



# Compliance Online Reference Manual

*Assisting in the Development and Maintenance  
of Quality Rental Housing Communities  
Affordable to  
Low Income Californians*

California Tax Credit Allocation Committee



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**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**



**LOW INCOME HOUSING  
TAX CREDIT PROGRAM  
(LIHTC)**

**COMPLIANCE MONITORING  
MANUAL**  
*(online format)*

**[www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp)**

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*All appendices are linked on the CTCAC Website: [www.treasurer.ca.gov/ctcac/compliance/manual.asp](http://www.treasurer.ca.gov/ctcac/compliance/manual.asp)  
Links to outside agencies are not maintained by CTCAC and CTCAC is not responsible for broken links or outdated material. A good faith effort has been made at the time of the CTCAC Manual release to verify the information.*

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	<b>Internal Revenue Code Section 42</b>
	<b>Memorandum of Understanding – Department of Treasury, Department of Justice, Housing and Urban Development (HUD)</b>
	<b>Government Code 6250-6270</b> (Public Records Act)
	<b>Blue Book (General Explanation of the Tax Reform Act of 1986)</b>
	<b>NCSHA Recommended Practices</b>
<b>Appendix 2</b>	<b>Handbooks and Guides</b>
	<b>IRS Guide to Form 8823</b>

**HUD Handbook 4350.3 Chapter 5 (Revision 3)**  
(Income, Assets, and Verification)

**CA Tenant/Landlord Handbook**

**Appendix 3 IRS Revenue Rulings, Notices, and Procedures**

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IRS Notice 1988-80	Income Determination
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IRS Final Regulations	(TD 8520) – Carryover Allocations, General Public Use, and Utility Allowances)
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**Appendix 4 Internal Revenue Service Sample Forms**

IRS Form 4506-T Request for Transcript of Tax Return  
IRS Form 8586 Low Income Housing Credit  
IRS Form 8609 Low Income Housing Credit Allocation Certification  
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IRS Form 8693 Low Income Housing Credit Disposition Bond  
IRS Form 8823 Low Income Housing Credit Agencies Report of Noncompliance



# SECTION I – INTRODUCTION

## **Part 1.1 Background of the CTCAC Program**

In 1986, Congress enacted the Low-Income Housing Tax Credit Program (LIHTC). This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The LIHTC reduces the federal tax liability of project owners in exchange for the acquisition, rehabilitation, or construction of affordable rental housing units that will remain income and rent restricted over a long period. The amount of tax credit allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The LIHTC is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”). The California Tax Credit Allocation Committee (CTCAC) is the designated “housing credit agency” to allocate and administer tax credits for the entire state.

Each state develops a Qualified Allocation Plan (QAP), which establishes the guidelines and procedures for the acceptance, scoring, and competitive ranking of applications and for the administration of the LIHTC Program. The QAP and California’s Program Regulations are developed to be relevant to state housing needs and consistent with state housing priorities. For more information on the Qualified Allocation Plan and the Program Regulations, see Section III, Parts 3.6 – 3.10.

## **Part 1.2 Contents and Summary**

Section 42(m)(1)(B)(iii) of the Code requires that each state’s Qualified Allocation Plan provide a procedure that the agency will follow in notifying the Internal Revenue Service (IRS) of any noncompliance with the provisions of Section 42 of which it becomes aware. This provision became effective on January 1, 1992.

Final regulations, developed by the IRS and published on September 2, 1992, outline minimum requirements for owner recordkeeping and reporting, for state credit agency monitoring and inspecting, and for reporting to the IRS instances of noncompliance.

On July 30, 2008, Congress passed the Housing and Economic Recovery Act of 2008 (HR 3221) which changed several provisions of the federal LIHTC program. See Section VIII Legislative Changes.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA). ARRA was designed as a sweeping economic stimulus bill providing resources to various programs and other efforts to reinvigorate the nation’s economy. The Low Income Housing Tax Credit (LIHTC) program was among those programs that received additional resources to stimulate the production of affordable rental housing for low-income families and households. In California, all ARRA funded projects are subject to the same monitoring procedures and requirements outlined in this manual in addition to asset management requirements. Detailed descriptions of ARRA and the available programs funded by it can be

found on our website at:

<http://www.treasurer.ca.gov/ctcac/arra.asp>

California's compliance monitoring plan follows the final regulations, as well as the recommendations of the National Council of State Housing Agencies (NCSHA), and is applicable to ALL owners of ALL buildings that have ever claimed the low-income housing tax credit since the inception of the program in 1987. See Section VIII Legislative Changes.

In March 2018, Congress passed a tax reform as part of the Omnibus Spending Plan that added a third Federal Set-aside to the LIHTC – Average Income Target. California released guidance as part of an emergency regulations package on March 26<sup>th</sup> that outlined how the program is going to be implemented. Please see Section VIII Legislative Changes.

### **Part 1.3 Compliance Period**

Once allocated by the housing credit agency, low-income housing tax credits can be claimed annually over a ten (10) year period beginning either with the year the building is placed in service or the following year, depending on which option is selected by the owner. Projects must, however, remain in compliance for a minimum of fifteen (15) years, with some requirements extending for an additional three years. Additionally, owners who agreed in their applications to have longer compliance periods will be bound for the length of time specified up to a total of 55 years.

Developments with allocations of 1990 credit and after will have entered into a restrictive covenant (Regulatory Agreement/Land Use Restrictive Agreement) with CTCAC at the time of final allocation. These developments must comply with eligibility requirements for an additional 15 years beyond the initial 15 year compliance period (or a total of 30 years).

Many projects, particularly those allocated in 1990 and beyond, elected to extend the number of low-income use restriction years up to 55 years in order to receive additional points in the scoring process. 9% Competitive projects allocated in 1996 and beyond must extend the number of low-income use restriction years to 55 years in order to compete for an allocation. 4% Bond Allocations through 2003, could choose either 30 or 55 years for the Regulatory Period. All projects allocated starting in 2004 must have a 55 year Regulatory Period. For more information regarding the Extended Use Agreement, the Qualified Allocation Plan, and the Program Regulations, see Section II, Part 2.1(G), Section III, Parts 3.6 – 3.10.

The restrictive covenant binds the owner and any successors to maintain specified low-income occupancy during the Extended Use Period. The Extended Use Period may end in the event of foreclosure, or if, during or after the 14th year of the tax credit period, the owner requests the credit agency to find a buyer willing to enter into a “qualified contract” to purchase the property and maintain its low-income use for the remainder of the Extended Use Period. However, please note, in California, the option of requesting the credit agency to find a purchaser is not available to owners who agreed to longer compliance periods.

If a LIHTC property goes into foreclosure during the 15 year Federal Compliance Period, a 3

year de-control period goes into effect, wherein the owner cannot raise rents for the tax-credit units to market rate for 3 years.

## **Part 1.4 Regulations for Various Tax Credit Periods**

IRS regulations differ depending on when a project was allocated tax credit. In some cases, the change in regulations brought forth by a technical correction is minor; in others, it is substantial. Management must not only be aware of the differences in regulations but must also clearly understand which rule governs each particular building and/or project. There are six specific tax credit regulation periods as follows:

### **1. January 1, 1987 – December 31, 1989**

- For projects allocated credit during this period, rent is based on the number of people living in the unit, and was (is) subject to change as household composition changes. Owners of these projects, however, had a one-time opportunity to opt to change the methodology used by sending a letter to the Internal Revenue Service requesting the conversion. Verification of the option chosen must be provided to CTCAC upon request.

### **2. January 1, 1990 and beyond.**

- Rent for all projects allocated after January 1, 1990 is based on the number of bedrooms in a particular unit.
- The compliance period is increased to 30 years.

*NOTE: This does not necessarily mean projects placed in service in 1990. It is the tax credit allocation year that is determinative.*

### **3. 1991 and January 1, 1992 – June 30, 1992**

- The Farmers Home Administration Overage Rule and an extension on initial compliance (not retroactive) were implemented.

### **4. July 1, 1992 and August 10, 1993**

- Section 8 voucher rule (cannot refuse to lease to Section 8 tenants) – retroactive.
- Two student rule changes were implemented.
- 1987 – 1989 projects can convert rental rates from number of persons to number of bedrooms.

### **5. 2001**

- The IRS issued a Revenue Ruling to include the requirement of physical inspections in addition to file inspections

### **6. July 30, 2008 – Housing and Economic Recovery Act of 2008 (HR 3221)**

*(Compliance Related Changes)*

- Clarified the general public use test to explicitly allow Credit developments that establish tenancy restrictions for persons with special needs, tenants who are involved in artistic or literary activities, and persons who are members of a specified group under a Federal or state program or policy that supports housing for such a specified

group, effective for buildings placed in service before, during, and after date of enactment.

- Modifies HUD’s income limit methodology for calendar years after 2008 to require HUD to increase applicable area median incomes by the amount area median incomes rise, even if the HUD-determined area median incomes would be frozen under HUD’s 2007 and 2008 income limit methodology. (*HERA Hold Harmless*)
- Modifies the Housing Credit student rule to make children who received foster care assistance eligible for Housing Credit apartments, effective for determinations after date of enactment.
- Defines area median income in rural areas as the greater of the area median income and the national non-metropolitan median income, effective for income determinations made after date of enactment, applicable only to 9 percent Credit developments.
- Eliminates the annual income recertification requirement for 100 percent qualified unit developments, applicable for years ending after the date of enactment.
- Repeals the Housing Credit recapture bond rule, effective for future dispositions and past dispositions if:
  - a) it is reasonably expected the building will continue to be operated as a qualified low-income building; and
  - b) the taxpayer elects to be subject to the new longer statute of limitations.
- Excludes military employees’ basic allowance for housing from the definition of income if they are housed in a building located in a county with a military base that had its population grow by 20 percent or more between December 31, 2005 and June 1, 2008, or any county adjacent to such a county. *Please note: this was made permanent by the PATH Act of 2015. There are currently no projects in California that meet the qualification.*

#### **7. Consolidated Appropriations Act of 2018 (Average Income)**

- Increased the volume cap of credit allocation by 12.5% until 2022.
- Created new federal set aside known as “Average Income Test” (See Section VIII)
- Allows for income restricted units at 20%, 30%, 40%, 50%, 60%, 70%, and 80% as long as the average income and rent of the property is at or below 60% of Area Median income

### **Part 1.5 CTCAC Policy Memo**

CTCAC Policy Memos are periodically released to provide notice of a change in policy, updated procedure, or to provide general guidance about the way California looks at compliance issues related to the IRS Section 42 LIHTC Program. All policy memos that have been issued are available on our website at:

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

### **Part 1.6 Compliance Manual**

The CTCAC Compliance Manual is designed to offer guidance on the requirements, restrictions, and policies of the California Tax Credit Allocation Committee and is not designed to be all



inclusive or cited as an authority for setting or sustaining a technical position. Policies and procedures may change with little or no notice if Federal, State or Local regulations governing the program change. Please Note: The CTCAC Online Compliance Manual is updated annually. However, in the event a change of policy has occurred between revisions to the manual, please refer to the most current guidance provided by the Committee via Policy Memo.

## SECTION II – RESPONSIBILITIES

Among the entities/persons involved in the compliance part of the tax credit program are the California Tax Credit Allocation Committee (CTCAC), the project owner, and the management company. Their various responsibilities are set forth below.

### **Part 2.1 California Tax Credit Allocation Committee**

The California Tax Credit Allocation Committee allocates and administers the tax credit program for the State of California. The responsibilities of CTCAC are as follows:

#### **A. Issue IRS Form 8609 (Low-Income Housing Certification)**

An IRS Form 8609 is prepared by CTCAC for each building in the project. Part I of the Form is completed by CTCAC and then sent to the owner when the project is Placed In Service and all required documentation is received by CTCAC.

Part II of the IRS Form 8609 must be completed by the owner in the first taxable year for which the credit is claimed. After completion of Part II, the owner is required to submit a copy of the form to the Compliance Section of CTCAC. The original is sent to the IRS with the owner's personal, partnership, or corporate tax returns in the first taxable year in which the credit is claimed and each year thereafter in the compliance period. After signing and dating Part II of the 8609 form, the owner should make sixteen (16) copies of it, one for each of the tax credit compliance years.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. CTCAC cannot give legal or tax advice on the filing or completion of tax forms.

The issuance of the IRS Form 8609 begins the compliance monitoring period. A sample copy of the form is included in Appendix 4. CTCAC will conduct the 1st compliance monitoring visit within two years of the date the last building Placed in Service.

#### **B. Prepare Regulatory Agreement/Restrictive Covenants**

CTCAC will prepare a Regulatory Agreement (Land Use Restrictive Agreement) prior to issuance of the IRS Form 8609. This document must be recorded before the end of the calendar year in which credit is first claimed. When the original recorded document, from the County Recorder's Office in which the property is located, is returned to CTCAC and all fees have been paid, the IRS Form 8609 will be sent to the owner.

#### **C. Review Annual Owner Certification**

For information on the Annual Owner Certification, see Section V, Part 5.6

**D. Review Annual Operating Expense Report (AOE)**

For information on the Annual Operating Expense Report, see Section V, Part 5.6 (C).

**E. Conduct On-site Monitoring - Current Portfolio**

Currently, CTCAC will conduct in-depth on-site compliance monitoring for at least one-third of the total portfolio of tax credit projects each year. Owners of the selected projects will be required to provide detailed information on tenant income and rent for all low-income units in each building in the project, and CTCAC will choose a random sample to audit. Information to be reviewed will include, but is not limited to, the annual income certifications, the documentation received to support those certifications, and rent records.

CTCAC retains the right to perform an on-site inspection of any low-income building at any time during the compliance period. For more information about on-site monitoring, see Section V, Part 5.7.

In 2001, CTCAC started conducting both file and on-site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is Placed In Service, and once every three years thereafter. The physical inspections are conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews are also for at least 20% of the low-income units in each project, and will be conducted on site. Additionally, CTCAC will inspect all units on the property that have been vacant for more than 30 days. The file and physical review will take place at the property. If files are kept at an off-site location, it is to be expected that they will be brought to the site on the day of the inspection. In rare instances where there is not available space at the property to review the files, CTCAC may make prior arrangements to meet at an off-site location as long as it is in close proximity to the property.

Starting in January 2021, CTCAC will follow the Federal Regulations released in February 2019 that change the minimum sample size for projects under 150 units on a property. For projects that are 150 - 300 units, CTCAC will select a 15% random sample. For projects over 300 units, CTCAC will select a 10% sample.

**F. Conduct On-site Monitoring – Extended Use Portfolio**

In 1992, the IRS implemented as part of criteria for being awarded Tax Credits the requirement for owners to enter into a longer period of restriction outside the initial 15 year compliance period for the IRS. In California, this period is called the Extended Use Period and the terms of the agreement require that income eligibility and rent restriction continue for an additional 15-40 years (40 year extended use period being the standard for 9% competitive projects in California as of 1996 and 4% Bond projects as of 2004.) Projects that were awarded credits in 1989-1991 had the option of entering into a Land Use Restriction Agreement (LURA) or Regulatory Agreement after the fact, which outlined the continued terms the owner needed to abide by.

See Section V, Part 5.8 for details of Extended Use Monitoring Requirements

**G. Conduct 504 Monitoring for TCAP properties – ARRA legislation**

Starting in 2011, CTCAC began conducting HUD Section 504 monitoring for all properties that elected to receive TCAP funding. This monitoring is to verify the property conforms to all ADA accessibility standards and requirements as noted in the ARRA legislation for TCAP. Unlike the standard CTCAC monitoring for Section 42, 504 monitoring will be completed during the final construction phase or concurrent with initial lease-up of the property. The 504 Monitoring was a one-time inspection to ensure the projects were compliant. As of July 2013, CTCAC has completed the 504 Monitoring inspections for all TCAP properties.

**H. Conduct Asset Management Functions for TCAP and Section 1602 exchange funds – ARRA legislation**

Starting in 2010 and continuing for the fifteen year Federal Compliance Period, for all ARRA projects funded by either 1602 funds or TCAP funds, CTCAC will be monitoring asset management functions of these projects. The portfolio consists of 138 Tax Credit Developments that received federal assistance through 2 federal programs: TCAP Program administered by the US Department of Housing and Urban Development (HUD) and Section 1602 exchange funds administered by the US Treasury.

CTCAC will require **all** ARRA project sponsors to submit the annual operating budgets, annual physical inspection reports, and annual audited financial statements for review and approval by CTCAC and/or asset management contractor. The Operating Budget should follow the HUD chart of accounts and include all income and operating cost categories. The Audited Financial Statements consist of Balance Sheet, Statement of Operations, and Statement of Cash Flows prepared in accordance with Generally Accepted Auditing Principles (GAAP) Standards.

**Annual Asset Management Reports:**

- Annual Operating Budget
- Annual Audited Financial Statement
- Annual Physical Inspection Report

**Asset management fee:**

- *Projects that received Cash in Lieu Assistance or elected not to share asset management reports (via Cooperation Agreement) - will be required to pay asset management fees.*

- For those ARRA projects that will pay asset management fees, the following summarizes the fee structure for CTCAC asset management during the initial 15-year federal compliance period:
  - Annual Asset Management fee of \$5,000 for small development projects with 30 units or fewer (up to 30 units).
  - Annual Asset Management fee of \$7,500 for projects that range between 31 units and 75 units (up to 75 units).
  - Annual Asset Management fee of \$7,500 (up to 75 units) and \$40 per unit per year for each additional unit in tax credit project with a maximum cap of \$15,000 per year.

Please note that all ARRA projects will also be subject to regular Section 42 Monitoring as well as the Asset Management throughout the entire Compliance Period.

#### **I. Notification of Noncompliance**

**For Properties within the 15-year Federal Compliance Period** - CTCAC will notify the IRS of instances of reportable noncompliance for any projects within the 15 year federal compliance period. For information on noncompliance, see Section VI.

**For Properties in the Extended Use Period** – CTCAC may issue negative points for future funding rounds or fines to the owner or management agent, if the issues of noncompliance are not corrected during the correction period.

**For Properties receiving ARRA funds** – CTCAC will notify the IRS or Treasury, whichever is applicable, if the issues of noncompliance are not corrected within the 15 year federal compliance period. Please note: ARRA funded projects must follow all Section 42 IRS Regulations and will be monitored accordingly.

#### **J. Record Retention - CTCAC**

CTCAC will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. CTCAC will retain records of noncompliance or the failure to certify compliance for six years after its filing an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

#### **K. Conduct Training and Provide Continuing Education**

1. **Workshops** - CTCAC will conduct Compliance Workshops each calendar year. Information regarding dates and locations will be posted on our website starting in January of the current year:

<http://www.treasurer.ca.gov/ctcac.asp>

Workshops are filled on a 1<sup>st</sup> come basis. They will be limited to 3 persons per company. Larger groups *may* be accommodated during general registration if space allows. Please see Section V Part 5.2 for more information on Workshops

2. CTCAC offers continuing technical guidance to assist the owner, the management company, and on-site personnel in complying with federal regulations and state rules. CTCAC staff can be contacted at:

Low-Income Housing Tax Credit Program  
California Tax Credit Allocation Committee  
P.O. Box 942809  
Sacramento, CA 94209-0001  
(916) 654-6340

3. **Owner/Management Training Classes** - offered 3-4 times a year for projects that have been awarded 4% credits, sold or resyndicated an existing Tax Credit property where the incoming owner or management company does not have the required LIHTC experience per the regulations, or whenever staff determines that such training is necessary.

#### **L. Rural Housing Service (RHS) Agreement**

CTCAC currently has an agreement with the RHS (formerly known as the Farmers Home Administration) with respect to the provision of monitoring certain tenant and rent information. RHS projects are subject to the compliance requirements outlined in this manual.

#### **M. Subcontracting of Functions**

CTCAC subcontracts with three third party vendors to provide the following:

- Asset Management services for some of the 138 properties that were awarded Tax Credit Assistance Program (TCAP) or Section 1602 credit exchange funds under ARRA – Boston Capital
- HUD Tenant Demographic Data Collection as required by HERA – Spectrum Enterprises
- California Utility Allowance Calculator (CUAC) Submissions – Beningfield Group – is this still correct?

#### **N. Freedom of Information Act / Public Records Act**

The California Public Records Act (PRA) Government Code 6250-6270, is similar to the federal Freedom of Information Act -- the purpose of these acts is to give private citizens greater access to government information. With some exceptions, the PRA considers records maintained by most state agencies to be public records, but also recognizes the right to individual privacy.

To make a FOIA or PRA request, please submit it in writing to:

Sertan Usanmaz  
c/o CTCAC FOIA Request  
915 Capitol Mall, Room 485  
Sacramento, CA 95814

CTCAC will charge for the cost of copying the documents only. The turnaround time for all requests is normally 10 business days. If a request will take longer, a notification letter will be sent within 10 business days. Documents will be mailed via regular US Mail, if Fed Ex or UPS is requested, the requestor must pay the cost of postage.

## **Part 2.2      Owner of Project**

In exchange for the low-income housing tax credit benefits, the owner must adhere to certain requirements and accept responsibilities, outlined as follows:

### **A.      The project owner should be knowledgeable about the following:**

1. The credit year of the project. (The date of allocation.)
2. The date(s) the building(s) was Placed in Service. The Placed in Service date is the date of first possible occupancy, not necessarily actual occupancy. Generally, this is the certificate of occupancy date or temporary certification of occupancy for new construction properties and the acquisition date for Acq/Rehab properties.
3. If a rehabilitation project:
  - whether or not tenants were required to move out during rehab
  - whether or not the building was occupied during the rehab
4. The number of buildings in the project.
5. The Building Identification Number (BIN) for each building in the project.
6. The percentage of the residential units in the project that are tax credit eligible, or the percentage of floor space that is tax credit eligible.
7. The year when credit was first claimed with the IRS.
8. The terms under which the tax credit reservation was made, including statutory set-aside, deeper targeting agreements, etc.
9. The minimum set-aside elected:
  - 20/50

- 40/60
- Average Income Target

10. Line 8b election on the 1<sup>st</sup> year filings of the 8609 form, determining whether the project is considered a multi-building project.

## **B. Good Cause Eviction**

On July 29, 2004, The Internal Revenue Service (IRS) issued Revenue Ruling 2004-82 which set forth that all Housing Credit Properties are prohibited against evicting tenants in low-income housing units for other than good cause throughout the entire Compliance Period.

In accordance with Revenue Ruling 2004-82, effective July 30, 2004, a low-income resident of any Housing Tax Credit project may not be evicted other than for good cause. Housing Tax Credit unit occupants have the right to specifically enforce this prohibition in State court. Generally, “good cause” is defined as “the serious or repeated violations of a material term of the lease”, as that definition is applied with respect to federal public housing.

You must use the CTCAC form to evidence compliance with this provision. See Section III Part 3.7 (E)

## **C. Comply with Terms of Application**

For more information regarding the compliance monitoring requirements for representations made by project owners in their applications, see Section III, Parts 3.6 – 3.10

## **D. Meet Initial Eligibility Requirements**

Submit compliance monitoring fees as described in Section V, Part 5.9.

Submit to CTCAC a copy of the signed and dated IRS Form 8609 for each building with Part II completed after the submission of the first year filing to the IRS.

Change of the composition of the ownership entity, including sale of the property must be approved by CTCAC **prior** to the completion of the sale. The owner must provide details and include a sales agreement identifying the complete information for the new owner entity if the property is to be sold, if the general partnership interest change is greater than 50% or if there is a change in the limited partnership, at minimum 45 days prior to the closing date for the sale. CTCAC reserves the right to require the new ownership entity to undergo specific CTCAC training or partner with a bona-fide management company with a current tax credit portfolio in California if it determined the new ownership entity does not have a sufficient LIHTC Section 42 background or an existing portfolio of Tax Credit properties in California. For more information on transfer events,



see Section III Part 3.11

#### **E. Deeper Targeting Requirements**

Deeper Targeting requirements are common in 9% competitive tax credit deals and 4% bond deals awarded credits after 2006. This is a State election and is separate from the federally elected set-aside of 20/50, 40/60, or AIT. The deeper targeting is determined by the owner at application stage and will be monitored by the State allocating agency on a property-wide basis at each audit.

CTCAC does not regulate the methodology the owner uses to calculate the deeper targeting set-aside, nor does it moderate in disputes between the owner/management agent and tenants regarding the movement from one deeper targeted set-aside to another. CTCAC will monitor to verify the total number of units noted in the Regulatory Agreement are being met throughout both the entire Federal Compliance and Extended Use period. Failure to meet the Deeper Targeting Requirements may result in negative points for a future funding round or fines to the owner.

#### **F. Prepare and Submit the Annual Certification Package**

Prior to 2009, the Annual Owner Certification Package consisted of three reports: the Annual Owner Certification (AOC), the Project Ownership Profile (POP), and Annual Operating Expense Report (AOE), and was due as of March 1st.

Starting in 2009, the Annual Owner Certification Package (AOC package) will consist of **four** reports: the Annual Owner Certification (AOC), the Project Ownership Profile (POP), Annual Operating Expense Report (AOE), and the Lender Report. As of 2009, the AOC package is split into two parts. Part 1 will include the Annual Owner Certification (AOC) documentation and the Project Ownership Profile (POP). Part 2 will include the financial data of the Annual Operating Expense Report (AOE) and the Lender Report.

**Part 1 of the Annual Owner Certification Package is due at the end of March of the current year. See CTCAC website for specific dates.**

**Part 2 of the Annual Owner Certification Package is due at the end of May of the current year. See CTCAC website for specific dates.**

It is solely the owner's responsibility to submit the complete Annual Owner Certification Package before the deadlines noted.

The Annual Owner Certification Package forms and files are available on our website:

<http://www.treasurer.ca.gov/ctcac/compliance/AOC/index.asp>

Failure to submit all four reports (AOC, POP, AOE, and Lender Report) completely and legibly by the due date is noncompliance and can ultimately result in the issuance of an

uncorrected IRS Form 8823 and/or a recommendation for negative points (Regulation Section 10325(c)(2)).

