

## RESPONSIBILITIES

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### 1.1 PHFA RESPONSIBILITIES

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

1. Review the Project History Form, Exhibit B, as submitted by the owner/agent.
2. Review the Owner's Certificate of Continuing Program Compliance, Exhibit C, as submitted by the owner/agent.
3. Review the Tenant Income Certificate(s), Exhibit E, as submitted by the owner/agent.
4. Notify the owner/agent of any noncompliance with the LIHTC Program.
5. Notify the Internal Revenue Service (IRS) of any noncompliance issues, as required.
6. At the discretion of PHFA and in accordance with IRS direction, from time to time, perform on-site inspections and management reviews.

### 1.2 OWNER/AGENT

- A. Upon receiving an allocation of LIHTCs, the owner/agent is responsible for:
  1. Following the instructions in this Pennsylvania Housing Finance Agency LIHTC Program Compliance Manual.
  2. Completing and submitting the Project History Form, Exhibit B.
  3. Completing and submitting the Owner's Certificate of Continuing Program Compliance, Exhibit C, to the Agency as instructed in the PHFA LIHTC Compliance Manual.
  4. Completing and submitting the Tenant Income Certification(s), Exhibit E, to the Agency as instructed in the PHFA LIHTC Compliance Manual.
  5. Participating and facilitating in the compliance review.
  6. Making all required corrections and/or clarifications as determined necessary for compliance. This action must be completed and a response received within the time established by the Agency. The Agency must give notice to the IRS of any known noncompliance.
  7. Keeping records for each building pursuant to the Tax Credit Compliance Manual, Section 4.5, Recordkeeping and Record Retention.
  8. Allowing and assisting in the review of any low income building during the compliance period. This audit would include an inspection of the building as well as the review of records.

B. The owner/agent must notify the PHFA of:

1. Change in management agent.
2. Anticipated change in ownership. Prior to a change of ownership, the owner must adhere to the procedures set forth in IRS Revenue Ruling 90-60.
3. Change of mailing address.
4. Action prescribed by the IRS should noncompliance exist.
5. Issuance of waiver of recertification or revocation of waiver by the IRS.

C. Submission of Audited Financial Statements

The Pennsylvania Housing Finance Agency is compiling annual statistical data on the financial operations of the non-portfolio tax credit properties (properties that have received a tax credit allocation but no additional PHFA financing). The Agency is limiting the data to properties with **20 or more units**.

Effective January 1, 2000 and annually thereafter, PHFA will require the submission of audited financial statements. If audited financial statements are not available, a compilation must be prepared and submitted.

One copy of the financial statement or compilation should be submitted to PHFA by March 31 for the preceding calendar year.

MANAGEMENT POLICIES  
AND GUIDELINES

## MANAGEMENT POLICIES AND GUIDELINES

The following procedures apply to the processing and occupancy of Low Income Housing Tax Credit Units. These guidelines need to meet all local and state landlord resident laws and must be in compliance with the Internal Revenue Code, Section 42, and all regulations and guidelines, promulgated in accordance thereto.

### 2.1 MARKETING

Eligible units must be made available for use by the general public and cannot be restricted to members of particular organizations.

Owners cannot give preferences in renting units or limit occupancy to special groups or persons, such as elderly persons or persons with a handicap or disability or homeless persons, in any way, if these actions would result in violation under the Fair Housing laws and all state and federal statutes and regulations.

### 2.2 SCREENING

Should the owner/agent choose to establish resident selection criteria for the screening of their applicants for occupancy, they must establish this criterion in writing. This screening criterion must be applied and performed on all applicants for housing in the development. This would include the LIHTC applicant, as well as all other applicants. This screening must be in compliance with all federal, state statutes and regulations.

### 2.3 RENT AND UTILITY ALLOWANCE REQUIREMENTS

The gross rent charged by the owner/agent must comply with the owner's election of the minimum set-aside of low-income units by targeting residents at either 50 percent or 60 percent of median income. Once an election is made, and the building is placed in service, the percent of minimum set-aside may not be changed. If further restrictions are made through a Restrictive Covenants Agreement/Extended Use Agreement, the owner must adhere to those, as well.

The gross rent must include an allowance for all utilities to be paid by the resident. For information on the applicable utility allowance for the property, please refer to IRS Notice 89-6, Utility Allowance Requirements, Determination of General Public Use, and Provision of Services. Also, reference Internal Revenue Regulations (TD 8520) for updated information on utility allowances.

The maximum allowable rent calculations include costs to be paid by the resident for utilities inclusive of heat, lights, air conditioning, water, sewer, oil or gas, where applicable. Utilities do not usually include telephone or cable TV. (Unless required as part of the security system.)

Utility allowances should be calculated as follows:

1. Housing and Urban Development (HUD) regulated buildings - use HUD approved utility allowances.
2. Rural Housing Services (RHS) regulated buildings - use RHS approved utility allowances.

3. Conventional buildings - use Public Housing Authority (PHA) utility allowances unless utility company data can show alternate amounts. However, for Section 8 certificates or vouchers, use the PHA Section 8 Existing utility allowances.

Effective May 2, 1994, if a local utility company estimate has been obtained for the units of a given building and HUD assisted tenants move into one or more of those units, the use of the PHA utility allowance would apply only to those units that are rent restricted.

Utility allowances must be updated annually, since they are included in the maximum allowable rent calculations. Updated utility allowances must be implemented within 90 days of their change. Utility analysis data must be retained in the property's yearly files. Any changes in utility allowances may impact on the net chargeable rent to the resident.

Beginning in 1990, fees paid by a government assistance program or rental assistance provided by a tax-exempt organization to the owner for supportive services do not have to be included in the gross rent.

