COMPLIANCE MONITORING MANUAL

For The

Federal Low-Income Housing Tax Credit Program

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INTRODUCTION

This manual contains reference material for the Federal Low-Income Housing Tax Credit program and gives guidelines for qualifying families for occupancy based on income, calculating maximum rents, record keeping, adhering to occupancy rules, inspecting records and many other compliance issues and should be a useful resource for owners, developers, management companies, and on-site management personnel. **However,** this manual represents Virginia Housing Development Authority's understanding of **only** the Tax Credit program and may not include all information necessary to comply with the Code or with other financing or housing programs. Please use this manual as a supplement to existing federal laws, regulations and the Department of Housing and Urban Development's ("HUD's") Section 4350.3 Handbook. Laws, regulations and interpretations can change, and owners are advised to consult with qualified legal and tax advisors regarding their property's compliance.

SECTION 1.42-5(G) OF THE TAX CREDIT REGULATIONS STATES THAT "COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 IS THE RESPONSIBILITY OF THE OWNER OF THE BUILDING FOR WHICH THE CREDIT IS ALLOWABLE. THE AGENCY'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 DOES NOT MAKE THE AGENCY LIABLE FOR AN OWNER'S NONCOMPLIANCE."

SECTION 1

BACKGROUND

In 1986 as part of a major change in tax law, Congress enacted the Low-Income Housing Tax Credit ("Tax Credit") program as an incentive to encourage development of affordable housing. In exchange for the acquisition, rehabilitation or construction of affordable rental housing units, owners are allowed to reduce their federal tax liability. The Internal Revenue Service of the Department of Treasury ("IRS") is responsible for interpreting the statutes regulating the Tax Credit program, which is governed by Section 42 of the Internal Revenue Code (the "Code"). Virginia Housing Development Authority ("VHDA") is the state's designated housing credit agency working with both allocation and compliance monitoring.

Allocation - Annually, each state has a credit cap from which allocations are deducted. The cap is in an amount equal to $1.25 per resident in the state. The tax credit cap increased to $1.50 in 2001, $1.75 in 2002 and thereafter increases will be tied to the consumer price index. The amount of tax credits allocated to an owner is determined in one of two ways: 1) The tax credits from the above-mentioned annual cap are allocated through a competitive ranking process and the amount is based in part on the number of qualified low-income units that meet federal rent and income targeting requirements; 2) Properties receiving more than 50% financing through tax-exempt bonds may apply for 4% tax credits outside the competitive ranking process and receive "automatic" credits as long as there is a financial need.

VHDA may allocate only the amount of tax credits necessary to make a property economically feasible to produce and ensure viability of a property throughout the compliance period. VHDA annually publishes a Qualified Allocation Plan (the "QAP") establishing the guidelines and procedures for the acceptance, scoring and competitive ranking of applications. Questions regarding the QAP or allocation of credits should be directed to James Chandler of VHDA at 804-343-5786.

Compliance Monitoring - The 1990 amendments to the Code established compliance monitoring for **all** properties receiving credits in any year under Section 42 whether through the allocation process or through issuance of tax-exempt bonds. The Treasury Department published final regulations September 2, 1992; the effective date to begin monitoring tax credit properties was January 1, 1992. These regulations were amended effective January 1, 2001. Section 1.42-5 (a) of the U.S. Internal Revenue Regulations (the "Regulations") requires that each state's QAP include a procedure that the housing credit agency will follow to monitor for noncompliance with the provisions of Section 42 and to notify the IRS of any noncompliance of which the agency becomes aware. Procedures for monitoring contained in each state's Plan must be consistent with the Regulations and address the following areas: record keeping and record retention; certification and review; on-site inspection and notification of noncompliance.

Because of the competitive ranking process, owners may have to comply with additional state requirements beyond the federal code, and state guidelines may be more restrictive than federal regulations. Compliance monitoring for Virginia is administered by Cara Wallo, Tax Credit Compliance Manager. Please address questions regarding compliance monitoring to her at (804) 343-5640.

VHDA is a political subdivision of the Commonwealth of Virginia and does not receive any state appropriations to finance its operations. Operating funds come from the management of monies received from the sale of tax-exempt and taxable bonds, from fees associated with the administration of federal housing programs and from other non-state sources.

DEFINITIONS AND WEBSITES

Applicable Fraction - the lesser of (i) the unit fraction (number of low-income units divided by the total number of units) or (ii) the floor space fraction (low-income units' floor space divided by the total units' floor space).

Compliance Period - the 15-year period beginning the first taxable year of the Credit Period.

Credit Period - the 10-year period beginning the first taxable year the building is placed in service or the following year if the owner elects.

Eligible Basis - *generally*, the adjusted basis (costs minus depreciation) of the building including common areas such as laundry facilities, offices, etc. and excluding land.

Extended Use Period - the period beginning on the same day as the Compliance Period and ending 15 to 25 years after the end of the 15-year Compliance Period.

Form 8609 – following the final cost certification, an owner will file an application with VHDA requesting issuance of Form 8609 for each building in the property. This form sets forth the specific information about the ownership, the qualified basis , the property's placed in service date and maximum allowable credit amount and must be filed with the investor's tax return in order to claim the credit.

Form 8823 – a form filed by VHDA with the IRS to notify them of an event of noncompliance and any correction date, if applicable.

Minimum Set Aside - an election that the owner makes to rent either (i) 20% of the units in a building to households earning 50% or less of the area median income at move-in or (ii) 40% of the units in a building to households earning 60% or less of the area median income at move-in. In addition to the minimum set aside, there may be other, stricter, occupancy requirements (see Section 2, Paragraph B, for more information).

Placed in Service - for a new building, generally the date the units are available for rent (i.e., date of certificate of occupancy). For a building being rehabilitated, a building may be placed in service at any time the owner wishes, as long as the minimum rehab expenditure has been met and there is proof of occupancy of units by tax credit qualified households.

Qualified Basis - the applicable fraction multiplied by eligible basis.

Websites that may be helpful:

Code of Federal Regulations: www.access.gpo.gov/nara
Fair Housing Information from HUD: http://www.hud.gov/offices/fheo/FHLaws/index.cfm
HOME program: www.hud.gov/cpd/home
HUD: www.hud.gov
Income Limits: http://www.huduser.org/datasets/il/fmr01/index.html
Internal Revenue Service: www.irs.gov
IRS Private Letter Rulings: www.irs.gov/prod/news/efoia/determine.html
National Council of State Housing Agencies (which provides links to state housing credit agencies nationwide: www.ncsha.org
Rural Housing Service: http://www.rurdev.usda.gov/rhs
Tax Code On-line: www.fourmilab.ch/ustax/ustax.html
VHDA: www.vhda.com

SECTION 2

OWNER'S RESPONSIBILITIES

In exchange for a reduction in their federal tax liability, owners must meet certain requirements of the Code. A brief description of the owner's responsibilities follows:

A. Property Management

The owner is responsible for ensuring that the property is managed in accordance with all applicable laws, rules, regulations and policies that govern a tax credit property. Renting units to over income households, charging rent in excess of the allowable maximum or inadequately documenting information in unit files may result in the loss of ability to claim credits in the future or recapture of previously claimed credits. Hiring qualified and motivated persons and providing proper training for property management staff is one of the most important steps an owner can take to ensure that a property meets the many confusing requirements mandated by the tax credit regulations. Also important is a regular flow of information from the owner to the property management staff. Management staff needs to be aware of occupancy restrictions, fee and report deadlines and any rules changes. Clear communication and continuity of on-site staff will considerably reduce the chance that noncompliance will occur.

All tax credit units must be suitable for occupancy taking into account local health, safety and building codes. Owners and management staff should maintain the condition and appearance of the property through an efficient maintenance program.

B. Occupancy Set-Aside Requirements

During the competitive tax credit application process, the owner will choose one of two federal minimum occupancy standards to follow during the compliance period. Once the choice has been made it should be carried over onto Part II of Form 8609 and <u>cannot be changed</u>. The choices are:

1. 20% or more of the residential units in such property are both rent-restricted and occupied by individuals whose income at move-in is 50% or less of area median gross income or;

2. 40% or more of the residential units in such property are both rent-restricted and occupied by individuals whose income at move-in is 60% or less of area median gross income.

In addition to the above federal minimum standards, the owner may have contracted with the state during the tax credit allocation process to impose stricter occupancy requirements for the property (ex. 100% of the units to be rented to households whose income is at or below 60%, or even a split standard of 80% of units at 60% of income and the remaining 20% of units at 50% of income, etc.). For properties receiving credit allocations after 1989, the Extended Use Agreement that the owner and the agency signed (which is recorded in the appropriate Circuit Court Clerk's office) describes each property's specific occupancy requirements.

C. Compliance Period

Properties receiving an allocation of tax credits from January 1, 1990 forward must comply with rent and income restrictions for a minimum term of fifteen (15) years and, possibly, an extended period stipulated by the Extended Use Agreement. For properties receiving allocations prior to December 31, 1989 an Extended Use Agreement was not required and the compliance period is fifteen (15) years. This period begins the year the building is first available for rent, meets its minimum occupancy standard and begins its 10-year credit period (unless the owner elects on Form 8609 to begin the credit and compliance period the following year).

D. Record Keeping and Record Retention

Records must be kept for each building within a particular development, and must be kept by the owner for at least six (6) years after the due date (with extensions) for filing federal income tax returns for that year. **The records for the first year of the credit period, however, must be kept for at least six (6) 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.** It is recommended that copies of first-year records be made (hard copy, CD Rom, etc.) and stored off-site.

NOTE: If a building (or property) is sold or otherwise transferred by the owner, the buyer should obtain from the previous owner all information related to the first year of the credit period so that the buyer will be able to substantiate credits claimed.