### **1. Annual Owner Certification (AOC) part 1:**

The owner of any building(s)/project which has claimed or plans to claim low-income housing tax credit or **owner's whose projects are in the extended-use period**, must certify to CTCAC, under penalty of perjury, **annually**, for each year of the compliance period, on CTCAC's Owner Certification form, that, for the preceding 12 month period:

- (i) The project meets the requirements:
  - (A) The 20-50 test under §42(g)(1)(A), or
  - (B) The 40-60 test under §42(g)(1)(B)
  - (C) Average Income Test §42(g)(1)(C)
- (ii) There was no change in the applicable fraction (as defined in §42 (c)(1)(B) of the Code) of any building in the project;
- (iii) The owner has received an annual income certification from each low-income tenant and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of §1.42-5 (Compliance Monitoring Requirements);
- (iv) Each low-income unit in the project was rent restricted under §42(g)(2);
- (v) All units in the project were for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
- (vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes, and the State or local governmental unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice, or a copy of the violation report or notice to this certification. In addition, the owner must state whether the violation has been corrected;
- (vii) There has been no change in the eligible basis (as defined in §42(d)) of any building in the project, (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- (viii) All tenant facilities included in the eligible basis under §42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (ix) If a low-income unit in the project becomes vacant during the year, that 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 in the project were, or will, be rented to tenants not having a qualifying income;

- (x) If the income of tenants of a low-income unit increased above the limit allowed in §42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;
- (xi) A regulatory agreement as described in §42(h)(6) was in effect, including the requirement that an owner may not refuse to lease a unit in the project to a prospective tenant who holds a voucher for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective tenant as the holder of such voucher or certificate.
- (xii) All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv));
- (xiii) The project met all terms and conditions recorded in its Regulatory Agreement, if applicable. (As detailed in the Regulatory Agreement and Exhibit A to the Regulatory Agreement.);
- (xiv) The applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification.);
- (xv) **No change in ownership of the project has occurred during the reporting period;**
- (xvi) The Project has **not** been notified by the Internal Revenue Service that it is no longer a “qualified low-income housing project” within the meaning of Section 42 of the IRC.
- (xvii) No additional tax-exempt bond funds or other Federal grants or loans with interest rates below the applicable federal rate have been used in the project since it was placed in service;
- (xviii) The project contains: \_\_\_\_\_ low income units. On December 31, 20##, the number of low income units that were **occupied** by tax credit eligible households was \_\_\_\_\_.
- (xix) The project did not suffer any casualty loss in 20##; fire, flood, earthquake, or structural damage;
- (xx) 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 gross rent with respect to a low-income unit not otherwise permitted under Section 42;
- (xxi) The project has provided all site / service amenities as identified in the project Regulatory Agreement during the reporting period;
- (xxii) The project owner certifies compliance with the Capital Needs Agreement to complete short term work and set aside replacement reserve funding for long term work during the 15-year agreement (if applicable);
- (xxiii): The property is in compliance with the Violence Against Women Act requirements and all related implementing regulations providing protections for residents and applicants who are victims of domestic violence, dating violence, sexual assault, and/or stalking
- (xxiv) FOR PROJECTS RECEIVING STATE CREDITS ONLY: No more than the 8% cash distribution from Project operations, after funding required reserves, as provided for under Revenue and Taxation Code Sections 17058(d) and 23610.5(d), was distributed during the reporting year.

An Annual Owner Certification must be submitted to CTCAC for each year in which a project was in service or occupied for one day or more. The form should not be completed prior to the next calendar year and must be received by CTCAC by the end of March (*see website for specific due dates*). *Failure to submit legible and thoroughly completed required forms when they are due will be considered an act of noncompliance and is reportable to the IRS on Form 8823.*

**2. Annual Project Ownership Profile (POP) part 1:**

CTCAC requires a Current Project Ownership Profile at the AOC filing. This information should reflect the current and correct Ownership address and contact information, as well as the current Management company information. The form will be available on our website and will be due electronically in the same packet as the AOC. Please Note – If the POP information indicates a change from the Ownership partnership or Tax-Id Number noted on the 8609's, CTCAC will contact the owner for clarification prior to reporting the discrepancy on IRS Form 8823.

**3. Annual Operating Expense Report (AOE) part 2:**

CTCAC requires an Annual Operating Expense Report (AOE) as part of the Annual Owner Certification package. The form will be available on our website and report will be due electronically.

**4. Lender Report part 2:**

CTCAC will require a complete copy of the Lender Report. The form will be available on our website and the report will be due electronically.

**5. HUD Tenant Demographic Data**

The Housing Recovery Act of 2008 requires that all LIHTC and HUD programs gather tenant demographic data for all participants in its programs on an annual basis. Beginning in 2011, CTCAC will require all owners provide this information.

In November 2010, CTCAC released a revised TIC with Supplemental Tenant Demographic Data and a Supplemental Tenant Data Sheet for Existing Households. This form is to be used for all new move-ins as of January 1, 2011 to collect the required data for HUD

In January 2012, CTCAC further revised the TIC to capture information in a specified format and language consistent with software requirements of both HUD and our contractor Spectrum.

CTCAC will post specific instructions on the website to owners on submission of this data. Data will be due electronically to our assigned contractor – Spectrum Enterprises.

## G. Train On-site Personnel

The owner must make certain that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the project. Additionally, CTCAC strongly recommends that all onsite personnel be Tax Credit certified.

## H. Ensure Proper Maintenance

The owner is responsible to ensure that the LIHTC project is maintained in a decent, safe, sanitary condition, and in good repair. Failure to do so is a reportable act of Uniform Physical Condition Standards (UPCS) noncompliance.

**Lock-outs or units where management does not have a key at the time of a compliance inspection, will be noted as a Level 3 UPCS Health and Safety Violation (blocked emergency ingress/egress) and will be reported to the IRS on Form 8823.**

All properties entering into the Extended Use period must continue to comply with the UPCS requirements.

## I. Recordkeeping and Record Retention - Site

The owner of any building for which credit has been or is intended to be claimed must keep records that include all of the information set forth below, **on a building by building basis**, for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. **Please note: The records for the first year of the credit period must be kept for six years beyond the end of the federal compliance period for each building in a project, for a total period of 22 years.**

The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rent unit);
2. The percentage of residential rental units in the building that are low-income units;
3. The rent charged on each residential rental unit in the building and the applicable utility allowance;
4. The number of occupants in each low-income unit;
5. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented (This information must include the unit number, tenant name, move-in date and move-out date for all tenants, including market rent tenants.);
6. The income certifications of each eligible tenant;
7. Documentation to support each eligible tenant's income certification;
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
9. The character and use of nonresidential portion of any building included in the project's eligible basis (for example, any community building, recreational facility,

manager's unit(s), etc.) available to all tenants and for which no separate fee is charged.

**J. Maintain a Development File**

CTCAC suggests that Owners maintain a Development File that contains all pertinent documents for the project. The Development File should contain:

1. All approved tax credit applications together with applicable attachments;
2. Recorded copy of the Regulatory Agreement/Restrictive Covenant (except for pre-1990 credit projects);
3. For 1987-89 projects, election to calculate rent on a bedroom basis, if applicable;
4. IRS Forms 8609 and 8586 for each building for each year credit is claimed;
5. All applicable documents relating to any other form of housing or finance programs (i.e., HOME, HUD Section 8, RHS, etc.);
6. Documentation that the project complies with any statutory set-asides or Qualified Allocation Plan requirements. For more information, see Section III, Part 3.9;
7. Utility Allowance documentation, for each utility allowance update or revision which must occur at least once per year. For more information regarding utility allowances, see Section III Part 3.4
8. Ongoing Site and Service Amenity requirements as noted in the Regulatory Agreement, including contracts for services and classes.

**K. Maintain a Tenant/Unit File for Each Unit in the Project**

The Tenant/Unit File requirements are outlined in Section IV, Part 4.7.

**L. Prepare and Submit Low-Income Housing Credit (IRS Form 8586)**

One IRS Form 8586 must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. IRS Form 8586 must be attached to IRS Form 8609 and Schedule A (IRS Form 8609) and submitted annually with the owner's federal tax return. A sample copy of the form is included in Appendix 4.

**M. Administration and Notification**

The **owner** is required to notify CTCAC immediately in writing and obtain CTCAC approval prior to any changes in the ownership composition or in the management agent, such as name, address, and telephone number. Transfer Events such as refinance, sale or MGP or LP changes are subject to additional requirements noted in the current regulations. For information on Transfer Events, please see Section III Part 3.11

### **Part 2.3 Management Company and On-site Personnel**

The management company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information, as requested, to CTCAC and submit all required reports and documentation in a timely manner. **The Owner has the ultimate responsibility for compliance and proper administration of the LIHTC program.**

## SECTION III – FEDERAL AND STATE REGULATIONS

The following section highlights some of the statutory and regulatory provisions directly affecting project compliance. The following is not meant as an exhaustive listing of compliance regulations.

### Part 3.1 Calculating and Claiming the LIHTC

#### A. The Annual Tax Credit Amount

The maximum amount of credit that can be allocated is calculated by multiplying the “eligible basis” by an “applicable fraction” to ascertain the “qualified basis” and then multiplied by the “applicable credit percentage.”

For definitions of Qualified Basis, Eligible Basis, Applicable Fraction, and Applicable Tax Credit Percentage, see the Glossary in Section IX or a low-income housing tax credit textbook or guide.

*QUALIFIED BASIS = Eligible Basis multiplied by Applicable Project Fraction*

*ANNUAL TAX CREDIT = Qualified Basis multiplied by Applicable Credit Percentage*

The annual credit allocated may not exceed this amount. However, it may be less if CTCAC determines that this maximum amount is not necessary.

#### B. Claiming Tax Credits in the Initial Year

The credit is claimed annually for ten years and the credit period can begin either in the year that the building is Placed in Service or the subsequent year, depending on the owner’s election. During the first year of the credit period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first month in which the project was Placed in Service (or the following year if there is an election to defer the credit period) even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving tax credits and is filed with the taxpayer’s tax return for the first year of the credit period. Owners can elect to defer the start of the credit period by checking the appropriate box on the IRS Form 8609. A sample copy of this form and its instructions are located in Appendix 4.

#### C. Initial Year Proration

A project claiming credit in the initial year of occupancy is subject to a special provision which limits the credit to a proportionate amount based on average occupancy during the year.

*For example: If one-half of the low-income units were occupied in November and the*



*remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 (12.5% - all for December and half for November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.*

If a qualified low-income tenant becomes an ineligible tenant prior to the end of the initial tax credit year, that unit cannot be counted in the first year toward the minimum set-aside for purposes of determining the qualified basis.

**D. The Two-thirds Rule**

If an owner decides to take the tax credit for a property in the initial year when, for example, only 80% of the units are rented to tax credit eligible tenants, the maximum qualified basis for the entire credit period would be 80% with the remaining 20% eligible for two-thirds credit if later rented to eligible tenants.

**E. Increase in Qualified Basis**

If there is an increase in a building's qualified basis (usually by adding 1 or more new tax credit units) after the first year of the credit period, and to the extent that a building has been allocated more credit than it has been eligible to take, the owner may claim an additional credit equal to two-thirds of what would first have been eligible to claim. This should not be confused with the first year election described above and is applicable only for increases that occur after the first year of the credit period.

**F. Claiming Credit in the Remaining Years of the Compliance Period**

Owners must file an IRS Form 8586 (Low-Income Housing Credit) for every year in the compliance period. This form indicates continuing compliance and the qualified basis of the development for each year of the compliance period. A sample copy of this form is located in Appendix 4.

**Part 3.2 Minimum LIHTC Set-aside Requirements and Income Limits**

By the time credit is allocated, the owner has elected one of the following minimum set-aside elections on a project basis:

(A) At least 20% of available rental units must be rented to households with incomes not exceeding 50% of area median income adjusted for household size.

(B) At least 40% of available rental units must be rented to households with incomes not exceeding 60% of area median income adjusted for household size. The project owner may have also elected to target a percentage of the units to persons of lower income levels and/or to target a higher percentage (number) of units to low-income persons. These project owners must comply with those elections.

(C) Average Income – the average income of available rental units may be rented to

household up to 80% of AMI provided the Average Income of the property does not exceed 60% of AMI adjusted for household size. Please see Section VIII Part 8.3 for more information and the restrictions on Average Income.

For more information regarding deeper targeting, see Section II Part 2.2(E). HUD publishes median income and rent limit information for California and for each county or metropolitan area on an annual basis.

### **Part 3.3 Maximum Gross Rent**

The maximum gross rent is the tenant paid portion of the rent plus the utility allowance (excluding telephone and cable) and any other mandatory charge. For more information regarding utility allowances, see Section III, Part 3.4.

#### **A. Projects Allocated Credit during the Years 1987 to 1989**

For projects allocated 1987, 1988, or 1989 credit, the tenant's gross rent may not exceed 30% of the applicable median income (that is, either 50% or 60%, depending on which income set-aside has been chosen) adjusted for household size for the area in which the project is located. The gross rent must include an allowance for utilities, except those that are paid for by the development.

Owners of a low-income building placed in service before 1990 had until February 6, 1994 to make an irrevocable election to continue to use household size or to begin using the number of bedrooms in determining maximum allowable rent. The election applied only with respect to tenants first occupying any unit in the building after the date of the election.

#### **B. Projects Allocated Credit after January 1, 1990**

Projects receiving tax credit allocations after January 1, 1990, must be rent-restricted based on an imputed, not actual, household size. Household size is imputed by the number of bedrooms in the following manner:

1. An efficiency or a unit that does not have a separate bedroom – 1 individual; and
2. A unit that has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable median income for the imputed household size (notwithstanding that the actual household size may be different).

*For Example:*

*Income Limits (by household size)*

<u>One Person</u>	<u>Two Persons</u>	<u>Three Persons</u>	<u>Four Persons</u>
\$10,000	\$15,000	\$20,000	\$25,000

*The rent for a two bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size (\$20,000 x 30%) divided by 12 months [equals \$500]. The \$500 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying the two bedroom unit.*

**C. Allowable Fees and Charges**

Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits, and/or credit deposits are permissible. However, an eligible tenant cannot be charged a fee for work involved in completing the additional forms or documentation required by the LIHTC Program, such as the Certification of Tenant Eligibility. For verifications that require a fee to complete (such as The Work Number, Verification of Deposit for assets over \$5000, etc.), CTCAC does allow the direct cost of obtaining the verification to be passed along to the tenant. However, please note that for projects with Project-Based HUD funding, HUD does not allow the additional costs to be passed on and the owner may need to absorb the costs for any verifications.

If after occupying a unit, an eligible tenant cannot pay the rent, the owner has the same legal rights in dealing with the income-eligible tenant as with any other tenant.

**D. Section 8 Rents**

Gross rent does not include any payments made to the owner to subsidize the tenants' rent, including Section 8 or any comparable federal, state, or local government rental assistance program to a unit or its occupants. Only the tenant-paid portion of the rent payment (inclusive of tenant-paid utilities) is considered in determining if the rent exceeds the maximum gross rent permissible.

Additionally, the gross rent may exceed the federal set-aside Tax Credit limits of 20/50, 40/60 or AIT, as long as the household is receiving at least \$1 in federal (Section 8) subsidy – project based or voucher.

*For example:*

*The maximum allowable tax credit gross rent for a unit is \$900. The maximum Section 8 rent is \$1250. At the most recent HUD recertification, they determined that the tenant's income has increased and they have reduced the amount of HUD Rent subsidy for the tenant to \$10. The owner may charge the tenant up to \$1240 in rent even though the amount is above the tax credit limits, since the household is still receiving at least \$1 in subsidy assistance.*

**E. Gross Rent Floor Election**

The Gross Rent Floor Election (GRFE) is made by the owner within the 1<sup>st</sup> year of receiving a credit reservation. For all projects, CTCAC will determine the GRFE to be at

carryover allocation for 9% tax credit projects or at preliminary reservation for 4% bond projects unless specific written notification is made by the owner to TCAC specifying the GRFE is to be placed in service.

For all projects Placed in Service on or before 5/13/2010, a project's rent limit is **not** impacted by the GRFE selected by the owner, due to HUD's Hold harmless policy, as the limits were never less at placed in service than they were at carryover or preliminary reservation. Similarly, a project could not use HERA Special limits as their GRFE, since to qualify as a HERA Special project, the project must have been **placed in service** prior to 12/31/2008.

For all projects that Placed in Service on or after 5/14/2010, the owner and management company needs to be knowledgeable of the GRFE as the income limit in several counties decreased in 2009 and continued to fluctuate in the subsequent years.

For all projects that Placed in Service on or after 5/14/2010, the correct Rent limit to use would be the greater of:

- A.) the limits in place at carryover allocation/preliminary reservation, or
- B.) the current rent limit at Placed in Service

The time frame for the Rent limit is driven by the Rent/Income release date by HUD. The following is a list of HUD release dates per calendar year as determined by HUD that may potentially affect projects placed in service on or after 5/14/2010.

- 2006 – on or after 3/8/2006 through 3/19/2007
- 2007 – on or after 3/20/2007 through 2/12/2008
- 2008 – on or after 2/13/2008 through 3/18/2009
- 2009 – on or after 3/19/2009 through 5/13/2010
- 2010 – on or after 5/14/2010 through 5/30/2011
- 2011 – on or after 5/31/2011 through 11/30/2011
- 2012 – on or after 12/1/2011 through 12/3/2012
- 2013 – on or after 12/4/2012 through 12/17/2013
- 2014 – on or after 12/18/2013 through 3/5/2015
- 2015 – on or after 3/6/2015 through 3/27/2016
- 2016 – on or after 3/28/2016 through 4/13/2017
- 2017 – on or after 4/14/2017 through 3/31/2018
- 2018 – on or after 4/1/2018 through 4/23/2019
- 2019 – on or after 4/24/2019 through 3/31/2020
- 2020 – on or after 4/1/20+

#### **F. 8609 Form Line 8b Election**

CTCAC issues the IRS Form 8609 for each building in a project once the Placed in Service package has been received. The owner then completes Part II and submits the form to the IRS in order to start claiming credits on the project. The owner is also required to send a

completed copy of the first year filing of the 8609 form(s) to CTCAC for record keeping.

The owner will need to know how the Line 8b election on the 1<sup>st</sup> year filing of the 8609 forms is treated or will be treated, and be able to relate that information to the management company operating the property. Line 8b states:

*Are you treating this building as part of a multiple building project for purposes of Section 42? .....*  *Yes*     *No*

If the owner elects “Yes” and attaches the required statements to IRS Form 8609, all buildings are considered to be part of one project (*multi-building project*). All Section 42 regulations apply to all buildings, transfers may be completed between buildings as long as the household does not exceed 140% of Area Median Income, and the Gross Rent Floor Election (GRFE) is the same for all buildings in the property.

If the owner elects “No”, for IRS Section 42 purposes, each building is to be treated as its own project for IRS purposes. All Section 42 regulations must be applied to each building separately, all household transfers must retain income eligibility at the set-aside limit of 20/50 or 40/60, the gross rent floor will be applied individually to each building, and there may be a different set of rent limits for each building based on the GRFE. CTCAC strongly recommends developing an internal tracking system and making sure management is aware of both the owners Line 8b election and the GRFE for each project in the portfolio, to ensure rents are being held at the correct limits. Over-charged rents are reportable on Form 8823 to the IRS. For examples and further clarification see the Gross Rent Floor Memo posted on the CTCAC website in July of 2011.

**G. Amenities and Services**

Charges for any mandatory amenities and/or services, such as garages, carports, meals, laundry, and housekeeping, must be counted as part of the gross rent for these units. Charges for optional services other than housing do not have to be included in gross rent, but they truly must be optional.

Physical amenities such as carports, storage, or garages that were included in eligible basis cannot be charged to the tenant even if they are an “optional” charge.

For more information regarding supportive services and exceptions to the above rule, See Appendix 3, IRS Notice 89-6 and IRS Revenue Ruling 91-38, Answer 12.

**H. Conflicts with Other Government-Funded Housing Programs**

Management must be aware of the differences between RHS rent rules and those of the LIHTC Program that could result in proper RHS rents but in incorrect LIHTC rents. If the LIHTC maximum allowable rent is less than the overage, the overage cannot be charged.

*NOTE: For credit allocations beginning in 1991, the overage can be charged for amounts that will be returned to RHS. This provision is not retroactive to projects*

*receiving credit allocations from 1987 through 1990.*

If a rent amount that is greater than the maximum allowable LIHTC rent is charged to a tenant, management may either rebate the difference between the basic rent and LIHTC rent to the tenant, or discount that amount in the current lease.

*NOTE: A lease addendum must be executed indicating the appropriate discount and the difference between the government (HUD or RHS) rental and the LIHTC. If a discount is not offered, management must maintain adequate documentation of the rebate.*

If the management company determines that the project is not in compliance with LIHTC Program requirements, the CTCAC monitoring agent must be notified immediately.

### **Part 3.4 Utility Allowances**

The Internal Revenue Service published Final Regulations on July 29, 2008 which impact the Section 42 Utility Allowance Regulations. These regulations provide that taxpayers may rely on the rules for determining utility allowances before the first day of the owner's taxable year beginning on or after July 29, 2008 provided that any utility allowance so calculated are effective no earlier than the first day of the owner's taxable year beginning on or after July 29, 2008. For most taxpayers, Treasury Regulation 1.42-10 is effective January 1, 2009.

The maximum gross rent includes the amount of tenant paid utilities. Utilities include heat, lights, water, sewer, oil, and gas where applicable. Utilities do not include optional telephone, cable, internet, or television charges.

When utilities are paid directly by the tenant (as opposed to the development), a utility allowance must be used to determine maximum eligible unit rent. The utility allowance (for utility costs paid by the tenant) must be subtracted from the maximum gross rent to determine the maximum amount of allowable tenant-paid rent.

*For example:*

*If the maximum gross rent on a unit is \$850 and the tenant pays utilities with a utility allowance of \$66 per month, the maximum rent chargeable to the tenant is \$784 (\$850 minus \$66).*

If all utilities are included in the household's gross rent payment, no utility allowance is required. The IRS requires that the utility allowances be set according to IRS Notice 89-6, included in Appendix 3.

Applicable utility allowances:

**A. Rural Housing Service or Rural Development RHS/RD Financed Project** – Use the RHS/RD utility allowances.

**1. Buildings assisted by the Rural Housing Service.** If a building receives assistance

from the Rural Housing Service (RHS-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service (RHS) for the building (whether or not the building or its tenants also receive other state or federal assistance).

2. **Buildings with Rural Housing Service assisted tenants.** If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

**B. HUD Regulated Buildings** - occupied by Residents who receive HUD Assistance (HUD Project Based Rental Assistance (PBRA) and HOME assisted units must use HUD approved utility allowances.

1. **Buildings regulated by the Department of Housing and Urban Development.** If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are regulated by HUD (HUD-regulated buildings), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

- i. HUD Project Based Rental Assistance (funded by HUD Office of Multifamily Assistance) - must use the HUD Rent/UA schedule
- ii. HOME assisted units must follow HUD guidance- HOMEfires Vol. 13, No. 2. Please note it is the owners/management responsibility to keep updated on future HUD guidance and apply the correct UA on HOME assisted units. Please speak to your local HUD office for updates and guidance.

*\*Please note, if the HOME Loan was funded prior to August 23, 2013, the owners may use the Local PHA UA on HOME assisted units, and apply the Local PHA UA on all units in the building, HOME and non-HOME units. If the HOME loan was funded after August 23, 2013, and the owner wishes to utilize the PBV UA issued by the Local PHA, the owner may request a waiver from their local HUD office. The waiver approval must be obtained by HUD before applying the local PHA UA when a building has HOME units. A project specific methodology [Agency Estimate] is also allowed by the HOME program as an optional utility allowance method but is not allowed in California.*

**C. Other Buildings - Buildings without RHS or HUD Assistance**, 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 in the building is determined under the following methods:

1. **Tenants receiving Project-based vouchers or other HUD rental assistance/individual vouchers**, (*issued by the Local PHA and funded by HUD Office of Public and Indian Housing*) The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant voucher or PBV) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

**D. Tax Credit Only Buildings** - If the project does not have RD or HUD Funding (regulated or voucher) the following utility allowances are applicable for LIHTC rent-restricted units:

1. **Local Public Housing Authority (PHA)** – the owner may elect to obtain an estimate of utilities from the local Public Housing Authority (PHA) administering the assistance for those tenants only. The estimate used should be based on the building type (i.e, Garden, Townhouse, Condo, etc.)

i. **Energy Efficiency Based Utility Allowance (EEBUA)** –This is an estimate provided by the PHA using a calculation that takes into account general energy efficiency measures. To ensure the proper use of the EEBUA, housing authorities rely on a home energy rater (HERS) to verify the project meets the policy’s energy efficiency requirements. This schedule is provided to Tax Credit Projects that meet or exceed the California Energy Commission Title 24 standards by 15% for new construction development and rehab projects with a 20% improvement over existing conditions.

*\*CTCAC reserves the right to request that project owners obtain a letter from the local Public Housing Authority on PHA letterhead certifying the project was reviewed by a HERS (Home Energy Ratings System) specialist and that the project meets or exceeds Title 24 standards for Energy Efficiency.*

2. **Utility Company Estimate** - if a local utility company estimate is obtained for any unit in the building in accordance, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. The owner may request the utility company’s estimated utility cost for each unit of similar size and construction in the building’s geographic area. Such an estimate must be in writing for the current year, signed by a local utility company official, prepared on the utility company’s letterhead, and maintained in the Development File for the project. Use of the actual utility rates, whether higher or lower, is required once they have been requested and must be updated annually. The new regulation requires that the written local estimate should include all “component deregulated charges” for providing the utility service. Post 2008 – regulation were updated to state that if there are multiple utility companies that service the development, a written estimate is needed from only one of the providers. However, the estimate must come from a provider that offers services to the building.

3. **Energy Consumption Model (California Utility Allowance Calculator)** – In these regulations the IRS established the authority for CTCAC to authorize the use of an energy consumption software model to determine project-specific utility allowances.

*“The utility consumption estimate must be calculated by either a properly licensed engineer or a qualified professional approved by the Agency that has jurisdiction over the building (together qualified individuals) and the qualified professional and the building owner must not be related within the meaning of section 267 (b) or 707 (b).”*



CTCAC has adopted the California Utility Allowance Calculator (CUAC) as the energy consumption model software for California. This calculator can be used for New Construction Properties that will be awarded an Allocation of Tax Credits beginning with the 1st funding round of 2009 going forward. CTCAC will require a Certified Energy Plan Examiner (CEPE) and either a Plans Examiner (PE) or (HERS) rater to review and certify that the Utility Allowance Amounts generated by the CUAC model meets the requirements as specified under Treasury Regulation 1.42-10 (E).

All projects intending to use the CUAC option must obtain written approval from CTCAC **prior** to implementing the CUAC at their property. Once approved, the CUAC requires the owner to submit annual reports for review and approval in order to continue using it. Please note - once the 8609's are issued, the CUAC can no longer be requested. Please see the website noted below for a Memo with submission guidelines for proper use of the CUAC:

[http://www.treasurer.ca.gov/ctcac/2009/submission\\_reqs.asp](http://www.treasurer.ca.gov/ctcac/2009/submission_reqs.asp)

4. **HUD Utility Schedule Model (HUSM)** - A building owner may contract with a 3<sup>rd</sup> Party Energy Analyst to calculate a utility estimate using the "HUD Utility Schedule Model" that can be found on the Low-Income Housing Tax Credits page at:

<http://www.huduser.org/datasets/lihtc.html>

CTCAC will require verification that the HUSM was completed by a qualified energy analyst such as a Certified Energy Plan Examiner (CEPE), a Plans Examiner (PE) or (HERS) rater.