For properties receiving tax credits during the years 1987 to 1989, the resident's gross rent may not exceed 30 percent of the median income adjusted for family size for the area in which the property is located. An exception to this rule exists if the owner opted to utilize Revenue Procedure 94-9 to make an irrevocable election to change their rent structure to that of POST-1989 properties, so that they may rent based on unit size.

Gross rents for properties receiving tax credit allocations after January 1, 1990 are based on unit size rather than household size. The rent is equal to 30 percent of the maximum income for an imputed household size. The rent for a unit that does not have a separate bedroom would be based on one individual occupying the unit. The rent for units with one or more separate bedrooms is based on 1.5 individuals occupying each of the bedrooms.

## 2.4 UNIT ELIGIBILITY REQUIREMENTS

For a building to qualify for the low income housing tax credits, the following requirements must be considered:

- A. Non-Transient Housing - The building may not be used for transient housing. A resident is considered transient if the initial lease term is less than six months. The only exception to the six-month lease restriction is Single Room Occupancy (SRO) housing, which permits units to be rented on a monthly basis.
- B. Suitable for Occupancy - All units must be suitable for occupancy as determined under regulations prescribed by the Secretary of Treasury, which will take into account health, safety, and building codes. The owner shall certify that this requirement is being met annually by use of the Owner's Certificate of Continuing Program Compliance, Exhibit C. This report must be submitted to the Agency each of the 15 years of the compliance period. See Exhibit H for the required submission dates.
- C. Fair Housing - Under current Internal Revenue Service interpretations, compliance with the general public use requirement for tax credit properties requires compliance with the Fair Housing Act. Monitoring Agencies have been instructed that noncompliance with the Fair Housing Act will constitute noncompliance with the general public use requirement and are reportable offenses.
- D. Housing Students - In general, a unit is not considered a low-income unit if all the occupants of such unit are full-time students (as defined in Section 151(c)(4) of the Code;

which includes children K-12). The exceptions to this are as follows:

- The full-time adult students are married and filing a joint federal income tax return. **(Effective for properties with a tax credit allocation or placed-in-service date after 06/30/92)**
  - The full-time student is receiving assistance under Title IV of the Social Security Act. **(Effective for properties with a tax credit allocation or placed-in-service date after 06/30/92)**
  - The full-time student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state, or local laws. Note: The IRS does not consider an internship a “similar” program (for example, a medical school student doing their residency or a student in a fellowship). **(Effective for properties with a tax credit allocation or placed-in-service date after 11/05/90)**
  - The full-time student is a single parent living with his/her minor children (with none of the persons being dependents of a third party; Exception: Child may be a dependent of his non-resident parent.) **(Effective for properties with a tax credit allocation or placed-in-service date after 06/30/92)**
  - The full time student is/was a recipient of foster care assistance under Part B or E of Title IV of the Social Security Act. **(Effective for determinations after 7/30/2008.)**
- E. Hospitals, nursing homes, sanitariums, life-care facilities, retirement homes (providing significant services other than housing), dormitories, or trailer parks may not be qualified LIHTC properties.
- F. Transfers - Should existing tenant(s), with incomes greater than 140% of the limit, wish to transfer to a new low-income unit in a separate building, the tenant(s) must be treated as prospective tenants in a new move-in. Therefore, all application, verification, and certification procedures must be completed for the transferring tenant(s). The household must now meet the appropriate income limit (not 140 percent of the limit) to maintain the LIHTC status. Per the revised Available Unit Rule, a transfer may now occur within the same building. If an over-income household transfers between units in the same building the units swap status and the 140 percent status will transfer with the household to the new unit. **NOTE: A Tenant Income Certification must be completed at the time of transfer in order to track the resident’s whereabouts.**
- G. Vacant Units - When a unit becomes vacant, which was formerly occupied by low income individuals, it may continue to be treated as occupied by a qualified low income individual for purposes of the set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit and no other units of comparable or smaller size in the property are rented to non-qualifying individuals.
- H. Restrictive Covenants – When a property commits to additional special set-asides, the appropriate number of units must either be rented to households that meet the set-aside requirements or they must be kept vacant.

## 2.5 RESIDENT APPLICATION PROCESS

Applicants being processed for a LIHTC unit should be advised of the income limit restrictions of the development, as well as any resident selection criteria the owner/agent uses to determine eligibility for occupancy.

The applicant must complete and sign a Release of Verification Form, Exhibit D or Exhibit G, for use by the owner/agent in retrieving third-party asset and income information. This information is necessary to complete the Tenant Income Certification, Exhibit E.

In offering equal opportunity to all applicants, a consistent method of accepting and processing applications should be devised.

## RESIDENT INCOME ELIGIBILITY

## RESIDENT INCOME ELIGIBILITY

### 3.1 INCOME ELIGIBILITY REQUIREMENTS

The LIHTC Program requires that the determination of eligible household income be based on the HUD Regulations in the Code of Federal Regulations. As a result, in order to determine income eligibility, the owner/agent must obtain verification of all income sources of all adult household members age 18 and older, as well as benefits paid on behalf of minors in the household. Unborn children and children who are in the process of being adopted (who do not live in the unit) are considered household members for purposes of determining unit size and income limits (Ref. HUD 4350.3 Change 27). Income from assets is to be included in annual income. To arrive at an income from asset figure, the owner/agent needs to verify all assets and establish a cash value of the asset. Include in the computation any assets that were disposed of for less than Fair Market Value within the two years prior to the effective date of the certification. At the time of verification, the anticipated income of the asset must be included in the total income figure that is compared to the applicable income limit.

For the LIHTC Program, the amount of income from assets will be determined on the total cash value of all assets owned by the household members.

