State of Utah

2002
Low-Income Housing
Tax Credit Program

COMPLIANCE MANUAL

COMPLIANCE MONITORING MANUAL

I. PLAN SUMMARY

A. Overview. The Utah Housing Corporation("UHC") is required by Section 42 of the Internal Revenue Code of 1986, as amended ("IRC § 42"), to monitor low-income housing tax credit ("LIHTC") projects for noncompliance with the provisions of IRC § 42, and to notify the Internal Revenue Service ("IRS") of such noncompliance of which the UHC becomes aware. The UHC has prepared a Compliance Monitoring Plan (the "Plan") which sets forth the procedures that the UHC shall follow, and those procedures that an owner of a LIHTC project (the "Project Owner") is required to follow, to satisfy the requirements of IRC § 42 and the regulations promulgated thereunder. As a condition to the allocation of low-income housing credits, Project Owners are required to enter into a binding agreement to comply with the terms and conditions of the Plan. The Plan is part of the UHC's LIHTC Allocation Plan for the State of Utah. The Plan may be amended as deemed necessary by the UHC to comply with IRC § 42 and the regulations issued thereunder, as the same may be amended, or to further promote the LIHTC program in the State of Utah. The UHC has also prepared a Compliance Monitoring Manual (the "Manual") as a supplement to the Plan to assist Project Owners in carrying out their responsibilities under the Plan. The Manual does not supersede or replace the Plan, but is intended to provide further guidance and assistance to Project Owners.

B. Recordkeeping Requirements. A Project Owner is required to keep records for each qualified low-income building in a LIHTC project that show for each year in the compliance period:

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 rental 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 (including any utility allowances);
4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under IRC § 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);
5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
6. The annual income certification of each low-income tenant per unit;

7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation);
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 the nonresidential portion of the building included in the building's eligible basis under IRC § 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the LIHTC project).

For purposes of IRC § 42 and the Plan, tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United State Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. Section IV of the Manual, page IV-16, provides a copy of 24 CFR 813.106, H.U.D. Definition of Annual Income. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement described in Section I.B. of the Manual is satisfied if the applicable public housing authority provides a statement to the Project Owner declaring that the tenant's income does not exceed the applicable income limit under IRC § 42(g).

C. Record Retention Requirements. A Project Owner is required to retain the records described in Section I.B. of the Manual for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

D. Certification Requirements. A Project Owner is required to certify at least annually to the UHC that, for the preceding 12-month period:

1. The LIHTC project met the requirements of: (a) the 20-50 test under IRC § 42(g)(1)(A) or the 40-60 test under IRC § 42(g)(1)(B), whichever minimum set-aside test was applicable to the project; and (b) if applicable to the project, the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;
2. There was no change in the applicable fraction (as defined in IRC § 42(c)(1)(B)) of any building in the project, or that there was a change, and provide a description of the change;
3. The Project 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 Section I.B. of the Manual;

4. Each low-income unit in the project was rent restricted under IRC § 42(g)(2);

5. All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under IRC § 42(i)(3)(B)(iii));

6. Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes;

7. There was no change in the eligible basis (as defined in IRC §42(d)) of any building in the project, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

8. All tenant facilities included in the eligible basis under IRC § 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;

9. If a low-income unit in the project became 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;

10. If the income of tenants of a low-income unit in the project increased above the limit allowed in IRC § 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; and

11. An extended low-income housing commitment as described in IRC § 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

E. Review Requirements. The UHC reviews the certification described in Section I.D. of the Manual for compliance with the requirements of IRC § 42. The UHC inspects at least 20% of LIHTC projects each year and inspects the tenant low-income certification, the documentation the Project Owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units in those projects. The UHC determines which tenant's records are to be inspected or submitted by the Project Owners for review. The records to be inspected must be chosen in manner that will not give Project Owners advance notice that their records for a particular year will or will not be inspected. However, the UHC may give a Project Owner reasonable notice that an inspection will occur so that the Project Owner may assemble records (for example, 30 days notice of inspection).

F. Frequency and Form of Certification. The certification and review requirements described in Section I.D. and I.E. of the Manual shall be made at least annually covering each year of the fifteen year compliance period under IRC § 42(i)(1) and thereafter for such period determined by the UHC not to exceed the LIHTC project's extended use period. The certifications and reviews may be completed more frequently than on a twelve month basis, provided that all months within each twelve month period are subject to certification.