5. **Agency Estimate** – Please note: This option is not available in California.

## **E. Per Building Requirement**

For all projects – Per the IRS, only one Utility Allowance source is allowed per building. Projects that have differently subsidized units (*i.e. HUD Project Based Rental Assistance, HOME assisted units, Rural Development (RD)*) must use the required UA for all units in the building including any tax credit units that otherwise would not be subject to that requirement. For buildings where there is only a fraction of units that have additional financing (such as HOME units), the limits required by the additional financing should be applied to all units in that building, not just the fraction of units.

### ***Example – Project with HOME units:***

*Vista del Sol is a 60 unit property that has 4 buildings, is 100% tax credit, and placed in service in 2008. 20% of the units also have HOME funding on them. These are spread evenly across all 4 buildings. HOME funding requires that the owner follow HUD specific guidance for HOME assisted units - the HUD Utility Schedule Model (HUSM), Multifamily Housing Utility Housing (MHUA), Local*

*Utility Company, or the Energy Consumption Model- the California Utility Allowance Calculator (CUAC).*

**Example #1 – Project with HOME units and Project Based Vouchers:**

*(PBV issued by the Local PHA and funded by HUD Office of Public and Indian Housing):*

*Casa del Sol is a 60 unit property that has 4 buildings, is 100% tax credit, and placed in service in 2018. 20% of the units also have HOME funding on them AND project based vouchers. These 2 funding sources (HOME And PBV) are spread evenly across all 4 buildings. Since this is a HUD regulated Building, the HUD UA will supercede, so owners will apply the HOME UA on all units in the building. HOME funding requires that the owner follow HUD specific guidance for HOME assisted units - the HUD Utility Schedule Model (HUSM), or Multifamily Housing Utility Housing (MHUA), or Local Utility Company, or the Energy Consumption Model- the California Utility Allowance Calculator (CUAC).*

**Example #2 – Project with HOME units and HUD Project Based Rental Assistance, issued and funded by HUD Office of Multifamily Assistance:**

*Garden Village is a 60 unit property that has 4 buildings, is 100% tax credit, and placed in service in 2018. 20% of the units also have HOME assisted units spread evenly across all 4 buildings and is a HUD PBRA. Since each building is HUD regulated, the HUD UA will apply to all buildings - the HUD UA schedule for the HUD PBRA program. This specific UA from HUD also complies with HOME UA guidelines.*

**Example #3 – Project RD funding and Project Based Vouchers:**

*(PBV issued by the Local PHA and funded by HUD Office of Public and Indian Housing)*

*Happy Place Apartments is a 100% tax credit 80 unit 5 building property with PBV funds on 25% of the units for a total of 20 PBV units. The project is RHS financed. For all RD projects, the UA to be applied is the applicable RHS utility allowance*

**Example #4 – Project RD funding and HUD Project Based Rental Assistance:**

*(issued and funded by HUD Office of Multifamily Assistanc):*

*Sunny Place Apartments is a 100% tax credit 80 unit 5 building property with HUD PBRA. The project is RHS financed. For all RD projects, the UA to be applied is the applicable RHS utility allowance, even though there is HUD PBRA on the property.*

**F. Maintaining Compliance with Utility Allowances**

To remain in compliance, owners must utilize the correct and current Utility Allowance source/schedule in order to properly determine unit rents. An increase in the Utility

Allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the tenant's rent must be lowered. When a Utility Allowance changes, rents must be recalculated within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42(g)(2). Utility Allowances need to be reviewed and updated as follows:

- When the rents for a project or building are changed or there is a change in who pays the utilities.
- Within 90 days of an update by HUD, RHS, PHA, or local utility supplier.  
The Utility Allowance must be updated at least once annually, however, must always use the current utility allowance in place, (implemented, 90 days from the effective date)
- Within 90 days of a change in the applicable allowance (e.g., a new tenant is receiving a Project Based Voucher)
- Annually for projects or buildings with documentation from a utility company.

CTCAC requires that the tenant files include documentation on how utility amounts are determined annually. The Utility Allowance used in the calculation for the property must be obtained/updated at least once a year and kept in a location that is accessible by tenants. Contact the appropriate agency to request current utility allowance information. The LIHTC Section at CTCAC does not maintain the various utility allowances

#### **G. Utility Allowance (Sub-metering)**

In June 2009, the IRS released Regulation 2009-44, which allows for individual sub-metering of units in a building. IRS Regulation 2009-44 allows for a sub-metering system within the Utility Allowance calculation methods that was not originally addressed in the initial Treasury Decision and is retroactive to the Final Regulations of July 29, 2008. To clarify it was determined 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 for purposes of IRC §42(g)(2)(B)(ii), which requires that the rent for low-income units include a utility allowance if the tenant pays the utilities

The breakdown of the regulation is as follows:

Sub-metering is defined as a measurement of the tenant's actual utility consumption and the tenants pay for the utilities they use. A sub-metering system usually has 2 parts.

- A master meter, which is owned or controlled by the Utility Company and from which the Utility Company bills the overall utility consumption to the owner.
- Individual unit-based meters which show the breakdown of utility costs per unit measured and whose combined total is part of the overall consumption costs.

In a sub-metering system the owner receives and should retain the bill of the property consumption with a breakdown of the resident utility consumption (master bill). The owner then prepares a bill for each residential unit based off of their actual consumption, and the tenant receives the documentation of the utility costs as specified in the lease. A

sub-metered rent restricted unit is treated as a utility paid directly by the tenant, and not by the owner.

For purposes of computing the utility allowance when a building is sub-metered as described above:

- For RHS-assisted buildings, buildings with RHS tenant assistance, HUD regulated buildings and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance, the applicable RHS or HUD rules apply.
- For all other rent-restricted units in other buildings, this includes tax credits:
  - The utility rates charged to each tenant in each sub-metered unit must be limited to the utility company rates incurred by the building owners.
  - The owners may charge a “reasonable fee” not to exceed \$5 per month to cover administrative costs of sub-metering. This fee is not considered in the Gross Rent calculation
  - If the cost of sewer is included in / combined on the same bill as the water costs, then the sewerage costs are treated as paid directly by the tenants for purposes of Utility Allowance calculations.

**Please note** – Ratio Utility Billing Systems (RUBS) are not allowed under the sub-metering system. RUBS are pro-rated amounts based on number of people in the unit and/or unit size. Any billing by the owner must be based on actual consumption. Water usage in common areas cannot be billed to the tenants.

CTCAC monitoring requirements for sub-metered units:

- CTCAC will look for specific language in the Lease stating the units are sub-metered for water and the billing will be based on actual consumption.
- CTCAC will look for language that Owner is charging a \$5 Administrative fee
- CTCAC will require a copy of the Master Bill (with the breakdown by units) be available either prior to the inspection or on the day of the inspection.

### **Part 3.5 Rules Governing the Eligibility of Particular Residential Units.**

Following is a partial listing of rules governing the eligibility of a unit to be counted as a low-income housing tax credit unit. For more information regarding unit eligibility, consult Section 42 of the IRS Code or a LIHTC textbook or guide.

#### **A. Unit Vacancy Rule**

If a low-income unit becomes vacant during the year, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to qualifying tenants before ANY units of comparable or smaller size in the project are rented to non-qualifying tenants.

Units that have never been occupied cannot be counted as “low-income”, but must be included in the “total units” figure for purposes of determining the applicable percentage.

Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered “low-income” for purposes of determining the amount of credits claimed only if the units were occupied for a minimum of one month by an eligible low-income tenant.

In order to be eligible to continue claiming units while the unit is vacant, it must be in turn-key ready condition and be actively marketed. Units that are being held vacant due to the owner having a contract with a social services agency or other funding restrictions where applicants are directed to the property from a third party/outside agency, may be out of compliance if the vacancy exceeds 60 days and no marketing efforts are being made to fill the units by the general public.

**B. When a Unit Must Remain Vacant**

If the required percentage of tax credit units has not been met, the remaining number of qualified units must be held vacant for eligible tenants. Units cannot be left permanently vacant and still satisfy the requirements of the tax credit program. The owner or manager must be able to document attempts to rent the vacant units to eligible tenants.

**C. 140% Next Available Unit Rule**

If the income of the occupants of a qualifying unit increases to more than 140% of the applicable income limitation, the unit may continue to be counted as a low income unit as long as the unit continues to be rent-restricted and the next unit of comparable or smaller size is occupied by a qualified low-income tenant.

Please note: The 140% calculation is based off of the Federal set-aside of either 40/60, 20/50, or AIT elected by the owner of the property. It is not used with any State Required deeper targeting requirements stipulated in the Regulatory Agreement for the property.

**D. Totem Pole Rule**

A household will continue to be considered tax credit eligible as long as there is at least one original household member residing in the unit. Children who were minors at the time the household originally moved in who were on the TIC but did not sign the initial lease are still considered original household members. If at any point there are no original household members in the unit, the current household members must qualify under the current income limit in order for the unit to retain the ability to get credits. This must be done as soon as no original members occupy the unit, it cannot be done at the next recertification.

Example: Rose Smith and her 16 year old daughter Kristina move into Happy Place Apartments. Rose signs the initial lease, but Kristina does not because she is still a minor. Four years after they move-in, Rose moves out and Kristina moves in her best friend Jen. Jen and Kristina live together for 3 more years and then Kristina moves out. Jen decides she wants to add her boyfriend to the unit.

As soon as Kristina moves out, you must income qualify Jen to see if she is eligible under the current income limits. If there is a gap between when Jen is occupying the unit alone and when she intends to add her boyfriend, Jen would need to qualify as a one person household. If Jen is moving in her boyfriend at the same time Kristina is moving out, you would need to income qualify both Jen and her boyfriend as a two person household.

#### **E. Transfer of Existing Tenants – 100% Tax Credit Property**

Should an existing household desire to move to a different rent-restricted unit in a different building, this is acceptable provided that the current income of the tenants does not exceed 140%, and the owner has elected “yes” to the Line 8b on the IRS Form 8609, indicating the property is considered a multi-building project. All application, certification, and verification procedures for the transferring resident(s), including the income and asset verifications transfer with the household. The units then swap status.

If the owner has elected “no” to the Line 8b on the IRS Form 8609, this indicates that each building is to be considered its own project for tax purposes and the household must re-qualify under the 20/50 or 40/60 set-aside to be able to transfer. The household is treated as a complete move-out and complete move-in.

Unit transfers within the same building do not require interim certification/recertification. The file must include documentation verifying income eligibility for the originating unit and document the reason for the transfer. The annual recertification date remains the same.

Section 42 is silent on whether “unit transfer fees” may be required for transfers throughout a property. CTCAC does not have a policy either “for or against” charging a transfer fee, however, after researching this topic the determination is most major owner/management agents do not charge a transfer fee.

In the absence of specific regulation, it is assumed the owner may charge a reasonable transfer fee. However, transfer “fees” may not be incurred for any reasonable accommodation request. Additionally, CTCAC reserves the ability to require specific documentation if excessive or unreasonable fees are determined to be charged of a household wishing to transfer to another unit.

#### **F. Exempt / Resident Manager’s Unit**

The exempt/resident manager’s unit may be considered in one of two ways listed below:

1. The exempt/manager’s unit can be considered a common area or other special facility reasonably required within a rental project that supports and/or is reserved for the benefit of all the rental units. Under this interpretation, the unit is included in eligible basis, but excluded from the low-income occupancy calculation. The unit can be used by the manager without concern as to the effective rent being charged to or the income level of the manager; or

*For example:*

*The project contains one building. This building has 25 units, one of which is a manager's unit. At the end of the first year of the credit period, all units are rented except the manager's unit that remains unoccupied. The building's applicable fraction would be 96% (24/25 assuming all units are the same size). Therefore, if the building's eligible basis is \$700,000, its qualified basis would be only \$672,000. If the exempt/manager's unit were considered as common area, it would not be included in either the numerator or the denominator in calculating the applicable fraction. If not included, the building's applicable fraction would be 100% (24/24) and its qualified basis would be \$700,000.*

2. If the owner determines the exempt/manager's unit is not going to be occupied by a manager or maintenance person, then it may be treated as a rental unit provided the owner has prior approval from TCAC. Approval may be granted if the owner can demonstrate there is not an immediate need for a management agent to be onsite due a 24 hour desk clerk available or that there are more exempt/manager's units required than are needed for the day to day functioning of the property.

In a project that is 100% tax credit, changes may be permitted by the Tax Credit Allocation Committee (CTCAC) to the size or location of the approved managers unit(s) noted in the recorded Regulatory Agreement. CTCAC will review each owner request after performing due diligence and will approve each individual request for changing the exempt/managers unit size or location based on the circumstances around the change. Written request must be made by the owner to CTCAC and sent to the attention of the Senior Compliance Program Managers, **before** making any changes to the exempt/managers unit. Changes to the exempt unit will not be approved unless a minimum of two years have passed since any prior requests.

If the exempt/manager's unit is a single unit attached to the common room, pool area, or any other common space that where a BIN is not assigned to the building, the unit cannot be changed and a qualified household cannot occupy that unit in lieu of treating it as an exempt/manager's unit.

In a mixed-income tax credit project (tax credit with conventional market rate units), the owner elects the unit size and the location of the on-site managers unit. Once this election is made, the on-site managers unit may **never** change size or location in the project. Making such a change in size or location can impact and affect both the applicable fraction and the qualified basis on which the credit was calculated. Such changes can result in placing the project in noncompliance and is reportable to the IRS on Form 8823. CTCAC **can never** approve a change to an on-site managers unit in a mixed-income tax credit property.

For all project types where the manager's unit is included in eligible basis, the unit is required to be occupied by the onsite manager, assistant manager, or maintenance personnel who work primarily at the property which the unit is located in order to qualify for purposes of Section 42. Employees occupying the manager's unit but

working primarily at a different property is **not** a qualified use of the manager's unit and will be reported to the IRS on Form 8823.

***Please note: If the owner is treating the exempt/manager's unit as a tax credit unit (income and rent restricted) and the unit is occupied by an income eligible employee of the management company, the owner cannot evict or remove the tenant solely because they no longer work for the management company.***

#### **G. Waitlist(s)**

Section 42 of the IRC does not outline provisions for waitlists in the tax credit program, therefore CTCAC does not monitor for waitlist maintenance. However, proper management of waitlist(s) is necessary under Fair Housing and Employment. Please consult with your Fair Housing attorneys if questions or concern arise regarding your waitlist policy.

### **Part 3.6 Rules Governing the Eligibility of Particular Tenants and Uses**

Following is a partial listing of rules governing the eligibility of certain tenants. For more information on tenant eligibility, consult Section 42 of the Code or a LIHTC textbook or guide.

#### **A. Student Eligibility**

The applicable definition of student is a full-time student at an educational organization with regular facilities, faculty, curriculum, and enrolled body of students. Section 42 of the IRC requires that households comprised entirely of full-time students meet certain requirements. See Section IV Part 4.6 for more information on students.

#### **B. Manager or Employees as Tenants**

It is permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a project. The manager or employee may also be an eligible tenant if income qualified\*. If, however, the manager or employee receives free rent or a rental discount, the imputed value of the rent or discount must be counted as income. Additionally, the employee cannot be required to leave the property or be evicted solely because of a termination of employment with the management company. For additional information regarding the manager's unit, see Section III, Part 3.5 (F).

*\*If an employee of the management company is determined to be a qualified tenant and subsequently leaves or is terminated from employment at the management company, they cannot be evicted from or the lease non-renewed from their unit solely because they no longer work for the management company.*

#### **C. Live-in Care Attendants**

A live-in care attendant for a tax credit tenant should not be counted as a household member for purposes of determining the eligible income and rent limits. The need for a



live-in care attendant must be certified with documentation included in the Tenant/Unit File (see Section IV, Part 4.7). HUD's definition for a live-in aide requires that the aide is in the unit solely for the care of the tenant. If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program.

In July 2009, HUD released revision 3 to the 4350 Handbook. This revision clarified the requirements for a live-in attendant in a Tax Credit property. Chapter 3 of the HUD handbook defines a live-in aide as:

1. A person who resides with one or more elderly persons, near elderly persons, or persons with disabilities, and who;
  - a. Is determined to be essential to the care and well-being of the person(s)
  - b. Is not obligated for the support of the person(s) and will not contribute materially to the household; and
  - c. Would not be living in the unit except to provide the necessary supportive services to the person(s)
  
2. Regarding a live-in aide;
  - a. The owner must verify the need for a live-in aide. Verification must be obtained from the person's physician, psychiatrist, other medical practitioner, or health care provider.
  - b. The owner must approve a live-in aide as a reasonable accommodation request in accordance with 24 CFR part 8. However, the owner should only document/verify the need for a live-in attendant and cannot require access to confidential medical records or require a physical examination be performed.
  - c. The live-in aide qualifies for occupancy only as long as the individual needing the supportive services requires the aide's services and remains a tenant. The live-in aid may not qualify the household as a remaining family member.
  - d. A spouse cannot be a live-in aide for a person as a spouse is legally obligated for the support of the other person.
  - e. The determination if a live-in aide can bring in additional family members is up to the owner to approve. CTCAC strongly suggests consulting with a Fair Housing and/or Tax Credit attorney in each circumstance.
  
3. The income of a live-in aide is excluded from annual income
  
4. Multiple Aides are allowed as long as the Doctor's verification indicates the need for multiple aides (quadriplegic, amputee, etc.).
  
5. **Live-in Aide Verification Form** – In January of 2012, CTCAC released a third party Live-in Aide Verification Form to be used for all households requesting a Live-In Aide. This will be a required "as needed" form beginning in January 2012. In addition to the form, CTCAC strongly recommends the use of a "Live-in Aide Lease Addendum" that outlines the requirement for an aide, denies occupancy to the live-in

aide if for any reason the tenant vacates the unit, and gives the owner the right to evict a live-in aide who violates the house rules. Properties that are also Project Based Section 8 and have completed HUD's Live-in Aide Verification form may substitute that form for the required Tax Credit form. A copy must be available in the Tax Credit file.

In January of 2017, CTCAC updated the Live-in Aide Verification form to include a question if the disability is permanent and not subject to change. As of that date, if the third party practitioner completing the form indicates that the disability that requires the services of the live-in aid is permanent, then CTCAC will only require the Live-in Aide to be completed at move-in. If the third party practitioner completing the form indicates that the need is temporary, then the Verification should be completed at each recertification. Please note that this policy is in effect from February 1, 2017 onwards and is not retroactive.

#### **D. Unborn Children**

The IRS allows that unborn children may be included in the total household count for determining eligibility provided the child(ren) will be occupying the unit at birth. CTCAC requires a self-certification of pregnancy be in the file to document unborn children at initial move-in.

The IRS has determined that even though an unborn child may be counted as a household member for determining the income and rent limits, they cannot be used solely to qualify a full-time student household that does not meet one of the other 5 IRS exceptions, until the child is physically residing in the unit.

#### **E. Non-transient Occupancy**

Under program requirements, a unit cannot be tax credit eligible if it is used on a transient basis. A unit is deemed to be transient if the initial lease term is less than six months. There is an exception to this rule for single-room-occupancy (SRO) developments assisted under the Stewart B. McKinney Act.

Single-room-occupancy (SRO) housing must have a minimum lease term of one month. Federal rules allow for month-by-month leases for the following types of housing:

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

#### **F. Ineligible Facilities**

No hospital, nursing home, sanitarium, life-care facility, retirement home providing

significant services other than housing, dormitory, or trailer park is eligible to be a low-income housing tax credit project.

Commercial space within a tax credit development is not tax credit eligible.

### **Part 3.7 Other Federal Regulations**

#### **A. Physical Requirements of Units**

1. Qualified units rented to, or reserved for, eligible tenants:
2. Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the project; and
3. Cannot be geographically segregated from the other units in the project.

Units intended for eligible tenants must be comparable in size, location, and quality to those rented to other tenants. In the event a residential unit in a project which is rented to an eligible tenant is above the average quality standards of the units rented to eligible tenants, then the basis in the project which is used to determine the amount of tax credits must be reduced by the portion which is attributable to the excess costs of the above standard units.

#### **B. Discrimination Prohibited in Project**

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, marital status, age, familial status, sexual orientation, source of income, or handicap. Additionally, owners cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws.

#### **C. General Public Requirements**

Under program requirements, tax credit units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (e.g. homeless individuals, persons with disabilities, etc.). These preferences, however, must not violate HUD's anti-discrimination policies.

The revised Guide to IRS Form 8823, published in September 2009, indicates that a qualified low-income project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) who are members of a specified group under a Federal program or state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

#### **D. General Occupancy Guidelines/Family Size**

There are no current tax credit requirements governing minimum or maximum household size for a particular unit; however, owners must comply with all applicable local laws, regulations and/or financing requirements (e.g. if RHS, use RHS regulations).

CTCAC advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit and should be able to adequately address questions and concerns of potential applicants including denial of application. CTCAC will not mediate in disputes regarding income eligibility of applicants.

#### **E. Good Cause Eviction**

On July 29, 2004, IRS issued Revenue Ruling 2004-82 which requires all Extended Use Agreements (Regulatory Agreements) for Housing Tax Credit properties to include, a prohibition against evicting or terminating tenancy of tenants in low-income housing units for other than good cause. This prohibition must extend throughout the duration of the entire extended use period.

The Regulatory Agreement for your project requires your compliance with all conditions to tax credit eligibility under Section 42 of the Internal Revenue Code (Code). In accordance with Revenue Ruling 2004-82, effective July 30, 2004, no low-income resident of any Housing Tax Credit project may be evicted other than for good cause. The reason for the "good cause" eviction must be provided to the tenant **in writing**. Housing Tax Credit unit occupants have the right to specifically enforce this prohibition in State court. Generally, "good cause" is defined as "the serious or repeated violations of a material term of the lease", as that definition is applied with respect to federal public housing. CTCAC will not mediate in disputes between the tenant and the owner/management regarding evictions.

In 2009, The IRS modified the 8823 Guide to remove the language regarding non-renewal in the good cause eviction section. However, the requirement for the owner to be able to demonstrate in a court of law the reason for the non-renewal still stands. (See also Section II Part 2.2 (B))

### **Part 3.8 Qualified Allocation Plan**

The federal low-income housing tax credit program requires allocating agencies to allocate low income housing tax credits pursuant to a Qualified Allocation Plan (QAP or Plan). CTCAC is the state agency responsible for implementing the federal and state low income housing tax credit

programs in California. The specific provisions of the qualified allocation plans, are set forth in subsections of IRC Section 42 and can be found here:

<http://www.treasurer.ca.gov/ctcac/programreg/regulations.asp>

### **Part 3.9 Statutory Set-Asides (State)**

The legislature of the State of California has statutorily created certain “set-asides” based on the housing needs within the state. A percentage of the state’s total credit ceiling each year is set aside for the following:

- Large Family
- Senior
- Qualified nonprofit organizations pursuant to Section 42 of the Internal Revenue
  - Preemptive priority to Homeless Assistance Projects Code.
- At-Risk
- Rural Set-aside
  - RHS/HOME Financed projects
  - Native American Apportionment
- Special Needs / SRO
- Supplemental

#### **A. Qualified Nonprofit Organization**

For projects receiving allocations under the Qualified Nonprofit set-aside, documentation must be provided indicating that the nonprofit organization is materially participating in the ongoing management and operation of the projects.

Documentation that should be retained in the owner’s file is as follows:

- IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation
- Proof of designation as a non-profit corporation under Health and Safety Code Section 50091
- Proof that one of the exempt purposes of the corporation is to provide low-income housing a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying current involvement, a third party legal opinion verifying the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with an Related Party of a for-profit organization including the basis for said determination and a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42 (h)(5)

### **Part 3.10 Adopted State Regulations**

These regulations establish procedures for the reservation, allocation and compliance monitoring

of the Federal and State Low-Income Housing Tax Credit Programs and establish policies and procedures for use of the Tax Credits. Section 42 provides for state administration of the Federal Program. California Tax Credit Allocation Committee is the Housing Credit Agency to administer both the Federal and State Housing Tax Credit programs in California and determines the regulations as set forth by the policies and procedures noted in IRS Section 42. In addition to these regulations, program participants shall comply with any other statutory or regulatory requirements noted by the Committee or California Legislature. Both current and previous year's regulations can be found at:

<http://www.treasurer.ca.gov/ctcac/programreg/regulations.asp>

### **Part 3.11      Transfer Events**

Transfer events include the Sale, Transfer, Refinance, or Disposition of the Project after the Placed-in-Service Date including changes to either the Limited Partnership or the General Partnership. Generally, any change in ownership of a building or a partnership interest during the Federal Compliance period has the potential to be a recapture event if not processed correctly or if the new ownership entity fails to remain in compliance with IRS regulations. Recapture can possibly be avoided if the IRS determines that the project is expected to remain in compliance for the balance of the Compliance Period (including Extended Use period). Changes in ownership occurring in the Extended Use period are closely monitored to make sure the project remains in compliance for the full term of the Regulatory Agreement.

To determine if a project remains in compliance with IRS regulations prior to the approval of a Transfer Event, CTCAC staff will review the results from the most recent CTCAC compliance inspection, the last AOC package submitted to the Committee, and the performance of the newly proposed owner or management agent. The entity replacing a party or acquiring ownership or Tax Credits will be subject to a "qualification review" by the Committee to determine if sufficient project development and management experience is present for owning and operating a tax credit project. For projects awarded 9% tax credits, CTCAC regulations require the new owner or management agent to possess equivalent experience as the current owner or management agent (see TCAC regulation section 10320(b)(1)(B)). For projects given 4% tax credits with bonds, TCAC regulations require that the incoming management agent to qualify for at least 2 management company experience points or obtain training and certification in fair housing law, Section 42 program requirements, project operations, and attend a Owner/Management Training Class conducted by CTCAC (Section 10325(c)(1)(B)(iii)).

In October of 2015, CTCAC published regulations regarding the definition and requirements of Transfer Events. At the same time a Questionnaire for Ownership Transfers and Transfer Events was posted to the CTCAC website to facilitate the process and clearly indicate the required documentation to be submitted to the committee. The Questionnaire for Ownership Transfers and Transfer Events can be found at:

<http://www.treasurer.ca.gov/ctcac/compliance/covenant/questionnaire.pdf>

Certain transfer events (including re-financing) that occur after October 9, 2015 are required to submit a Capital Needs Assessment and enter into a 15 year Capital Needs Agreement unless

they meet one of several exceptions:

- A. The project consists of less than 50% Tax Credit units
- B. A transfer of the project or a partnership or membership interest in a project owner in which the debt encumbering the project is not increased, refinanced or otherwise modified.
- C. A refinancing of project debt which does not increase the outstanding principal balance of the debt other than in the amount of the closing costs and fees paid to the project lender and third parties as transaction costs.
- D. A replacement of a general partner by the limited partner upon the occurrence of a default by a general partner in accordance with the partnership agreement of the project owner.
- E. A transfer pursuant to a foreclosure or deed in lieu of foreclosure to a non-related party.
- F. A project that is subject to a Capital Needs Agreement and is now being transferred in connection with a new reservation of 9% or 4% tax credits (i.e., resyndication).
- G. A transfer of the ownership of a project subject to an existing tax credit regulatory agreement with a remaining term of five (5) or less years that is made in connection with a new reservation of 9% or 4% tax credits (i.e., resyndication).
- H. A sale of a project, or the sale or assignment of a partnership interest in a project owner, to an unrelated party for which the parties entered into a purchase agreement prior to October 9, 2015.