For each property and for each qualified low-income building in the property, the owner must keep records for and certify the following information for each year:

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). This information is necessary to calculate the applicable fraction at the end of any year and also relates to how to determine the size of the next available unit when the 140% rule is applied (see later section regarding Increases in Income);

2. the percentage of residential rental units in the building that are tax credit qualifying 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;

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 move-in and annual income certification of each low-income resident per unit or, if the owner has received a recertification waiver letter from the IRS and it is in good standing, has received an annual Alternate Certification from each low-income resident (and documentation of income at move-in);

7. documentation to support each low-income resident's income certification consisting of verifications of income from third parties;

8. the eligible basis and qualified basis of the building at the end of the first year of the credit period as well as any change thereafter;

9. that all units are for use by the general public on a non-transient basis;

10. there was no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619 (**Note:** if a finding has occurred or VHDA receives notice from HUD or the Department of Justice, Form 8823 must be filed with the IRS);

11. each building is and has been suitable for occupancy and there has been no report of violation for any building;

12. the owner has complied with Sec. 42(h)(6)(B)(iv) and not refused to lease a unit to an applicant solely because the applicant holds a voucher under Section 8 of the U.S. Housing Act of 1937; and

13. the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42 (d) (for example, (i) resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities, or (ii) facilities reasonably required by the property).

E. Certification and Review

Annually, the owner will certify to VHDA that, for the preceding 12-month period, the property met the requirements of Section 42 of the Internal Revenue Code and whichever occupancy set-aside is applicable to the property (i.e., 20% @ 50% or 40% @ 60%). These certifications must be made under oath and are subject to the penalties of perjury provided by law. Each owner will provide to VHDA the Annual Owner's Certification in the form included as Exhibit A (or such document, as revised). Note that **the due date may change and the forms are modified frequently** – instructions are sent with the notice letter and we encourage you to ask questions before completing forms.

Noncompliance which is discovered from the review of items listed in the Annual Owner's Certification, during an on-site record inspection or in any other manner may reduce the amount of credits an owner may claim for a specific tax year and could result in recapture by the IRS of tax credits previously claimed. The owner will be provided the opportunity to respond to any noncompliance discovered. Please see Section D of VHDA's responsibilities for a discussion of the period for correcting noncompliance.

F. Compliance Monitoring Fees

Owners of all properties participating in the Tax Credit program must pay to VHDA an annual compliance monitoring fee for each unit for which tax credits were allocated and for which the compliance period was begun prior to or during the monitoring year. If monitoring fees are not paid by the due date set each year, the greater of $100 or a 10% late penalty will be imposed. To defray the cost of compliance monitoring, VHDA reserves the right to make such adjustments in the amount of the annual compliance monitoring fee as it shall from time-to-time deem necessary.

If monitoring fees are not paid, the record inspection cannot be completed and Form 8823, Report of Noncompliance, will be sent to the IRS.

If an owner notifies VHDA in writing that the credits will never be used and will be returned if allowed, the annual monitoring fee will not be imposed. In this event Form 8823 will be completed and sent to the IRS to inform them that the credits are no longer available to the owner.

For properties participating in the Rural Housing Section 515 program, VHDA entered into a Compliance Monitoring Memorandum of Understanding with the Rural Housing Service. The memorandum states that VHDA may obtain information directly from Rural Housing regarding household composition, income and rent paid by residents and may assume the accuracy of this information during a record inspection. As a result of the reduction in the time necessary for monitoring these properties, the current annual per unit monitoring fee is $10.

For all other properties, the current annual compliance monitoring fee per unit is $20.00.
The fee may change from time to time. Please contact VHDA to confirm the amount.

G. Liability for Noncompliance

The Owner assumes all liability for any instances of noncompliance and the correction of such deficiencies. Please see Section D of VHDA's responsibilities for a discussion of correction period.

H. IRS Form 8609 Submission

After the property is placed in service and IRS Form 8609 has been issued to the owner by VHDA, it becomes the owner's responsibility to submit the appropriate forms to claim the credit on an annual basis by filing a tax return with the IRS. Please follow the instructions attached to Form 8609 that specify how to complete Part II of the form and how to file properly with the IRS. If you need a copy of the instructions, please contact VHDA.

I. Sale or Transfer of the Property

The owner must keep VHDA informed of any change in management, mailing address or ownership of the property. If a property has received an allocation of credits (and has not placed units in service), VHDA should be notified in writing before any intended change in ownership. After units are placed in service, a change in the ownership of buildings or partnership interests before the end of the compliance period may be considered a recapture event by the IRS. Owners must notify VHDA of any such change (this may be accomplished on the annual Owner’s Certification of Continuing Compliance). VHDA will then notify the IRS of the change by filing Form 8823.

Recapture of the tax credits previously claimed may be avoided by posting a bond (or providing a Government obligation as security in lieu of a bond) in an amount that is satisfactory to the IRS. See IRS Revenue Ruling 90-60 and Revenue Procedure 99-11 for additional guidance on bonding requirements (copies are available upon request from VHDA’s compliance monitoring staff).

VHDA'S RESPONSIBILITIES

A. Training

VHDA will conduct periodic compliance monitoring training workshops. Although participation is not mandatory, we strongly recommend that personnel who are directly involved in the ownership and management of the property attend the training prior to placing units in service and on a regular basis thereafter.

B. Monitoring Process

VHDA will monitor **all** properties placed in service since the 1986 enactment of the Tax Credit Program (including those financed through Rural Housing or tax-exempt bond issues). VHDA will conduct its first tax credit inspection by the end of the second calendar year following the year the last building in the property is placed in service. Subsequent inspections will be conducted at least once every three years.

<u>Inspections for TC/Rural Housing Service properties</u>: VHDA will request the following information from RHS: 1) income and rent information to determine if all households were within the appropriate income maximums and rent limits at the end of the monitoring year and 2) copies of that calendar year's Physical Inspection, Supervisory Visit and Compliance Review Reports. If incomes and rents were within the maximums at year end and there were no violations noted in the Reports, a satisfactory inspection letter will be sent to the owner. If there are questions or compliance staff needs additional information, we will contact the owner. Any items of noncompliance discovered will be reported to the Rural Housing Service and the IRS in accordance with Sections C, D and E, below.

<u>File inspections for all other properties</u>: VHDA monitoring staff will select for review at least twenty percent (20%) of the low-income tax credit units located in the property. For each unit file selected, the inspector will review the total household income and the documentation supporting the stated income from the time of move-in to that unit and annually, annual rent and utility allowance documentation and such other records required to be kept on site as needed. Records will be selected by VHDA's compliance monitoring staff at the time the inspection is held.

Unless the owner shall voluntarily agree to a shorter notice period, the owner will be given at least ten (10) days notification before the inspection date. While it is not mandatory that the owner (or owner's representative) be present for the inspection, he/she should ensure access to records. Payment of the appropriate monitoring fee is required prior to the inspection by VHDA.

<u>Physical Inspections for all other properties</u>: VHDA will also conduct an on-site physical inspection of all buildings and the same 20% of the low-income units selected for the record inspection. The physical inspection, to meet the requirements of the Uniform Physical Condition Standards, may take place on the same date as the record inspection or be completed by the end of the following month. Buildings in all properties must meet federal accessibility requirements. Rental offices and public areas should meet ADA requirements. All first-floor units occupied after March 13, 1991 must meet Fair Housing accessibility standards (accessible routes to the building; all first floor units accessible; and owners must provide reasonable accommodations/modifications at residents' requests).

In addition to code-required inspections, VHDA has the right to, from time-to-time, perform additional record and/or on-site reviews. That right shall be ongoing through the end of the compliance period.

C. Inspection Report

Following the record inspection, a written report of findings will be provided to the owner. In the report, VHDA will summarize any noncompliance (exs., if required certifications are not found on site or if not permitted to review resident income records, supporting documentation or other necessary documents, or if it discovers by inspection, review, or in some other manner, that the property may not be in compliance with the provisions of Section 42 or the Extended Use Agreement).

D. Correction Period

Following notice to the owner of possible noncompliance, the owner will be notified of a cure period not to exceed ninety (90) days from the date of VHDA's written report to correct the discrepancy and provide VHDA with proper documentation. The owner's response must address all items individually and indicate the manner in which corrections were made. VHDA may grant up to a six (6) month extension of the specified correction period based on a case-by-case review.

E. Notice of Noncompliance to IRS

VHDA is required to file Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance" with the IRS no later than forty five (45) days after the end of the correction period (including any permitted extensions), and no earlier than the end of the correction period, *whether or not the noncompliance or failure to certify has been corrected*. VHDA will explain on Form 8823 the nature of the noncompliance or failure to certify and shall indicate whether or not the noncompliance was corrected. After Form 8823 has been filed noting uncorrected noncompliance, the owner may (within three years after the ending date of the correction period) provide documentation of correction. An amended, corrected Form 8823 will then be sent to the IRS.

Any change in either the applicable fraction or the eligible basis, defined at Sections 1.42(c)(1)(ii) and (vii), which results in a decrease in qualified basis under Section 42(c)(1)(A) from the preceding year is noncompliance and must be reported to the IRS. **Note:** a casualty loss is a temporary reduction in qualified basis and as such should be reported to VHDA. If the loss is restored within a reasonable period of time, there should be no recapture of credits previously claimed, however, credits may not be available during the time of repair.

Pledges made by the owner to the housing credit agency during the application process (ex: a split income/rent schedule of 80%@60% and the remaining 20%@50%) and mistakes regarding these covenants which are not met but which do not violate federal regulations may be reported to the IRS on Form 8823 as “other” noncompliance.

If VHDA 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 owner’s ability to claim the credits is lost and VHDA need not file Form 8823 in subsequent years.

Based on VHDA's inspections, its own audits and computer matching programs, the IRS is solely responsible for determining whether the building owner's credits are subject to disallowance or recapture.

F. Record Keeping

VHDA is required to keep records of noncompliance or failure to certify for a period of six (6) years beyond the date of filing of Form 8823. In all other cases VHDA is required to keep certifications, inspection reports and other records for a period of three (3) years from the end of the calendar year in which VHDA received or generated the certifications or reports.