G. On-Site Inspections. A Project Owner shall permit, and the UHC shall have the right to perform, an on-site inspection of any LIHTC project, at least through the end of the compliance period and thereafter for such period determined by the UHC not to exceed the LIHTC project's extended use period, of the buildings in the project. The inspection provision described in this Section I.G. is separate from any review of low-income certifications, supporting documents, and rent records described in Section I.E. of the Manual.

H. Notification-of-Noncompliance Requirements. The UHC is required to give the notice described in Section I.I. of the Manual to the Project Owner of a LIHTC project and the notice described in Section I.J. of the Manual to the IRS.

I. Notice to Project Owner. The UHC is required to provide prompt written notice to the Project Owner if the UHC does not receive the certification described in Section I.D. of the Manual, or has not received or is not permitted to inspect the tenant income certifications, supporting documentation and rent records described in Section I.E. of the Manual, or discovers by inspection, review, or in some other manner, that the LIHTC project is not in compliance with the provisions of IRC § 42.

J. Notice to Internal Revenue Service. The UHC is required to file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described in Section I.K. of the Manual, including extensions permitted under that section) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The UHC is required to explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of a LIHTC project under IRC § 42(c)(1)(A) is noncompliance that must be reported to the IRS under this Section I.J. If the UHC reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the UHC is not required to file Form 8823 in subsequent years to report that building's noncompliance.

K. Correction Period. The correction period is that period during which a Project Owner must supply any missing certifications and bring the LIHTC project into compliance with the provisions of IRC § 42. The correction period is not to exceed 90 days from the date of the notice to the Project Owner described in Section I.I. of the Manual. The UHC may extend the correction period for up to 6 months, but only if the UHC determines there is good cause for granting the extension.

L. Record Retention. The UHC is required to retain records of noncompliance or failure to certify for 6 years beyond the UHC's filing of the respective Form 8823. In all other cases, the UHC is required to retain the certifications and records described in Section I.D. of the Manual for 3 years from the end of the calendar year the UHC receives the certifications and records.

M. Liability. Compliance with the requirements of IRC § 42 is the responsibility of the Project Owner of the building for which the credit is allowable. The UHC's obligation to monitor for compliance with the requirements of IRC § 42 does not make the UHC liable for a Project Owner's noncompliance.

N. Fees. To reimburse the UHC for anticipated fees and expenses in administering the Plan, set forth below is a schedule of compliance monitoring fees which a Project Owner is required to submit to the UHC prior to the final allocation of low-income housing credits (issuance of IRS Form 8609). It is contemplated that the fees set below will be a one-time fee assessment to compensate the UHC for its compliance monitoring activities. However, the UHC may assess additional compliance monitoring fees as necessary in the future to reimburse the UHC for expenses it incurs in administering the Plan.

Number of Units in Project	Fee
1-10 units	No fee
11-30 units	$ 500.00 + $50 per unit (one time)
31-50 units	$1,000.00 + $50 per unit (one time)
51 & over	$2,000.00 + $50 per unit (one time)

O. Recordkeeping Form. Section IV of the Manual, page IV-1, provides a Recordkeeping Form which is required to be used by a Project Owner to keep those records for each qualified low-income building in a LIHTC project as required under the Plan. The Recordkeeping form shall be completed at least annually (to cover each year in the compliance period), and more frequently if necessary, to compile and maintain the information and records required under the Plan.

P. Annual Low-Income Tenant Income Certification Form. Section IV of the Manual, page IV-2, provides an Annual Tenant Income Certification form which is required to be used by a Project Owner for purposes of the annual income certification of each low-income tenant per unit. The Annual Tenant Income Certification form is required to be completed by each low-income tenant per unit (18 years of age and older) prior to occupancy in any low-income unit and annually thereafter.

Q. Annual Compliance Report and Certification Form. Section IV of the Manual, page IV-3, provides an Annual Compliance Report and Certification Form which is required to be used by a Project Owner to make those certifications required under the Plan. The Annual

Compliance Report and Certification Form is required to be signed by the Project Owner and filed with the UHC by April 30th following the close of the preceding calendar year (January 1 - December 31). The Annual Compliance Report and Certification Form covers a full calendar year period.