In addition to the above, CTCAC may require any or all of the following based on responses to the Questionnaire for Ownership Transfers and Transfer Events:

- Letter from current owner of record notifying TCAC of the proposed sale of existing tax credit project including TCAC project name and number
- A copy of the Purchase/Sales Agreement
- An Assignment and Assumption Agreement (buyer assumes TCAC regulatory agreement)
- A copy of the filing of the newly formed ownership entity with the California Secretary of State's Office
- IRS letter which shows the federal taxpayer identification number for the new ownership entity
- Organization Chart showing the newly proposed ownership structure
- A completed TCAC Project Ownership Profile Form (POP), identifying the new ownership entity and property management (PM) agent
- Property Management Agreement for project (if applicable)
- TCAC Stand Still Agreement if the acquisition is being financed
- Financial statements for new ownership entity including General Partner(GP) or Administrative General Partner (AGP)
- Completed TCAC application attachments 21 and 22 evidencing GP, AGP and PM experience
- Completed Project Status Report (PSR)
- A statement of how much will rents increase after the transfer of ownership interests occurs.
- Confirmation letter from current owner confirming that seller will transfer tenant records and all tenant demographic data collected up to the date the sale closes escrow to the buyer and their property management agent
- Completed TCAC Annual Owner Certification (AOC) Form and TCAC Annual Operating Expense (AOE) reports

- Copy of a written letter stating whether the project will be applying for a re-syndication of tax credits
- IRS tax filing Form 990 for non-profit organization (if applicable)
- A copy of the Sources and Uses worksheet

In September 2018, CTCAC updated the Transfer Memo to require that transfer events that include properties that received 4% tax credits in conjunction with a bond allocation notify the CA Debt Limitation Allocation Committee (CDLAC) of the intent to transfer the property, and added two additional items to the documentation that is to be submitted. These are:

- Sources and Uses Worksheet showing net equity distribution to the seller
- Reserve Certification indicating all expended funds in the project reserve funds associated with the project will remain with the project.

In March 2019, CTCAC revised the Questionnaire for Ownership Transfers and Transfer Events to a more user friendly layout which separates the main types of Transfer Events received and has an easy check box system.

CTCAC must give approval to the transfer event prior to its occurrence. Failure to gain approval prior to completing a transfer event may result in fines. Due to the high number of requests that are submitted for approval, the approval process can take up to 3-4 weeks to complete February through October and 4-6 weeks to complete November through January. CTCAC strongly suggests submitting any documentation for a Transfer Event 45+ days prior to the closing date to ensure sufficient review and processing time.

Transfer Event requests can be submitted via email to Compliance Program Manager David McDaniels [david.mcdaniels@treasurer.ca.gov](mailto:david.mcdaniels@treasurer.ca.gov)



## SECTION IV – QUALIFYING TENANTS FOR LIHTC UNITS

Potential tenants for low-income, rent-restricted units should be advised early in the application process that there are income limits that apply to these units. Management should explain to potential tenants that the projected gross income of all adult persons expecting to occupy the unit must be included and verified on a Tenant Income Certification (TIC) form prior to occupancy and, then, annually recertified for continued eligibility in mixed-use Tax Credit properties or for one additional income recertification for 100% Tax Credit properties.

### Part 4.1 The Tenant Application, Lease, and Lease Rider

- A. **Application** - A fully completed application is critical to an accurate determination of tenant eligibility. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets.

At the time of the application, it is the management agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application and complete the Tenant Income Certification.

CTCAC requires criteria that should be captured in the tenant application. The application should include:

1. The name and age of each person that will occupy the unit (legal name should be given just as it will appear on the lease and tenant income certification).
2. All sources and amounts of current and known projected annual income expected to be derived during the twelve month certification period. Include assets currently owned and indicate if household members disposed of assets during the previous two years.
3. The current and anticipated student status of each applicant during the twelve month certification period.
4. A screening process, for example, previous landlord's credit information. Owners should ask applicants whether the family assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent or failure to cooperate with recertification procedures.
5. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly.
6. Housing history for the past two years.

- B. **Lease** - All residents occupying tax credit units must be certified and under lease no later than the time a tenant moves into the unit. Leasing guidelines are listed below.

At a minimum, the lease should include (but is not limited to):

- The legal name of all parties to the agreement and all other occupants.
- A description of the unit to be rented.
- The date the lease becomes effective.
- The term of the lease.

- The rental amount.
  - Any mandatory charges to the tenants
  - The use of the premises.
1. Rents on the tax credit units may not exceed the amounts allowed by Section 42 of the Code or stated in the project’s Regulatory Agreement (Gross Rent).
  2. There must be an initial lease term of at least 6 months on all tax credit units (except for housing for the homeless and single-room-occupancy). Succeeding leases are not subject to a minimum lease period.
  3. It is important for the lease to reflect the correct date of move-in, or the date the tenant takes possession of the unit. This date should match the move-in date reflected on the initial move-in Tenant Income Certification (TIC)

**C. Section 42 Lease Language, Rider or Addendum**

In addition to the lease there should be language in the lease or a lease rider/addendum that outlines all of the LIHTC requirements per IRS Section 42 such as; the rights and obligations of the parties, including income requirements and the obligation of the tenant to certify income annually, as well as, language which addresses income, utility allowance increase/decrease, income limit increase, rent changes, student restrictions and exceptions, household composition change or any other change that may impact the tenant’s rent or eligibility for the program. Please note – the HUD Affordable Housing Rider cannot be used in lieu of the Section 42 Lease Rider/Addendum.

In March of 2021, CTCAC released a CTCAC Section 42 Lease Rider in lieu of including separate language in the lease or an Addendum created by the owner/management company. This CTCAC Required Section 42 Lease Rider will be used to maintain consistency across all properties and management companies to clearly state the provisions of the LIHTC Program. This Addendum will be required to be in use at all properties by January 1, 2022.

**D. CTCAC Required Lease Rider (Good Cause Eviction Rider)**

The CTCAC Good Cause Eviction Lease Rider became a CTCAC requirement 2005, and must be executed by new tax credit households. The Good Cause Eviction Lease Rider is separate from the Section 42 language/lease rider/addendum noted above. The Good Cause Eviction Lease Rider must be included with leases for all new tax credit households at initial leasing only. The Lease Rider is posted on CTCAC’s website. The Lease Rider informs tax credit households that they may not be evicted by the owner or management agent unless there is “Good Cause” to do so. Once signed, it is not necessary to re-sign a new lease rider at every recertification. If there are any new additions to a household, or a child reaches his or her majority, then the “new” tenant should sign the existing waiver with the current date. (See also Section II Part 2.2(B) and Section III Part 3.7(E))

In 2021 the name of the form changed from Low Income Housing Tax Credit Lease Rider to LIHTC Good Cause Eviction Lease Rider to minimize confusion with the requirement

for the LIHTC Section 42 Lease Rider noted in Section IV Part 4.1 (C)

#### **E. Violence Against Women Act (VAWA) HUD Lease Rider**

In 2013, Congress passed legislation that added LIHTC properties to the list of federal housing programs protected by the Violence Against Women Act (VAWA). No official guidance has been given from the IRS regarding this legislation. In December of 2017, CTCAC put out guidance regarding VAWA and started requiring the HUD – 91067 Form (HUD VAWA Lease Rider) be in the file for all Tax Credit properties. For tax credit purposes, one VAWA Lease Rider form may be signed by all adult household members and new additions to a household or minors that reach their majority, may sign the existing VAWA form with the current date.

The CTCAC Guidance Memo regarding VAWA compliance can be found at:  
<https://www.treasurer.ca.gov/ctcac/compliance/memos/vawa.pdf>

#### **Part 4.2 Determining Maximum Income and Rent Limits**

CTCAC publishes Income and Rent Tables based on limits released by HUD annually (See Section III Part 3.3 (E)). The income limits reflect household sizes for up to 8 persons. CTCAC calculates the 60% income limit the 4 person household as 132% above the HUD very low limit of 50%.

The Income and rent tables can be found at:  
<https://www.treasurer.ca.gov/ctcac/compliance.asp>

On occasion it may be necessary to determine the limit for a household size over eight people. To do so, please use the following calculation: Take the income limit for a family of four, add 8 to the 4-person percentage for each additional person in the household (for a 9-person that would be  $132 + 8 = 140\%$  or 1.4, for a 10 it would be  $132 + 16 = 148\%$  or 1.48). Then multiply the 4 person limit by that %.

Example:

9 person calculation:

Sacramento County 60% limit for a family of 4 = \$42,600

60% limit = 132%

Add 8 = 140%

Multiply 4 person limit by 140% = \$59,640

9 person limit for a 60% unit in Sacramento County = \$59,640

The Rent tables published by CTCAC follows the guidelines for occupancy as determined by HUD using the maximum income limits and the following person/bedroom ratio – 1 person per unit for a Studio/SRO or Efficiency unit and 1.5 persons per bedroom size. Maximum allowable rent equals 30 percent of the project’s income limit for the imputed family size. The maximum allowable rent for:

- A studio/efficiency is 30 percent of a project’s one person income limit.

- A one-bedroom unit is 30 percent of a project's income limit for 1.5 persons, calculated by averaging the one and two person income limits.
- A two-bedroom unit is 30 percent of a project's three person income limit. (2 bedrooms x 1.5 persons = 3 persons)
- A three-bedroom unit is 30 percent of a project's income limit for 4.5 persons, calculated by averaging the four and five person income limits. (3 bedrooms x 1.5 persons = 4.5 persons)
- A four-bedroom unit is 30 percent of a project's six person income limit. (4 bedrooms x 1.5 persons = 6 persons)
- A five-bedroom unit is 30 percent of a project's income limit for 7.5 persons, calculated by averaging the seven person and eight person income limits. (5 bedrooms x 1.5 persons = 7.5 persons)

**Maximum Rent Example**

40% @ 60% minimum set aside

1 bedroom unit

Utility allowance = \$65

$$\begin{aligned}
 &1\text{-person } 60\% \text{ income limit} = \$22,500 \\
 &2\text{-person } 60\% \text{ income limit} = \$24,300 \\
 &\quad (\$22,500 + \$24,300)/2 = \$46,800 \\
 &\quad \$46,800/2 = \$23,400 \\
 &\quad \$23,400 = 60\% \text{ income limit for } 1.5 \text{ Persons}
 \end{aligned}$$

$$\begin{aligned}
 &\$23,400 \times 30\% = \$7,020 \\
 &\$7,020/12 \text{ months} = \$585 \text{ (rounded down)} \\
 &\$585 - \$65 = \text{max tenant rent of } \$520
 \end{aligned}$$

**For all Rent Calculations the rental amount is based on the Area Median Income as released by HUD annually not on the tenant's annual income.**

**Part 4.3 Tenant Income Verification**

IRS Revenue Notice 88-80 (Appendix 3) states that determination of annual income of individuals and area median gross income adjusted for household size must be made in a manner consistent with HUD Section 8 Income definitions and guidelines. HUD Handbook 4350.3 REV-3, Occupancy Requirements of Subsidized Multifamily Housing Programs, can be used as reference guide and is included in Appendix 2. **However, please keep in mind that the allocating agency (CTCAC) can impose stricter requirements for determining income eligibility beyond what HUD Handbook 4350.3 REV-3 requires.**

*“The accurate determination of a household's income is a fundamental requirement of the IRC Section 42 Low-Income Housing Credit program. Not only is it necessary for identifying households most in need of housing, but the determination must be adequately documented in order for the owner to claim credits.” – IRS.*

The income of every prospective occupant of the unit over the age of 18 and any unearned income

from persons under 18 (such as Social Security benefits) must be verified. All regular sources of income including income from assets must be verified. Verifications must be received by the management agent prior to the execution of the Tenant Income Certification and actual move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets. It is the burden of the owner to perform adequate due diligence in obtaining verifiable information. Information that is not verifiable or is unclear, may be questioned by CTCAC during an audit, and may result in reportable noncompliance to the IRS.

**A. Effective Term of Verification**

Third-party verifications of income are valid for 120 days prior to move-in. If after 120 days the tenant has not yet moved in, a new written verification must be obtained.

**B. Methods of Verification**

1. Written Verification

Written, third party verification is required. Any request for income verification must:

- (a) State the reason for the request;
- (b) Include a release statement signed and dated by the prospective tenant;
- (c) Provide a section for the employer or other third-party source to state the applicant's hire date, current anticipated gross annual income or rate of pay, number of hours worked, income YTD including when the annual pay period began, and frequency of pay. Bonuses, tips, commissions and any other additional income sources such as uniform allowance or mileage must be included. Spaces should also be available for a signature, job title, phone number, and date.
- (d) Probability and effective date of any increase during the next twelve (12) months.
- (e) CTCAC requires three months of consecutive pay stubs at initial move-in on addition to the Verification of Employment (VOE) for wage earners only.

2. Verbal Verification

In the past, CTCAC has accepted verbal verification when written verification is not possible prior to move-in, by direct contact with the source and at the owner's risk.

***Although verbal verification is acceptable in HUD Handbook 4350 Rev-3, as of January 1, 2009, verbal verification of income and assets will not be permitted by CTCAC due to the significant risk of Tax Credit noncompliance.***

Verbal telephone clarifications of existing written documentation will still be allowed for minor issues relating to dates or blanks. However, if the verbal clarification would reduce the income calculation used to determine eligibility, third party clarification must be obtained.

3. Verification Requests

Income verification requests must be sent directly to the source of income by the owner or

management agent and returned by the source to the owner or management agent. Under no circumstances should the applicant or resident be allowed to send or deliver the verification form to the third party source. CTCAC does not require that a self-addressed, stamped envelope be included with the request for verification, however, many investors or management companies have made it a policy to do so, to ensure a timely and documented response.

All tenant income verifications should be date stamped as they are received. However, CTCAC will determine time validity of the verification based on when the source of income signed and dated the verification (120 days)

#### 4. Acceptable Forms of Income Verification

For information concerning acceptable forms of income verification for Employment Income, Self-Employment Income, Social Security/Pensions/Supplemental Security Income (SSI)/Disability Income; Unemployment Compensation, Alimony or Child Support Payments; Recurring Contributions and Gifts; Scholarships, Grants, Veteran's Administration Benefits; etc., see Section VII Part 7.2(B)(C), HUD 4350.3 Chapter 5 (REV 2) and the IRS Guide to Form 8823 Chapter 4.

In addition to the Tax Credit requirements, an owner or management company may impose more restrictive standards on documentation or ask for additional documentation not required by CTCAC (ex. bank statements).

### C. Discrepancies in Reported Income

The management agent should give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party verifications in order to determine actual income. Discrepancies noted between the VOE and the paystubs may require third party clarification.

### D. Electronic Signatures

In 2015, CTCAC started allowing the use of electronic signatures on the application only. In 2020, due to the COVID-19 Pandemic, CTCAC allowed the use of electronic signatures through the vendor DocuSign for all documents to mitigate in-person contact. Starting in 2021, CTCAC will allow electronic signatures on all CTCAC required documents (*Application, Lease, CTCAC Forms*) through a legitimate 3<sup>rd</sup> party vendor, provided the signature was obtained by a secure log-in process directly from the 3<sup>rd</sup> party vendor that verifies ID or the electronic signature was created by the tenant "writing" their name using a mouse or electronic pen with the current date.

Numeric "PIN only" signatures or signatures using Adobe or other 3<sup>rd</sup> party software that does not have a secure ID verification system to track and document identity will not be accepted.

## E. Assets

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

Third party verification of assets is required when the combined value of assets exceeds \$5,000. Owners of tax credit projects will not have to obtain third-party verification of income from assets if the tenant submits to the owner a signed, sworn statement that the value of their combined assets is less than \$5,000. The tenant's income from the net household assets that are less than \$5,000 must be included in the calculation of the annual income amount when initially qualifying a household and upon recertification.

For information regarding which net household assets are included or excluded to determine the value of and income from assets, see HUD Handbook 4350.3 REV-2

## F. Real Estate

All real estate currently owned by the household or sold by the household member within the prior two years, must be accounted for in determining asset income for the household. Determining the value of the real estate property can be done one of two ways:

1. Actual value - third party appraisal or sale documents
2. Estimated value – three online estimations from realty websites, such as Zillow, Redfin, Realtor.com. The highest estimate should be circled and used to determine the basis for the asset calculation.

Once the value of the property has been determined, calculation of the asset can be done the following ways:

### 1. Normal Sale of Real Estate

To determine the asset value of real estate that has been sold at market value-management must calculate both the actual cash value of the property and if the value is over \$5000, the imputed value of the property, and take the **higher of the two amounts**. To do this, take the value of the property, subtract the costs of any outstanding mortgages, and subtract the closing costs for the property. The interest on the cash amount received for a home would be zero, unless the proceeds were put into an interest bearing account like a savings or CD.

*Example 1: Mr. Smith just sold his house and is moving into a tax credit property. The House sold for \$325,000. Mr. Smith owed \$150,000 on his mortgage. Closing costs for the property were \$32,500. All of the proceeds for the sale of the home are currently in a CD earning 3.8% interest. The values of the property are:*

$$\$325,000 - \$150,000 - \$32,500 = \$142,500$$

*Imputed Value:  $\$142,500 \times .06\% = \$85.50$*

*Cash Value:  $\$142,500 \times 3.8\% = \$5415$  would be noted on the TIC as an asset.*

*Example 2: Ms. Jones just sold her condo and is moving into a tax credit property. The condo sold for \$125,000. Ms. Jones owed \$90,000 on her mortgage. Closing costs for the property were \$12,500. She paid off a few bills and put the rest of the proceeds from the sale of her condo into a checking account that does not earn any interest. The values of the property are:*

$\$125,000 - \$90,000 - \$12,500 = \$22,500$

*Imputed Value:  $\$22,500 \times .06\% = \$13.50$*

*Cash Value:  $\$22,500 \times 0\% = \$0^*$*

*\*You would also need to take the imputed value of the Checking account (6 month average)*

## 2. Real Estate used as a Rental Property

For real estate that is used as a rental property, two calculations must be completed and then compared. The first calculation is the same as the normal sale of real estate, noted above. The second calculation is the amount of monthly income from the rent, subtracting any mortgage or maintenance amounts. The final income amount that needs to be listed on the TIC is the higher of the two.

## 3. Foreclosure

A foreclosure is essentially to be treated as a zero asset, as the tenant will not be receiving any monies from the foreclosure. However, until the final foreclosure documents are provided, the house is resold at auction, or the title transfers ownership to an outside party, a tenant has the option to pay off the remaining balance and reclaim the house. CTCAC will require copies of the final foreclosure documents to be in the file. Notices of Foreclosure will not be accepted as valid documentation.

## 4. Short Sale

A short sale is essentially to be treated as a zero asset, as the tenant will not generally be receiving any monies from the short sale. However, if there is a difference in the sale in favor of the tenant it must be 3<sup>rd</sup> party verified if it is over \$5000. The documentation that is required in the file is:

- 1099-C showing the amount and the final debt forgiveness

Or

If the tenant has not received the 1099-C, the following information needs to be 3<sup>rd</sup> party verified and in the file:

- Market Value (as determined by the bank and the tenant agreeing to a transaction)



- Minus, Costs of the Transaction (commission, closing costs, etc.)
- Minus, Loan Balance owed on Property  
= Equals, Equity / Cash Proceeds from the Transaction

## 5. Reverse Mortgages

Management Companies should look closely into applicants who apply for a tax credit unit and claim to have a reverse mortgage on their home. Financial Institutions often require the owner of the home to live in the home in order to qualify for a reverse mortgage. If a prospective tenant applies for a tax credit unit, the management company needs to obtain 3<sup>rd</sup> party verification from the Reverse Mortgage lending institution stating the applicant does not need to live in the home full-time. If the verification shows that the applicant can live outside their home with a reverse mortgage, then the income from the reverse mortgage is considered an asset. To determine the value of the house, subtract the principal balance due on the reverse mortgage from the home's market value to determine its cash value.

## G. Computing the Total Household Income

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

## H. Anticipated Income

CTCAC does not calculate Anticipated Wages into income calculations, unless a definite salaried offer of employment has been made and a start date is set. Instead, CTCAC asks that the Zero-Income Certification form be filled out for the tenant, stating how he or she will be paying the rent and/or other bills. *Please Note - If no tenant in the household is earning wages nor has a different source of income, CTCAC will question how the bills are being paid and an anticipated wage statement will not be sufficient documentation as there is no guarantee of wages.*

Employment that occurs later within the 1st year of tenancy will generally not be an issue for CTCAC. However, if at 1st recertification (for both 100% and Mixed-use properties) the VOE indicates that new employment began within the 1st month of the lease term, CTCAC may request further documentation inquiring about the start date and the date the job was offered to determine income eligibility.

## I. Cash Payments

As of June 2004, in addition to the Verification of Employment (VOE) CTCAC requires 3 months of current consecutive pay-stubs at move-in. If the tenant is claiming that they do

not receive pay-stubs as they are paid in cash, the IRS has determined that those individuals are considered “independent contractors” and as such should file a 1040 tax return. CTCAC will require a copy of the 1040 filing for the tenant and a third party statement from the employer on company letterhead, indicating the name of the tenant, the position title, and how much the employer pays the tenant in cash each week.

If the tenant is claiming that he/she does not file tax returns, CTCAC will require a copy of completed Form 4506-T indicating the tenant did not file taxes with the IRS in place of the 1040 Return. The statement from the employer will still be required in addition to the 4506-T. CTCAC will question patterns of excessive use of Cash Wages statements in the 20% audit sample, and may request additional information or a larger audit sample.

## **J. Other Payments**

1. California Climate Credit - The California Climate Credit is a bill credit that is part of California's efforts to fight climate change. Residential households and small businesses automatically receive the California Climate Credit if they are purchasing utilities through an investor owned utility company (such as PG&E, San Diego Gas & Electric, Southern California Edison, etc.) or through a Community Choice Aggregator (CCA). The Credit is applied twice per year – in the spring and fall. As this is a credit to the tenant’s bill and not funds that the tenant has access to, it is not considered income for Tax Credit purposes and should be excluded when determining income eligibility.
2. Kin-GAP Payment - The Kin-GAP Program offers a subsidy to children who leave the juvenile court system to live with a related legal guardian. The intent of the legislation is to provide an option in a continuum of choices for the related caregiver, the agency, and the courts in order to allow the most appropriate permanency plan for dependent and delinquent children. In mid-2019, HUD provided guidance that they do not consider Kin-GAP payments as income for a household, CTCAC will also exclude Kin-Gap payments as a source of income for the household.
3. Flex Benefit Payments - Flex Benefit plans allow employees to choose the benefits they want or need from a package of programs offered by an employer. Flexible employee benefit plans may include health insurance, retirement benefits such as 401(k) plans, and reimbursement accounts that employees can use to pay for out-of-pocket health or dependent care expenses. In a flexible benefit plan, employees contribute to the cost of these benefits through a payroll deduction of their before-tax income, reducing the employer's contribution. Since the amounts in the Flex Benefit account are the pre-tax funds from the wages of the employee and not a benefit in addition to wages, it is not considered income for Tax Credit purposes and should be excluded when determining income eligibility.
4. ABLE Accounts – ABLE accounts are tax-advantaged savings accounts for individuals with disabilities. The beneficiary of the account is the account owner and contributions to the account may be made by the owner, a trust, family or any other person up to a maximum annual contribution of \$15,000. The funds in this

account must be used for certain qualified disability expenses that help improve the quality of life for the beneficiary. In April of 2019, HUD provided guidance that ABLE accounts are excluded from the calculation of income and assets. As of that guidance, CTCAC will also exclude ABLE accounts as a source of asset income for the household.

**K. Electronic Banking Cards (EBT), Debit Visa or MasterCard**

For household that receive payment for programs such as Social Security, EDD, or employer payroll on a EBT/Debit Visa or MasterCard, CTCAC will continue to verify the source information for the card (Social Security Award Letter, EDD Award Letter, VOE and pay stubs). Any balance amount remaining on the card at time of move-in or recertification is treated like any other asset and if under \$5000 should be noted on the Under \$5000 Asset Verification Form. If over \$5000, then a statement or receipt should be in the file, the balance should be imputed at the current HUD passbook rate of .06%, and added to the total household income.

**L. Mobile Payment Service (Venmo, Paypal, CashApp, etc.)**

For any mobile payment service CTCAC will treat any held balance similarly to a savings account with zero interest. We will require a printout of the current balance and the use of the HUD Passbook rate to determine the cash value.

**M. Crypto-Currency (Bitcoin, Ether, Ripple, etc.)**

For households that have crypto-currency, CTCAC will treat this asset similarly to a stock. We will require a printout of the current balance and the percentage of fluctuation for a 3 month period to determine the cash and imputed value.

**Part 4.4 Initial Tenant Income Certification Guidelines**

The initial move-in certification guidelines for 100% and Mixed-use Tax Credit Properties are as follows:

- A. Each adult tenant must sign the following:
- Lease
  - LIHTC Good Cause Eviction Lease Rider
  - LIHTC Section 42 Lease addendum (or have language in the lease or separate addendum prior to 2022)
  - Application
  - Tenant Income Certification (TIC)
- B. Each adult tenant must complete the required CTCAC forms:
- Tenant Income Certification Questionnaire (TICQ)\*
  - Child/Spousal Support Affidavit
- C. **If Applicable**, each adult must also complete the following required CTCAC forms:

- Under \$5000 Asset Verification (*one for each adult, unless married and have joint asset accounts*)
- Zero Income Certification
- Student Affidavit
- Foster Care Affidavit
- Single Parent Full-time Student Affidavit
- Financial Aide Verification
- Live-in Aide Verification
- Separated or Estranged Status Affidavit (new 2020)

D. Once all the income and asset information has been obtained and calculated, prepare the required CTCAC Tenant Income Certification for each household. The following guidelines apply:

1. Upon receipt of all verifications, owners or managers should review all documentation and calculations, as necessary. If all requirements for eligibility are met, the applicant can be considered as qualified.
2. Execute a lease agreement with a minimum of a 6 month term (*SRO properties may issue a month-to-month lease*). No one may live in a tax credit eligible unit in the project unless he/she is certified and under lease.
3. Management should instruct the prospective tenant(s) to sign the lease exactly as the name appears on the form.
4. It is preferred that the lease be executed on the date of move-in.
5. All adult members of the household must sign and date the lease.