SECTION 3 - QUALIFICATION OF PROPERTIES/HOUSEHOLDS

BACKGROUND

Management should explain to applicants that only qualified household may live in a tax credit unit. There are many qualified households, but it is management's responsibility to be sure that they are also "certified". Income restrictions apply to residency in the property and the anticipated gross income of all persons expecting to occupy the unit in the next 12 months must be third-party verified and included on an Income Certification before move-in. Applicants need to be educated that they will be expected to provide income information which will be reverified and recertified annually and that failure to cooperate is a material breach of the lease.

Rental units must be available to all members of the general public; however, preference to certain classes of applicants will not violate this rule if the preferences do not violate HUD policy governing nondiscrimination. HUD policies are set forth in HUD Handbook 4350.3. Preferences to the elderly and persons with disabilities will generally not violate the rules. Other allowable preferences are the homeless and transitional housing for the homeless (including women and/or women with children).

PLACING A PROPERTY IN SERVICE

The minimum set aside test (either the 20% @ 50% or 40% @ 60% election) must be met by the end of the first year of the credit period. This can be the year the building was actually placed in service – i.e., the units were available to be rented – or the next year, at the election of the owner.

New Construction Properties: Following the receipt of a certificate of occupancy, as the units are ready to be rented, they must be leased to households whose income is certified at or below the maximum income allowed.

Rehab Properties: Assuming there are households in residence, the initial certification of income showing the household is within the maximum may be dated up to 90 days before the acquisition date (and the verifications may be dated no more than 90 days before the certification is signed and dated by the residents and management). This change in policy takes effect January, 2002, and will allow an easier transition to a qualified tax credit property for those owners taking possession of a Section 8 project-based property or receiv-

ing tax-exempt bond funding. Previously, initial certifications were acceptable up to a year before the rehab placed in service date as long as the certification took place after acquisition.
After initial certification, the household will remain tax credit eligible even if household income increases before the placed in service date as long as the household continues to occupy a unit in the same building. If the household moves to a unit in a different building, it is considered a transfer, and income must be verified and certified within the then current maximum.

For both types of properties, the best way to approach an initial rent-up is to attempt to lease all the units in a building before renting units in other buildings and to try to qualify all never-occupied units before re-renting any previously qualified vacant units. This will allow flexibility in beginning the credit periods if some buildings will be placed in service before construction/occupancy is complete on other buildings.

THE LEASE

In general, occupancy must be provided on a non-transient basis to the general public. This means that residents should sign leases for an initial term of at least six (6) months. After the initial term the lease may convert to a month-to-month term.

There are, however, provisions for housing for the homeless and Single Room Occupancy (SRO) properties contained in 26 U.S.C. Sec. 42(i)(3)(B)(iii) & (iv). If your property falls under these rules, a thirty (30) day lease may be signed by residents of the low-income portion of the property and the property will still qualify for tax credits.

Suggested lease provisions are:

- Persons who intentionally misstate household size or income or otherwise attempt to mislead the owner as to their qualifications to occupy a low income unit will be evicted.

- Any change in a unit's household composition must be reported to the property management staff and reflected in the resident's file.

- Failure by the resident to provide required certifications or documentation is a substantial violation of the lease and is cause for eviction.

- The owner, the owner's representative, and staff of VHDA, accompanied by the owner's representative, reserve the right to enter the unit to inspect the physical condition of such unit.

- If all members of the household become full-time students not meeting any of the allowable exceptions, the household agrees to move out of the unit within _____ days (ex. 30, 60 etc.).

- Subletting/assignment is not allowed – all households must be qualified for occupancy and sign a lease.

If there are optional, extra charges for washer/dryer rental or pet fees, etc., they should not be included in the rent listed in the body of the lease. Use an addendum or separate agreement to ensure that those charges are completely separated from unit rent. An extra charge is optional as long as the household has a practical alternative to the option and as long as taking the option is not a requirement to live in the unit. Month to month fees may be charged but the regular rental rate plus the monthly fee must be below the maximum tax credit rent.

In situations where additional security is required to satisfy management's minimum credit requirements, guarantors are allowed; however, the guarantor has no right to the unit and should not sign the lease. In this instance also, use an addendum or separate agreement to ensure there is no question that the guarantor is not part of the household.

DEFINITION OF HOUSEHOLD

When determining the correct **unit size (# of bedrooms)** for a household, take into consideration the following persons who may be living in the unit:

- All full-time members of the household
- Unborn children of family members
- Children who are subject to a joint custody agreement regardless of the percentage of custody
- Foster children and foster adults
- Dependent children at school who live with parents during school recesses
- Live-in medical attendants

Note that there is not a tax credit standard for the minimum/maximum number of residents who may reside in a unit. For more specific information, consult your local zoning administrators or a knowledgeable attorney.

When comparing the number of persons in the household with the ***income limits*** do not consider the following persons or their income:

- Unborn children (a single pregnant woman, or an individual in the process of adopting a child under 18, must have an *income* at or below the income limit for *one person*)
- Live-in medical attendants
- Children residing with parents having *less* than 50% custody
- Children who live at school the majority of the year who are not claimed as a dependent of the house-hold
- Foster children and foster adults

Note: Depending upon the length of time an enlisted person is stationed elsewhere, the household may not want to reserve living space in the unit for military personnel; however, you must count the absent person as a household member and include his or her total income in the maximum income calculations. This is necessary because although he/she is physically absent, the unit is the person's permanent residence, he/she is leaving dependents and is probably contributing monetarily to the household.

PROCEDURES FOR MOVE-IN

1. Interview applicant(s) to obtain information on anticipated income, assets, family composition and student status for the future 12 months, and have applicant(s) sign an Application reflecting their information and sign any necessary verification request forms giving permission for release of information.

2. Verify the applicant(s) income (and assets, if necessary) using either the forms provided as Exhibits to this Manual or the property's specific forms.

3. After all verifications are returned and before allowing the household to move in, calculate and compare the total verified income to the maximum income limit for that household size. The total anticipated income must be below the limit. Complete and have the management agent and each adult resident sign and date the Income Certification within five (5) days before move-in. File the Certification with the supporting income verification forms. It is extremely helpful to attach a calculator tape to the Certification to show how management arrived at the total income.

Note: it is helpful to file papers by unit number and then within that file by date, oldest items first and newer items next. Keep the Income Certification together with the verification forms that support it. A colored sheet of paper between yearly information may make articles easier to locate.

FULL-TIME STUDENTS

A full-time student is defined as any individual, regardless of age, who has been or will be a full-time student (as determined by the school attended) at an educational institution with regular facilities and students during five (5) months of the certification year, other than correspondence school. Keep in mind that employment status has nothing to do with student status (i.e., a student may work 50 hours a week at three jobs and still be counted as a full-time student). Do not rent a tax credit unit to a household made up completely of full-time students unless:

- The student occupants are married (not necessarily to each other) and each occupant files a joint return for federal income tax purposes. In this case, be sure to get a copy of the past year's jointly filed income tax return. If a joint return has not yet been filed and the owner still wishes to allow the household occupancy, an option is to ask the applicants to sign a statement that they intend to file jointly and will provide a copy of the return after filing. Note that if a joint return is never filed, the owner may risk that the unit is non compliant for the period of time occupied by a household that did not actually meet this exception.

- The household receives Aid For Dependent Children benefits (under Title IV of the Social Security Act) or Temporary Aid to Needy Families (TANF).

- The student is enrolled in a job training program receiving assistance under the Job Training Partnership Act (employment and training programs for native Americans, migrant or seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs, etc.) or other similar Federal, State or local laws. It may help to compare a questionable program's "mission statement" to the JTPA's to see if it has a comparable purpose.

- The student is a single parent and his or her child(ren) and no one in the household is a dependent of a third party. Dependency may be determined by obtaining a copy of last year's tax return for the household and supplementing it with a statement from the resident that the dependent status will not be changing.

There is no "grandfather" provision relating to students. If at **any time** the household is composed entirely of full-time students not meeting any of the above exceptions, the unit is no longer a qualified tax credit unit and steps should be taken to modify the situation (exs. abide by a previous agreement that the household should move out; have one person reduce hours to part-time status; do not claim credits for the unit). To document full or part-time student status, use the Verification of Student Status form (Exhibit R). Remember, management is not required to verify every person's student status just the person that will qualify the unit by one of the exceptions above.

CHANGES IN HOUSEHOLD COMPOSITION

Occasionally residents will request that an additional person be added to their lease. Following move-in an increase (or decrease) in the number of people in a household is acceptable and the unit will remain tax credit qualified provided that the change was **not anticipated** at the time of move-in. If the change was in any manner anticipated (i.e., a new roommate or a marriage a week after move-in), then the change must be viewed as a way to avoid the income limitations. In this event, the addition of another member to the household should not be approved. The key factor is **intent**; properties should not routinely allow changes. Use common sense to detect misuse of this provision (ex. estranged couples "making up", single people applying for 2 or 3 bedroom units, repeat applications after initial disqualification).

Assuming that the change in composition was not anticipated, document the file to reflect the modification including completing an application, income verification and certification and adding the person to the lease. The combined income of the original resident and the additional resident may be above the tax credit income maximum only when at least one original member of the income qualifying household is still living in the unit. (Ex. Mary and Jane income qualify together and move into a unit. A year later Jane moves out. Mary still needs help with the rent so Carol moves in. Their income does not need to qualify under the limit. After a few months Mary, the last original income qualifying resident, is transferred to another state by her employer. At this point, Carol is the sole remaining resident. She was not a member of the original income qualifying household so must now income qualify for the unit to remain tax credit qualified.)

Although an unanticipated change in the income of a household does not need to meet the tax credit income guidelines, remember to rent the next available unit in the building to an eligible household if the newly combined income is greater than 140% of the current maximum. (See the section on "Increases in Income" for more detail.)

INCREASES IN INCOME (I.E., THE 140%/NEXT AVAILABLE UNIT RULE)

After a household moves into a unit and the income initially qualifies, that unit continues to be tax credit eligible until the household's income increases to a level that is **more** than 140% of the then current income limit. At that point, the residents do not need to move out. They may still live in the unit *and* the unit will remain a low-income unit as long as the next available vacant unit of comparable or smaller size in the same building is rented to a qualified low-income household. If at recertification the household's income does *not* exceed 140% of the limit no further action is necessary.