R. Waiver of Annual Income Rectification. Low-income housing building which are 100% occupied by qualifying low-income tenants may request a waiver of the annual rectification of tenant income requirement. Such a waiver is only granted upon application by the taxpayer to the IRS. Rev. Proc. 94-64, sets forth the procedures and requirements which must be followed to be granted a waiver.

S. Qualified Nonprofit Organization Certification. Each year, a project which receives an allocation of credits from the nonprofit set aside, shall submit an Annual Certification Of Qualified Nonprofit Organization certifying as to the nonprofit entity's qualification, ownership and participation in the project.

T. Budgets and Annual Operating Statements. Project Owners will be required to provide the UHC copies of the Project’s Annual Budgets and Operating Statements.

II. RESPONSIBILITIES

A. The Utah Housing Corporation. The Utah Housing Corporation allocates tax credits through the Low-Income Housing Tax Credit Program for the acquisition, construction, and rehabilitation of qualifying low-income housing within the state of Utah. Once a final allocation is awarded to a project, the specific duties of the UHC include:

1. Reviewing annual Occupancy Report and Move In/Out Report and Annual LIHTC Compliance Report and Certifications.
2. Reviewing Annual Tenant Income Certifications and supporting documentation.
3. Performing an annual review of tenant files and on-site inspections of the LIHTC projects.

B. Project Owner . Each Project Owner who has received an allocation of tax credits under the LIHTC program must met certain requirements.

1. The Project Owner is responsible to the UHC for insuring that the project is properly administered. The Project Owner must make certain that the on-site management team complies with all appropriate rules, regulations and policies that govern the project.
2. It is the responsibility of the Project Owner to keep the UHC informed throughout the compliance and extended use periods of any circumstances which result in the noncompliance of the Project with any of the requirements of the LIHTC Program.
3. The Project Owner must annual certify to the UHC that the project is in compliance with the LIHTC Program.

C. Management Company and On-Site Personnel.

1. General. The management company and all on-site personnel are responsible to the Project Owner for implementing the LIHTC Program requirements correctly. Anyone who is authorized to lease apartments units to tenants should be thoroughly familiar with all federal and state laws, rules or regulations governing certification and leasing procedures. It is also important that the management company provide information, as needed, to the UHC and submit all required reports and documentation in a timely manner.
2. Non-compliance. If the management company determines that the project is not in compliance with LIHTC Program requirements the Project Owner and the UHC must be notified immediately.

D. Compliance Procedures. This section of the Manual outlines procedures for monitoring the project to ensure compliance with the LIHTC Program and UHC policies.

Compliance is necessary to retain the low-income housing tax credit. Monitoring each project is an ongoing activity that extends throughout the compliance and extended use periods. The actual compliance steps that will be explained are:

1. The annual Occupancy Report and Move In/Out Report;
2. The Annual Compliance Report and Certification; and
3. Annual Tenant Income Certification; and
4. The UHC Documentation Requirements.

E. LIHTC Program Reports. Beginning with the first calendar year following the receipt of a final tax credit allocation (issuance of Form 8609) management must prepare and submit to the UHC the annual Occupancy Report and Move In/Out Report accompanied by copies of Annual Tenant Income Certifications for each new move-in and each recertification of income for existing tenants.

Additionally, those projects which receive an allocation of credits from the nonprofit set aside, shall also submit the Annual Certification Of Qualified Nonprofit Organization. These reports must be submitted to the UHC no later than May 31st of each year throughout the compliance period.

F. Annual Project Review. The UHC shall conduct an on-site project inspection of at least 20% of the LIHTC projects each year. During the on-site inspection, randomly selected tenant files will be reviewed for compliance. Management should respond in writing within twenty-one (21) days addressing any discrepancies noted. The Project Owner response must indicate the manner in which necessary corrections have been made or will be under taken. The Project Owner has 90 days from the date of notice of any non-compliance to correct that non-compliance. The UHC shall notify the IRS within forty-five (45) days, following the 90 day correction period, of any noncompliance found. The UHC may extend the correction period for up to 6 months, but only if the UHC determines there is good cause for granting the extension.

III. EXPLANATIONS - QUALIFICATION OF TENANT

A. Background. A prospective tenant of a low-income rent-restricted unit should be advised early in their initial visit to the project that there are maximum income limits which apply for these units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be certified and included on an Income Certification prior to occupancy, and at least annually thereafter.