*\*please note that CTCAC requires a completed TIC Questionnaire for **each** adult member of a household.*

#### **Part 4.5 Income Recertification Requirements**

A. **For 100% Tax Credit properties only – Please Note:** With the passage of federal legislation known as The Housing Recovery Act of 2008 (HR 3221), on July 30, 2008, the requirement for continuance of annual income recertifications beyond initial move-in certification was abolished. However CTCAC implemented final Regulations on February 25, 2009 requires one additional income annual recertification after initial move-in (1st income recertification) in our 2009+ State Regulations.

Failure of 100% Tax Credit properties to perform the mandated 1<sup>st</sup> income recertification for all files, will put the property out of compliance and at risk of Negative Points/Fines given to both the Ownership and/or Management Company.

1. CTCAC monitors recertification on the anniversary date of move-in or the industry standard of the 1<sup>st</sup> day of the anniversary month for the household.

2. Student Status must still be verified annually, to determine if the household met one of the five IRS student exceptions. *Applies to both 100% and Mixed-Use Projects.*
3. In the event a new member is added to a qualifying household within the 1<sup>st</sup> year of move-in, the following steps must be taken at 1<sup>st</sup> income recertification:
  - a. The additional tenant verifications of income and assets must be completed, as with a new household;
  - b. If the addition was within the first 6 months of move-in - The additional tenant's income should be added to the current household's previously certified income. The combined household income must be compared to the maximum allowable income limit in effect at the time and based on actual household size; and
  - c. if at any point all original household members vacate the unit, the Totem Pole Rule goes into effect. See Section III Part 3.5 (D)

*Example: 1 person household income limit = \$25,000*

*2 person household income limit = \$28,000*

*140% of 2 person income limit = \$35,000*

*Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification was \$20,500. Eight months after Tenant A moves into the project, she informs management that Tenant B will be moving into the unit in two months. Before moving in, Tenant B is certified as earning \$12,900. The household's combined income will be \$33,400.*

The house will still qualify, since it is below the 140% limit of \$35,000. If the combined income of Tenants A and B would exceed 140% of the current income limit, the next available unit rule may go into effect.

4. If tenants in a previously qualified household become full-time students, the household can only be considered as a qualified tax credit household if at least one of the student criteria is met as described in Section III, Part 3.6 (A) of this manual.
5. In the event that a tenant occupies a unit in a building prior to the Placed In Service date of the building (as shown on the project's IRS Form(s) 8609), and the verification of the tenant's income was performed more than 120 days prior to the Placed In Service date, the tenant must be recertified on the Placed-In-Service date.
6. In the event the household composition changes in any way (i.e., birth, death, marriage, divorce, or a household member vacates the unit) the household must notify management of the changes throughout their tenancy. Management should keep a record of the reason for the changes in the tenant's file.
6. For Section 8 recertification, follow the HUD Guidelines.

- B. Mass Recertification** - For 100% Tax Credit properties, if after the 1<sup>st</sup> recertification, the owner wishes to move the household to a mass recertification cycle to align it with another program's certification cycle, it is not an issue for CTCAC, provided that less than 12 months has passed since the last recertification.

*Example: The Geoffrey household moves into Garden Valley Apartments on April 23, 2016. Their 1<sup>st</sup> recertification is a full income and asset certification and is completed on April 1<sup>st</sup>, 2017. Garden Valley Apartments has Project Based Section 8 in addition to Tax Credits. The recertification cycle for Section 8 for the property is October. After the 1<sup>st</sup> recertification in April 2017, the owner may elect to move the Geoffrey household to the mass recertification date of October. This would have to be completed within 12 months of the anniversary date (before April 2018).*

*The property would be considered out of compliance if the owner waited until October 2018 because more than 12 months had passed since the last recertification in April 2017.*

For recordkeeping purposes, if the file is archived due to becoming too large, please keep either the recertification for the year the mass recertification occurred or put a clarification record in the file that indicates when the unit was moved to a mass recertification cycle.

- C. For Mixed-Income Properties** – All of the above conditions apply, however, complete 3<sup>rd</sup> party income and asset recertifications must continue to be performed on an annual basis on the move-in anniversary date. Any transfers to different buildings must also be tracked to comply with the 140% Next Available Unit Rule. (See Section VII Part 7.7 for more information on Mixed-Income properties). Please note: During a State Agency Monitoring Review, the owner is required to have complete copies of each year's annual recertification in the tenant files for review. Failure to provide this documentation is a reportable issue of noncompliance to the Internal Revenue Service.

**D. Recertification Procedure**

1. Notify tenant that recertification is due.
2. Interview tenant and obtain information on income, assets and household composition.
3. Every tenant age 18 or over must complete the recertification documentation.
4. Verify each tenant's income and assets. Supporting documentation (third-party income verification, employment verification, child support affidavit, etc.) must be reviewed and added to the Tenant/Unit File each year. (See Maintain a Development File, Section IV, Part 4.7.
5. Complete a Tenant Income Certification.
6. Review the income and asset verifications and the Tenant Income Certification to determine the tenant's eligibility for an LIHTC unit.
7. A renewal lease may be executed at the time all required forms are signed and approved, but is not required by CTCAC.
8. Notify tenants of any rent increase resulting from the recertification.

**E. Annual Recertification Waiver (*pre-2008*)**

With the enactment of Housing Bill HR 3221, the Annual Recertification Waiver program is no longer relevant and CTCAC's review of the feasibility of implementation has ceased.

**Part 4.6 Students**

Section 42 requires that households comprised entirely of full-time students meet certain requirements in order for the household to retain its eligibility. Student status is a continuous, monitoring requirement that can occur at any time during the household's occupancy of the unit or throughout the full regulatory period. Households that are comprised of a mix of non-students, part-time students, and full time students, are not considered to be a household comprised entirely of full-time students and do not have to provide Student Status Verification for CTCAC purposes.

**A. Part-Time Student**

CTCAC has no restrictions on the number of part-time students occupying an apartment as long as there is third party documentation from the school in the file, showing the tenant as part-time only. This should be updated regularly (each semester/quarter) as student status can change and cause a household to become ineligible.

**B. Full-time Student (*including K-12 and adult dependents*) -**

In order for a household of full-time students to be considered eligible, they must meet one of the following criteria:

- **Any** member of the household is married and either files or is entitled to file a joint tax return.
- The household consists of a least one single parent and his or her minor children, and neither the parent nor child is claimed as a dependent of a third party. Any children may be claimed as a dependent of either parent, regardless of tenancy in unit. CTCAC will require a copy of the Tax return showing dependent status or the Single Parent Full-Time Student Form if custody is shared between parents.
- At least one member of the household receives assistance under Title IV of the Social Security Act. (AFDC, TANF, CalWORKS, etc. – Not SSA or SSI)
- At least one member is enrolled in a job training program receiving assistance under the Work Investment Act (WIA) formerly known as the Job Training Partnership Act, or similar federal, state or local laws
- At least one member of the household is under age 24 and has exited the Foster Care system within the previous 6 years.

**C. \$480 Student Income**

Under special circumstances, HUD Handbook 4350.3 REV-2, allows only \$480 of a full-time student's income to be counted toward income eligibility. To be eligible all of the following criteria must be met:

- Student cannot be listed as Head, Co-head, or Spouse of Household
- The students full-time status must be 3rd party verified with their school/college
- The students wages must also be 3rd party verified with their employer

Additionally, CTCAC requires that to be eligible under this rule, all the following criteria must also be met and owner must include in the tenant file evidence of such:

- Student must be claimed as a dependent on the Head, Co-Head or Spouse's tax return

OR:

- On student's tax filings he/she must show that he/she is a dependent

#### **D. Financial Aid Verification**

In February 2006, HUD announced changes to income calculations to include all forms (except loans) of Financial Aid above the cost of tuition (as determined by the school) unless the household meets one of two exceptions. This change applies to both full and part-time students. These exceptions are:

1. The student is over the age of 23 with dependent children, or
2. The student is living with his or her parents who are applying for, or receiving, Section 8 assistance.

In July of 2006, CTCAC started to require the Financial Aid Verification form for households with students in addition to the Student Status Verification form.

In Chapter 4 of the Revised IRS Guide to Form 8823 dated September 2011, the IRS states the treatment of educational scholarships or grants is dependent on whether the student is receiving Section 8 assistance.

CTCAC will no longer calculate any financial aid income for qualified students, except in the instances where Section 8 assistance is received. If Section 8 assistance is received, then the guidelines and exceptions noted in HUD Handbook 4350 Rev. 3, Chapter 5 will be in effect.

#### **Part 4.7 The Tenant/Unit File**

The Tenant/Unit File must contain the following:

- A. Initial Application. This must include a minimum of a two-year housing history
- B. Tenant Income Certification. This certification should detail the annual income of each resident in the household, applicable area median income limit, and must be signed and dated by all adult household members.
- C. Third Party Verifications. Documentation verifying all income and assets of the household for each certification, and each annual recertification. At move-in, employment verification must be accompanied by three months of pay stubs for each employed adult or the alternative paystub calculation (See Section V Part 5.5 (I)).
- D. Section 42 Lease Language and/or Addendum. The initial lease term for all Section 42 residents must be a minimum of six months in length, unless the unit is a qualified



Single-room-occupancy Unit. It must also include documentation showing the property is monitored under the provisions of IRS Regulation Section 42, and must include information regarding recertification, rent restriction, and student requirements. See Section IV Part 4.1 (C)

E. All CTCAC Required Forms. These include the TICQ, Child/Spousal Support Affidavit, and the “if applicable” forms including Zero Income Certification, Under \$5000 Asset Verification, Child/Spousal Support Verification Form, Separated or Estranged Status Affidavit, Student Verification, Single Parent Full-time Student Self-Affidavit, Foster Care Verification, Financial Aid Verification, and Live-in Aide Verification.

F. Applicable Housing and Financing Requirements specific to the Unit. If other housing or financing programs govern the development, the applicable documentation reflecting compliance to its requirements should also be in the resident’s file. These programs may include: HOME Investment Partnership, Tax Exempt Bond Financing, HUD or Rural Housing and Community Development Services (formerly Farmer’s Home Administration).

G. A Release of Information Consent form signed by each adult member of the household.

H. Other Documents. These include any optional contract item that the tenant pays for and is not contained in the lease (parking, pets, etc.), or base rent; change in unit occupancy (increase or decrease in household); income and asset certification for all new adult residents.

I. If the project was funded as a designated senior property, documentation that the tenant and household is eligible as a “senior” person (Section III, Part 3.9).

Annual Recertification:

**For 100% properties** – one income recertification is required on the 1st anniversary of move in. Subsequent years must have either the Tenant Household Information Form (THIF) or owners may elect to continue with full recertifications. Owners may choose to make the anniversary effective date the first day of the month the recertification is due or they may keep the actual anniversary date. The effective date cannot be pushed back until the next month.

**For mixed-income properties** – annual income recertifications must be done on a yearly basis on the anniversary date of move-in. IRS regulations do not permit mass recertifications or short form recertifications of mixed-income tax credit properties.

## **Part 4.8 Qualifying Section 8 Tenants for LIHTC Units**

An owner’s management agent may substitute a completed, executed copy of the HUD 50059 form in lieu of the completed Tenant Income Certification (TIC). A blank TIC signed by all adult household members that includes the following information must accompany the HUD 50059:

street address, Building Identification Number (BIN) where the unit is located written at the top.

The substitution of this form does **not** waive the requirement for the owner to maintain supporting income documentation. The income verification procedures outlined in Section IV Part 4.3, and the supporting documentation outlined in Section IV Part 4.7, must be followed when certifying the eligibility of Section 8 certificate and/or voucher holders, and tenants in Section 8 project-based developments. The following modification must be made to the HUD 50059: The street address and BIN of the building in which the unit is located must be written or typed at the top of each form.

The HUD 50059 with supporting documentation replaces only the items outlined in the paragraph above. No other substitution of forms or certification procedures will be permitted. ALL other initial certification and recertification procedures outlined in Section IV, Parts 4.3, and 4.6 and throughout this manual must be followed. ALL of the annual certification requirements, outlined in Section V, Part 5.6, must be completed and submitted to CTCAC as described. All other tax credit policies and guidelines outlined in this manual and in federal and state regulations apply to Section 8 projects, except as noted therein.

The Tenant/Unit File must contain a HUD 50059 with supporting documentation for the initial certification and an updated HUD 50059 for every annual recertification. The Tenant/Unit File must contain all other documentation outlined in this section, including, but not limited to, an application and lease agreement.

If a HUD 50059 or updates cannot be obtained by the owner/management agent or the tenant discontinues participation in the Section 8 program, all of the initial certification and/or interim and annual recertification procedures must be followed.

### **Using the HUD 50059 to Qualify Tenants for LIHTC Units**

Use lines 90-92 from the HUD 50059 to compare to the appropriate area median gross income limit as adjusted for household size. Tax credit income limits are based on the gross annual income of a household, not adjusted annual income.

Use line 111, Total Tenant Payment, to compare to the maximum allowable tax credit rent. Tax credit rent limits are based on the tenant-paid portion of the rent and tenant-paid utilities and do not include any subsidy payments.

In order to maintain Section 42 compliance it is strongly recommended that owner's maintain a section of the tenant file with all required CTCAC verification requirements and mandated forms separate from the section containing the HUD paperwork. **CTCAC does not require the use of separate files for HUD and Tax Credit.** However, if HUD requires separate files from Tax Credit, copies of employment verifications, leases, or other income documentation required by CTCAC may be included in a tax credit file if the originals are required to be in the HUD file. Failure to maintain third party verification of supporting income documentation can result in an issue of noncompliance.

### **Tax Credit and the Enterprise Income Verification (EIV) System**

CTCAC is not authorized to see any income or asset information obtained by using the EIV or TRACS system as required by HUD. Management companies operating project-based Section 8 properties layered with tax credits or those properties with Section 8 voucher holders will have to 3<sup>rd</sup> party verify income and assets separately following the standard CTCAC procedure.

#### **Part 4.9 Qualifying Tenants in RHS Projects for LIHTC Units**

An owner/management agent of a project financed by the Rural Economic and Community Development (RHS, formerly Farmers Home Administration) may substitute a completed RD 3560-8 form in lieu of the completed TIC. A blank TIC that includes the following information must accompany the RD Form 3560-8: the address, number of bedrooms in the units, the date household moved into the particular unit including the BIN the unit is located in written at the top of the TIC.

**The substitution of this form does not waive the requirement for the owner to maintain supporting income documentation.** All other initial certification procedures outline in Section IV, Parts 4.3, 4.4, 4.6, and throughout this manual must be followed.

- A. A worksheet calculating net household assets, detailing:
  - 1. For each type of asset, the following information:
    - a. the type of asset (cash, real estate property, stocks, etc.).
    - b. the cash value of the asset.
    - c. the actual yearly income from the asset.
  - 2. The combined total cash value of all assets
  - 3. The combined total actual yearly income from all assets.
  - 4. For households with assets with a total cash value exceeding \$5,000 the imputed income from assets based on the HUD approved passbook rate.
  
- B. The following written or typed at the top of the RD Form 3560-8:
  - 1. The number of bedrooms in the unit;
  - 2. The street address and BIN number of the building in which the unit is located
  - 3. The date the tenant moved into the unit.

The RHS 1944-8 replaces only the Tenant Income Certification. No other substitution of forms or certification procedures will be permitted. All other initial certification and recertification procedures outlined in Section IV, Parts 4.3, and 4.6, and throughout this manual must be followed. All of the annual certification requirements, outlined in Section V, Part 5.6, must be completed and submitted to CTCAC as described. All other tax credit policies and guidelines outlined in this manual and in federal and state regulations apply to RHS projects.

The Tenant/Unit File must contain a RD Form 3560-8 for the initial certification and an updated RHS 1944-8 for every annual recertification. The Tenant/Unit File must contain all of the other documentation outlined in Section IV, Part 4.7, including, but not limited to, third party verifications and lease agreement.

If an RD Form 3560-8 is not completed, all of the initial certification and annual recertification

requirements and procedures must be followed.

### **Using the RHS Forms to Determine Rent and Income**

Use Line 18f, from the RD Form 3560-8 to compare to the appropriate area median gross income limit as adjusted for household size. Tax credit income limits are based on a household's gross annual income, not adjusted annual income.

Use Line 33 the Final Net Tenant Contribution, to compare to the maximum allowable tax credit rent. Tax credit rents are based on the tenant-paid portion of the rent and tenant-paid utilities and do not include any subsidy payments.

In order to maintain Section 42 compliance it is strongly recommended that owner's maintain a section of the tenant file with all required CTCAC verification requirements and mandated forms separate from the section containing the RHS paperwork.

### **Part 4.10 Acquisition and Rehabilitation**

In January of 2007 The IRS released the Guide to Completing Form 8823. Within the guide, Chapter 4 contains a section on Income Certifications when completing an Acquisition / Rehab property. The chapter states that a unit occupied before the beginning of the credit period will be considered to be a low-income unit at the beginning of the credit period, even if the household income exceeds the income limit at the beginning of the first year of the credit period, if two conditions related to income qualifications are met and the units remain rent restricted:

- The household must be income qualified at the time of Acquisition or the date the household started occupying the unit, whichever is later.
- The owner must maintain documentation of the income qualification

If a household is already occupying a unit at the time of Acquisition, the initial Income Certification must be completed within 120 days before or after the date of the acquisition using the current limits in effect on the day of acquisition. The effective "move-in" date would be the date of acquisition, since the household is already occupying the unit. All CTCAC required documentation must be in the file as well as an updated Application showing the current household composition. However, CTCAC will not require a new lease to be signed, providing there is already a valid lease in effect and a copy of that lease is in the file.

If a household is already occupying a unit at the time of acquisition, but the Income Certification is completed more than 120 days from the Acquisition date, the household must be treated as a new move-in. A new lease and all required CTCAC documentation must show the household is income eligible. The owner would use the income limits in effect at the time of certification, and the effective date would be the date the last adult household member signs the TIC.

Section 42 requires that the Applicable Fraction for the first year of the credit period be calculated based on a month-to-month accounting of units or floor space occupied by income qualified households. For Acquisition/Rehab projects there are two separate allocations of credits – one for

Acquisition, one for Rehabilitation. However, there does not need to be a separate calculation for the applicable fraction of both credit allocations. The IRS mandates that the Applicable Fraction for the Rehabilitation will be the same as the Acquisition.

Households that are eligible for the Applicable Fraction calculation are:

- Units that are occupied before the beginning of the credit period providing they are income qualified at the start of the credit period.
- Units that become occupied by a qualified household after the beginning of the credit period (regardless of rehabilitation costs)
- Units that are occupied by a qualified house that transferred from another unit in the project. **Please note** – a household can only be used to qualify a unit once in the 1st year period. If, during the 1st year period, a household transfers from one unit to a vacant unit that had never been occupied, the units swap status. (*see IRS Guide to Form 8823 for rules on tenant transfers*)
- Vacant units that are suitable for occupancy AND were previously occupied by an income qualified household.

Households that are not eligible for the Applicable Fraction calculation are:

- Units occupied by nonqualified households
- Vacant unit last occupied by a nonqualified household
- Units not suitable for occupancy – including units that are undergoing Rehabilitation CTCAC strongly recommends keeping a chart or spreadsheet that summarizes the current status of each unit during the Rehabilitation process.

#### **Part 4.11 Re-Syndication**

Re-syndication occurs when an existing tax credit property with a recorded Tax Credit Regulatory Agreement comes in for a new allocation of credits. For a resyndication - CTCAC will give the application a new CTCAC Project Number beginning with the current allocation year to note the new regulations the project falls under, but the old number and provisions of the recorded Regulatory Agreement remain in effect. Prior to 2017, resyndications were allocated new Building Identification Numbers (BINs) to correspond with the new Allocation number. Starting in January 2017, all resyndications will be allocated a new Tax Credit number to reflect the allocation year for the resyndication credits but the original allocation BINs will remain unchanged. Additionally, until the resyndicated project is placed in service, the project is considered to be under the original Project Number and may be monitored under the provisions of the existing regulatory agreement.

**If the project is on the current year monitoring rotation under the Extended Use requirements of the prior Regulatory Agreement while it is in preliminary reservation for a new resyndication of credits, CTCAC will perform a monitoring visit even if it is undergoing rehabilitation.**

Once the property places in service the provisions of the prior Regulatory Agreement will be incorporated into the new agreement. The strictest regulatory provisions from both Regulatory Agreements will be the provisions applicable to the newly resyndicated property going forward.

**Please Note – with a new Placed in Service Date, the newly resyndicated tax credit property might have different applicable Rent and Income Limits from those that were applicable under the old allocation of tax credits.** Any new household occupying a unit in a resyndicated tax credit property must income qualify under the current federal maximum income limits for family size for the new allocation.

CTCAC will require the owner to perform a full income and asset certification of all existing households who remain when property is resyndicated. This certification may be completed either at the tenant’s next normal recertification date OR the owner may elect to select a date after the award of the new allocation (usually coinciding with the start of the new credit period) to certify all households\*. The date the certification is completed becomes the new “move-in/effective” date for the household and starts the recertification cycle over under the new allocation. Starting in 2017, TCAC will require the owner to create a new file for each newly resyndicated household.

*\*Please note - The “120 day before/after Acquisition date” guidance that applies for certifying households in Acq/Rehab projects that have never had tax credits does not apply to resyndication properties.*

**A. Creating a New Tenant File (Re-syndication Only):**

1. CTCAC requires the owner or their management agent create a completely new tax credit file for all tenants.
2. For households where the tenants qualify under the new Income limits, treat the certification as the new “move-in certification” for the resyndication allocation.
  - Future annual recertification requirements for the household would be based off this date.
  - No clarification form is needed.
3. For households where the current recertification is over the income limits for the new allocation, CTCAC will require a copy of the Re-syndication Clarification Form to be completed to prove eligibility to be grandfathered.
  - For each grandfathered household - the file must include the certification showing the household is over the current income limit at certification. The date of the certification will be the new “move-in certification” for the resyndication allocation. Future annual recertification requirements for the household would be based off this date.
  - **The Resyndication Clarification Form** should be behind the certification along with complete documentation of the original qualifying certification for the household that clearly shows income eligibility under the old allocation of credits.
4. The owner/management agent needs to check for and ensure full-time student requirements are met, if the household is comprised of all full-time students at the time of the resyndication, even if they can be grandfathered in for income purposes:
  - They must meet one of the 5 IRS Full-time Student Exceptions or the unit will not qualify for tax credits.
5. These properties are back in the 15-year Federal Compliance Period and will be monitored as such with any noncompliance reportable to the IRS on Form 8823.
6. If the project was on a 5-year monitoring rotation, it will be placed back on a 3-

year monitoring rotation.

**B. Grandfathering of Existing Residents (Re-syndication Only):**

1. The initial Tax Credit Regulatory Agreement is the authority that prohibits the eviction without good cause of any previously income qualified households that are over-income at current applicable income limits.
  - a. Households determined to be income qualified during the initial 15-year compliance period are considered concurrently income qualified for the purposes of the Extended Use period.
  - b. Any household determined to be income eligible at the time of move-in for purpose of the extended use agreement is a qualified household for any subsequent allocation of credits.
  - c. The existing first regulatory agreement “protects” these households from eviction and allows the owner to continue to claim credits on the over-income households.
  - d. Owner can give incentives to once qualified tax credit over-income households to vacate their units, but if the tenant(s) do not want to leave, they cannot be forced to move.
  - e. Each unit will remain tax credit eligible as long as the owner provides the complete initial certification paperwork to show the household was income eligible at move-in.
    - CTCAC prefers that this documentation be the original move-in certification, but will accept any subsequent complete certification that clearly shows income eligibility.
    - CTCAC requires the use of our “Resyndication Clarification Form” for all over-income household files.

**C. Mixed Income Re-syndication**

The same process as noted above for creating a file applies for the resyndication of a Mixed Income property. However, please note the following additional restrictions:

1. If the existing tax credit property is mixed-income property, and applies as a 100% tax credit restrictive property under the new resyndication, the market rate households **cannot** be grandfathered in.
  - Those households were never protected under the Tax Credit regulatory agreement and therefore must meet the current maximum tax credit income limits per family size.
2. If the Resyndicated property will remain mixed-income:
  - no mass recertification’s are permitted by IRS,
  - the **140% next available unit rule** must be tracked correctly by annually recertifying households on their anniversary date.
  - The move-in date will be the existing anniversary date of the household.
3. These properties are back in the 15-year Federal Compliance Period and will be monitored as such with any noncompliance reportable to the IRS on Form 8823.
4. If the project was on a 5-year monitoring rotation, it will be placed back on a 3-year monitoring rotation.

**D. Reducing Rents (if Applicable)**

Due to the HERA legislation of 2008 which changed the criteria that the Income and Rent limits were based on from county to project, the Income and Rent limits for a newly resyndicated project may be less than the prior allocation.

1. **For all projects** – if the newly applicable Federal Set aside limit of 40/60 or 20/50 is less than the prior limit, then the rents must be reduced to the current limit no later than the Rehab Placed in Service date for all 60% units in a 40/60 project or 50% units in a 20/50 project.
2. For projects with State Deeper Targeting – If the prior allocation had additional State driven deeper targeted rents (30%, 45%, 40%, etc.) then CTCAC will allow those deeper target units to be held harmless under the prior allocation's income limits until those limit reach the current deeper targeted amount, at which point they will then follow the limits applicable to the current award.

**Part 4.12 Existing Tax Credit Properties without a Regulatory Agreement (Re-Application):**

Several properties with very early allocation of tax credits in years 1987, 1988, 1989 and 1990, only had a 15-Year Federal compliance period. Because the owner never entered into a Tax Credit Regulatory Agreement with the allocating agency after the expiration of the 15-Year Federal compliance period, the properties were no longer monitored and were considered to have exited the Tax Credit program.

For these projects:

- The project will be considered a new allocation
  - The lack of a recorded Regulatory Agreement and end of the Compliance Period means the grandfathering provisions do not apply and households that are over-income cannot be grandfathered in.
- When coming back for a new allocation of tax credits **all** households **must** income qualify at the current maximum income limits for family size.
- Households comprised of all Full-time students must meet one of the 5 IRS Full-time Student Rule Exceptions.
  - The Placed in Service Date will dictate which rent and income limits are applicable.



## **SECTION V – COMPLIANCE MONITORING PROCEDURES**

This section of the manual outlines CTCAC's procedures for monitoring all projects receiving credit. Monitoring is designed to determine if the owner is in compliance with federal and state laws, regulations, and policies. Compliance is solely the responsibility of the owner and is necessary to retain and use the credit, and to avoid recapture of credit already claimed. Also, refer to Committee Regulations Section 10337, which details the compliance requirements.