- If the total cash value of all assets owned by the household is less than \$5,000, include the actual income derived from the asset in annual income.
- If the total cash value of all assets owned by the household is \$5,000 or greater, include in annual income the larger amount of either the actual income derived from the assets or an imputed amount, which is calculated by multiplying the total cash value of all assets owned by the household times 2.00 percent.

This process cannot occur until third-party verification of all income and assets has occurred. When this verification has been retrieved, the owner/agent will complete a Tenant Income Certification, Exhibit E.

The Internal Revenue Service has determined that an owner may satisfy the documentation requirement for a low income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's net family assets do not exceed \$5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. This determination was published in Revenue Procedure 94-65 and was effective October 11, 1994.

### 3.2 INCOME LIMITS

The U.S. Department of Housing and Urban Development (HUD) publishes median income information for Pennsylvania that is broken down into local areas, such as county or metropolitan areas. HUD publishes these limits on an annual basis. The Agency will make them available to all owners of the Low Income Housing Tax Credit Program. The 50 percent and 60 percent LIHTC income limits are Exhibit F in this manual.

Rural projects will use the greater of the area median gross income (AMGI) or the national non-metropolitan median income for determinations made after July 30, 2008.

### 3.3 INCOME INCLUSIONS AND EXCLUSIONS

The following items reflect the applicable regulations set forth in the Code of Federal Regulations as income sources to be considered for eligibility.

#### **ANNUAL INCOME INCLUDES:**

1. a. The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults of the household, except that of full-time students in excess of \$480. Includes salaries received from a family-owned business.
- b. Net income, salaries, and other amounts distributed from a business.
2. a. The gross amount (before deductions for Medicare, etc.) of periodic Social Security payments. Includes payments received by adults on behalf of minors or by minors for their own support.

Note: If Social Security is reducing a family's benefits to adjust for a prior overpayment, use the amount remaining after the adjustment for the overpayment. This is usually the "gross" amount reported on Social Security's verification form.

- b. Annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.
  - c. Lump-sum payments received because of delays in processing unemployment, welfare, or other benefits. This does not apply to a lump-sum payment for the delayed start of Social Security.
  - d. Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay. Any payments that will begin during the next 12 months must be included.
3. Welfare Assistance
    - a. If the payment includes an amount specifically designated for shelter and utilities and the welfare agency adjusts that amount based upon what the family is currently paying for shelter and utilities, special calculations are required.
    - b. If the welfare agency is reducing the family benefits to adjust for a prior overpayment, use the amount remaining after the adjustment for the overpayment. This is usually the "gross" amount reported on the welfare agency verification form.
  4. Alimony and child support.
  5. Interest, dividends, and other income from net family assets (including income distributed from trust funds). On deeds of trust or mortgages, only the interest portion of the monthly payments received by the applicant is included.
  6. All regular pay, special pay, and allowances (except hazardous duty pay) paid to a member of the Armed Forces who is a family member and:

- a. Is the spouse or head of household (whether or not living in the dwelling)?
  - b. Is age 18 or over and has dependents living in the unit.
7. Lottery winnings paid in periodic payments. (Winnings paid in a lump sum are included in net family assets, not in Annual Income.)
  8. Recurring monetary contributions for gifts regularly received from persons not living in the unit. (Includes rent or utility payments regularly paid on behalf of the family.)
  9. NOTE FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (ICF/MR) where Medicaid pays the ICF/MR directly for services and rent and pays the resident only a small personal allowance, e.g., \$30. Owners must not add the personal allowance to the SSI amount. Annual income must include:
    - a. The Supplemental Security Income (SSI) payment the resident would receive if he/she were not living in a group home.
    - b. All income the resident receives from sources other than SSI, e.g., wages, training workshops, interest income, etc.
  10. Title II relocation payments authorized by the Uniform Relocation Act of 1970.
  11. Any financial assistance, in excess of amount received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965) shall be considered income to that individual, except that any financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. Such assistance may include fees, books, equipment, material, supplies, transportation and miscellaneous personal expenses.

**ANNUAL INCOME EXCLUDES:**

1. Employment income of children (including foster children) younger than 18 and employment income of full-time students 18 and older in excess of \$480 (except head of household and spouse).
2. Food stamps, meals on wheels, or other programs that provide food for the needy; groceries provided by persons not living in the household.
3. Grants or other amounts received specifically for:
  - a. Auxiliary apparatus for a person with a handicap or disability.
  - b. Expenses for attendant care provided by someone other than a family member living in the household.
  - c. Medical expenses.
  - d. Set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income (SSI) eligibility.
  - e. Out-of-pocket expenses for participation in publicly-assisted programs and only to

allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.

4. Income associated with persons that live in the unit but are not household members. Includes:
  - a. Payments received for care of foster children and foster adults.
  - b. Income of live-in attendants.
5. The principal portion of payments received on mortgages or deeds of trust.
6. All amounts for student financial assistance.
7. Hazardous duty pay to a family member in the military.
8. Lump-sum additions to family assets, such as inheritances, cash from sale of assets, one-time lottery winnings, insurance settlements under health and accident insurance and workmen's compensation, settlement for personal or property losses. Lump-sum payments of SSI and Social Security benefits received as deferred payments.
9. Casual, sporadic, or irregular gifts.
10. Payments, rebates, or credits received under Federal Low Income Home Energy Assistance Programs. Includes any winter differentials given to elderly.
11. Annual rent credits or rebates paid to senior citizens by government agencies.
12. Payments received under training programs funded by HUD (Comprehensive Improvement Assistance Program).
13. Income excluded by federal statute:
  - a. Relocation payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
  - b. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
  - c. Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, and senior companions).
  - d. Payments received under Alaskan Native Claims Settlement Act.
  - e. Payments from certain submarginal U.S. land held in trust for certain Indian tribes.
  - f. Payments or allowances made under Federal Low Income Home Energy Assistance Programs. Includes any winter differentials given to elderly.
  - g. Payments received under programs funded in whole or in part under the Job Training Partnership Act (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998).