In properties that are 100% tax credit, the unit which exceeded the 140% income limit must **continue** to be rent restricted, and it will count as a tax credit eligible unit.

In mixed-use properties (those that have some tax credit units and some market rate units), after the next available unit of comparable or smaller size is rented or legally committed to be rented to a qualified household, the rent of the over-income unit may then be increased to market rate in accordance with any lease restrictions. At that time, the newly rented comparable size unit then becomes the tax credit qualified unit in place of the original unit that went over income. Comparable size is measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available (i.e., either number of bedrooms or square footage in the units).

> To calculate 140% of income:
> multiply the *current* applicable income limit adjusted to family size by 1.4.
>
> **Example**: At recertification the verified income for this 1-person household was $25,000. The 1-person income limit at recertification is $17,250. $17,250 * 1.4 = $24,150. **Result**: this household is above 140% of the then current income limit.
> **Response**: rent the next available unit of comparable or smaller size in the building to a qualifying household. Keep a record of to whom and the date the new unit is rented.

If the household's income is above 140% and the next unit is **not** rented to a qualified household, **all** units in the building having income above 140%, as well as the unit rented that did not qualify, will be in noncompliance. The rule is that if one mistake is made (i.e., one time the next unit rented is to a market household instead of a tax credit qualified household), then all units that are above 140% in that building are in noncompliance. The trade-off is not one unit for one unit, it is one unit for ALL over income units.

PROCEDURES FOR ANNUAL RECERTIFICATION

Within 12 months after the initial (or previous year's) income verification and certification, a recertification must be completed. Recertification takes place each year that a household is in residence in a tax credit property.

1. Notify the resident(s) in writing 30-90 days before the lease expiration (or, if the lease expiration and the recertification dates are not the same, the date the annual recertification is due) and schedule an appointment for an interview.

2. If the property has received IRS approval of the waiver of annual income recertification, simply have the residents complete the Alternate Certification (Exhibit F).

   If the property is still required to obtain third-party verifications of income, interview resident(s), have them complete the Application Addendum obtaining information on anticipated income, asset value, family composition and student status for the upcoming certification year and have them sign verification forms permitting third parties to release information.

3. Verify all household income (and assets, if necessary) using either the forms provided as Exhibits to this Manual or the property's specific forms. Remember that it is helpful to attach a calculator tape to the Certification to show how management arrived at the total income.

4. After all verifications are returned, calculate to see if the 140% rule comes into play. Complete and have the management agent and each adult resident sign and date the Income Certification. File the Certification with the supporting income verification forms. If annual recertification is due June 15 but verifications are received and the Certification signed in May, the next year's certification will still be due the next June. Reminder: verifications may be no more than 90 days before, and the signatures of the household members and management representative should be obtained on or before, the recertification due date (ex. if verifications are dated 5/25/99, instead of signing and dating the Certification 5/25/99, the Certification may be signed and dated anytime on or after 5/25/99 but before the due date, and noting on the Certification the recertification due date of June 15, 1999).

   If a recertification is completed late but management was able to obtain verification documentation "as of" the past due date and the Income Certification is signed using the current date with a declaration dated and initialed by the residents that "the information herein is true and complete as of [the past due date]", then the Certification will be considered timely; however the due date of the next recertification will remain due in the same month.

   If a recertification is completed late and the information does <u>not</u> relate back to the time it was due, it is an issue of noncompliance; however, the due date of the next recertification will remain the same (i.e., due date is March, but recertification not done until September and none of the information relates to March, then the next recertification will still be due in March – the recertification date will not change).

   A recertification completed more than 13 months after the prior certification that does not "relate back to the due date" will be considered noncompliance and will be reported to the IRS on Form 8823.

If during an annual recertification management discovers that a household moved in with income above the maximum there are several questions to consider. Did the residents give incorrect information on the application? If so, that should be a breach of their lease. Did management incorrectly calculate the income? If so, the household is not tax credit qualified. However, did that household's income drop below the applicable limit at any time after move-in? If so, the household may be considered tax credit qualified beginning at the time they were recertified below the then current income maximum. If that has not occurred, the unit still does not qualify and management should decide how to proceed (i.e., buy the residents out of the lease, not claim the credits for that unit).

WAIVER OF ANNUAL INCOME REVERIFICATION

Compliance monitoring regulations require that income for each tax credit qualified household be third-party verified and certified on an annual basis. This rule is in place to ensure that properties containing a mix of tax credit and market-rate units maintain from year to year the proper percentage of tax credit qualified units. (See the section discussing Increases in Income - the 140%/Next Available Unit Rule).

The next available unit rule applies to all tax credit properties, however, practically, it has the most impact on mixed-use properties. Properties that are 100% tax credit will always rent the next available unit to qualified households no matter what the situation and households with increasing incomes are not required to move out. Recognizing that 100% tax credit properties were completing paperwork having no "real" use, in 1994 the IRS issued Revenue Procedure 94-64 establishing a process for those owners to follow to request a waiver from the annual income verification requirement. In 1996, Virginia began allowing owners to apply for the IRS waiver.

Eligible properties: Properties that are 100% tax credit that have been placed in service, completed one year of annual compliance monitoring reports, are in good standing with VHDA and have no outstanding items of noncompliance are eligible to apply for this waiver. This includes 100% tax credit qualified properties with funding from HOME, VHDA taxable and tax-exempt bonds, VHDA housing funds and VHPRF funds may apply for the waiver.

Ineligible properties: Properties participating in other programs requiring annual reverifications of income (i.e., Rural Housing, Project Based Section 8).

The process: After contacting VHDA's compliance monitoring staff, the owner will be referred to the approved independent contractor to set up an income and eligibility review of 100% of the units in the property. Because the inspection agreement and any payments made are between the owner and contractor, noncompliance discovered as a result of the review is not reported to VHDA or the IRS. File corrections are worked out between the owner and the contractor. After the contractor determines that 100% of the units are tax credit qualified, he will issue a certificate to that effect. After VHDA receives the certificate, the monitoring staff will forward its certification letter to the owner who will deliver the request for the waiver to the IRS in the approved format (provided by VHDA).

Until the IRS issues its written approval of a property's waiver request and that approval has been received by VHDA, management must continue to complete annual income reverifications and an income certification. IRS approval of a property's waiver request relieves the property only from the burden of annual third-party reverifications of income. Still required are: verification and certification of income at move-in to a unit (or at transfer from building to building), annual *certification* (not verification) of household composition, income and student status, annual compliance monitoring reporting, payment of the appropriate compliance monitoring fee and cooperation during record inspections as required by monitoring regulations. Any properties funded by tax-exempt bonds that receive the waiver must continue to satisfy the documentation requirements for bond purposes.

If the IRS determines at any time following the grant of the waiver that substantial noncompliance has occurred, it may revoke the waiver and again require the owner to complete annual income reverifications.

SPECIAL OCCUPANCY RULES

Employee Units

Often an owner finds it necessary to have management, maintenance or security staff live on a site. According to Revenue Ruling 92-61 (available from VHDA compliance staff on request) the cost of such a unit is included in the eligible basis of a building, but the unit is not included in the number of units used in either the numerator or denominator to determine the applicable fraction.

This means that a staff person (regardless of whether their income is below the tax credit maximum) could live in the unit which would then be treated as common area like the management office or laundry area. No rent should be charged, and the employee should sign an employment agreement that terminates occupancy when employment is terminated. On the compliance reports, a 200 unit property would be shown as a 200 unit property with 1 unit being used as a staff unit. If there is no need for a management unit in the future, the unit would once again be rented to a tax credit qualified household, and the compliance report would list all 200 units as qualified. Generally, VHDA will accept that one unit per 100 units on a property may be "off-line" and used for staff.

Of course, employees could apply and be *income qualified* just as any other resident (any reduction in rent would then be added to the qualifying income).

In properties that are not 100% tax credit (i.e., there are market units in the property), the management, maintenance or security unit may not be counted as a tax credit unit unless the employee occupying the unit is qualified exactly as any other tax credit household.

Model Units

A model unit is a residential rental unit, is included in the number of units used to determine the applicable fraction when calculating the amount of the credit, and as such must be rented to a qualified household. At the time a household moves out, a property could temporarily convert a vacant unit to a model. Because of the vacant unit rule, if tax credits are claimed on the unit, continuing efforts must be made to market that unit to qualified households and the next available vacant unit in the property must be rented to a tax credit qualified household. An easier solution that allows a property to show a model would be to have an employee unit available to present to prospective residents.

Households Receiving Section 8 Assistance

Properties participating in the Tax Credit program may not refuse to house an applicant based solely on the fact that the household participates in the Section 8 Program. The household may, of course, be denied if it does not meet other normal selection criteria such as satisfactory landlord references or credit history or if the PHA payment standard plus any family contribution is below the normally required unit rent.

If the property enforces a minimum income, that minimum must not unfairly exclude those on assistance. Following are a couple of examples of how properties could choose to calculate the minimum income. There may also be other acceptable methods as determined by the owner. If the minimum for a 2-person household is $15,000, include the Section 8 payment of $300 per month ($3,600 per year) with the employment income of $12,000 to meet the minimum. Or, if the minimum is two times the unit rent, then because the PHA-paid rent is guaranteed, calculate a Section 8 household's minimum income based on the <u>family's</u> portion of rent payable (ex. PHA pays $300; family pays $100 per month. Minimum income would be $2,400 ($100*2*12.)

Unit Transfers

Effective September 26, 1997, an existing tax credit qualified household may transfer to a different tax credit unit *in the same building* within the property (a building is as defined on Form 8609). The transfer may take place without the household requalifying below the income maximum. Although the income of the household need not be below the maximum at the time of the transfer, management should continue to require a new application to be sure that (1) all household members are not full-time students and (2) the household is not above 140% of the then-current income maximum thus triggering the next available unit rule previously described.

If a household wishes to transfer to a unit in a *different building*, it must be treated exactly as a prospective resident in a new move-in and qualify within the income maximum. Therefore, all application, verification and certification procedures must be completed for the transferring household. Income verifications already completed may be used if the transfer occurs within ninety (90) days of a previously completed verification and certification of income although a new Certification would need to be signed.