B. Application. A fully completed application is critical to an accurate determination of eligibility of the tenant. 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. In the event the application does not request asset and asset income information, an Asset Verification form may be used. (See Section IV, page 11 for a sample form).

At the time of application by a tenant, it is management's responsibility to obtain sufficient information on all tenants to determine the eligibility of the prospective tenants for a LIHTC unit.

The application should include:

1. The name of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Annual Tenant Income Certification); this may include unborn children of the couple or a pending adoption.
2. All sources and amounts of current and anticipated annual income expected to be derived during the twelve month certification period (this should include total assets and asset income); and,
3. The signature of the applicant and the date the application was completed. It may be necessary to explain to the tenant that all information provided is considered confidential and will be handled accordingly.

C. General Verification Requirements. Sources of income must be verified. Verification should be received by management prior to the execution of the Annual Tenant Income Certification. Verification must include complete and detailed information and include at a minimum:

1. Verification of all sources of income for each tenant, including income from Net Family Assets;
2. Written verification of income directly from the source; and,
3. Retention of all verification documentation for at least 6 years after the due date for filing the federal income tax return (of the Project Owner) for that year.
4. Application information for any individual that is not approved should be retained by the Project Owner for (1) one year.

    a. Methods of Verification.

(1) Written Verification. Written verification is always preferred. The request for income verification must:

(a) state the reason for the request;

(b) include a release statement signed and dated by the applicant; and

(c) provide a section for the employer or another third-party source to state the tenants rate of pay, number of hours worked, and frequency of pay. Bonuses, tips and commissions must be included. Space should also be available for a signature and title as well as the date.

(2) Verbal Verification. When written verification is not possible prior to move-in, direct contact with the source will be acceptable to the UHC only as a last resort and should be followed with written verification. The conversation should be documented (see Section IV, Page 5 for suggested format) and placed in tenant's file.

(3) Verification Transmittal:

(a) Tenant should be asked to sign two copies of each verification form. The second copy may be used when the first request has not been returned in a timely manner.

(b) Income verification requests must be sent directly to and from the source not through the tenant. It is suggested that a self-addressed, stamped envelope be included with the request for verification.

(c) Verification may be hand-delivered by the applicant only if it is provided on the letterhead of the source or is a notarized affidavit.

b. Differences in Reported Income. Management should give the tenant the opportunity to explain any significant differences between the amounts reported by the tenant and amounts reported by third party in order to determine actual income. The file should be documented to explain the difference.

D. Acceptable Forms of Verification. Acceptable forms of Verification for specific types of income situations are as follows:

1. Employment Income.

a. Employment verification form (see Section IV, Page 4 for suggested format) completed by the employer or statement from employer on company letterhead; or

b. Check stubs or earnings statement showing the employee's gross pay per pay period and frequency of pay; or

c. Notarized statement or affidavits along with the most recent income tax returns signed by the tenant providing the amount of income including income from tips and other gratuities.

2. Self-Employment Income.

a. Accountant's or bookkeeper's statement of net income; or

b. Audited or unaudited financial statements of the business along with a notarized statement from the tenants giving the anticipated income for the 12 months following certification; or

c. Income Verification Form (see Section IV, Page 6).

3. Unemployment Compensation.

a. A verification form completed by the unemployment agency; or

b. Records from the unemployment office stating payment dates and amount; or

c. Unemployment Affidavit (see Section IV, Page 7).

4. Alimony or Child Support Payments.

a. A copy of a separation or settlement agreement or a divorce decree stating the amount and type of support payment schedule; or

b. A notarized letter from the person paying support (see Section IV, Page 9 for suggested format); or

c. A copy of latest check and documentation of how often the check is received or Office of Recovery Services report.

d. HUD manual 4350.3 indicates in situations where the payee is not making full payments, the full amount of support will be included in gross income, except where it can be demonstrated that the recipient: "Has made a reasonable effort to collect the amounts due, including filing with courts or agencies responsible for enforcing payments." The logic for this is that government should not have to support a family with children with subsidized rents where the family has made no legitimate effort to collect the total support payment.

5. Recurring Contributions and Gifts.

a. Notarized statement or affidavit signed by the person providing the assistance, giving the purpose, dates and value of the gifts; or

b. A verification letter from a bank, attorney or a trustee administering contribution; or

c. Only when the above is not possible will the tenants notarized statement giving the same information suffice.