- h. Payments from disposal of funds of Grand River Band of Ottawa Indians.
  - i. The first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands.
  - j. Payments received under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program).
  - k. Student loans (regardless of how they are actually spent).
  - l. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other fund established pursuant to the statement in the In Re Agent Orange product liability litigation, MDL No. 381 (EDNY).
  - m. Financial assistance that an individual receives for tuition under the Higher Education Act of 1965, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965) shall be not considered income.
  - n. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat. 1785).
  - o. Holocaust reparation payments (effective 04-23-93).
  - p. Value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the ChildCare and Development Block Grant Act of 1990.
  - q. Earned income tax credit (EITC) refund payments received on or after January 1, 1991.
  - r. Payments by the Indian Claims Commission to the Confederated Tribes and Bonds of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation.
  - s. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990.
  - t. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam Veteran.
  - u. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act.
14. Amounts received by a person with a handicap or disability that are set aside for use under a Plan to Attain Self-Sufficiency (PASS).
  15. Resident services stipends of \$200 per month or less, received for performing services for the property owner that enhance the quality of life in an assisted housing development such as lawn maintenance, coordination of property activities, etc.

16. Adoption assistance payments in excess of \$480 per adopted child.
17. State homecare payments to families that have developmentally disabled children or an adult family member living at home.
18. Compensation received under a state or local employment training program or from a program to train residents as management staff. (This exclusion only covers compensation received while the resident participates in the training program and the duration of training must be for a limited period determined in advance.

### 3.4 CALCULATING INCOME FROM EARNINGS AND BENEFITS

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

1. To annualize full-time employment, multiply;
  - hourly wages by 2080 hours;
  - weekly wages by 52;
  - biweekly amounts by 26;
  - semi-monthly amounts by 24;
  - monthly amounts by 12.
2. To annualize income from anything 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 (monthly, biweekly, etc.) by the number of periods the family expects to work.
3. Annual wages should always reflect a full 12-month period, regardless of the pay schedule. For example, if a schoolteacher earns a gross annual salary of \$17,000, the \$17,000 should be used as annual salary whether the teacher is paid over only nine months or throughout the year.
4. If a family indicates that income might not be received for the full 12 months, i.e., unemployment compensation, the owner should still annualize the income, i.e., income benefits may be extended.

### 3.5 INCOME FROM ASSETS

The Tenant Income Certification will help in working through the calculation to determine income from assets.

Third-party verification is required to determine the market value of an asset. The value of the asset may then be reduced by whatever costs that may be incurred to convert that asset to cash. Examples of these costs are:

- penalties for premature withdrawal;
- brokers fees;
- legal fees;

- settlement costs for real estate transactions.

## HOW TO CALCULATE CASH VALUE

Owners must use the cash value of the asset, i.e., the amount the family would receive if the asset were converted to cash.

Cash value is the market value minus any reasonable expenses that would be incurred in selling or converting the asset to cash, such as:

- penalties for early withdrawals;
- broker and legal fees;
- settlement costs for real estate.

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

### Examples:

	<u>Balance</u>	<u>Interest Rate</u>	<u>Penalty for Early Withdrawal</u>
A.	\$5,000	6.0%	3 months
B.	\$8,000	7.5%	4 months
C.	House valued at \$50,000 with broker fees of \$2,000 and settlement cost of \$6,000.		

### To Calculate:

- A.  $\$5,000 \times 6\%$  divided by  $12 \times 3 = \$75$  (penalty for early withdrawal).  
 $\$5,000 - \$75 = \$4,925$  (cash value).  
 $\$5,000 \times 6\% = \$300$  (actual yearly income from asset).
- B.  $\$8,000 \times 7.5\%$  divided by  $12 \times 4 = \$200$  (penalty for early withdrawal).  
 $\$8,000 - \$200 = \$7,800$  (cash value).  
 $\$8,000 \times 7.5\% = \$600$  (actual yearly income from asset).
- C.
- |                  |               |
|------------------|---------------|
| Market Value     | \$50,000      |
| Broker Fees      | -2,000        |
| Settlement Costs | <u>-6,000</u> |
| Cash Value       | \$42,000      |

Actual yearly income from asset - zero.

### 3.6 ASSET INCLUSIONS AND EXCLUSIONS FOR LOW INCOME HOUSING TAX CREDITS

#### **ASSETS INCLUDE:**

1. Amounts in savings and average 6-month balance of checking account.
2. Stocks, bonds, Treasury Bills, certificates of deposit, money market funds.
3. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset.
4. Principal value of trusts that are available to the household.
5. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty.
6. Some contributions to company retirement/pension funds.
7. Personal property held as an investment (such as jewelry or antiques).
8. Inheritances, lottery winnings, capital gains, insurance settlements and other lump-sum amounts are generally considered assets.
9. Assets disposed of for less than Fair Market Value within two years before the effective date of Certification/Recertification. (If the Fair Market Value of the disposed assets exceeds the gross amount received by more than \$1,000, include the whole difference between the cash value and the amount received. If the difference is less than \$1,000, ignore it).