<u>Medical Transfers</u> - If an existing tax credit qualified household needs to transfer to a different unit (whether or not in the same building) to accommodate a medical condition it may do so according to normal transfer rules. Management should obtain written verification of the medical necessity of the transfer from a third-party source.

<u>Emergency Transfers</u> - If a unit is damaged and is uninhabitable, existing tax credit qualified households may be relocated according to normal transfer rules. Also, place a memorandum of explanation in the damaged unit's file as well as the new unit's file to answer potential questions during future record inspections. A "temporary" move to another building may be allowed as long as the household returns to the original unit. If the household decides not to return, a full application and qualification of income must take place.

Vacant Low-Income Units

If a low-income household moves out of a unit, such unit may continue to be counted as a tax credit vacant unit as long as reasonable attempts are being made to rent that unit to a qualified low-income household and as long as the next available unit of equal or smaller size **in the property** is occupied by a qualified low income household.

This becomes particularly important to properties that do not have 100% tax credit qualified units. If a tax credit unit becomes vacant and a market unit is also vacant, the tax credit unit must be rented (or contracted to be rented) before the market unit or the vacant unit rule is violated regardless of whether the units are in the same or different buildings.

SECTION 4 - INCOME AND ASSETS (DEFINITION AND VERIFICATION)

WHAT IS INCOME

Annual income is the total **gross** income from all sources received by each adult member of the household, including all income from assets, anticipated to be received for the twelve (12) month period following the date of certification of income. The goal in qualifying applicants to live in a tax credit property is to use a reasonable method to determine and verify through outside sources (third parties) total income for the household.

The tax credit definition of income is not necessarily identical to income included for Federal income tax purposes (ex. pre-tax contributions to a 401K plan must be included in the maximum income calculation for occupancy even though it is exempt from federal income tax until withdrawn).

A. Annual income includes, but is not limited to:

1. The full (gross) amount (including any special pay and allowances for a member of the Armed Forces), before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services, as well as salaries from a family-owned business;

2. Net income, salaries and other amounts distributed from operation of a business or profession;

3. The full (gross) amount (before deductions for Medicare, etc.) of periodic payments received from Social Security (including payments received by adults on behalf of minors or by minors for their own support as well as spousal survivor benefits), annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts. If a Social Security payment is being reduced for a prior overpayment count only the actual amount being paid after the adjustment;

4. Payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay (include amount of any monthly payments to begin during the upcoming

12 months). A lump sum of unemployment compensation is income unless the payment is shown to be for a period of time during which the recipient was not living in assisted housing;

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

6. Lottery winnings paid in periodic payments (lump-sum winnings are included in family assets);

7. Welfare assistance including AFDC/TANF;

8. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling. Note that if a third party is regularly paying bills on behalf of the resident, even if paid directly to a third party, the amounts should be included in income. An exception is payments made directly to a third-party child care provider by someone not living in the unit;

9. Long-term care payments above $180 per day.

Certain earnings statements (ex., the military leave and earning statement or some employer's pay stubs) may show only taxable income. Be sure to inquire whether the applicant receives income that is deferred to any type of non-taxable account (ex., to a 401K or retirement account) and, if so, add that amount to regular income.

B. Annual income excludes certain sources of income such as:

1. Employment income of members of the household under 18 years of age, including foster children under 18. Earned income (over the first $480) from full-time students 18 or over, who are dependent on the resident household, is also not counted. However, the head of household and spouse (or co-head) may never be considered dependent minors and all income must be included. If a spouse is 16 years of age and working, income is included;

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

3. Grants or other amounts received specifically for:

    a. Auxiliary apparatus for a handicapped person;

    b. Expenses for attendant care provided by other than a family member living in the household;

    c. Medical expenses;

    d. Use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income (SSI) eligibility;

e. Out-of-pocket expenses to allow participation in publicly assisted programs (including special equipment, clothing, transportation, child care, etc.)

4. Income associated with persons that live in the unit but are not household members. For example:

   a. Payments received for care of foster children or foster adults; and,

   b. Income of medically necessary live-in attendants;

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

6. Educational scholarships and grants, veteran's educational benefits or student loans (regardless of how the loans are actually spent);

7. Hostile fire pay to a family member in the military (otherwise, include all types of income: BAQ, VHA, Com Rats, Sep Rats, Clothing Allowance, Career Sea Pay, Hazardous Duty Pay, etc.);

8. Lump-sum additions to family assets such as delayed payments of Social Security or supplemental security, inheritances, cash from sale of assets, one-time lottery winnings, settlement under health and accident insurance and workmen's compensation, and settlement for personal or property losses;

9. Temporary, nonrecurring or sporadic income (including gifts and income from such employment as census taking, delivering phone books, etc.);

10. Annual rent credits or rebates paid by government agencies;

11. Payments received under training programs funded by HUD (Comprehensive Improvement Assistance Program);

12. Rent rebates made by the property;

13. Other forms of income excluded by federal statutes:

   a. Value of the allotment made under the Food Stamp Act of 1977;

   b. Payment under any state or local employment training programs, income from training of resident management staff as well as any monies received under the Job Training Partnership Act. Effective 7/1/2000, references to Job Training Partnership Act shall be deemed to refer to the Workforce Investment Act of 1998 (29 U.S.C. 2931). Not included is income are any allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act through employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans' employment programs, state job training programs, and career intern programs;

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

d. Payments received under Alaskan Native Claims Settlement Act;

e. 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, and Older American Community Service Employment Program);

g. Payments from certain submarginal U.S. land held in trust for certain Indian tribes;

h. Payments, rebates, or credits received under federal Low-Income Home Energy Assistance Programs (including any winter differentials given to elderly);

i. Payments from disposal of funds of Grand River Band of Ottawa Indians;

j. Scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or Bureau of Indian Affairs student assistance programs (ex. Pell Grants, Supplemental Opportunity Grants, State Student Incentive Grants, College-Work Study and Byrd Scholarships);

k. Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation;

l. Payments received under the Maine Indian Claims Settlement Act of 1980;

m. The value of child care provided or arranged for under the Child Care and Development Block Grant Act of 1990;

n. Resident service stipends;

o. Adoption assistance payments;

p. Homecare payments made by a state agency for families with developmentally disabled children or adults;

q. Earned income tax credit refund payments received on or after January 1, 1991;

r. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;

s. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990;

t. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;

u. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) because of the commission of a crime against the applicant (42 U.S.C. 10602);

Although not specifically noted as excluded, it is generally accepted that the dollar value of Section 8 or other housing certificates is not required to be included in household income.

Note: This information is current at the distribution date of this manual; however, from time-to-time HUD may change what is included or excluded from the definition of income.

C. How to Annualize Income

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

1. To annualize full-time employment, multiply;
   - hourly wages by 2080
   - weekly wages by 52
   - bi-weekly amounts by 26
   - semi-monthly amounts by 24
   - monthly amounts by 12

2. To annualize income from anything other than full-time employment, multiply:
   - hourly wages by the number of hours the family member expects to work annually
   - weekly amounts by the number of weeks the family member expects to work
   - other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the family member expects to work

3. Annual wages must reflect a full twelve (12) month period, regardless of the pay schedule. Example: if a teacher earns a gross annual salary of $25,000, the $25,000 should be used as annual salary whether the teacher is paid over only nine months or throughout the year.

Because the tax credit program carries heavy penalties for moving an over-income household into a unit, always calculate income using the highest number of hours/weeks/periods.

WHAT IS AN ASSET

Assets are items of value, other than necessary personal items. Income from assets is added to regular income to determine the eligibility of a household. Asset information (total value and any income) must be obtained from the applicant before move-in. The applicant should declare that asset information is correct by executing the Income Certification.

If an applicant declares a combined total asset value of $5,000 or less, third-party verification is not necessary; however any *actual* income the applicant receives and declares (ex., interest on a savings account) must be added to regular income.

If an applicant declares a combined total asset value of more than $5,000, third-party verification of each individual asset must be obtained, and the greater of the total actual income from the asset(s) or the imputed income based on the total asset value must be added to regular income.

Note: Internal Revenue Procedure 94-65 which allows properties to waive verification of assets when the household's total cash value is $5,000 or less is a tax credit rule only. If your property participates in any other type of funding with different rules, management must comply with the stricter rule and verify assets. Examples of housing programs that require asset verification are: Section 8 and Rural Housing funding. Note that as of 2000, VHDA loan requirements regarding assets are now the same as tax credit requirements.

A. Assets include:

1. Cash held in savings and checking accounts, safety deposit boxes, homes (mattresses, pants pockets and purses, too!). For savings accounts, use the most current balance and for checking accounts, use the average balance for the last six (6) months.

2. The principal value of any trust available to the household. Do not include trusts to which no family member has access. An example is an irrevocable trust (i.e. a trust fund established for a son or daughter prior to the parent's death. The parent receives only the interest from the trust during his/her lifetime – the interested is counted as income - and cannot withdraw the principal – so the principal is not an asset.)

3. Equity in real estate, rental property and other capital investments. Include the current market value less any unpaid balance on loans secured by real property and less any reasonable costs that would be incurred in selling the asset (prepayment penalties or broker fees). In Virginia, it is permissible to use 10% of the value as an estimate of the costs of disposal. Absent third-party verification of no control or ownership, if an applicant is separated or in the process of obtaining a divorce but is still the owner of record for a home, verify the value and include interest on the individual's pro rata ownership portion of the property.

4. Stocks, bonds, treasury bills, certificates of deposit, money market funds, etc.

5. Individual Retirement (IRA) and Keogh Accounts as well as any 401(k) tax-deferred savings accounts. If the individual is withdrawing from an IRA or Keogh account, determine the amount of the asset by using the average balance of the account for the previous six months. Do not count the withdrawals as income.

6. Retirement and pension funds (and annuities);

   a. While the person is employed, include only amounts the individual can withdraw without retiring or terminating employment; and,

   b. At retirement or termination of employment, if benefits will be received in a lump sum, include the benefits in net family assets. If benefits are paid in periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.