6. Veteran's Administration Benefits.

a. Benefactor's written confirmation of amount of assistance and educational institution's written conformation of expected cost of the student's tuition, fees, books and equipment for the next 12 months; or

b. Copies of latest benefit checks, if benefits are paid directly to student. Copies of the canceled checks or receipts for tuition, fees, books and equipment, if such income and expenses are not expected to change for the next 12 months.

7. Unemployed Tenants.

a. The income of unemployed tenant(s) with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as covered previously.

E. <u>Annual Income</u>. A determination of anticipated annual income must include all of the types of income listed below in the amount anticipated to be received by all tenants, 18 years of age or older, in the 12 months following certification.

1. <u>Annual Income Includes</u>.

a. Gross amount (before any payroll deductions) of wages, salaries, overtime pay, commissions, fees, tips, bonuses, and any other compensation for personal services received by every adult member of the household; and

b. Net income, salaries, and other amounts distributed from a business; and

c. Gross amount (before deductions of Medicare, etc.) of periodic social security payments. Includes support payments received by adults on behalf of minors; and

d. Annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic payments; and

e. Lump sum payments received because of delays in processing unemployment, social security, welfare or other benefits; and

f. Payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation, and severance pay. Any payments that will begin during the next 12 months must be included; and

g. Alimony and child support; and

h. Interest, dividends, and other income from net family assets (including income distributed from trust funds). On deeds of trust or mortgages, only the interest portion of the monthly payments received by the tenant(s) is included; and

i. Lottery winnings paid in periodic payments. (Winnings paid in a lump sum are included in net family assets, not in annual income); and

j. Recurring monetary contributions or gifts regularly received from persons not living in the unit, including unit or utility payments regularly paid on behalf of the family. This can include individualized rent concessions or payments which are similar to "in-kind" payments for services rendered or to be rendered.

F. Calculating Annual Income. Verified income must be converted to annual amounts by using the following calculations:

1. To annualize full-time employment multiply:

a. hourly wages by 2080 hours;

b. weekly wages by 52;

c. bi-weekly amounts by 26;

d. semi-monthly amounts by 24;

e. monthly amounts by 12.

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

a. hourly wages by the number of hours the tenant expects to work annually;

b. average weekly amounts by the number of weeks the tenant expects to work;

c. other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the tenants expect to work.

3. Annual wages should always reflect a full 12 month period, regardless of the pay schedule. For example, if a school teacher earns a gross annual salary of $17,000, the $17,000 should be used as annual salary whether the teacher is paid over only nine months or throughout the year.

G. Annual Income Excludes. Certain sources of income should not be counted as annual income:

1. Employment income of members of the household that are under eighteen, including foster children. Head of household and spouse may never be considered minors. (Unearned income such as social security payments received on behalf of minors must be included as income.)

2. Food stamps, meals on wheels or any other program that provides goods for the needy.

3. Income associated with persons that live in the unit but are not household members. For example, this would include:

a. payments received for care of foster children; and

b. income of live-in attendants.

4. The principal portion of the payments received on mortgages or deeds of trust.

5. Scholarships or veterans benefits used for tuition, fees, books or equipment. Student loans are not considered income.

6. Hazardous duty pay to a family member in the military.

7. Lump sum additions to family assets such as inheritances, cash from sale of assets, one-time lottery winnings, insurance and workmen's compensation, or settlement for personal or property losses.

8. Temporary, nonrecurring or sporadic income (including gifts).

9. Payments, rebates, or credits received under Federal Low-Income Home Energy Assistance Programs.

10. Annual rent credits or rebates paid to senior citizens by government agencies.

11. Other forms of income excluded by federal statutes are:

   a. Relocation payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and

   b. Payment under the Job Training Partnership Act (employment and training programs for native Americans and migrant and seasonal farmworkers, Job Corps, veterans employment programs, state job training programs, career intern programs); and

   c. Payment received under Domestic Volunteer Service Act of 1973 (employment through Vista, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); and

   d. Payments received under Alaskan Native Claims Settlement Act; and

   e. The first $2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian Tribe.

   f. Payment received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program).

   g. Earned Income Credit.

H. <u>Assets</u>. Assets are items of value, other than necessary personal items, and are considered along with verified income in determining the eligibility of a household.