#### **ASSETS DO NOT INCLUDE:**

1. Personal Property, except as noted in #7.
2. Interest in Indian trust lands.
3. Assets that are part of an active business or farming operations.
4. Assets an applicant/resident legally owns but are not accessible by the applicant, e.g., a battered spouse owns a house with her husband but, because of the domestic situation, she receives no income from the asset and cannot convert it to cash.
5. Assets that are not effectively owned by the applicant, i.e., when asset is held in applicant's name but:
  - Asset and income from asset accrue to someone else; and
  - That other person is responsible for paying taxes on the asset income.
  - Not to be confused with joint ownership.
6. Equity in the cooperative unit in which the family lives.
7. Life insurance policies that have no cash value to the individual before death.

### 3.7 INCOME AND ASSET VERIFICATION

All sources and forms of income and assets must be verified. Verification must be received by the owner/agent prior to the execution of the Move-in Certification and occupancy, as well as prior to the annual recertification.

## **PROCESSING/DATING OF CERTIFICATIONS**

**Effective Date:** For a new resident, this date is the same as their move-in date. On the resident(s)' annual certification, this date is the first of the month, one year from move-in. EXAMPLE: Resident(s) move in 01/21/92, their Annual Certification is effective 01/01/93. (Exceptions: (1) If a new recertification is needed prior to the anniversary date to meet RHS income recertification requirements, a new LIHTC TIC (Exhibit E) can be processed too. This will establish a new yearly recertification date to coincide with the RHS processing. (2) If a new recertification is needed prior to the anniversary date due to the resident being accepted into the Section 8 Program between certifications, a new LIHTC TIC (Exhibit E) can be processed to allow the paperwork to coincide with that of the Section 8 office. This will establish a new yearly recertification date to coincide with the Section 8 processing.) When a transfer occurs, an interim recertification is processed effective the day of the transfer. An annual recertification is then processed at yearly intervals from the original move-in date. **Note:** The effective date, and not the date the resident signs the Certification Form, is the driving force behind the Certification. The resident should not backdate his signature date.

**Move-In Date:** This is the initial date the resident moved into the unit. If the move-in is the result of a transfer, use the original move-in date into the property. If the move-in is the result of an acquisition with existing residents, the move-in date is the date of the acquisition.

Each adult household member prior to the application interview and again at the annual recertifications should sign an Authorization for Release of Verification Form, (Exhibit G). These forms are consent forms to allow for the release of information necessary for third-party verification. Additional signatures of new adult members should be obtained prior to move-in or when the member turns 18 years of age.

If a tenant's net family assets do not exceed \$5,000, then the Internal Revenue Service has determined that an owner may satisfy the documentation requirement for verification of income from assets by obtaining a signed, sworn statement directly from the tenant. The statement must include notations that the tenant's net family assets do not exceed \$5,000 and a reference to the amount of annual income the tenant earns from the net family assets.

In the event the property received acquisition and rehabilitation tax credits and the property was occupied on the date of acquisition, tenant income certifications must be completed effective the date of the acquisition (with verification of existing income and assets being completed within 120 days before or after the date of acquisition). Based upon an owner's demonstration of special circumstances, the Agency may, in its sole discretion, determine income eligibility as of the rehabilitation placed-in-service date. See Rev. Proc. 2003-82 (safe harbors), which may require January 1 recertifications. Note: The Revenue Procedure says to test the household income, the Agency considers this "test" to be a complete tenant income certification requirement.

## **VERIFICATION TERM**

All items that affect an applicant's eligibility must be verified and be 120 days current to (prior to) the move-in or annual recertification; with the exception of acquisition move-in certification data, which may be verified within 120 days after the date of acquisition.

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

1. Written verification by a third party, which should not be hand carried by the resident. Oral verification by a third party is acceptable if a form is completed, signed, and dated by agent indicating identity of the third-party oral source.
2. Review of documents evidencing income sources, but only when a third-party verification is not possible.
3. Resident Certification (notarized statement) when third-party verification or review of documents is not possible or delayed beyond four weeks. This method is usually not acceptable and should only be used as a last resort.
4. Asset Verification Only - If the tenant's net family assets are less than \$5,000, then the owner can obtain a signed, sworn statement from the tenant in accordance with Revenue Procedure 94-65.

Verification should be date stamped upon receipt to ensure compliance. Sample verification forms are included as Exhibit G of this manual.

### **3.8 INCOME AND ASSET VERIFICATION OF HUD-ASSISTED RESIDENTS**

Should the LIHTC resident be the recipient of Section 8 assistance in the form of a Section 8 Certificate, Section 8 Voucher, or Section 8 Moderate Rehabilitation Contract, the owner/agent would certify with the Contract Administrator (CA) for the HUD assistance, i.e., the local PHA, that each recipient of this assistance is income eligible according to the income limit requirements of the LIHTC Program.

Verification may be secured by letter to the CA outlining the income requirements, as well as the income limits. The CA should certify that this occurs for all recipients of the assistance program by returning the letter with a certification.

A copy of that letter must accompany the appropriate certification worksheet form for all move-ins and recertifications.

### **3.9 RECERTIFICATION**

The determination of continued resident eligibility of all set-aside units must be performed annually. This calculation is performed in the same manner as the initial eligibility requirements. The owner/agent is required to retrieve third-party verification of all income sources of all adult household members age 18 and older as well as benefits paid on behalf of minors in the household.

Applicable income from assets is to be included in annual income. This amount is established by obtaining third-party verification of assets, or if assets are less than \$5,000, by obtaining a

signed, sworn statement from the tenant. The income from the asset to be included in annual income is the actual income from asset if the total cash value of all assets is less than \$5,000. If the total cash value of all the assets is \$5,000 or more, include the larger amount when compared to the actual income from asset as opposed to the imputed amount, which is calculated by multiplying the total cash value of assets times 2.00 percent.