Monitoring each project is an ongoing activity that extends throughout the initial 15 year Federal Credit Compliance Period, as well as, the Extended Use period. CTCAC is required by law to conduct compliance monitoring and inform the IRS of noncompliance, or the failure of an owner to certify to compliance. CTCAC will report to the IRS no later than 45 days after the period of time allowed for correction. Notification to the IRS by CTCAC is required whether or not the noncompliance has been corrected.

### **Part 5.1 The Compliance Manual**

In May of 2007, CTCAC converted the Compliance Manual to an openly accessible online format. The manual describes the compliance monitoring procedures that the owner and management agent must follow. Updates will be provided by CTCAC as changes to the law and/or procedures occur and will be available on our website

[www.treasurer.ca.gov/ctcac/compliance/manual.asp](http://www.treasurer.ca.gov/ctcac/compliance/manual.asp)

The manual also contains samples of the required reporting and certification forms that must be completed and submitted to CTCAC, sample tenant eligibility forms, Section 42 of the Code, the HUD Handbook 4350 Chapter 5, the IRS Guide to Completing Form 8823, and completed compliance monitoring regulations as published in the Federal Register and other pertinent IRS notices and rulings.

### **Part 5.2 Compliance Training Workshops**

CTCAC conducts periodic compliance training workshops, open to professionals who own, consult, or manage tax credit properties. Although attendance is not mandatory, it is recommended that personnel directly involved in the ownership or management of the project attend a workshop as soon as is practical either prior to or immediately following the date the project is Placed in Service. The purpose of workshops is to provide instruction on:

A sampling of the basic Code compliance requirements; IRS final regulations for compliance monitoring; CTCAC policy and procedures for compliance reporting; CTCAC policy and procedures for tenant file reviews; equal housing opportunity and fair housing regulations and policies.

The basic training workshop is designed for onsite management personnel and lower-level

compliance staff. It will provide specific information on the following low-income tenant eligibility requirements:

Income and rent limits; definitions of income and assets; certification of tenant income and assets; verification of tenant income and assets; leases; student eligibility; reporting violations of the tax credit program; other owner responsibilities, including notifying CTCAC of any change in management or ownership of the project.

As need arises, CTCAC will provide advanced training workshops for higher-level compliance staff including Asset Managers, Regional Directors, Occupancy Specialists and Owners. These workshops will provide specific information about legislative changes, IRS rulings, and any other information that directly impacts the LIHTC program.

Announcements as to the specific date, time, and location of workshops will always be posted on our webpage at [www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp). All workshops will be limited to 2-3 persons from a specific company per location unless prior arrangements have been made with CTCAC, or the workshop brochure states differently.

In 2020 and 2021, due to the COVID-19 pandemic, CTCAC modified the physical Compliance Workshop format to a Virtual Compliance Workshop format. Any future workshops may be in either format as determined to be necessary.

### **Part 5.3 CTCAC Required Training**

Under certain circumstances CTCAC may require owners, investors, asset managers, developers, and management agents to attend specific training as a condition of a tax credit award, ownership transfer, or to address consistent reoccurring noncompliance in a company's portfolio. These trainings will be held once a quarter at CTCAC's office in the State Treasurer's Office in Sacramento. CTCAC staff will alert all relevant parties when this training will be required.

### **Part 5.4 Compliance Files and Records**

The following compliance files and records must be maintained by the owner and made available to CTCAC upon request:

- A. Owner Record-keeping and Record Retention Requirements. See Section II, Parts 2.1 (K) and 2.2 (I), (J), and (K).
- B. Tenant/Unit File. See Section IV, Part 4.7.
- C. Service Provider Contracts. If a project's Regulatory Agreement stipulates a Service Provider contract, the owner must provide and maintain a contract for the required Site and Service Amenities as noted in the Regulatory Agreement Exhibit A for the property.

## Part 5.5 CTCAC Forms

The following list contains the forms created and used by CTCAC to determine the eligibility of households at a LIHTC project. *A sample of required forms is located on our website at <http://www.treasurer.ca.gov/ctcac/compliance.asp>*

For all forms listed below – CTCAC requires our version of the form be in the file. Changes or modifications to the forms must be approved by CTCAC prior to implementation. In order to maintain consistency among the projects in the portfolio, all forms that were previously granted approval prior to 2021 should be resubmitted. **Prior approval does not guarantee new approval.** CTCAC will start noting the use of forms that do not match the CTCAC required form as noncompliance starting in 2022.

### A. Annual Owner Certification

This form is used to certify continuing compliance with Section 42 and is completed by the owner on an annual basis. The Project Ownership Profile (POP) and the Annual Operating Expense Report (AOE) are included with the Annual Owner Certification (AOC) form. *See Section II Part 2.2 (F) for detail.*

### B. Project Status Report

This form is used to detail the move-in income amounts, utility allowances, and gross rent charges for all low-income units in the development and is completed by the owner and/or management agent upon request by CTCAC, for compliance monitoring purposes. The form is submitted electronically and is available on the CTCAC website at

[www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp)

Please note: Only the current PSR that is on the CTCAC website will download into our database. Any changes, modifications, or use of a similar form from an outside vendor (such as Yardi, RealPage, or Boston Post) will not download and will not be accepted. CTCAC will require the information to be completed only on the current PSR form located on our website. Repeated failures to provide the information in the format specified may result in the issuance of Form 8823 for failure to comply with monitoring inspection requirements.

Starting in 2019, for projects that elect an Average Income Set-aside on their 8609 forms, CTCAC will have a separate PSR from the one used by projects with 40/60 or 20/50 set asides.

### C. Utility Allowance

At the time of inspection, CTCAC will require the owner submit a copy of the Utility Allowance that is currently used on the property. Please see Section III Part 3.4 for more detail on the Utility Allowance Methods that are eligible to be used on LIHTC properties.

**D. Tenant Income Certification (TIC)**

This form summarizes the household composition and income and asset amounts for a particular unit. It is used to certify the eligibility of a tenant to reside in a LIHTC unit and is completed and signed by the owner / management agent and signed and dated by all adults residing in the unit.

**E. Tenant Income Certification Questionnaire (TICQ)**

This form serves as a worksheet to list all of the sources of income and types of assets held by the applicant and one form should be completed by each adult applicant.

**F. CTCAC Paystub Policy:**

In June 2004, CTCAC started requiring three months' worth of current and consecutive pay stubs for all wage earning new move-ins. This requirement was in addition to the Verification of Employment and was not considered a substitute for the VOE or any other verifiable third party documentation.

Starting in January 2019, CTCAC will continue the current policy of requiring three months' worth of current and consecutive pay stubs for all new tenants who have been employed at the same job for more than three months.

For tenants with less than 3 months' worth of pay stubs due to recently starting a job, CTCAC will allow the paystubs that have been issued prior to move-in to be used instead of the full three months as long as the following criteria have been met:

1. The total income calculation for the household based on both the VOE and paystub(s) is less than 75% of the current maximum limit for household size.
2. There is at least one full pay period accounted for in the paystubs that were submitted. **A single partial pay period paystub will not be accepted.**

*Example: Kelsey Cooper is applying at your property. She just started a new job at Claire's Boutique as a sales clerk a little over a month prior to applying. She will be making \$10 an hour and working 32 hours a week according to her VOE. She has 3 paystubs – 1 partial and 2 full stubs. You disregard the partial paystub as it does not account for a full pay period. The average of the 2 full stubs comes out to 62 hours for a 2 week period. The maximum income limit for a 1 person household is \$23,000.*

*VOE - \$10 x 32 hours x 52 weeks = \$16,640*

*Average from 2 pay stubs - \$10 x 62 hours x 26 weeks = \$16,120*

*Income Limit: \$23,000*

*75% of income limit: \$17,250*

*This household's tenant file would not have an issue of noncompliance during a*

*CTCAC audit for having less than 3 months of current and consecutive paystubs, as the calculations used to determine eligibility are below the 75% threshold and there was at least one full pay period used in the calculation.*

For tenants where the pay stubs issued prior to move-in show an income that is lower than the maximum limit for the household, but greater than the 75% threshold noted above, CTCAC will defer to the owner of the project to determine if they want to move in the applicant and continue to collect the additional paystubs until a total of three months' worth of stubs have been received. In the event that the pay stubs obtained after move-in show income over the limit for any deeper targeted unit (30%, 40%, etc.) but below the maximum federal limit (50% or 60%), CTCAC will not issue negative points or fines as long as the owner meets the deeper targeting requirement with the next available vacant unit. For households that exceed the federal threshold (50% or 60%), CTCAC will report the unit as over-income to the IRS on Form 8823 during the federal compliance period or issue either negative points or fines in the Extended Use period.

*Example: Kara Zorell is applying at your property. She just started a new job at Starbucks as a barista two months ago. She is making \$12.50 an hour and working 35 hours a week according to her VOE. She has 5 paystubs – 1 partial and 4 full stubs. You disregard the partial paystub as it does not account for a full pay period. The average of the 4 full stubs comes out to 72 hours for a 2 week period. The maximum income limit for a 1 person household is \$27,000.*

*VOE - \$12.50 x 35 hours x 52 weeks = \$22,750*

*Average from 4 pay stubs - \$12.50 x 72 hours x 26 weeks = \$23,400*

*Income Limit: \$27,000*

*75% of income limit: \$20,250*

*Since this household is over the 75% threshold, the owner may continue to collect paystubs until there are 3 months' worth in the file. If the additional paystubs show that she remains income eligible, then this file would be in compliance for tax credit income purposes. If the inclusion of additional paystubs into the calculation puts the household over the federal income limit of \$27,000 then CTCAC will report the household as over-income to the IRS on Form 8823.*

If an applicant is returning from a medical, maternity/paternity, or disability leave into the same job that they were doing prior to the leave and the Verification of Employment (VOE) clearly indicates that they were continuously employed during their leave period, CTCAC will accept a lesser amount of paystubs or a W-2 for the applicant as long as the paystub income provided reflects the wage amounts noted on the VOE.

CTCAC only requires paystubs in the initial move-in file/certification. For all subsequent recertifications, CTCAC will only require a Verification of Employment (VOE) to document wages. If at recertification, the owner is unable to obtain a completed VOE after 3 reasonable attempts, documented and spaced at minimum 5 days apart, then 3 months of

paystubs and documentation of the start date for the tenant may suffice.

*Please note – if the sample audit size shows patterns of owners not getting the VOE's returned, CTCAC may elect to expand the audit sample up to a 100% file audit.*

## **G. Negative Verifications**

CTCAC only requires the use of Negative Verifications, such as a Negative Verification of Employment, when documentation in the file indicates that the applicant may have had additional income as of the move-in date (or annual recertification date in mixed use properties).

*Example: Jacob King is applying at your property. On his application he notes that he works part time for Home Depot and part time for Ace Hardware. When he becomes reachable on the waitlist and you are preparing the documentation for determining his income eligibility, Jacob says that he is now just working full-time at Home Depot. You should obtain a Negative Verification of Employment for Ace Hardware to verify his end date.*

## **H. The Work Number and other Employment Verification Services**

At **initial move-in** into a tax credit unit, CTCAC policy require all tenant files must contain 3rd party verification for all wage earners in the form of a Verification of Employment (VOE) along with the pay stubs.

Beginning in June 2010 forward, CTCAC will require that for all initial applicants whose wage earnings can only be verified via The Work Number or another third party employment verification service, the owner of the project may pass on the cost of the verification to the applicant. This will ensure there is a VOE and pay-stubs for all wage earners at initial move-in, in the tenant files as requested by CTCAC. The requirement to pass the cost for the VOE is only at initial move-in year. At first year anniversary move-in date during the CTCAC mandatory 1<sup>st</sup> recertification, the owner or their management agent no longer have to supply a VOE from The Work Number, as long as 3 months of consecutive pay-stubs are included in the file.

For projects layered with HUD financing and tax credits, and where the owner is prohibited from passing on the cost of a verification to the applicant, for the cost of The Work Number, the owner **must** pay for the cost to obtain The Work Number verification for the file and include the required 3 months of pay-stubs as well. This will be a one-time expense at initial move-in only, as you may revert to using only the pay-stubs at the required 1<sup>st</sup> anniversary move-in date during the CTCAC mandatory 1<sup>st</sup> recertification.

Please note this policy is only for those files where obtaining The Work Number verification is an issue, for all other wage earners at initial move-in the file must contain a VOE form directly from the employer plus the required pay-stubs.\*

*\*The owner must provide documentation of a minimum of 3 reasonable attempts at obtaining the*

*Verification of Employment, spaced at minimum 5 days apart. If the owner is unable to obtain a completed VOE after 3 reasonable attempts, then 3 months of paystubs and documentation of the start date for the tenant may suffice. Please note – if the sample audit size shows patterns of owners not getting the VOE's returned, CTCAC may elect to expand the audit sample up to a 100% file audit.*

#### **I. Child Support and/or Spousal Support Release form**

The Child Support Verification form is required as of June 2004. It is used to document any form of child support including personal and court ordered. It was updated in July of 2007 to include spousal support. The Child/Spousal Support Affidavit should be completed by all adult household members at all full income and asset recertifications. If the Affidavit indicates that child or spousal support is being received, 3<sup>rd</sup> party documentation or the Child/Spousal Verification form should be completed in addition to the Affidavit.

#### **J. Separated or Estranged Status Affidavit**

In 2019, CTCAC removed the Marital Separation Status Form from the website due to conflicting guidance on how to treat the income of an applicant who has recently separated from a spouse and has not obtained a legal separation or divorce. The IRS has given CTCAC further clarification and has stated that if the estranged spouse does not have access to the other spouse's income, then it does not need to be counted as a source of income for the tenant, provided the spouse does not move into the household and any pre-arranged payments or spousal support payments are accounted for. If the spouse is added to the unit within 1 year of move-in, the total household income should be recalculated to include the spouse's income and then compared to the income limit at move-in. If the addition of the spouse's income puts the household over the income limit, it would be considered an over-income household.

In May 2020, CTCAC created and posted to the Compliance website the Separated or Estranged Status Affidavit to document those situations where there has not been a legal separation or divorce.

#### **K. Certification of Zero Income (Zero Income Certification)**

The Zero Income Certification is used when there is no eligible income or asset source for a household member. The tenant would complete the Zero Income Certification and indicate the source for how they intend to pay for rent and other necessities.

#### **L. Under \$5000 Asset Verification Form**

This form is used for households where the combined net assets do not exceed \$5000. For these households, CTCAC does not require any additional documentation (such as bank statements), but other funding sources on the property, or owner, investor, or management company policies may require additional documentation to support the Under \$5000 Asset verification form.

**M. Student Verification**

For households comprised entirely of students, CTCAC will require verification from the educational institution the student is attending to show the status (part-time or full-time) of each member of the household, to determine if the household must meet one of the 5 IRS Student Exceptions (*See Section IV Part 4.6*)

**N. Financial Aid Verification Form**

This form is used for households that are full-time students, receiving Section 8 assistance, and do not meet the Section 8 exceptions. It should be sent to the Financial Aid office of the educational institution the tenant is attending to verify the amount of financial aid determined to be counted as income for the household. For more detail on Financial Aid requirements see Section IV Part 4.6 (D).

**O. Single Parent Full-Time Student Status Form**

This form is used to track the dependent status of the child(ren) in a full-time student household. For full-time student households that meet the following exception – single parent with a dependent child and neither are claimed as dependent of a third party, the IRS has clarified that as long as custody arrangements allow for shared or alternating dependency for tax purposes, and remains between the parents of the child(ren), a household is not out of compliance for the year the dependency is with the other parent.

**P. Foster Care Verification Form**

This form is used to verify previous participation in the Foster Care system for purposes of determining eligibility for a household comprised entirely of full-time students. It should be sent to the Agency that monitors the Foster Care program the household member exited from.

**Q. Tenant Household Information Form**

This form can be used at 100% Tax Credit Projects after Year 3, to document required household information for properties that do not require full income and asset certifications to be completed.

**R. Live-in Aide Verification**

This form should be sent directly to the doctor, medical practitioner, social agency, or other 3<sup>rd</sup> party non-related professional who is actively treating the household member for verification that a Live-in Care Attendant is essential for the household. For more information on Live-in Care Attendants see Section III Part 3.6 (C).



## **S. Resyndication Clarification Form**

CTCAC requires that at resyndication a full income and asset certification be completed for all households at the new income and rent limits for the new allocation. If the household is income eligible under the new limits, no additional documentation is needed. If the household is over the new limits, the Resyndication Clarification Form should be used in conjunction with a previous certification, to document the continuing eligibility from the previous allocation. For more information on Resyndication see Section IV Part 4.11.

## **Part 5.6 Annual Certification with Section 42**

Annual compliance information must be reported by the owner for existing tax credit projects when requested by CTCAC, beginning with the year for which credit was first claimed.

The annual compliance requirements are as follows:

### **A. Annual Owner Certification (AOC)**

Failure to supply legible and thoroughly complete Owner Certifications when due will be considered noncompliance and is reportable on IRS Form 8823. The forms will be posted on the CTCAC web site page in January of each year. The AOC's are due the third Monday of March each year. See the CTCAC website for specific dates.

### **B. The Project Ownership Profile (POP) is considered part of the AOC.**

For more information regarding the AOC, see Section II, Part 2.2(F)(1).

### **C. Annual Operating Expense Report (AOE)**

Failure to supply legible and thoroughly complete Annual Operating Expense Reports (AOE) when due will be considered noncompliance. The forms will be posted on the CTCAC web site page in April of each year. The AOE's are due at the end of May each year. See the CTCAC website for specific dates. For more information regarding the AOE, see Section II, Part 2.2(F)(3).

### **D. Lender Report**

For more information regarding the Lender Report, see Section II, Part 2.2(F)(4).

### **E. Written Request to Amend Support Service Requirement**

Projects that received an allocation of credits in 2010 or later may not change their service plans without prior written approval from TCAC. Request for approval to make this

change must be sent to the attention of the Compliance Senior Program Managers.

## **Part 5.7 CTCAC Tenant/Unit File Review and On-site Project Inspections**

As provided in IRS compliance monitoring regulations, CTCAC is required to review a project's Tenant/Unit Files, Development File, and recordkeeping and record retention files.

Beginning in 2001 and pursuant to new IRS Regulations, the Committee or its agent will conduct file and on-site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is Placed In Service, and once every three years thereafter. The physical inspections will be of at least 20% of the low-income units in each project. The tenant file reviews will also be for at least 20% of the low-income units in each project, but may be conducted on-site or off-site. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose, while the units and tenant records to be inspected shall be randomly selected. Advance notice shall not be given of the Committee's selection process, or of which tenant records and units will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection date.

In 2009, CTCAC implemented a policy of posting on the website a list of all the properties that were scheduled for inspection in that year (both PIS project and those in the extended use period). The lists can be found at

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

A. When performing an on-site review, CTCAC will:

- Notify the owner and management agent in advance of the intended site visit.  
*NOTE: Physical inspection will be of the project grounds, common amenities, and occupied units. CTCAC Staff will ask to see vacant units and inquire as to the reason for and duration of the vacancy if they have been vacant for more than 60 days.*
- Inform the management agent on the day of the review which units and unit files will be inspected.
- Inform the owner of any findings of noncompliance with regard to such review.
- Inform the owner of a time line to respond to CTCAC with correction of any noncompliance. CTCAC may extend the correction period up to six months, but only if the Authority/Committee determines there is good cause for granting the extension.
- Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.
- Require **ORIGINAL** documentation whenever possible.
- Require that the review of the files and units will occur at the project site. If tenant files are kept at a central management office, they must be brought to the property on the date of the monitoring inspection. Exceptions may be made on a case-by-

case basis at the discretion of the Analyst conducting the inspection, prior to the inspection date.

B. CTCAC reserves the right to perform an in-house (Desk Audit) review. CTCAC will:

- Notify the owner in writing that they have been selected for a desk audit.
- Request that the owner submit a minimum of 30% of the files and documentation to CTCAC through a secure file transfer system.
- Give a time frame in which the tenant file documentation must be submitted.
- Inform the owner of any findings of noncompliance with regard to such review.
- Allow the owner a timeline to notify and respond to CTCAC for any correction of noncompliance.
- Schedule a physical audit at the property at a later date.
- Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

In May of 2020 through September 2021, CTCAC implemented desk audits due to the COVID-19 pandemic. CTCAC reserves the right to schedule desk audits as deemed necessary for public health, safety, or other reasons. In each instance, a physical audit may be scheduled at a different date from the desk audit.

## **Part 5.8 Extended Use Portfolio Monitoring**

In 2009, CTCAC began monitoring those projects that were out of the 15 year federal compliance period and were in the extended-use period as noted in the Regulatory Agreement or for each property. Extended Use projects will be seen in a 5 year monitoring rotation. CTCAC will monitor approximately 20% of the total extended-use portfolio of tax credit projects each year, and will choose a random 10% sample to audit for file and units; 100% of the common areas will be inspected. CTCAC reserves the right to perform an onsite inspection of any property in the Extended Use period at any time.

When performing an extended use review, CTCAC will:

- Notify the owner and management agent in advance of the intended site visit.  
*NOTE: Physical inspection will be of the project grounds, common amenities, and occupied units. CTCAC Staff will ask to see vacant units and inquire as to the reason for and duration of the vacancy if they have been vacant for more than 60 days.*
- Inform the management agent on the day of the review which units and unit files will be inspected. A 10% random sample list will be provided, however CTCAC reserves the right to expand the audit sample if necessary.
- Inform the owner in writing of any findings of noncompliance with regard to such review.
- Inform the owner of a timeline to respond to CTCAC with correction of any noncompliance. CTCAC may extend the correction period up to six months, but

only if the Authority/Committee determines there is good cause for granting the extension.

- Require **ORIGINAL** documentation and require that the review of the files and units will occur at the project site. If tenant files are kept at a central management office, they must be brought to the property on the date of the monitoring inspection. Exceptions may be made on a case-by-case basis at the discretion of the Analyst conducting the inspection.

### **Part 5.9 Compliance Monitoring Fees (\$410 per unit)**

The Committee currently charges a one-time per unit fee to cover the costs associated with compliance monitoring throughout the Federal Compliance Period and the Extended-Use Period. Payment of the fee shall be made prior to the issuance of federal and/or state tax forms. Any alternative timing for payment of the fee, may be approved in the sole discretion of the Executive Director and shall only be considered where convincing proof of financial hardship to the owner is provided.

**Failure to submit the fee will be considered an act of noncompliance.**

The per unit lump sum fee must be paid for the manager/employee-occupied unit(s) if this unit(s) is being counted as a “rental unit” for purposes of determining the low-income occupancy percentage for the building. If the manager/employee-occupied unit(s) is being considered as “common space,” no monitoring fee is required for this unit(s). For more information on the manager’s unit, see Section III, Part 3.5 (F).

### **Part 5.10 Compliance Period**

The compliance monitoring period begins on the date on which the last building in the project is Placed in Service. However, CTCAC can monitor any tax credit project prior to that date if needed. For more information regarding the compliance period, see Section I, Part 1.3.

### **Part 5.11 Amendments to Compliance Monitoring Procedures**

The compliance monitoring procedures and requirements set forth herein are issued by CTCAC pursuant to Federal Regulations. These provisions may be amended by CTCAC, for purposes of conforming to the Federal Regulations and/or as may otherwise be appropriate, as determined by CTCAC or the IRS. In the event of any inconsistency or conflict between the terms of these monitoring procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.

## Part 5.12 Tenant Relations

As the allocating agency for the federal Low Income Tax Credit (LIHTC) Program in the State of California, CTCAC's monitoring responsibilities begin after the project has placed in service and is operating with tenant in place. These responsibilities apply to the period noted on the Regulatory Agreement and includes both the initial credit period and the extended use period. Our responsibilities are to audit the owner's records which include - the tenant files for income eligibility, verifying that the correct rents are being charged for the units as determined by the Regulatory Agreement on the property, and to making sure the units are safe, sanitary and in good repair. CTCAC does not have any monitoring authority over the day-to-day operations of the property (including rent increases) or of the Resident Selection Plan (RSP) that is used by the owner/management company to determine the eligibility of the households that are applying to the property, other than the requirement that all sources of income and/or potential income must be counted to determine income eligibility. CTCAC also does not mediate in evictions other than to require that all eviction notices given to tenants state a reason in writing as to why the household is being given the notice. The CTCAC Good Cause Eviction Lease Rider does state that there must be "good cause" to evict a household. However, the determination of whether the reason for the eviction is good cause or not is left to court of law and a judge to determine the outcome. CTCAC has no influence or input into the decision.

In addition to following the regulation of the LIHTC program, the owner and management companies who are operating the property must be aware of Fair Housing and Employment law and California Tenant/Landlord law. CTCAC strongly recommends that all on-site management personnel (including maintenance personnel) attend Fair Housing training to reduce the potential for conflict or concern with tenants.

Properties that have multiple funding sources in addition to Section 42 Tax Credits such as Section 8 Vouchers, Project-based Section 8 funding, other HUD funding sources, Rural Development (RD), HOME, CalHFA financing, HCD program financing, et al., need to have on-site staff that is knowledgeable about the differences in requirements for each funding source, how one program may differ from the others, and which requirements apply to which funding source\*. This knowledge will benefit the onsite staff in the relations with tenants as they will be able to completely and concisely explain the requirements of each program.

Questions regarding CTCAC policy with regard to tenant concerns may be directed to Quang Le – Compliance Program Manager at [qle@treasurer.ca.gov](mailto:qle@treasurer.ca.gov)

*\* If another program requirement directly conflicts with the Tax Credit Program, than the owner must be aware that by accepting the conflicting funding source as part of the financing and development of the property, they are accepting the potential repercussions for which they are noncompliant – including the filing of an uncorrected 8823 to the IRS. The IRS and the LIHTC program does not defer its program regulations, except as explicitly noted in IRC Section 42.*

## SECTION VI – NONCOMPLIANCE

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for tax credit because of failure to satisfy LIHTC Program requirements.

### Part 6.1 Types of Noncompliance

Generally, during the Compliance Period a project is out of compliance and recapture may apply if:

- A. A building or an ownership interest in a building is disposed of (except as noted in Part 6.80)
- B. There has been a change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of the building from one year to the next; or
- C. The building no longer meets the minimum set-aside requirements or Section 42(g)(1), the gross rent requirements of Section 42(g)(2), or the other requirements for the units which are set-aside; or
- D. Failure to submit the annual utility allowance documentation, owner certification, tenant income and rent report, or compliance monitoring fees, along with any applicable supporting documentation in a timely manner.
- E. Gross rents exceed the tax credit maximum limits per bedroom size.