The asset information (total value and income to be derived) should be obtained at the time of move in. The tenant will affirm that this information is correct by executing the Annual Tenant Income Certification. Net Family Assets ("NFA") must be verified unless the tenant provides a sworn statement the NFA does not exceed $5,000.00 and the amount of tenant's annual income from NFA. A project owner may not rely on a tenant's signed, sworn statement of annual income from NFA if a reasonable person in the project owner's position would conclude that the tenant's income is higher than the tenant's represented annual income amount.

1. Assets Include:
    - a. Cash held in savings and checking accounts, safety deposit boxes, homes, etc.; and
    - b. The principal value of any trust available to the household. Do not include irrevocable trust fund established for a son or daughter, prior to the parent's death. The benefactor receives only the interest from the trust during his or her lifetime and cannot withdraw the principal; and
    - c. Equity in Real Estate or other Capital Investments should include current market value less any unpaid balance on any loans secured by the property and any reasonable costs that would be incurred in selling the asset such as prepayment penalties or broker fees; and
    - d. Stocks, Bonds, Treasury Bills, Certificates of Deposit, Money Market Funds; and
    - e. Individual Retirement (IRA) and Keogh Accounts; and
    - f. Retirement and Pension Funds:
        - (1) While the person is employed, include only amounts the family can withdraw without retiring or terminating employment.
        - (2) At retirement or termination of employment, if benefits will be received in a lump sum, include the benefits that are paid in periodic payments, include the benefits in annual income.
    - g. Lump sum receipts should include inheritances, capital gains, one-time lottery winnings, settlements on insurance and other claims; and
    - h. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, paintings, etc.; and
    - i. Assets owned by more than one person should be prorated according to the percentage of ownership.
2. Assets Do Not Include:
    - a. Necessary personal property (i.e., clothing, furniture, automobiles, etc.); and
    - b. Vehicles specially equipped for the handicapped; and
    - c. Interest in Indian Trust Land; and
    - d. Life insurance policies; and
    - e. Equity in the cooperative unit in which the family lives; and
    - f. Assets that are part of an active business; and
    - g. Assets held in the tenant(s) name, but which are actually owned by someone else, such as:

(1) Assets and any earned income that are accrued to the benefit of someone else; or

(2) A situation wherein income taxes incurred on income generated by the assets are payable by a person other than the tenant; or

(3) The case of having the Power of Attorney, where the tenant is responsible for disbursing someone else's money, but the money is not the tenant's and no benefit is received by the tenant; or

(4) Assets that are not accessible to the tenant and provide no income to the tenant.

I. Determining the Value of Assets. When computing the value of assets, owners must use the cash value of the asset - the amount the tenant(s) would receive if the assets were converted to cash. Expenses which maybe deducted includes:

1. Penalties for withdrawing funds before maturity; and
2. Broker/legal fees assessed to sell or convert the asset to cash; and
3. Settlement costs for real estate transactions.

J. Determining Asset Income For Low-Income Tenants. If the asset value is $5,000 or less, add the amount of actual income derived therefrom to the total verified income. When assets exceed $5,000, add the greater of 1) the actual annual income to be derived from these assets, or 2) the imputed income using a interest rate (specified by HUD) to the asset for determining the income derived from that asset and add this total to the verified income.

K. Income Certification Guidelines. After all of the income and asset information has been obtained and computed, management personnel must prepare an Annual Tenant Income Certification Form. A sample form is attached in Section IV, Page 10. The Annual Tenant Income Certification must be executed prior to move-in, and at least annually thereafter. The following guidelines apply:

1. Management should instruct the prospective tenant to sign the Annual Tenant Income Certification exactly as the name appears on the form.
2. It is preferred that the Annual Tenant Income Certification be executed on the date of move-in.
3. In the event the tenant in a set-aside unit later wishes to have an additional person move into the unit, the following steps must be taken:
   a. The prospective tenant must complete and provide verification of income and asset information as required of the initial tenant.
   b. The prospective tenant's income must be added to current tenant's previously certified income. The new total unit income must be within the set income limits.

c. A determination must be made as to whether the income requirement is jeopardized by adding an additional occupant.

4. The unit file should be documented when any household member vacates the unit.

L. Leases and Rent Limits. The Utah Housing Corporationrecommends that all tenants be under lease in order to occupy a unit. Leasing guidelines are listed below:

1. The lease should include the legal names of all tenants, a description of the unit to be rented, the term of the lease, the rent amount, the rights and obligations of the parties.