When this recertification procedure is performed, the owner/agent needs to pay particular attention to the circumstances that may have affected the continuing eligibility of a resident in a set-aside unit. Areas of concern include:

- New or additional income sources;
- Change in employment status;
- Change in family composition - (If the number of household members decreases or increases, the income limit used at time of recertification is 140 percent of the new household size);
- Additional assets;
- Deletion of assets.

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

- If the household annual income at recertification increases above the qualifying income level at move-in, but is less than 140 percent of the area median income limit, as adjusted for family size, the family continues to qualify as a low income set-aside unit household.
- If the household annual income at recertification exceeds 140 percent of the area median income limit, as adjusted for family size, the unit may continue to count as a low income set-aside unit as long as all available units of comparable or smaller size in the building are occupied by qualified low income residents. (The revised available unit rule was effective as of September 26, 1997.)

The addition of household members is to be processed as follows:

- Complete a move-in TIC to include only the new member. The effective and move-in dates are both to be the date the person moves into the unit. The current income limits apply. If the new member is eligible as of that date, then they would also qualify to remain in the unit should all other original household members decide to vacate. If the new member is ineligible, they will have to move-out when all initial household members vacate. Third party income verification is required.
- Complete a second TIC to include all members of the household (existing; plus new). Check the "Other" category on top of the TIC form. The effective date is the date the new member joins the household. The move-in date remains the original move-in date of the household. The annual recert date for the household does not change.

Add the income from the new member's move-in TIC to the income from the most recent TIC of the existing household to complete this TIC; no third party documentation is required. Apply the 140% rule as of the effective date.

- Both TIC's should be listed on the Rental schedule.

Section 42(g)(8)(B) of the Internal Revenue Code provides for a waiver of the annual income recertification for owners of 100 percent qualified low-income housing properties. The Housing and Economic Recovery Act of 2008 (H.R. 3221) allows for an owner waiver of the annual recertification requirement (effective 1/1/2009). In order to take advantage of the waiver, an eligible owner must provide a statement to the Agency (via the Owner's Certificate of Continuing Program Compliance) that the property is eligible for a waiver of recertification because it is a 100% LIHTC property and no units were occupied by nonqualifying households. Also, the Agency may not have determined any of the units were occupied by tax credit ineligible households. The key points to this procedure are as follows:

- The waiver only applies to recertifications, not initial certifications. Each tenant must still be certified at the time of their initial move-in (including transfers within the property and when adding additional household members age 18 and older).
- Properties with additional types of financing, i.e., HOME Investment Partnership Program, must continue using the recertification process.

## COMPLIANCE PROCEDURES

## COMPLIANCE PERIOD PROCEDURES

### 4.1 ELECTION OF MINIMUM SET-ASIDE

An irrevocable election of the minimum set-aside of low income units is made by the owner no later than the date the building is placed in service, as outlined in the *Pennsylvania Low Income Housing Tax Credit Program Guide*, Exhibit A.

One of the following elections must be made:

1. At least 20 percent of the rental units must be rented to residents with qualifying income at or below 50 percent of area median income, or
2. At least 40 percent of the rental units must be rented to residents with qualifying income at or below 60 percent of area median income.

Properties that received tax credits prior to January 1, 1990, had to meet their minimum set-aside of low income units no later than 12 months after the building was placed in service. Properties receiving post-1989 tax credits must meet their minimum set aside by the close of the first year of the tax-credit period for the building.

The set-aside is the minimum amount of units that must be reserved for low income residents for a building to be considered a qualified low income building and retain any of its tax credits. However, the amount of units that must be reserved for qualified low income residents is determined at the placed-in-service date and is referred to as the Applicable Fraction of low income units. For a further explanation of the determination of the Applicable Fraction, please refer to the *Pennsylvania Low Income Housing Tax Credit Program Guide*, Exhibit A. The Applicable Fraction must be met on a building by building basis (statute requirement). The Applicable Fraction of units may not be decreased during the compliance or extended compliance period. A decrease in the Fraction may result in a partial recapture of tax credits, an event of noncompliance, and applicable penalties.

### 4.2 COMPLIANCE PERIOD

A property receiving an allocation of tax credits must remain a qualified low income housing property as defined in Section 42(g) of the Code for its entire compliance period. Properties receiving an allocation of 1987-1989 tax credits must remain a qualified property for a period of 15 taxable years beginning with the first taxable year of the credit period. Properties receiving an allocation of tax credits after 1989 must enter into a Restrictive Covenant Agreement with the Agency. This agreement addresses not only the maintenance of the applicable fraction of tax credit units, but also the rights of the residents and provisions for an extended low-income compliance period beyond the initial 15-year compliance period. An owner may claim no tax credit for a taxable year unless the Restrictive Covenant Agreement is in effect for such taxable year.

#### 4.3 ELIGIBILITY REPORTING REQUIREMENTS FOR DEVELOPMENTS FINANCED BY PHFA

If a development has PHFA mortgage financing, monitoring requirements for the property must meet additional PHFA compliance procedures and requirements as set forth in the mortgage loan documents and the additional requirements as set forth below:

1. **Owner's Certificate of Continuing Program Compliance** – The owner/agent shall submit to the Agency an Owner's Certificate of Continuing Program Compliance, Exhibit C, along with its attachment, the Rental Schedule. The Annual Report covers the prior calendar year, and the Rental Schedule should include all residents that occupied a unit at any given time during that 12-month period. The Tenant Income Certification, Exhibit E, shall also be submitted to the Agency for each resident household. Both of these forms are required submissions for each year throughout the compliance period. To assist with the review process, the submission dates of the Annual Certifications have been delineated by region. See Exhibit H, Submission by Regions, for the required submission dates.