7. Lump-sum receipts including inheritances, capital gains, one-time lottery winnings, insurance settlements or other claims and the delayed receipt of Social Security or SSI benefits.

8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, paintings, etc. (wedding rings and jewelry for personal use are not considered assets).

9. Cash value of life insurance policies available to the individual before death (ex. the surrender value of a whole life or universal life policy). Term life insurance is not included as an asset because it has no cash value to the individual before death.

10. A mortgage or deed of trust held by an applicant. Payments are usually received as one combined figure of principle and interest. Separate the principle and interest portions (by using an amortization schedule) and include only the interest for the future 12 months as income. Determine the amount of the loan outstanding at the end of the 12-month period following the certification and include that amount as the asset value.

Note: Assets owned by more than one person should be prorated according to the percentage of ownership.

B. Assets do not include:

1. Necessary personal property (i.e., clothing, furniture, automobiles, wedding rings and personal jewelry, etc.)

2. Vehicles specially equipped for the handicapped.

3. Interest in Indian Trust Land.

4. Value of term life insurance policies.

5. Equity in the cooperative unit in which the family lives.

6. Assets that are part of an active business. ("Business" does not include rental of properties that are held as investments and not a main occupation.)

7. Assets held in the applicant's name, but which are actually owned by someone else; such as:

    a. Assets and any earned income that is accrued or paid to the benefit of someone else; or,

    b. A situation wherein another person is responsible for income taxes incurred on income generated by the assets; or,

    c. An applicant responsible for disbursing someone else's money, such as in the case of having Power of Attorney, but the money is not his/hers and no benefit is received.

8. Assets that are not accessible to and provide no income to the applicant (ex: a battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash. In situations such as this, write an explanation for the file and have the individual and management staff sign and date it).

9. Mobile homes unless the unit has been situated on a foundation and is taxed as real property.

C. Sale or Disposition of Assets (2-year rule)

At the time of application, ask if anyone in the household has disposed of any assets for less than fair market value at any time within two years before the effective date of the Income Certification.

If there is more than $1,000 difference between the amount received for the asset and the fair market value of the disposed asset, then include in asset value that entire difference. If the difference is less than $1,000, do not count it.

> Example: Mr. Smith sold his home to his nephew for $5,000. The home could have been sold to any other buyer for $60,000. $60,000 minus $5,000 = $55,000. This difference between the value and the price received is greater than $1,000. Include $55,000 in total household asset value.

Note: Income from assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy or a final divorce decree are <u>not</u> to be included in the fair market value determination. However, if an individual is still the owner of record of property (ex. the sale has not yet taken place or the divorce is not yet final), include as an asset the value of the individual’s share of the property.

Note: Impute income from (i) assets put into trust in the past two years (even if the trust is irrevocable) and (ii) business assets disposed of for less than fair market value. Business assets are excluded from net family assets only while they are part of an active business.

D. Determining the Value of Assets

When computing asset value, use the cash value of the assets. This is the amount the individual would receive if the assets were converted to cash. Expenses which may be deducted include:

- penalties for withdrawing funds before maturity (for 401(k), IRA or retirement accounts do not use taxes as part of the "costs" or "penalties" of withdrawing funds);
- broker/legal fees assessed to sell or convert the asset to cash; and,
- settlement costs for real estate transactions (if actual fees are unknown, you may deduct 10%).

E. Determining Asset Income

If the combined total net asset value for the household is $5,000 or less, add to regular income the amount of <u>actual</u> income the applicant declares he receives from each of the assets.

If the combined total net asset value for the household is more than $5,000, verify each individual asset and add to regular income the **greater** of

1) the combined total actual annual income from all the assets, or
2) 2% of the value of the total combined assets (i.e., "imputed" annual income).

NOTE *- 2% is the current HUD passbook savings rate. However, this rate is subject to change at any time based on current passbook savings rates in Virginia.*

Include interest even if it is reinvested. Calculate the amount by using an annual percentage rate or multiply interest received in one month by 12 to get an annual amount.

<u>Example 1 (showing home not rented):</u>

Asset	Value	Imputed Income (value x 2%)	Actual Income

Checking Acct (verify avg. last 6 mos.)	$225	$4.50	$0
Savings Acct w/5% interest (verify last mo.)	$2,500	$50	$125
House (*not rented*) (subtract loan balance from Tax assess. value of property, then subtract 10% of value To convert to cash value ex. $65,000 - $20,000 = $45,000 - $6,500 = $38,500 (verify ALL figures)	$38,500	$770	$0
(TOTAL Add higher total to income)	**$41,225**	**$824.50**	**$125**

<u>Example 2 (showing home with rental income):</u>

Asset	Value	Imputed Income (value x 2%)	Actual Income
Checking Acct (verify avg. last 6 mos.) Savings Acct w/5% interest (verify last mo.)	$225 $2,500	$4.50 $50	$0 $125
House (*rented*) (subtract annual overhead from annual income - ex. ($550 p/mo. rent) $6,600 - (mort. interest & taxes $375 + $50 p/mo * 12) $5,100 = $1,500 (verify ALL figures)	$38,500 (calculated and verified same as above)	$770 (calculated same as above)	$1,500
TOTAL (Add higher total to income)	**$41,225**	**$824.50**	**$1,625**

The combined total of regular income and asset income should not exceed the applicable maximum low-income limits.

<u>HOW TO VERIFY INCOME AND ASSETS</u>

All regular sources of income (except income from total assets with a cash value of $5,000 or less), must be verified prior to move-in and reverified annually (preferably during the month the resident originally moved into the unit). Verifications of income are valid for ninety (90) days before the move-in income certification or annual recertification (i.e., a verification is good for up to 90 days from the date of the employer's signature). Virginia does not accept verbal updates to a verification that is more than 90 days old.

One of the most common errors made when processing applications is the failure to catch amounts reported on the application that are either not verified or are in conflict with what is reported on the Income Certification. Management staff is obligated to investigate any verbal or written discrepancies in reported household income and to use reasonable diligence in explaining the differences.

The need for proper documentation cannot be too highly stressed. Although many applicants will clearly qualify below the income maximum, it is imperative that the resident's file contain adequate documentation to support that decision. An inadequately documented file may result in the loss of tax credits even if the household is actually qualified. The burden of proof is on the property owner; however, too much paper is almost as bad as too little. Be sure that you have what you need and don't confuse the issues with too many types of back-up verification. You may use a cover letter to explain forms sent to employers.

NOTE: a unit may not be counted as a qualified tax credit unit unless the household income has been properly verified *and* certified.

A. Methods of Verification of Income

1. Written Verification

   a. Written independent third-party verification of income is required. Assets need only be verified when the total value is greater than $5,000 (unless there is another program in which the property participates that requires verification). Managers may use the verification forms provided in this Manual, but if not used, any request for verification must:

      1. State the reason for the request;

      2. Include a release statement signed and dated by the applicant; and

      3. Provide a section for the employer or other third-party source to state the applicant's current anticipated gross annual income (or the rate of pay, number of hours worked and frequency of pay). Bonuses, tips, and commissions must be included. Spaces should also be available for a signature, job title and date by the verifying party.

   b. Verification Transmittal and Receipt

      1. A recommended good practice is to ask applicants to sign two copies of each verification form. The second copy may be used if the first request is not returned in a timely manner.

      2. Income verification requests should be sent directly to and from the source, *not routed through the applicant*. It may help if a self-addressed, stamped envelope is included with the request for verification. **Faxed verifications are acceptable**. A good practice is to call back to the provider to confirm the amounts on the fax and to be sure that the header information reflects the same employer/company from which you requested information.

      3. A verification may be hand-delivered by the applicant <u>only</u> if it is returned by the employer on the letterhead of the source or is a notarized affidavit.

      4. It is helpful to keep the canceled stamped envelope in the file and/or to call the employer and make a note that you received verbal confirmation of the income reflected.

Do not accept a verification that has information that is "whited-out" or one that does not clearly address all questions (all blanks should be filled in - with 0's if not applicable).

2. Verbal Verification

   As a normal practice, verbal verification is not acceptable; however, when written verification has been attempted but is absolutely not possible prior to move-in, direct contact with the source will be acceptable only as a last resort and must be followed by written verification. The conversation should be documented by noting the income amount, name and title of the contact person providing the information, name of the on-site management representative accepting the information and the date, as well as an *explanation* of why written verification was not possible. Remember to follow up with written verification. Be aware that there are very few situations when this procedure is acceptable and that verbal verification will bring up questions during an inspection.

B. Sources of Income Verification

Following are examples for sources of verification for each type of income listed in order of acceptability. If the preferred documentation is unavailable and an alternate is used, management should make a note of their attempts to obtain the preferred method and the reason it is not available and file it with the verification received.

1. Employment Income

   a. Employment verification forms (see Exhibit G & H for suggested formats) completed by the employer or a statement from the employer on company letterhead (which must state that income is anticipated for the next 12 months);

   b. Several consecutive current check stubs from the employer showing gross income per pay period and frequency of pay or a printout of pay history (this is especially helpful with seasonal or shift workers);

   c. If the applicant still works with the same employer, confirmation of that fact, along with a copy of the most recent income tax returns signed by the applicant or copies of Form(s) W-2 providing the amount of income, including income from tips and other gratuities supported by a statement from the applicant.

   d. If third-party written verification is unavailable, document the file to that effect. Other methods of receiving verification are: through the internet at www.TheWorkNumber.com with a customer service number of 1-800-996-7566; Verifacts, a fax verification service at 314-983-3001; Everyone For Work at 1-800-660-3399.

2. Self-Employment Income - any salary being paid is counted as income as well as any net income from the business itself (see Exhibit O for suggested format).

a. Accountant's or bookkeeper's statement of net income and a notarized statement from the business owner on anticipated income; or,

b Financial statement(s) of the business along with an affidavit or notarized statement from the applicant forecasting the anticipated income for the twelve (12) months following certification; or,

c. The prior year's income tax return (Schedule C, the 1040 or K-1) along with a notarized statement from the applicant forecasting the anticipated income for the twelve (12) months following certification. This form of income verification alone may not be acceptable as it reflects the prior year's situation rather than that of the future 12 months. Year-to-date income verification, as well as projections, etc., can be used to supplement other methods of certification.