2. Rents on the set-aside units may not exceed certain limits, (See Section IV, Page 15) these limits will be provided by the UHC yearly.

3. The UHC recommends a minimum lease term of six months.

4. It is important for the lease to reflect the correct date of move-in, or the date tenant takes possession of the unit.

M. Annual Status Reports. This report shall be submitted to the UHC no later than May 31st of each year during the compliance period. These reports shall be provided by the UHC and shall be submitted for all projects receiving tax credit allocations since January 1, 1987.

N. Annual Report. The LIHTC Annual Compliance Report and Certification, and the Annual Certification Of Qualified Nonprofit Organization, is due by May 31, of each year throughout the compliance period beginning on the May 31 immediately following receipt of a final tax credit allocation by the UHC.

General project information must be completed by the owner. If the project has been sold or title to the property transferred to another entity at any time during the compliance period, the UHC must be informed of the transaction and the new owner must continue to adhere to the LIHTC Program compliance requirements which includes the filing of this report.

The Project Owner must sign the report certifying to its accuracy under penalty of perjury.

O. Utility Allowances. Under the recordkeeping requirements of the Plan, a Project Owner is required to maintain records which show for each year in the compliance period the rent charged, including any utility allowances, for each residential unit in a LIHTC building. Thus, rent charged is the actual rent paid plus a utility allowance for tenant paid utilities. Please note that the inclusion of a utility allowance in "rent charged" is not the actual amount of utilities paid, but rather an allowance or set utility amount. Thus, all units of similar size within a building will have the same utility allowance.

IRS Regulation § 1.42-10 provides general rules in determining the proper utility amount. A copy of IRS Regulation § 1.42-10 is found in Section IV, page 14. In summary, the Regulation § 1.46-10 provides that a building whose rents and utility allowances are reviewed by HUD on an annual basis must use HUD utility allowance. If a building, or tenant residing therein, receives

FmHA housing assistance, the FmHA utility allowances must be used. If a building is both HUD regulated and FmHA assisted, then FmHA utility allowances must be used.

Where there is neither HUD tenant assistance, nor an applicable HUD or FmHA utility allowance, a Project Owner must use the applicable Public Housing Authority ("PHA") utility allowance. For example, a LIHTC project located in Salt Lake City would look to the Salt Lake City Housing Authority to ascertain the applicable utility allowance.

Alternatively, any interested party (a LIHTC tenant, project owner, or the UHC) may obtain a letter from a local utility company providing the estimated cost of the utility for each unit of similar size and construction for the geographic area in which the LIHTC building is located. An interested party may obtain a letter from the local utility company at any time during the building's 15 year compliance period. If the utility estimated differ from the utility allowances provided by the PHA, the utility estimates shall be used in calculating the gross rent limitation. Utility allowances must be updated when rents are revised.

P. <u>Section 8 Tenants</u>. For tenants who receive Section 8 certificates, and thus pay a pre-determined rent amount, and HUD makes payment to the Project Owner for the difference between the tenant paid amount and the HUD fair market rent amount, rent charged for purposes of IRC § 42 includes only the amount of rent actually paid by the tenant, plus the applicable utility allowance for tenant paid utilities. Any rental subsidies paid by HUD or other governmental agency are disregarded.

Q. <u>General Public Use Requirement</u>. LIHTC units must be available for use by the general public. LIHTC units are <u>not</u> made available for use by the general public, if for example, the units are provided only for members of a social organization or provided by an employer for its employees. The IRS has issued Regulation § 1.42-9 which provides that the term "for use by the general public" shall be determined in a manner consistent with HUD housing policy governing non-discrimination as evidenced by HUD rules and regulation. See HUD Handbook 4350.3 (or its successor). Accordingly, owners of residential rental units that give preferences to certain classes of tenants (e.g., the homeless, disabled and/or handicapped) will not violate the general public use requirement if such preferences would not violate any HUD policy governing non-discrimination expressed in the HUD Handbook.