Should there be any items that require further clarification, either the Tax Credit Analyst or the Housing Management Representative will write to the owner/agent advising of any outstanding items to be addressed. The owner/agent must respond within 90 days of the date of the letter addressing the method and/or action completed to rectify each item indicated in the letter. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must initial the changes.) Within 21 days from the end of the 90-day correction period, the Agency will file IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance, regardless of whether the noncompliance items have been corrected. The report will identify all outstanding items that have not been rectified, as well as all deficiencies that have been corrected.

2. **Annual Recertification Waiver** – If an owner qualifies for a waiver of annual recertifications, he must continue to adhere to the above-stated policy, except where it applies to annual recertifications. He must continue to submit the Owner's Certificate of Continuing Program Compliance, with the Rental Schedule attached (minus the income information), as scheduled. A Tenant Income Certification shall also be submitted to the Agency for each resident move-in and/or transfer as well as the addition of a new household member.

Owners taking advantage of the waiver of annual recertifications must continue to obtain student status information for all household members. Owners may use a form of their own or use the "Alternate Certification Form" as included in Exhibit G of this manual.

3. **Compliance Review** - At the discretion of PHFA and in accordance with IRS direction, a compliance review will be performed on LIHTC units.

The developments participating in a Compliance Review will be subject to the following:

- a. Notification in writing of a proposed visitation review date.
- b. Required to have all LIHTC resident files with applicable certification worksheets and supporting income and asset verification on site for a review or required to send copies of said forms to PHFA.

- c. Required to have all utility analysis data on file for review or required to send copies of utility documentation to PHFA.
- d. Required to have on file copies of IRS Form(s) 8609 with Part II completed.
- e. Required to have on file a copy of the letter sent to tenant(s) notifying them of a pending physical inspection of the unit.
- f. A review will be performed by a PHFA representative to determine compliance with this Manual and the Low Income Housing Tax Credit Program. The number of files reviewed will not be less than 20 percent of the Low Income Housing Tax Credit Resident Files, and may be up to 100 percent of the files.
- g. PHFA representative will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the representative within 90 days of the date of the letter, addressing the method and/or action completed to rectify each item. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must initial the changes.) PHFA will notify the Internal Revenue Service within 21 days from the above-referenced correction period of all outstanding items that have not been rectified, as well as any deficiencies that have been corrected. This may include State imposed noncompliance issues, as well as Section 42 regulated issues. IRS Form 8823 is used to do this reporting.

#### 4.4 ELIGIBILITY REPORTING REQUIREMENTS FOR ALL LIHTC DEVELOPMENTS NOT FINANCED BY PHFA

As the monitoring agency for the LIHTC Program, PHFA will request the owner/agent utilizing the Program to complete the following steps:

1. **Owner's Certificate of Continuing Program Compliance** – The owner/agent shall submit to the Agency an Owner's Certificate of Continuing Program Compliance, Exhibit C, along with its attachments, including the Rental Schedule. The Annual Report covers the prior calendar year, and the Rental Schedule should include all residents that occupied a unit at any given time during that 12-month period. A Tenant Income Certification, Exhibit E, shall also be submitted to the Agency for each resident household. Both of these forms are required submissions for each year throughout the compliance period. To assist with the review process, the submission dates for the Annual Certifications have been delineated by region. See Exhibit H for the required submission dates.
2. **Annual Recertification Waiver** - If an owner qualifies for a waiver of recertification, he must continue to adhere to the above-stated policy, except where it applies to recertifications. He must continue to submit the Owner's Certificate of Continuing Program Compliance, with the Rental Schedule attached (minus the income information), as scheduled. A Tenant Income Certification shall also be submitted to the Agency for each resident move-in and/or transfer; as well as the addition of a new household member.
3. **Compliance Review** - At the discretion of PHFA and in accordance with IRS direction, a

compliance review will be performed on LIHTC units.

The developments participating in a Compliance Review will be subject to the following:

- a. Notification in writing of a proposed visitation review date.
- b. Required to have all LIHTC resident files with applicable certification worksheets and supporting income and asset verification on site for a review or required to send copies of said forms to PHFA.
- c. Required to have all utility analysis data on file for review or required to send copies of utility documentation to PHFA.
- d. Required to have on file copies of IRS Form(s) 8609 with Part II completed.
- e. Required to have on file a copy of the letter sent to tenant(s) notifying them of a pending physical inspection of the unit.
- f. A review will be performed by a PHFA representative to determine compliance with this Manual and the Low Income Housing Tax Credit Program. The number of files reviewed will not be less than 20 percent of the Low Income Housing Tax Credit Resident Files, and may be up to 100 percent of the files.
- g. PHFA representative will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the representative within 90 days of the date of the letter, addressing the method and/or action completed to rectify each item. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must initial the changes.) PHFA will notify the Internal Revenue Service within 21 days from the above-referenced correction period of all outstanding items that have not been rectified, as well as any deficiencies that have been corrected. This may include State imposed noncompliance issues, as well as Section 42 regulated issues. IRS Form 8823 is used to do this reporting.

#### 4.5 RECORDKEEPING AND RECORD RETENTION

As required by the Internal Revenue Service, *FEDERAL REGISTER*, Part 1 and 602, the owner is required to maintain accurate records for each building in the low income housing property. These data MUST include:

- The total number of residential units in the building and the square footage of all residential units in the building.
- The total number of all low-income units in the building.
- The percentage of residential rental units in the building that are low-income units.
- The number of occupants in each low-income unit.
- The rent charged on each residential unit in the building, including an account of the utilities that are paid by the resident and/or the owner. These records should reflect all

applicable utility allowances as well.