3. Social Security, Pensions, Supplemental Security Income (SSI), Disability Income

a. A benefit verification form completed by the agency providing the benefits (see Exhibits J & K for suggested formats); or,

b. An award or benefit notification letter prepared by the authorizing agency. Since checks or bank deposit slips show only net amount remaining after deducting SSI, Medicare or state health insurance, they should be used only as a last resort accompanied by an explanation of why they are being used. Any withholdings must be verified and included in annual income. To receive a Social Security or SSI printout, you may also try calling 1-800-772-1213 and supplying the applicant's social security number and birthdate; the printout will be mailed to the person.

Because income is based on what is to be received for the future 12 months, if the Social Security Administration or other plan provider has published a cost of living adjustment, include the increased amount as necessary (ex. for a December move-in, use the verified monthly amount for December, then add in the cost of living adjustment for the remaining eleven months).

4. Unemployment Compensation

a. A verification form completed by the unemployment compensation agency (see Exhibit L for suggested format); or,

b. Records from the unemployment office stating payment dates and amounts. Also, remember to ask the applicant to sign a statement reflecting his anticipated work status after the benefit is discontinued.

5. Alimony or Child Support Payments – if the payments are court ordered the full amount must be included in qualifying income unless the applicant certifies the income is not being provided and gives information showing reasonable efforts have been made to collect the amounts due (this would include filing with courts or agencies responsible for enforcing payments, consulting an attorney or Legal Aid, etc.).

a. A copy of a separation or settlement agreement, a divorce decree or verification from the clerk of the court (see Exhibit M for suggested format) stating the amount and type of support payment schedule. If those documents are not dated within the 90-day time frame, include a written statement from the applicant reflecting current income; or,

b. An affidavit from the person paying support (see Exhibit M for suggested format); or,

c. A copy of the latest check and documentation of how often the check is received; or,

d. As a last alternative, the applicant's statement of the amount being received, including a written explanation detailing why a, b, or c above cannot be provided.

6. Recurring Contributions and Gifts

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

b. A letter from a bank, attorney or a trustee providing required verification; or,

c. As a last alternative, the applicant's statement giving the same information, including a written explanation detailing why a or b above cannot be provided.

7. Unemployed Applicants

a. The income of unemployed applicants with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as described previously. It is also a recommended practice to ask the applicant to also sign a Non-Employment Affidavit. This is especially important for persons who are receiving Social Security icnome. Many people do still work but consider themselves retired, so it is to the owner's benefit to be sure employment income is not being received.

b. If the applicant is currently unemployed and claiming zero (0) income or is unemployed but has an offer to begin working within the next 12 months, he/she should provide evidence of current anticipated income for the certification year by executing a Non-employment Affidavit (see Exhibit N for suggested format). If an offer of employment is outstanding third-party verification from the place of employment is required.

8. Other income--in the case of a household participating in the Section 8 program, the local public housing authority's Certification of Income as set forth in Exhibit P to this manual or HUD Form 50058 or 50059 may be used in place of the property's own third-party verifications. The 50058/50059 may also be used in place of the Certification if it is properly completed and signed by all adults in the household.

C. Sources of Asset Verification

1. Checking and Savings Accounts or other types of accounts held by a bank

    a. Request for Verification of Assets (of all types) attached to this Manual as Exhibit Q; or

    b. For a checking account, copies of the account statement for the last six months to get a six-month average balance.

    c. For a savings account, a copy of the most current account statement.

2. Trust Funds

    a. Copy of the most current fund statement showing value and any interest earned.

    b. Letter from the trust administrator or representative of trustee.

3. Real Estate

    a. Copy of most current tax assessment (as long as assessment is for 100% of value) or statement from real estate broker.

    b. If under contract of sale, a copy of the contract.

    c. For the outstanding loan balance, a payoff statement from the mortgage holder.

4. Stocks, Bonds, Treasury Bills, Money Market Accounts, Certificates of Deposit

    a. Copy of the most current account statement (remember to determine if there is a penalty for early withdrawal).

    b. A statement from a brokerage account or bank representative.

    c. For stocks/if publicly traded, a copy of newspaper showing current share value. Multiply the number of shares by price per share for total value, then multiply the number of shares by the dividend for actual asset income (if dividends paid quarterly, multiply by 4); for savings bonds determine the type of bond and face value, then check the internet (www.publicdebt. ustreas.gov/sav/savwizar.htm) and use their calculation feature for value and interest.

5. Retirement and Pension Funds

    a. Copy of the most current account statement showing the ownership (vesting) percentage showing value and any interest earned (remember to determine if there is a penalty for early withdrawal).

b. Copy of the most current benefit statement.

6. Whole Life or Universal Life Insurance Policy

   a. Copy of the most current statement showing cash value and any interest earned (remember to determine if there is a penalty for early withdrawal).

   b. Statement from the insurance company as to value of policy.

7. Personal Property Held as an Investment (i.e., paintings, jewelry, coin or stamp collections)—copy of a 90-day current appraisal of value.

8. Mortgage or Deed of Trust Held by an Individual--copy of an amortization schedule relating to the specific term and interest rate of the mortgage.

SECTION 5 - HOW TO CALCULATE MAXIMUM INCOME LIMITS

HUD annually publishes median income information for Virginia by county or metropolitan statistical area (MSA) of the state. An amendment in the 1987 Housing and Community Development Act established a minimum income limit based on the state's nonmetro median family income level. This increases income limits in a number of counties which had lower income limits than the State's Nonmetro median family income. HUD may also adjust income limits for a small number of counties with unusually high or low housing costs in relation to income. To obtain a copy of the HUD Section 8 Existing Income Limits contact 1) VHDA's compliance monitoring staff, 2) visit VHDA's website at www.vhda.com (select HUD Income Limits, then search for your geographic location), 3) contact the Department of Housing and Urban Development, State Coordinators Office, 3600 West Broad Street, Richmond, VA 23230 or 4) visit HUD's website at www.huduser.com (select data sets then income limits).

If you should ever see income on any HUD chart titled "Low Income" know that this level is adjusted to 80% of the median income based on family size and, if used, will result in households above the tax credit income maximums. **Do not ever use the Low Income line!** Always begin calculating income using the ***Very Low Income*** level because it is adjusted to **50%** of the median income based on family size.

If your property is qualifying applicants using the 20% @ 50% minimum set aside election, use the "Very Low Income" line for your area for the appropriate family size. That is the maximum income for that family size.

If your property is qualifying applicants using the 40% @ 60% minimum set aside election, use the "Very Low Income" line for your area for the appropriate family size and multiply each number by 1.2 (example: very low income for a family of three is $26,800; to calculate the 60% limit, multiply $26,800 x 1.2; the 60% limit for a family of three in that particular area equals $32,160). **Do not round to the nearest $50.**

If your property is qualifying applicants at no more than 40% of area median income, use the "Very Low Income" line for your area for the appropriate family size and multiply each number by .8 (example: very low income for a family of three is $26,800; to calculate the 40% limit, multiply $26,800 x .8; the 40% limit for a family of three in that particular area equals $21,440). **Do not round to the nearest $50.**

The following is an example of how to compute 60% income limits using HUD's 2000 Income Schedule and the Richmond MSA.

Number of Persons	1	2	3	4	5	6	7	8
Very Low Income (50%)	$20,850	$23,800	$26,800	$29,750	$32,150	$34,500	$36,900	$39,250
Multiplied x	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
Income (60%)	$25,020	$28,560	$32,160	$35,700	$38,580	$41,400	$44,280	$47,100

NOTE: HUD rounds to the nearest $50.00 when computing the 50% income limits. Section 42 does NOT allow owners to round when computing other income limits.

SECTION 6 - HOW TO CALCULATE MAXIMUM RENT

As a basic principle, the rent (including all utilities) should not exceed 30% of the maximum allowable income limit for the household as adjusted for family size. Contrary to methods used by HUD-assisted or Rural Housing assisted properties, maximum allowable rent is *not* based on the household's *actual* income at move-in or recertification, rather, it is based on 30% of the *maximum allowable* income. Management staff should begin the rent calculation by finding the property's geographic area on the HUD income limit chart.

One exception to the rule that ties the rent limit to the allowable income limit is if during the allocation process the owner contracts to allow the household incomes to go up to the 60% limit while restricting the rents to no more than the 50% level. Please review your Extended Use Agreement to determine if this applies to your property or contact VHDA.

There are two approved methods of calculating rents for tax credit properties. Section 42 does not allow an owner to charge rent in excess of the exact amount calculated through the processes described in this manual. Do not round the rent calculation up to the nearest $.50 if rounding pushes the rent over the calculated maximum. VHDA publishes a chart showing maximum rents according to Method 2. Please visit www.vhda.com and click on the quick links drop down box under Multifamily Housing programs. Click on Income and Rent Limits and then go to the Maximum LIHTC Gross Rents chart and search for your geographic area.

Following are explanations of both calculation methods.

METHOD 1 - BASED ON NUMBER OF HOUSEHOLD MEMBERS

For properties receiving tax credit allocations from January 1, 1987 through December 31, 1989 (which did **not** make the election to determine rents based on number of bedrooms), the household's gross rent may not exceed thirty percent (30%) of the HUD-determined median income limit adjusted for the **actual** number of people in the household for the area in which the property is located.