### Part 6.2 Consequences

If the project is out of compliance, a penalty could apply to all units in the project (IRS Form 9861-1). Penalties include (but are not limited to):

- A. Recapture of the accelerated portion of the tax credit for prior years;
- B. Disallowance of the credit for the entire year in which the noncompliance occurs;
- C. Assessment of interest for the recapture year and previous years;
- D. Notification to IRS;
- E. Negative points on any subsequent LIHTC reservation applications.
- F. Fines or other monetary repercussions
- G. Rejection of future applications. Proposals submitted from sponsors that currently have projects that are out of compliance will not be accepted until the noncompliance is corrected;
- H. Repayment of rent overages; and/or
- I. De Minimis Errors. On August 10, 1993, Congress passed the Omnibus Reconciliation Act of 1993 that includes a provision for de minimis errors. Certain de minimis errors may be exempt from noncompliance or recapture as determined by the Secretary of the Department of Treasury.

### **Part 6.3 Notification of Noncompliance to Owner**

CTCAC is required to provide written notice of noncompliance to the owner if:

- A. Any required submissions are not received by the due dates;
- B. Tenant income certifications, supporting documentation, and rent records are not submitted when requested by CTCAC; and/or
- C. The project is found to be out of compliance through inspection; review, and/or other means with the provisions of Section 42 of the IRC.

Should any of the submissions required herein, including the Annual Owner Certification, the Project Status Report, and/or income certifications, supporting documentation, and rent records, not be submitted in a timely fashion, or should there be omissions, CTCAC shall, within 45 working days, notify the owner in writing, requesting such information. The owner will have 20 working days in which to provide the information, after which CTCAC shall notify the Internal Revenue Service of the owner's failure to provide the required information.

### **Part 6.4 Notification by Owner to CTCAC**

If the owner or management company becomes aware of any noncompliance with the LIHTC program requirements, the CTCAC staff must be notified immediately. This includes any situations where Casualty Loss (flood, fire, wind) causes one or more units to become uninhabitable.

### **Part 6.5 Correction Period**

Should CTCAC discover, as a result of an inspection or review, or in any other manner, that the project is not in compliance with Section 42, or that credit has been claimed or will be claimed for units which are ineligible, CTCAC shall notify the owner within 30 working days. The owner will have a time line in which to commence appropriate action to cure such noncompliance.

The owner shall be provided a time frame to cure the noncompliance, usually 30 days. In extraordinary circumstances, and only if CTCAC determines that there is good cause, an extension of up to 90 days to complete a cure for noncompliance may be granted.

### **Part 6.6 Reporting Noncompliance to Internal Revenue Service and Recapture**

#### **A. Reporting**

Actual noncompliance will occur if the potential noncompliance is not corrected within the correction period given the owner. Potential noncompliance of which the owner or management agent becomes aware must be reported to the state agency, who will in turn report it to the IRS. The IRS ultimately determines whether or not there is recapture of

credits.

CTCAC is required to file IRS Form 8823, “Low-income Housing Credit Agencies Report of Non-Compliance,” with the IRS no later than 45 days after the end of the correction period (as described above, including extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected.

CTCAC must explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

If a building is entirely out of compliance and will not be in compliance at any time in the future, CTCAC will report it on a IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building’s noncompliance.

## **B. Recapture**

Recapture is defined as an increase in the owner’s tax liability because of a loss in tax credits due to noncompliance with program requirements.

The IRS will make the determination as to whether or not the owner faces recapture of tax credits as a result of noncompliance. Please note: CTCAC is never notified of IRS actions against the owner.

IRS Form 8611 is used by taxpayers who must recapture tax credits previously claimed. A copy of IRS Form 8611 must be sent to the IRS and CTCAC upon completion by the owner.

## **Part 6.7 Retention of Noncompliance Records by CTCAC**

CTCAC will retain records of noncompliance or failure to certify for six years beyond CTCAC’s filing of the respective IRS Form 8823. In all other cases, CTCAC will retain the certifications and records described in paragraph (c) of Reg. 1.42-5 for three years from the end of the calendar year CTCAC receives the certifications and records.

## **Part 6.8 Liability**

*Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. CTCAC’s obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner’s noncompliance (Reg. 1.42-5(g)).*



## SECTION VII – SAMPLE ON-SITE AUDIT

The following area is a sample of what to expect for a CTCAC inspection, from the preliminary paperwork needed through the completion of the inspection.

### Part 7.1 Preliminary Requirements

- A. Letter of Notification** – Starting January 1, 2021, fifteen (15) days before a scheduled CTCAC Audit, the owner of the property and the management company contact on file will receive an email or letter stating the time and date of the inspection. It will also list the items that need to be returned to the analyst within 1 week (7 days) of the date of the notification letter before the inspection can be completed.

If the necessary pre-inspection documents are not received and the inspection needs to be cancelled or rescheduled, then CTCAC will issue a Notice of Noncompliance and reschedule the inspection at a later date. Failure to respond or provide the materials promptly for the rescheduled audit date will result in an uncorrected 8823 being sent to the IRS for “Failure to Respond to a Monitoring Agency Request”.

- B. Project Status Report (PSR) for 20/50, 40/60 and Average Income Test (AIT) Properties** – Depending on the federal set-aside for your property, one of two PSR forms must be downloaded from the CTCAC website at <http://www.treasurer.ca.gov/ctcac/compliance.asp>. If you have a property that is 20/50 or 40/60, form “PSR Form” must be downloaded and completed. If you have an AIT property, then “PSR Form A.I.T.” must be downloaded and completed. It must be filled out completely and e-mailed to the analyst who will be doing the inspection. This is the only form CTCAC requires to be in a specific format, as the completed PSR received via e-mail will be downloaded into a database from which all inspection information will be produced. Therefore, the PSR form that is submitted must be the most current form available on the website and may not have any additional cells, data, or worksheets added into it. If there is a problem with the submitted PSR, the analyst in charge of the inspection may contact the owner to have the PSR re-submitted in the correct format. Repeated failure to submit the PSR in the format requested may cause CTCAC to cancel the inspection and issue an uncorrected Form 8823 to the IRS for failure to comply with monitoring requirements.

Mixed use properties should not include market-rate tenants on the PSR that is submitted. It is for LIHTC units only. However, a separate listing showing units containing the market rate units per building should be submitted. Updated forms will be posted on the website as soon as they become available.

- C. Utility Allowance** – A copy of the current Utility Allowance, showing the source (PHA, HUD, CUAC, etc.) used must be submitted prior to the inspection. The amounts used should be circled and added at the bottom of the sheet. The bedroom size and amount used should be easily readable. Please note that CTCAC may question and reject any Utility Allowance that does not come directly from an approved source. See Section III

Part 3.4 for more information on Utility Allowances.

- D. Rent Roll** – A copy of the current rent roll for the entire property needs to be submitted prior to the inspection. If the property to be inspected is a mixed use property, please label the units that are market rate.
- E. Copy of Inspection Notice** – please submit a copy of the letter used to notify tenants of the upcoming inspection.
- F. Fire System Log** – for all properties with a contained Fire System (sprinkler, halon, etc.), please submit a copy of the most recent inspection report. Inspections must be current within 1 year of inspection date.
- G. Failure to respond to preliminary requirements** – If the owner fails to submit the preliminary documents by the time requested, then the following may occur:
  - 1. A CTCAC analyst may contact the owner via telephone or e-mail to remind them of the missing documentation and give a new deadline
  - 2. A CTCAC analyst may contact the management agency contact on file via telephone or e-mail to remind them of the missing documentation and give a new deadline
  - 3. CTCAC management will notify the Tax Credit Investor

If repeated attempts have failed to produce the required documentation in a timely manner by all verbal and written due dates, then the analyst may cancel the inspection and CTCAC **will** issue an uncorrected Form 8823 to the IRS stating the owner failed to comply with the monitoring review.

## **Part 7.2 File Inspection**

CTCAC policy has been that the monitoring of file inspections should be performed at the property site. If the office is not large enough to accommodate the Analyst(s) than a vacant unit supplied with a table and chairs will be acceptable. If the property does not have an office or is part of a scattered site project that encompasses several buildings at different locations and the files are kept at a central location, CTCAC may arrange to meet at the central location as long as it is within 5 miles of all buildings in the project. This arrangement must be discussed with the analyst conducting the inspection prior to the inspection date. If the central office is more than 5 miles from the buildings in the project, all files must be transported to a central location (usually the community room or vacant unit of one of the sites).

Starting in 2020, CTCAC implemented a Desk Audit process in response to the COVID-19 Pandemic. This process will continue in full through September 30, 2021 and may be used thereafter on a limited basis as determined by CTCAC. See Section V Part 5.7 (B) for more

information on the Desk Audit Process.

## A. Application

All tenant files must contain a current Application at initial move-in. CTCAC will inspect the initial application to verify:

1. Minimum of a 2 year housing history
2. Applicants listed match the tenants occupying the units
3. Application indicates all sources of income and assets from wages, pensions, IRA's, 401K's, etc.
4. Employment information is the same as found on the Verification of Employment
5. Student Status of the household

## B. Income Calculation (Wages)

1. **Regular Income** – CTCAC calculates income three ways and then uses the highest number to determine eligibility. The three ways are Verification of Employment from the employer, YTD calculation (off of both the VOE and the paystubs), and average number of hours/OT as listed on the pay stubs.\*

If an applicant does not have the required three months of paystubs at move-in, please see Section V Part 5.5(G) CTCAC Paystub Policy.

*\*If there is conflicting information between the VOE and the pay stubs, prior to moving in the household, then there must be 3rd party written documentation from the employer clarifying the discrepancy. Additionally, more pay stubs may be requested to determine eligibility and demonstrate due diligence.*

2. **Self Employment** – CTCAC looks for the following information to verify self-employment income:
  - a. Previous Year's 1040 Tax Return and Schedule C\*\*

OR:

- b. IRS Form 4506-T or 4506- C and one of the following:
  - a. Profit and Loss Statement
  - b. Statements from recurring clients

*\*\* for self-employed individuals who claim not to file tax returns for their business CTCAC will require management obtain a completed copy of Form 4506-T or 4506-C – request for verification of tax filing with the IRS, to verify no-filing status, as the IRS has stated that ALL persons who are self-employed must file a tax return regardless of their tax liability.*

3. **Day Labor** – CTCAC defines Day Labor as a tenant who waits in a specified location to do various odd jobs and is paid with cash. Day Labor does not usually have a recurring clientele and can vary dramatically on income or hours. CTCAC recognizes that in certain cases Day Labor is impossible to 3rd Party verify, and as such, will accept a Self-Certification of Wages from the tenant. However, this does

not excuse the management company from using all due diligence in processing the certification for the tenant. Patterns of excessive use of Self-Certifications in the 20% CTCAC audit sample, may trigger a request for additional information or a larger audit sample.

4. **Anticipated Earnings** - CTCAC does not calculate anticipated earnings, unless documentation from employer is in the file indicating pending offer of salaried employment (without commission) and includes the start date. If the only form of income for a household is from anticipated wages, CTCAC will question the household's ability to pay for rent, food and utilities and require management to demonstrate how they will be paid for. (See Section IV 4.3 (G))
5. **Cash Wages** – As of June 2004, in addition to the Verification of Employment (VOE) CTCAC requires 3 months of current consecutive pay-stubs at move-in. If the tenant is claiming that they do not receive pay-stubs as they are paid in cash, the IRS has determined that those individuals are considered “independent contractors” and as such should file a 1040 tax return. CTCAC will require a copy of the 1040 filing for the tenant and a third party statement from the employer on company letterhead, indicating the name of the tenant, the position title, and how much the employer pays the tenant in cash each week.

Additionally, if a household is claiming they do not file taxes on cash wages, as of July 1, 2010, CTCAC will require a completed IRS form 4506-T or 4506-C, received back from the IRS, to be in the file, verifying non-filing status in addition to the third party statement from the employer on company letterhead, indicating the name of the tenant, the position title, and how much the employer pays the tenant in cash each week.

6. **Farm Labor** – Farm labor is a unique challenge to verify as the length of time an applicant/tenant will be employed will vary on the growing season, which is determined by weather patterns and cannot be precisely predicted. If the tenant is receiving unemployment assistance during the off season, you only need to calculate the unemployment received for that layoff period. You would not annualize the unemployment benefits for farm labor. To adequately determine income eligibility for farm labor communities, CTCAC strongly suggests implementing the following procedures:
  1. Maintain a spreadsheet tracking the growing seasons of the farms in the area around the property. This will give management an historical perspective of work and lay-off seasons for any new applicants.
  2. Obtain a completed VOE showing Lay off period. **(required)**
  3. Obtain a payroll printout (in addition to piece count paystubs) that shows gross amounts earned per pay period. **Please note** – the payroll printout must include at minimum, the name of the applicant/tenant, the farm they work for, and the pay rate of the employee or it will not be considered a verifiable document.

- 7. Gig Wages** – Gig wages include Uber, Lyft, Door Dash, Grubhub, or any other driver or contract based employment where the tenant is determined to be an independent contractor for a larger company which pays their wages. For gig employment where the tenant has been employed for the period of a taxable year, CTCAC will require the 1099, Schedule C, and tax returns to be in the file to determine income eligibility.

For tenants that have recently started gig employment, CTCAC will require a printout of the weekly income earned, averaged over a 3 month period, and projected forward for the upcoming year.

- 8. IHSS – In-Home Supportive Services** – For tenants who are employed through California In-Home Supportive Services Program, in 2020 some CA county offices which previously verified employment redefined their methodology and determined that IHSS caregivers were to be considered employed by the person they are providing care for, not directly by the county, therefore the county would no longer be completing Verifications of Employment requests for employed IHSS caregivers. To this end, CTCAC will no longer require a VOE to be completed by the county for IHSS but will accept 3 months of paystubs or the W-2 for the previous year to determine the income eligibility of the tenant.

If a tenant's income at 1<sup>st</sup> recertification shows IHSS income that was not indicated at move-in, CTCAC will require a verification from the county that specifies the start date of the IHSS income.

### **C. Income Calculation (other forms of Income)**

- 1. Social Security and Supplemental Security Income** – CTCAC will accept the current year's Social Security Award letter in lieu of 3<sup>rd</sup> party documentation for regular Social Security and the most current verification letter dated within 120 days for Supplemental Security income.

During the COVID-19 Pandemic in 2020 and 2021, due to difficulties with obtaining information from the Social Security Office, CTCAC allowed award letters up to 2 years out of date plus the documented cost of living adjustments (COLA) to be used in lieu of the current year's award letter. CTCAC will return to the above noted current year award in 2022.

- 2. EDD and AFDC/TANF Payments** – CTCAC will accept the award letter for AFDC/TANF and/or EDD/Unemployment payments in lieu of 3<sup>rd</sup> party documentation, dated within 120 days of the move-in effective date.
- 3. Pensions, Annuity Payments, or any other form of recurring payment (excluding gifts)** – CTCAC will accept a formal statement/letter or the award letter from the entity providing the payment in lieu of 3<sup>rd</sup> party documentation.

4. **Gifts** – CTCAC will accept a signed and dated statement from the person providing the gift indicating the amount and frequency of the gift. An updated statement must be in the file at each annual recertification.
5. **Unemployment Income** – For unemployment where the tenant does not have a seasonal/recurring job - CTCAC requires that unemployment income to be annualized for 52 weeks, even if a “max benefit” amount is noted on the verification letter, since upon reaching the limit, the applicant/tenant may reapply for benefits. For unemployment where the tenant has a seasonal/recurring job – CTCAC requires the unemployment benefit only to be calculated during the “lay-off” period.

*Example: John Smith works as a cook at Thomas Jefferson Elementary School. He only works during the school year – from the beginning of September until the end of May. He receives unemployment for the months of June – August. You would only need to count the unemployment income for June, July and August, since he will be starting work again in September.*

6. **Asset Calculation** – CTCAC will follow the guidelines set forth in HUD Handbook 4350.3 Chapter 5, Rev. 2 to determine the household’s Asset Income. CTCAC policy requires all assets over \$5000 must be third party verified.

#### **D. Questionable Documentation**

If during the audit of a file, CTCAC is unable to determine income eligibility for any reason, the Findings Letter may request additional documentation be provided. Examples of this additional documentation may include (but is not limited to);

1. Tax Return or W2 filing for the move-in or recertification year
2. Most current pay stub
3. Clarification on the disposal of an asset
4. Negative Verification of Employment

#### **E. CTCAC Required Forms**

The analyst will verify the following items are in the file:

1. Tenant Income Certification (TIC) with Supplemental Demographic Data **or**
2. Tenant Household Information Form (THIF) for 100% Tax Credit Properties in Year 2+
3. Tenant Income Certification Questionnaire (TICQ)
4. Lease
5. Child/Spousal Support Verification forms
6. Under \$5000 Asset verification form or third party documentation of assets if over \$5000
7. Student Status (if applicable)
8. Zero Income Certification (if applicable)

9. Verification of Employment (VOE) form (if applicable)
10. Pay stubs – new move-in
11. Good Cause Eviction Lease Rider
12. Financial Aide Verification form (if applicable)
13. Single Parent Full-time Student Self Certification (if applicable)
14. Former Foster Care Status (if applicable)
15. Live-in Aide Verification Form (if applicable)
16. Separated or Estranged Status Affidavit (if applicable)
17. Re-syndication Clarification Form (if applicable)

**F. Additional Information**

CTCAC will review any supplemental information, telephone clarifications, and/or self affidavits to determine legitimacy or to aide in the determination of income eligibility of a tenant. If the file still contains discrepancies, CTCAC will request additional supplemental information.

**G. Rent Ledger**

On the day of the inspection, CTCAC will need to see the entire rent ledger history for the current tenants in the units selected in the 20% sample. All charges (excluding HAP assistance), will be verified against the current tax credit maximum rent limits and Gross Rent Floor (if applicable).

**Part 7.3 Physical Inspection**

CTCAC will conduct onsite physical inspections of a minimum of a 10% or 20% random selection of the units on the property based on the Uniform Physical Condition Standards (UPCS) established by HUD and required by the IRS and regulatory agreement requirements. A comprehensive listing of the UPCS requirements by inspectable area can be found at: [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_26481.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_26481.pdf)

The following is a general breakdown of the items that CTCAC inspects. Physical Deficiencies may be Level 1, 2, or 3 depending on severity. Not all inspectable items have three levels of deficiency (see link to HUD Comprehensive Listing noted above for additional detail). Health and Safety Violations are a separate category and do not have Levels assigned to them. *Note: some categories may be both a physical deficiency and a Health and Safety violation*

**Inspectable Area: Site**

- Fencing and Gates
- Grounds
- Mailboxes / Project Signs
- Market Appeal
- Parking Lots / Driveways / Roads
- Play Areas and Equipment

- Refuse Disposal
- Retaining Walls
- Storm Drainage
- Walkways / Steps
- Health and Safety
  - o Air Quality
  - o Electrical Hazards
  - o Flammable Materials
  - o Garbage and Debris
  - o Sharp Edges
  - o Trip Hazards
  - o Infestation - insects
  - o Infestation – rats / mice / vermin

**Inspectable Area: Building Exterior**

- Doors
- Fire Escapes
- Foundations
- Lighting
- Roofs
- Walls
- Windows
- Health and Safety
  - o Electrical
  - o Emergency Fire Exits
  - o Flammable Materials
  - o Garbage and Debris
  - o Sharp Edges
  - o Trip Hazards
  - o Infestation - insects
  - o Infestation – rats / mice / vermin

**Inspectable Area: Building Systems**

- Domestic Water
- Electrical System
- Elevators
- Emergency Power
- Fire Protection
- HVAC
- Roof Exhaust
- Sanitary System
- Health and Safety
  - o Air Quality
  - o Electrical Hazards
  - o Elevator
  - o Emergency Fire Exits



- Flammable Materials
- Garbage and Debris
- Sharp Edges
- Trip Hazards
- Infestation - insects
- Infestation – rats / mice / vermin

**Inspectable Area: Common Areas**

- Baluster / Side Railings
- Cabinets
- Call for Aid
- Ceiling
- Countertops
- Dishwasher
- Doors
- Dryer Vent
- Electrical
- Floors
- GFI
- Graffiti
- HVAC
- Lavatory Sink
- Lighting
- Mailbox
- Outlets / Switches / Cover Plates
- Pedestrian Wheelchair Ramp
- Plumbing
- Range Hood / Exhaust Fans
- Range / Stove
- Refrigerator
- Restroom Cabinet
- Shower / Tub
- Sink
- Smoke Detector
- Stairs
- Ventilation / Exhaust System
- Walls
- Toilet
- Windows
- Pools
- Fencing
- Trash Chutes
- Health and Safety
  - Air Quality
  - Electrical Hazards
  - Emergency Fire Exits

- Flammable Materials
- Garbage and Debris
- Sharp Edges
- Trip Hazards
- Infestation - insects
- Infestation – rats / mice / vermin

**Inspectable Area: Unit**

- Bathroom
  - Cabinets
  - Sink
  - Plumbing
  - Shower / Tub
  - Ventilation / Exhaust
  - Toilet
- Call for Aid
- Ceiling
- Doors
- Electrical System
  - Electrical Panel
  - Breakers
  - Evidence of Leaks / Corrosion
  - Frayed Wiring
  - GFI
  - Missing Breakers / Fuses
  - Missing covers
- Floors
- Hot Water Heaters
- HVAC System
- Kitchen
  - Cabinets
  - Countertops
  - Dishwasher / Garbage Disposal
  - Plumbing
  - Range / Stove
  - Range Hood / Exhaust Fan
  - Refrigerator
  - Sink
- Laundry Area
- Lighting
- Outlets / Switches
- Patio / Porch / Balcony
- Smoke Detector
- Stairs
- Walls
- Windows

- Health and Safety
  - o Air Quality
  - o Electrical Hazards
  - o Elevator
  - o Emergency Fire Exits
  - o Flammable Materials
  - o Garbage and Debris
  - o Sharp Edges
  - o Trip Hazards
  - o Infestation – insects
  - o Infestation – rats / mice / vermin

CTCAC will follow the REAC guidance for the standards for which repairs are completed. Any Non-Industry Standard repairs will reported to the IRS on Form 8823.

#### **Part 7.4 Property Signage**

As noted above, the requirement for properties to have visible signage indicating (at minimum) the name of the property is a UPCS requirement. Any signage must be visible from at least 20 feet from the street leading into the property. Visible signage is required to identify the property for emergency services as well as for monitoring staff to identify the property. Failure to have proper signage may result in a findings for CTCAC and/or reporting to the IRS on Form 8823 for a UPCS violation.

#### **Part 7.5 Findings Letter**

The CTCAC Analyst performing the inspection will notify the owner of the results of the inspection via letter within **30** days of the inspection. The letter will contain an itemized list of file and/or physical noncompliant issues as well as the date by which the owner must correct the issues noted.

#### **Part 7.6 Correction period**

The results letter will provide a date when the owner’s response to the issues noted is due. This is known as the “correction period”. **Please note – unless otherwise indicated, the Owner’s Response due to CTCAC must be sent by USPS mail.** CTCAC will not accept e-mailed Owner’s Response materials, unless specifically arranged prior to receipt. Extensions beyond the date noted must be made in writing either via letter or e-mail to the analyst who performed the inspection. Extensions are granted at the discretion of the CTCAC Program Manager only. Additionally, please note that certain issues even if corrected within the Correction Period, will automatically generate an IRS Form 8823. These issues include (but are not limited to) any UPCS violations, over-income households, overcharged-rent issues, and vacant-unit violations.

## Part 7.7      **Mixed-Income Properties**

Properties with both market rate and tax credit units have additional areas that are monitored in closer detail than properties with 100% LIHTC units. These areas are on a per building basis rather than a property-wide basis. They are:

### A.      **HERA and Mixed-Income Properties**

The passage of the Housing Economic Recovery Act (HERA) Bill of 2008 (HR 3221) **does not** impact mixed-income properties. All existing IRS Section 42 and CTCAC regulations remain including the requirement of annual recertifications.

### B.      **Next Available Unit Rule (140% rule)**

If the income of the occupants of a qualifying unit increases to more than 140% of the applicable income limitation (based on the set-aside for the property - 40/60, 20/50 or A.I.T.), the unit may continue to be counted as a low income unit as long as the unit continues to be rent-restricted and the next unit of comparable or smaller size (in the same building) is occupied by a qualified low-income tenant. Please remember, CTCAC requires tracking to determine when units exceed the 140% NAU Rule and can request a report evidencing compliance with the NAU Rule.

1. To monitor the Next Available Unit Rule, CTCAC may ask to see a tracking spreadsheet of the units in the building. The spreadsheet should show the following:
  - Number of LIHTC units currently in place;
  - Number of Market units currently in place;
  - Number of units currently under the NAU rule;
  - The date the NAU rule went into effect per unit;
  - The move-in dates for all units, market and LIHTC;
  - Any marketing used to advertise the next unit as LIHTC.

Please Note: Tracking the Next Available Unit Rule (140%) can only be done by performing a full income and asset recertification on the anniversary move-in date of each tenant that occupies a LIHTC unit at a mixed-income project.

### C.      **Applicable Fraction / Eligible Basis**

The low-income housing credit amount is based on certain costs associated with a **building** (eligible basis) and the portion of the **building** (applicable fraction) that low-income household occupy. The ratio of LIHTC units to Market-rate units can be found on the Form B's submitted by the owner to CTCAC prior to receiving the Forms 8609 for the property. CTCAC highly recommends management obtain a copy of the Form B per building from the ownership to maintain the correct Applicable Fraction in the number of required LIHTC units.

To monitor the Applicable Fraction/Eligible Basis, CTCAC will compare the ratio of

LIHTC units to Market units, by comparing the PSR (Project Status Report), submitted by the owner as part of the pre-inspection documentation requirements, to the Form B's found in the CTCAC File. Additional inquiries may be made on-site if the ratios are found to be incorrect.

CTCAC requires approval before an Exempt Manager's unit may be moved. This applies to moves within the same building and to another building, as it may affect the Applicable Fraction of the buildings. To obtain CTCAC's approval, please submit a letter from the owner requesting the change to the Compliance Section Chief. CTCAC staff will review the request, the Regulatory Agreement, and any others documentation pertinent to the request and send either an approval or denial letter in response. Average processing time for Manager Unit requests is 3-4 weeks.

## **Part 7.8 Service Amenities Verification**

For all 9% competitive Projects awarded credits or 4% projects awarded State Credits on or after 2010, as part of the on-site audit, CTCAC staff will verify that supportive services are being provided in accordance with the owner's service amenities commitments, as documented in the Regulatory Agreement. The verification process will include:

- Interview with a services staff person employed by the project sponsor or a partnering service provider.
- Review of documents verifying the provision of supportive services, such as (but not limited to):
  - Informational materials provided to tenants about available community resources (e.g. referral binder or handbook)
  - Materials provided to tenants about the availability of services provided on-site (e.g. services brochure, monthly activities calendar, flyers, etc.)
  - Sign-up sheets for classes and other group activities
  - Sign-up forms or registration forms for afterschool or childcare program
  - The record-keeping system for those projects where tenants receive individualized services, such as case management or health and wellness services. Note that CTCAC staff will not request to see contents of confidential client files, but instead will verify that there is a system for maintaining documentation about services provided to clients.
  - Up to date contracts and MOUs with service providers (if applicable)
- Inspection of service amenities space (e.g. service staff offices, classroom space, community room, etc.) to ensure that space is of sufficient size and provides sufficient, accessibility and privacy to accommodate the services being provided.