R. <u>Provision of Services</u>. The furnishing to tenants of services other than housing (whether or not such services are significant) will not prevent property from qualifying for the low income housing tax credit. However, any charges for services that are not optional to LIHTC tenants must be included in gross rent for purposes of IRC § 42(g)(2)(A). A service is optional if payment for the services is not required as a condition of occupancy. For example, meals may be provided to tenants if not required as a condition of occupancy and there exists a practical alternative for tenants to obtain meals other than from the dining facility. <u>See</u> IRS Revenue Ruling 1991-38, Question 12 and IRS Regulation § 1.42-11.

S. Nursing/Retirement Homes. A retirement-type facility may qualify under IRC § 42 as residential rental property notwithstanding that services other than housing are furnished to tenants. However, if continual nursing, medical, or psychiatric care is prescribed, it will be presumed that such services are mandatory. Such is generally the case with hospitals, nursing homes, sanitariums, and lifecare facilities. Tenants should be ambulatory and capable of caring for themselves on a day-to-day basis.

T. Lease Agreement. As a condition to leasing a LIHTC unit, a prospective LIHTC tenant should agree to annually certify annual income and provide documentation to support the annual income certification.

U. Tenant Information Letter. Tenants should be informed of their responsibilities under the LIHTC program prior to leasing a LIHTC unit. Section IV, page 17 provides a Tenant Information Letter which may be used as an explanation to prospective tenants of their responsibilities under the LIHTC program, such as Annual Income Certifications and providing supporting documentation for Annual Income Certifications.

V. Students . In certain cases students are not eligible for the tax credit. Managers of FmHA 515 and HUD housing need to be aware of regulations governing rentals to students as well. Under current LIHTC regulations, if a single applicant or all applicants are full time students (defined as 5 months per year and usually 12 credit hours per semester), not married, then they are ineligible for LIHTC units.

Student Exceptions are as follows: (i) If a recipient of Title IV (AFDC) benefits or JTPA applies, that household is eligible even if all persons are full-time students (IRS revision 1991). (ii) If someone is working and filing a tax return and attends school part time, there is no issue. (iii) If two persons living in one unit who are full-time students are in a situation where one or both is married (not necessarily to the other person living in the unit), then there is no issue in regard to the students if a joint tax return is being filed (8/10/93 revision). Must obtain a copy of the tax return. If all members are full-time students, and no-one is a dependent of another individual not in the household, they are now eligible due to 8/10/93 revisions. However; this may only apply to 7/1/92 and later funded projects. In all of these cases, the household must still be income eligible. (iv) In the case where one or more full-time students is married (not necessarily to another household member), and is Filling a joint tax return, they are eligible, (8/10/93 rules clarify this item).

NOTICE TO PROSPECTIVE TENANTS:

This apartment complex is a low income housing tax credit ("LIHTC") project. This means that the owner of this apartment complex has agreed to designate certain apartment units as LIHTC units, and comply with the requirements of the LIHTC program. The LIHTC program is a program to assist individuals with limited income to be able to rent apartments at more affordable rents. Under the LIHTC program, LIHTC units must be rented at certain reduced monthly rates to make the units more affordable. Additionally, the LIHTC units may only be rented to individuals who have limited incomes (those who earn no more than 60% (or in some cases lower) of area median income). To ensure that the LIHTC units are being rented at the proper reduced rates, and are being rented to those individuals who qualify by having limited incomes, the Utah Housing Corporation(the "UHC") will monitor this project for compliance with the LIHTC program. These compliance monitoring responsibilities will include verifying the amount of income earned by each tenant in an LIHTC unit.

To determine if you qualify to rent an LIHTC unit, you, and each person who will live in the apartment (over 18 years of age), will be required to disclose, and certify in writing, the amount of annual income you earn. You will also be required to provide sufficient documentation to verify the amount you earn by, for example, providing a copy of your federal income tax return, verification of income from employer, or other third party form of verification.

Additionally, each year you are a tenant in a LIHTC unit, you will be required to again disclose, and certify in writing, the amount of annual income you and each other tenant in your unit earns. The purpose of this is to ensure that the LIHTC units continue to be rented only to those individuals with qualifying income levels. The manager of the apartment complex will be able to assist you in determining whether you meet the income limitations to qualify for a LIHTC unit.

Please note that these requirements of the LIHTC program are required by law. Accordingly, the manager of the apartment complex does not have the authority to waive these requirements. If you will be unable to disclose, certify and provide supporting documentation as to your annual income level, then you cannot be a tenant in a LIHTC unit. Please check with the manager of the apartment complex to determine your eligibility upon making application.