- The number of bedrooms in each unit.
- The low-income unit vacancies in the building.
- The rentals of all available units in each building, including when and to whom rented.
- Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax-credit period.
- The character and use of the nonresidential portion of the building that was included in the building's Eligible Basis.
- The certification data discussed in Section 4.3 and 4.4 of this Chapter.

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

EXTENDED USE  
COMPLIANCE PROCEDURES

## EXTENDED USE COMPLIANCE PROCEDURES

### 5.1 APPLICABLE FRACTION

The Applicable Fraction must be met on a project basis. The Applicable Fraction of units may not be decreased during the extended use compliance period.

### 5.2 EXTENDED USE COMPLIANCE PERIOD

Properties receiving an allocation of tax credits after 1989 must enter into a Restrictive Covenants Agreement with the Agency. This agreement addresses not only the maintenance of the applicable fraction of tax credit units, but also the rights of the residents and provisions for an extended low-income compliance period beyond the initial 15-year compliance period.

### 5.3 ELIGIBILITY REPORTING REQUIREMENTS FOR DEVELOPMENTS FINANCED BY PHFA

If a development has PHFA mortgage financing, monitoring requirements for the property must meet additional PHFA compliance procedures and requirements as set forth in the mortgage loan documents and the additional requirements as set forth below:

1. **Owner's Certificate of Continuing Program Compliance** – The owner/agent shall submit to the Agency an Owner's Certificate of Continuing Program Compliance, Exhibit D, along with its attachment, the Rental Schedule. The Annual Report covers the prior calendar year, and the Rental Schedule should include all residents that occupied a unit at any given time during that 12-month period, minus the income information for recertifications. The Tenant Income Certification, Exhibit E, shall also be submitted to the Agency for each resident household at move-in, along with copies of third-party supporting income and asset verifications. Tenant Income Certifications will no longer be required for recertifications. Both the Owner's Certificate of Continuing Program Compliance and the Tenant Income Certification (move-ins only) are required submissions for each year throughout the extended use period. To assist with the review process, the submission dates of the annual paperwork have been delineated by region. See Exhibit H, Submission by Regions, for the required submission dates.

Should there be any items that require further clarification, either the Tax Credit Analyst or the Housing Management Representative will write to the owner/agent advising of any outstanding items to be addressed. The owner/agent must respond within 90 days of the date of the letter addressing the method and/or action completed to rectify each item indicated in the letter. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must initial the changes.)

2. **Annual Recertification** – The owner will no longer be required to annually recertify households for LIHTC purposes.

3. **Physical Inspection of Property** - At the discretion of PHFA, physical inspections will be performed on LIHTC units at least every five years.

The developments participating in a Physical Inspection will be subject to the following:

- a. Notification in writing of a proposed visitation review date.
- b. Required to have on file a copy of the letter sent to tenant(s) notifying them of a pending physical inspection of the unit.
- c. A review will be performed by a PHFA representative to determine compliance with code requirements. The number of units reviewed will not be less than 20 percent of the Low Income Housing Tax Credit units, and may be up to 100 percent of the units.
- d. PHFA representative will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the representative within 90 days of the date of the letter, addressing the method and/or action completed to rectify each item. If at the end of the 90-day period any issue remains unaddressed, the Agency will issue a letter to the owner informing them of possible repercussions.

#### 5.4 ELIGIBILITY REPORTING REQUIREMENTS FOR ALL LIHTC DEVELOPMENTS NOT FINANCED BY PHFA

As the monitoring agency for the LIHTC Program, PHFA will request the owner/agent utilizing the Program to complete the following steps:

1. **Owner's Certificate of Continuing Program Compliance** – The owner/agent shall submit to the Agency an Owner's Certificate of Continuing Program Compliance, Exhibit D, along with its attachment, the Rental Schedule. The Annual Report covers the prior calendar year, and the Rental Schedule should include all residents that occupied a unit at any given time during that 12-month period, minus the income information for recertifications. A Tenant Income Certification, Exhibit E, shall also be submitted to the Agency for each resident household at the move-in, along with copies of third party supporting income and asset verifications. Tenant Income Certifications will no longer be required for recertifications. Both of the Owner's Certificate of Continuing Program Compliance and the Tenant Income Certification (move-ins only) are required submissions for each year throughout the extended use period. To assist with the review process, the submission dates for the annual paperwork have been delineated by region. See Exhibit H for the required submission dates.
2. **Annual Recertification** – The owner will no longer be required to annually recertify households for LIHTC purposes.
3. **Student Households** – Households will no longer be excluded because they are comprised in their entirety by students.

4. **Physical Inspection of Property** - At the discretion of PHFA, physical inspections will be performed on LIHTC units at least every five years.

The developments participating in a Physical Inspection will be subject to the following:

- a. Notification in writing of a proposed visitation review date.
- b. Required to have on file a copy of the letter sent to tenant(s) notifying them of a pending physical inspection of the unit.
- c. A review will be performed by a PHFA representative to determine compliance with code requirements. The number of units reviewed will not be less than 20 percent of the Low Income Housing Tax Credit units, and may be up to 100 percent of the units.
- d. PHFA representative will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the representative within 90 days of the date of the letter, addressing the method and/or action completed to rectify each item. If at the end of the 90-day period any issue remains unaddressed, the Agency will issue a letter to the owner informing them of possible repercussions.

## EXHIBITS

- A. Tax Credit Program Guide
- B. Project History Form
- C. Owner's Certificate of Continuing Program Compliance
- D. Post Year 15 - Owner's Certificate of Continuing Program Compliance
- E. Tenant Income Certification
- F. Income Limits
- G. Sample Verification Forms
- H. Submission by Region: Due Dates