## SECTION VIII – LEGISLATIVE CHANGES

Since the inception of the LIHTC Program in 1986, Congress has enacted a number of legislative policies that impacted the Low Income Housing Tax Credit (LIHTC) program in substantial ways. Additionally, the California State Legislature has also enacted several policies that have impacted the LIHTC program in the state of California.

### Part 8.1 Housing Economic Recovery Act of 2008 (HERA) – HR 3221

In July of 2008 Congress enacted federal legislation HR 3221 known as The Housing Economic Recovery Act of 2008 (HERA). This legislation changed several provisions of the Low Income Housing Tax Credit Program (LIHTC) including changes to the compliance monitoring practices of CTCAC.

#### A. Requirement to Perform Annual Recertifications

HR 3221 changed the requirement for 100% Tax Credit properties to no longer require annual recertifications beyond the initial move-in. This legislation was enacted on July 30, 2008.

Upon internal review of the legislation by CTCAC it was determined that a minimum of one additional recertification was needed to accurately determine income eligibility. On February 25, 2009 CTCAC passed final state regulations requiring 100% Tax Credit properties in California to complete one additional recertification beyond move-in. Failure to do so will be noted as noncompliance and both the Owner and Management Agent will be subject to Negative Points in future tax credit allocation funding rounds, if the noncompliance is not corrected within the correction period noted in the findings letter.

*Please Note: HR 3221 eliminated the requirement for recertifications 100% Tax Credit (9%) or Tax Exempt Bond (4%) deals, but did not, however, change the Full-time Student Status requirement – any full-time student households must meet one of the five IRS exceptions at any point during the tenancy.*

For Year 3 and beyond, CTCAC has created the Tenant Household Information Form (THIF) which speaks to the Student Status and Rent Restrictions for the household. It does not require any income calculations or third party verifications. If the household is a qualifying full-time student household then there must be a Student Status verification accompanying the THIF form. Additionally, if your project has additional funding layers beyond Tax Credits (such as RD or HUD), annual recertifications are still required by those programs. If the property is strictly Tax Credit, the owner/investor may elect to continue with full recertifications for various reasons including increased knowledge of tenant population for Deeper Targeting requirements or for Rent increases. CTCAC strongly recommends checking with all financing sources before discontinuing annual recertifications.

**B. Former Foster Care Student**

HR 3221 modified the IRS Full-time Student Rule to allow an additional exception, bringing the total number of IRS exceptions to five. This fifth exception allows Individuals who previously received foster care assistance, if income eligible, to qualify a tax credit unit.

In California, CTCAC is capping the age limit to those who are ages 18-24 and have exited the foster care system up to 6 years prior to move-in.

**C. HERA Special Income and Rent Limits 2009**

Section 3009 (a) of the Housing and Recovery Act of 2008 (HR-3221) included provisions for increases in the Income Limits and Rents in certain counties impacted by HUD’s “Hold Harmless” Rule. As a result, HUD published the “HERA Special Income Limits” for all HUD “hold harmless impacted projects.” In California, only seven counties are affected by this legislation change. These counties are;

- Marin
- Nevada
- San Francisco
- San Mateo
- Santa Clara
- Solano
- Ventura

HERA Special Income limits are applicable to all properties currently Placed-in-Service in those counties, which in either 2007 or 2008 HUD Rent and Income limits were held harmless. It also applied to all properties in the above counties that Placed-in-Service in calendar year 2008+.

For all properties that placed-in-service after January 1, 2009, HUD will release the MTSP (Multifamily Tax Subsidy Program) income limits as well as HERA limits for LIHTC properties annually.

***Please note:** For properties that were in the process of initial lease-up from May 20, 2009 through the May 13, 2010, CTCAC published separate limits (HERA and Non-HERA). The 2009 HUD Standard limits only applied to projects leasing-up in 2009 with an anticipated Place in Service date of 2009 or later.*

**D. Rent and Income Limits for 2010 and going forward**

On May 14, 2010, the U.S. Department of Housing and Urban Development (HUD) published 2010 Income Limits applicable to low income housing funded with Low Income Housing Tax Credits (LIHTC) and projects financed with tax-exempt housing bonds, both are referred to by HUD as Multifamily Tax Subsidy Projects (MTSPs).

The Housing and Economic Recovery Act (HERA) of 2008 made statutory changes to how income limits are calculated for MTSPs (LIHTC and bond-financed properties). The legislation provides for immediate holding harmless of “area median gross income” for MTSP income limits. As a consequence of this legislation, beginning in 2010, HUD no longer held its Section 8 income limits harmless.

**Impacted and Non-Impacted MTSP projects:**

**Impacted Project** – An Impacted MTSP is any project (*including HERA Special*) which had area median gross income determined in 2007 or 2008 under the HUD Hold Harmless policy. These include:

- Any single building project that Placed in Service on or before 12/31/2008.
- Any Multi-building project that had at least one building Place in Service on or before 12/31/2008.
- Any acquisition/rehab project that has the date of acquisition on or before 12/31/2008.

**Non-Impacted** – Non-Impacted MTSPs are projects that were not subject to the HUD Hold Harmless policy in 2008 or Placed in Service on or after January 1, 2009.

1. For existing non-Impacted projects where the placed in service date is 1/1/2009 – 5/13/2010 (*eligible for HERA Hold Harmless*), you would use the greater of the 2009 or the 2010 rent limits.
2. For non-Impacted projects which are placed in service on or after the effective date of 2010 MTSP income limits - **May 14, 2010:**
  - The Income limits will be the MTSP/Section 8 limits as determined by HUD.
  - The Rent limit will be the greater of the current rent limits as published by HUD or the **owner’s gross rent floor election**. TCAC will determine the gross rent floor election to be at carryover allocation for 9% tax credit projects. The gross rent floor election for 4% tax exempt bond projects will be determined at preliminary reservation unless specific written notification is made by the owner to TCAC specifying the gross rent floor election is to be at placed in service.

Going forward, HUD will allow the Section 8 income limits to fluctuate with the area median income for each county. However, HUD has established a maximum and minimum amount that the AMI can change. The income limits issued for the Section 8 and MTSP program will not increase more than 5% or twice the national change in AMI (whichever is greater), nor will the limits decrease more than 5%.

Each non-Impacted project will be subject to the current year’s rent and income limits and will be held harmless at the highest income limit the property has achieved since it was placed in service should the income limits decrease in following years (*HERA Hold Harmless*). HUD will publish historical data on income limits, but each owner should retain a file evidencing their project’s income limits and rents since placing the project into service.



Based on the changes enacted by HUD, TCAC has revised the format of the published Income and Rent limits to reflect the hold harmless policy as enacted by the 2008 HERA legislation. Therefore, each subsequent year after 2010 will include a separate set of income limits based off of Placed in Service date. Please see the CTCAC Compliance website for a full list of all the current Income and Rent limits:

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

**Please see the 2011 Gross Rent Memo for additional guidance on determining the proper rents with the Gross Rent Floor Election at:**

<http://www.treasurer.ca.gov/ctcac/compliance/gross.pdf>

#### **E. Tenant Collection Data**

The HERA legislation added an additional requirement that starting in 2010, all LIHTC properties were to require the collection of certain race and ethnicity data on an annual basis. This data would be reported to the state allocating agency, which in turn would forward the information to HUD.

Annually CTCAC will post on their Compliance Website the updated schedule for submission for the prior years data:

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

Starting January 1, 2011 all new move-ins were required to use the new updated TIC which included a new section with tenant demographic data. All existing households were required to complete the Supplemental Demographic Information form at their next scheduled recertification.

**The TIC may be updated as additional information is requested or regulations change. Please make sure that you are using the most current version of the form.**

### **Part 8.2 American Recovery and Reinvestment Act of 2009 (ARRA)**

On February 17, 2009 President Obama signed into law the American Recovery and Reinvestment Act of 2009. ARRA was designed to be a sweeping economic stimulus bill that would provide resources to many different programs with the intent of reinvigorating the nation's economy. The LIHTC program was one of the programs to receive funds under ARRA to stimulate the production of affordable housing.

#### **A. Credit Exchange Program (Section 1602)**

- Subject to IRS Section 42 Compliance Monitoring Regulations
- Subject to Asset Management fees and Asset Management monitoring
- Designed to be a full exchange of credits for cash or a gap-filler for projects that

- have some tax credits and an equity investor
- Offered as a 15 year conditional grant with 0% interest, but with a 55 year compliance period
- Has a recorded Regulatory Agreement for 55 years

## **B. HUD Tax Credit Assistance Program**

In July 2008, the Department of Housing and Urban Development (HUD) created the Tax Credit Assistance Program (TCAP) to provide additional grant funding for capital investment in Low Income Housing Tax Credit properties based on a formula-based allocation to the State allocating agencies. These funds are to be distributed competitively.

- Subject to IRS Section 42 Compliance Monitoring Regulations
- Subject to Asset Management fees and Asset Management monitoring
- The projects will retain a minimum of \$100 in Federal tax credits
- Subject to Davis-Bacon wage requirements
- Subject to a NEPA environmental review
- Subject to Section 504 monitoring for ADA requirements
- 55 year loan terms
- Has a recorded Regulatory Agreement

For compliance monitoring purposes, all existing CTCAC forms, policies, procedures, and requirements remain in effect. CTCAC will treat any ARRA funded projects in the same manner as the regular LIHTC portfolio.

## **Part 8.3 Consolidated Appropriations Act of 2018 (Average Income)**

The Consolidated Appropriations Act, 2018, also known as the omnibus spending bill, made two significant changes to the Tax Credit program. It increased the volume cap of credit allocation by 12.5 percent over the period of 2018 – 2022 and it created a new federal minimum set-aside option known as “Average Income”. This new federal minimum set aside allows for units up to a maximum of 80% AMI as long as the overall average of the project remains at or below 60% AMI.

In California, Section 10325(f)(13) of the CTCAC Regulations outlines the requirements for projects that elect this new federal minimum set-aside. Under these regulations, CTCAC will require that a competitive project (9%) that intends to use this election be restricted so that the average targeting of the property does not exceed 50% AMI and that non-competitive bond projects (4%) be restricted so that the average targeting of the property does not exceed 59% AMI.

In addition to the above, CTCAC will require that any multi-building project with an Average Income federal minimum et-aside elect “yes” on Line 8b of the 8609 form stating that the owner intends to treat the projects as a multi-building project for the purposes of Section 42.

In October 2020, the IRS published Proposed Regulations in the Federal Register Vol. 85 No. 211 pg. 68816 regarding the Average Income Targeting set-aside. These proposed regulations defined the requirements for selecting the AIT set-aside.

As of the posting date of this Manual, the IRS has received significant public comment about this Proposed Regulation and will be conducting a public hearing to listen to concerns, and potentially revise or rescind this regulation. More information will be posted once a final determination has been made.

#### **Part 8.4 California State Law - AB 1920 (Fine Authority)**

AB 1920 of 2016 authorizes the California Tax Credit Allocation Committee to levy fines for non-compliance violations of the Tax Credit Program. Currently, CTCAC reports non-compliance with federal program requirements to the IRS with a Form 8823 during the 15-year compliance period, but the IRS does not enforce deeper affordability or other requirements or commitments applicable to a project during the first 15 years or any requirements after year 15. With the ability to impose fines through an administrative process for such violations that either are not or are no longer being regulated by the IRS, CTCAC will ensure the integrity of the Low-Income Housing Tax Credit Program for the duration of the 55-year regulatory period. In April of 2021, CTCAC updated the Fine Schedule to more accurately define the monetary value of the fine and the types of noncompliance that would trigger a fine.

CTCAC will not issue fines for violations reported to the IRS on a Form 8823. Additionally, CTCAC retains the authority to issue negative points for program violations but will not levy fines in cases where it imposes negative points. CTCAC will use its discretion to determine the most appropriate sanction, as applicable to the circumstances, when choosing between fines or negative points. For smaller violations, the schedule provides a correction period, generally 30 days. For these violations, CTCAC will not impose any fine if the non-compliance is corrected during the correction period. For more serious violations, an immediate fine will be assessed in addition to the requirement of correction. If the noncompliance remains uncorrected, additional fines will be assessed monthly.

All fines are subject to appeal if the owner so chooses. A party may appeal the fine to the Executive Director at no cost within seven days of the date of the findings letter. If the appeal is denied, a party may appeal to the Committee within seven days of the Executive Director's decision. The appeal to the Committee is subject to a non-refundable \$500 fee. The regulations allow the Executive Director to approve a payment plan for any fines. Fine payments are due within 30 days of assessment or completion of the appeal. In the event that fines assessed against a property owner are not paid within six months of initial assessment, CTCAC will provide reasonable notice to the owner and file a lien against the property.

Once adopted by the Committee, a schedule of the fines and the correction period can be found on our website at:

<http://www.treasurer.ca.gov/ctcac/>

## **8.5 California State Law – AB 1482 (Tenant Protection Act)**

In October of 2019, the California Legislature passed AB 1482 also known as the Tenant Protection Act of 2019. While the Act does establish a definition of “Good Cause” for evictions, eviction protections, and sets maximum caps on how much the rents can be increased annually, the provisions of the Act specifically exclude:

“...Housing restricted by deed, regulatory restriction, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, and moderate income...”

Therefore the LIHTC Program is excluded from the provisions of AB 1482 except for the provision [Section 1947.13 of the Civil Code] that states:

“...The owner of a deed-restricted affordable housing unit or an affordable housing unit a regulatory restriction contained in an agreement with a government agency limiting rental rates that is not within an assisted housing development may establish the initial rental rate for the unit upon the expiration of the restriction. Any subsequent rent increase for the unit shall be subject to Section 1947.12”

CTCAC will require that all projects ending their regulatory period between 2019 and 2030, establish the base rent for which all AB 1482 provisions will thereafter apply as no more than the maximum CTCAC rent for the year the property exits the CTCAC regulatory period per bedroom size.

## **Part 8.6 California State Law – AB 701**

In October of 2019, the California Legislature passed AB 701 which provided persons who have been exonerated of a conviction access to specified public services including enrollment in CalFresh and Medi-Cal. It additionally requires the payment of \$5000 to a person who is exonerated upon release and would entitle the person to receive direct payment or reimbursement for housing costs for a period of up to 4 years.

For CTCAC purposes, the initial lump sum amount of \$5000 would not be considered as income as it is a one-time payment. Any recurring direct payments for housing would be included as an income source for the applicant.

## **Part 8.7 California State Law – SB 329**

In October of 2019, the California Legislature passed SB 329 which provided additional guidance on the prohibition of housing discrimination based on source of income. The bill incorporated changes to the Fair Housing and Employment Act to mean verifiable income paid directly to a tenant, to a representative of a tenant, or paid to a housing owner or landlord on

behalf of a tenant, including federal, state, or local public assistance and housing subsidies including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937.

This legislation is intended to prohibit the discrimination of Section 8 or other public voucher holders from obtaining housing. It does not mean that Section 8 Vouchers are to be included as a source of income when determining income eligibility for the LIHTC Program. The LIHTC Program has always required that owners do not discriminate against Section 8 Voucher holders and will continue to exclude the value of the voucher as income for the household as it is paid directly to the owner and not to the tenant.

## SECTION X – GLOSSARY

**AB 1920:** California State law that allowed the allocating agency to levy fines for noncompliance violations of the LIHTC program.

**Annual Household Income:** Gross income of all persons who intend to permanently reside in a unit. The annual income is defined as income as of the date of occupancy for the next twelve (12) months.

**Annual Income:** Total gross income anticipated 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 re-certifies his/her income, for the purpose of determining whether the tenant will be of low income according to the provisions of the LIHTC Program.

**Annual Inspection:** A review of a project which may be made annually by CTCAC or its agent, which includes an examination of records, a review of operating procedures and a physical inspection.

**Applicable Fraction:** The applicable fraction is the lesser of a) the ratio of the number of low income units to the total number of units in the building or b) the ratio of the total floor space of the low income units to the total floor space of all units in the building.

**Applicable Credit Percentage:** Although the credits are commonly described as 9% and 4% credits, the percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month. For instance, for December 1994, the 9% credit figure was actually 8.89%, while the 4% credit figure was 3.81%. The monthly percentages may be greater or less than exactly 9% and 4%. Once the percentage is established for a building, the percentage applies for the entire 10 year credit period.

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

**ARRA:** Economic Stimulus Bill in 2009 that was designed to provide resources to many different programs with the intent of reinvigorating the nation's economy.

**Assets:** Items of value, other than necessary personal items, which are considered in determining the 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.

**Authority:** California Tax Credit Allocation Committee (TCAC or CTCAC)

**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.

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

**Compliance Period:** The length of time a property must remain in compliance with the provisions of the Low Income Tax Credit Program. For projects that were awarded credits after 1990 this is a minimum of 30 years and maximum of 55 years. The Compliance Period includes both the federal Credit Period and the Extended Use Period.

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

**Credit Period:** The period of fifteen (15) taxable years during which credit may be claimed beginning with:

- (1) the taxable year the building is placed in service, or
- (2) at the election of the taxpayer, the succeeding 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.
- (3) the credits may be accelerated and claimed over the initial 10 years of the Credit Period

**Current Anticipated Income:** Gross anticipated income for the next twelve (12) months as of the date of occupancy that is expected to be received by the tenant(s). All income is counted unless specifically excluded as determined by HUD 4350 Chapter 5.

**Effective Term of Verification:** A period of time not to exceed one hundred twenty (120) days prior to the certification date. A verification must be within the effective term at time of tenant's Income Certification.

**Eligible Basis:** The eligible basis of a qualifying project generally includes those capital costs incurred with respect to the construction, rehabilitation, or acquisition in certain circumstances, of the property, minus non-depreciable costs such as land and certain other items such as financing fees. While it may not include any parts of the property used for commercial purposes, it may include the cost of facilities for use by tenants to the extent that there is no separate fee for their use and they are available to all tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units. Eligible basis is reduced by an amount equal to the portion of a building's adjusted basis which is attributable to non-low income units which exceed the average quality standard of the low income units unless the cost of building the market rate units does not exceed the cost of the average low income units by more than 15% and the excess cost is excluded from the eligible basis.

Eligible basis is further reduced by the amount of any federal grants applied towards the project,

and, should the owner so elect, it may be reduced by “federal subsidies” to take advantage of the higher applicable tax credit percentage. It is determined without regard to depreciation.

**Eligible Person:** One or more persons or a family determined to be of low income.

**Employment Income:** Wages, salaries, tips, bonuses, overtime pay, and all other compensation for services from a job.

**Extended Use Period:** The time frame which begins after the initial 15 year federal compliance period in which all the regulatory provisions must continue to be met. Depending on allocation year this can be an additional 15 – 40 years. The end date of the Extended Use Period will be specified by TCAC in the Regulatory Agreement/Restrictive Covenant.

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

**Federal Omnibus Bill of 2018:** Legislation enacted in March of 2018 that allowed for a third federal set-aside called Income Averaging.

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

**Full-time Student Household:** A household that is comprised entirely of full-time students as determined by the educational institution they are attending. Full-time student households must meet one of 5 IRS exceptions in order to qualify for the LIHTC program.

**Grandfathering:** A term used by the IRS in the resyndication process to refer to a household that was initially income eligible under a previous allocation of credits, but may be over the income limit for the incoming resyndication of federal credits. The Tax Credit Regulatory Agreement for the first federal credit allocation gives the authority to treat any household that was eligible under the initial credits to be concurrently eligible for any subsequent allocation of credits.

**Gross Income:** See Annual Household Income.

**Gross Rent:** Maximum amount that a tenant can pay for rent after deducting a utility allowance. The maximum gross rent is the tenant paid rent + utility allowance.

*Note:* The owner must be aware of the year in which the tax credit allocation was made and the specific guidelines that refer to the calculation of gross rent for those years, i.e. 1987, 1988, and 1989 tax credit allocations base gross rent on the actual number of persons residing in the unit. All projects that received credits after 1990 are based on bedroom size.

**HERA / HR 3221:** The Housing Economic Recovery Act of 2008. This was legislation that impacted the LIHTC program in several ways. The most significant impact was the change in methodology for how the Income and Rent tables were calculated as it changed from a county-



wide threshold to a project threshold, meaning the tables would be calculated for each project on the year they Placed in Service, rather than making all projects in the same county have the same limits. It granted the provision of HERA Hold Harmless once a project placed in service. HERA created the requirement for annual Tenant Demographic Data Collection and the allowed that for 100% projects full income and asset certifications were no longer required after move-in. This provision does not apply to projects with conventional as well as tax credit units. Please note: CTCAC will still require a full income and asset certification at the 1<sup>st</sup> anniversary date of a household in a 100% tax credit project.

**Hold Harmless:** The provision that limits will not drop lower than their current level.

**Household:** The individual, family, or group of individuals living together as a unit.

**Imputed Income:** The estimated earning potential of assets held by a tenant using the potential earning rate established by HUD. The current rate is provided by TCAC in its instructions to the Annual Income Recertification.

**Income Limits:** Maximum incomes as published by CTCAC for projects giving the maximum income limits per unit for low income (50% or 60% of median) units. These limits will be adjusted periodically by TCAC based on median income figures provided by HUD.

**Ineligible Person:** One or more persons, or a family who apply for residency in a rent-restricted low income unit and whose combined income exceeds the income limitation that was selected by owner (i.e. 50% or 60% of median) or someone living in a set-aside unit who is not certified or under lease, or, in many circumstances, full-time students not filing joint tax returns.

**Initial Compliance:** The 12 month period, commencing with the date the building is placed in service, in which the minimum set-aside must be met to receive the tax credits. *Note:* Projects consisting of multiple buildings with phased completion must meet the set-aside requirements on a building by building basis with the 12 month commencing with the individual date each building is placed in service.

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

**LIHTC:** Low Income Housing Tax Credit.

**Low Income Household:** 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 Tenant:** an individual whose income, adjusted for family size, does not exceed either 50% or 60% of median income for the local area.

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

1. such unit is rent restricted (as defined in subsection (g)(2) or IRS Section 42).
2. the individuals occupying such unit meet the income limitation applicable under

- subsection 42(g)(1) to the project of which such building is a part.
3. the unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

**Management Company:** A firm selected by the owner to oversee the operation and management of the project and who accepts compliance responsibility.

**Maximum Allowable Rent Calculation:** The maximum allowable rent calculation includes costs to be paid by the tenant for utilities inclusive of heat, electricity, air conditioning, water, sewer, oil, or gas where applicable. (Do not include cable TV or telephone.)

**Maximum Chargeable Rent (Net Rent):** Gross rent less utility allowance paid by the tenant.  
*Note:* Charge for Amenities: If the tenant amenity is included in eligible basis under Section 42(d), it must be provided as a comparable amenity to all residential rental units in the building without charge. IRS Section 42(d)(4)(B) (Treasury Regulation § 1-42-5 5(c)(1)(vii).

**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 under the statute to be income and rent-restricted (either at 20% @ 50% or 40% @ 60%). Please note- In a 100% Tax Credit property all units will be income and rent restricted to either 50% or 60%.

**Monitoring Agent:** The agency responsible for monitoring the compliance with the terms and conditions specified under the law and the LIHTC Program.

**MTSP Limits:** Multi-family Tax Subsidy Program Limits. As of 2009, the income and rent limit tables that HUD releases for use in the LIHTC program.

**TCAC or CTCAC:** California Tax Credit Allocation Committee

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

**Placed in Service Date:** For buildings, this is the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. *Note:* Rehabilitation expenditures that are treated as a separate new building are placed-in-service at the close of any 24 month period over which such expenditures are aggregated (see IRS Notice 88-116).

**Project:** Rental housing development receiving a LIHTC allocation.

**Qualified Allocation Plan:** The plan developed and promulgated by CTCAC.

**Qualified Basis:** The portion of the eligible basis attributable to low income rental units. It is 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. *Note:* This is the lesser of the Applicable Fraction/Occupancy Percentage:

1. the proportion of low income units to all residential rental units, or
2. the proportion of floor space of the low income units to the floor space of all residential rental units.

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

**Qualified Persons:** Individuals and families who, at the time each such individual or family first occupies a unit in the development, are of low income, having annual income not exceeding 50% or 60% of area median gross income (depending on the set-aside chosen), adjusted for family size, within the meaning of the Code and Treasury Regulations.

**Qualified Unit:** A unit occupied by qualified persons at a qualified rent.

**Regulatory Agreement/Restrictive Covenant:** The agreement between CTCAC and the owner restricting the use of the project during the term of the LIHTC compliance period.

**Resyndication:** An existing tax credit project with a tax credit regulatory agreement that returns for a subsequent allocation of credits after the initial 15 year federal credit period has expired.

**Roommates:** Two or more unrelated persons occupying one dwelling unit as a household.

**Section 8 of the U.S. Housing Act of 1937, as Amended:** Regulations used in defining and determining income as required under Section 103(b)(4)(A) of the Internal Revenue Code of 1986, as amended.

**Student:** Any individual who has been, or will be, a full-time student at an educational institution with regular facilities and students, during five months of the calendar year.

**Tax Credit:** 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 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 TCAC, or at the time the allocation is made.

**Tenant:** Occupant of a unit to whom the unit is leased.

**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, annual income recertification, utility schedules, rent records, lease and lease addendum. Any authorized representative of TCAC or the Department of Treasury may be permitted access to these files upon receipt by project owner or management company of prior written notice of not less than two calendar days.

**Totem Pole Rule:** An IRS requirement that states a household remains qualified as long as at least one original certified household member remains in the unit. If at any point, there are no longer any original household members occupying the unit, in order for the unit to remain eligible, documentation must be provided showing the current household is income eligible at the current income limits.

**Utility Allowance:** An allowance for the cost of utilities, other than telephone, cable, television, or Internet, paid directly by the tenant(s) and not by or through the owner of the building and is included in the computation of gross rent under IRC Section 42(g)(2)(B).

**Verification:** Information from a third party which is collected in order to corroborate the accuracy of information about income provided by applicants to a project.

**Verification Request Form:** The form used by management to request verifications of income from the source of the income or assets. The form must state the purpose of the request, include a release statement by the applicant/resident and request the frequency and amount of pay or interest.

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

**20%/50%:** 20% or more of the residential units must be rented to households with aggregate gross income of 50% or less of the area median gross income adjusted for family size.

**40%/60%:** 40% or more of the units must be rented to households with aggregate gross income of 60% or less of the area median gross income adjusted for family size.