Formula: Income Limit for family size x 30% divided by 12 (months) = Max. Gross Monthly Rent

Example: 50% limits for the Richmond MSA (as shown on HUD's 2000 income chart):

1-person = $20,850	3 people = $26,800	5 people = $32,150	7 people = $36,900
2 people = $23,800	4 people = $29,750	6 people = $34,500	8 people = $39,250

20% @ 50% Set-Aside Election

Rent calculation for Very Low Income level (50%) by number of household members:

Number of Persons	1	2	3	4	5	6	7	8
Very Low Income (50%)	$20,850	$23,800	$26,800	$29,750	$32,150	$34,500	$36,900	$39,250
Multiplied x 30%	.30	.30	.30	.30	.30	.30	.30	.30
Equals Gross Annual Rent	$6,255	$7,140	$8,040	$8,925	$9,645	$10,350	$11,070	$11,775
Divided by 12 Months	12	12	12	12	12	12	12	12
Maximum Gross Monthly Rent (no rounding)	$521.25	$595.00	$670.00	$743.75	$803.75	$862.50	$922.50	$981.25

Reminder: subtract utility allowance from the gross rent to calculate net rent charge to resident

40% @ 60% Set-Aside Election

Rent Calculation for 60% Income level by number of household members:

Number of Persons	1	2	3	4	5	6	7	8
Very Low Income (50%)	$20,850	$23,800	$26,800	$29,750	$32,150	$34,500	$36,900	$39,250
Multiplied x	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2
Annual Income (60%)	$25,020	$28,560	$32,160	$35,700	$38,580	$41,400	$44,280	$47,100
Multiplied x 30%	.30	.30	.30	.30	.30	.30	.30	.30

Equals Gross Annual Rent	$7,506	$8,568	$9,648	$10,710	$11,574	$12,420	$13,284	$14,130
Divided by 12 Months	12	12	12	12	12	12	12	12
Maximum Gross Monthly Rent (no rounding)	$625.50	$714.00	$804.00	$892.50	$964.50	$1,035.00	$1,107.00	$1,177.50

Reminder: subtract utility allowance from the gross rent to calculate net rent charge to resident

METHOD 2 - BASED ON NUMBER OF BEDROOMS IN UNIT

For properties receiving tax credit allocations after January 1, 1990 and for pre-1990 allocation properties which made the bedroom-size rent calculation election by February 7, 1994, maximum gross rents are computed based on the number of bedrooms in the unit. Units with no separate bedroom are treated as being occupied by one (1) person and larger units are treated as being occupied by 1.5 persons per each separate bedroom.

(Note: for the pre-1990 properties, only apply the per bedroom calculation for households moving into units after the date the bedroom election was made. Units with households living in the property before the date of the election will continue to calculate rents based on the number of family members actually living in the unit until such time as a change in occupancy occurs.)

Formula: # of bedrooms x 1.5 [persons]; multiply the HUD income limit for your area for the no. of household members x 30%; divide by 12 (months) = Max Gross Monthly Rent

Example: 50% limits for the Richmond MSA (as shown on HUD's 2000 income chart):

1-person = $20,850	3 people = $26,800	5 people = $32,150	7 people = $36,900
2 people = $23,800	4 people = $29,750	6 people = $34,500	8 people = $39,250

0 Bedroom Unit = use 1.0 person income (shown above)

1 Bedroom Unit = use 1.5 person income
(calculate by adding 1 and 2 person limits [shown above]; divide by 2.
Example: $20,850 + $23,800 = $44,650.
$44,650 divided by 2 = midpoint between 1 and 2 person
incomes of $22,325. Use $22,325 to calculate 1 Bedroom Unit rent
by method shown in charts below)

2 Bedroom Unit = use 3.0 person income (shown above)

3 Bedroom Unit = use 4.5 person income
(calculate by adding 4 and 5 person limits [shown above]; divide by 2.
Example: $29,750 + $32,150 = $61,900.
$61,900 divided by 2 = midpoint between 4 and 5 person
incomes of $30,950. Use $30,950 to calculate 3 Bedroom Unit rent
by method shown in charts below)

<u>4 Bedroom Unit</u> = use 6.0 person income (shown above)

<u>5 Bedroom Unit</u> = use 7.5 person income
(calculate by adding 7 and 8 person limits [shown above]; divide by 2.
Example: $36,900 + $39,250 = $76,150.
$76,150 divided by 2 = midpoint between 7 and 8 person incomes of $38,075. Use $38,075 to calculate 5 Bedroom Unit rent by method shown in charts below)

<u>20% @ 50% Set-Aside Election</u>

Rent calculation for Very Low Income (50%) by number of bedrooms in unit:

Number of Bedrooms	0	1	2	3	4	5
Multiply by 1.5 to get family size	0	1.5	3	4.5	6	7.5
Income (50%) (for rent calculations only)	$20,850	$22,325*	$26,800	$30,950*	$34,500	$38,075*
Multiply x 30%	.30	.30	.30	.30	.30	.30
Equals Gross Annual Rent	$6,255	$6,697.50	$8,040	$9,285	$10,350	$11,422.50
Divide by 12 Months	12	12	12	12	12	12
Maximum Gross Monthly Rent (no rounding)	$521.25	$558.12	$670.00	$773.75	$862.50	$951.87

*#'s from calculations on page 41

Reminder: subtract utility allowance from the gross rent to calculate net rent charge to resident

<u>40% @ 60% Set-Aside Election</u>

Rent calculation for 60% Income level by number of bedrooms in unit:

Number of Bedrooms	0	1	2	3	4	5
Multiply by 1.5 to get family size	0	1.5	3	4.5	6	7.5
Income (50%) (for rent calculations only)	$20,850	$22,325*	$26,800	$30,950*	$34,500	$38,075*
Multiply by	1.2	1.2	1.2	1.2	1.2	1.2

Equals 60% Annual Income (for rent calculations only)	$25,020	$26,790	$32,160	$37,140	$41,400	$45,690
Multiply by 30%	.30	.30	.30	.30	.30	.30
Equals Gross Annual Rent	$7,506	$8,037	$9,648	$11,142	$12,420	$13,707
Divide by 12 Months	12	12	12	12	12	12
Maximum Gross Monthly Rent (no rounding)	$625.50	$669.75	$804.00	$928.50	$1,035.00	$1,142.25 *#'s from calculations on page 41

Reminder: subtract utility allowance from the gross rent to calculate net rent charge to resident

Gross rent **does not include** any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in Section 501(c)(3) of the Code and exempt from tax under Section 501(a) of the Code) if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. All other fees for supportive services must be included in the gross rent.

Gross rent **does not include** any payment under Section 8 of the U.S. Housing Act of 1937 or any comparable rental assistance program with respect to such unit or the occupants. This means that only the family-paid portion of rent is compared to the maximum rent limits to determine whether or not too much rent is being paid for the unit.

UTILITY ALLOWANCE

Gross rent includes an allowance for utilities that are paid by the resident. The utility allowance is the estimated monthly expense for all utilities (excluding telephone) which are not included in the rent and are paid by the resident. The rent collected from the resident must be reduced by the amount of the utility allowance estimate. Follow the rules below to find the utility allowance to use for your property:

- All rent restricted units in (i) buildings which are assisted by Rural Housing (formerly FmHA) or (ii) buildings with units receiving rental assistance from FmHA must use FmHA-approved utility allowance estimates.

- If a building receives no Rural Housing assistance, but is reviewed annually by HUD, all rent restricted units in the building must use the HUD-approved utility allowance estimates.

- If a building is not regulated by HUD or Rural Housing and there are no residents in the building receiving Rural Housing rental assistance, then:

  (i) if there are any residents receiving HUD rental assistance, use the Public Housing Authority ("PHA") utility allowance estimates established for the Section 8 Program for those units; and

(ii) for any <u>other</u> residents in the building, if <u>none</u> of the above rules apply, you may use the local PHA's utility allowance estimate chart **unless** you wish to contact the local utility providers. If a local utility company estimate is obtained for any unit in the building, that estimate becomes the appropriate utility allowance for all rent restricted units (not governed by other rules above) of similar size and construction whether or not it is higher than the PHA estimate.

Any change in the utility allowance estimate must be used to compute gross rents in all rent restricted units due ninety (90) days after the change.

Utility allowance estimates must be updated annually and received in writing from either the local Public Housing Authority or the utility provider(s). This documentation is necessary to calculate maximum allowable rents and must be available for review during any compliance monitoring record inspection (See Exhibit S, Utility Allowance Regulation). It may expedite requests if owners specify in the utility estimate request letters that they need (1) the usage estimate - ____ kilowatt hours are needed to service each type of unit and (2) the current rate schedule - $______ per kilowatt hour and $______ for the individual meter charge. This way the companies may find the letter easier to update each year. Once they have calculated the kilowatt hours necessary for the unit sizes, they will only need to update their rate schedule to apply to the property.

A property that first uses the PHA estimate may continue to use that estimate indefinitely. However, after a property requests and receives a written allowance from any utility provider, that estimate source must be used for all future rent calculations. Properties may in the same year use an electric estimate from one source and a natural gas estimate from another. A property may not, however, split estimate sources for one type of service (ex: use a PHA electric estimate for overall electrical usage and also rely on an estimate for electric heating and cooling from a utility provider).

If utility providers will no longer supply estimates, owners must receive the refusal in writing before reverting to the PHA estimate.

<u>SECTION 7 - FORMS AND DOCUMENTATION</u>

Compliance monitoring forms are divided into two major TYPES:

<u>Type 1</u>: consists of reports that are to be completed and **turned in to VHDA's offices.** Note that **the due date may change and the forms are modified frequently –** instructions are sent with the notice letter and we encourage you to ask questions before completing forms.

<u>Type 2</u>: consists of forms that will be completed and **kept in the possession of the owner on site or in a central location** where they may be inspected by VHDA's compliance staff.

The Type 2 forms attached to this Manual are provided for your convenience. If you are currently using forms that are comparable in nature, you may continue to use them. The Type 1 forms must be used as provided to you by VHDA.

TYPE 1 – TO BE TURNED IN TO VHDA

A. OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE *(Exhibit A)*
IRS regulations require that owners must submit an annual Owner's Certification. Failure to provide this document to VHDA annually in a timely manner is an act of noncompliance which will be reported to the IRS. For every property for which the owner certifies information, the lowest building identification number must be listed at the top of page one.

B. PROJECT INFORMATION REPORT *(Exhibit B)*
This form provides basic property-wide information and serves as a cover sheet showing information for up to five properties.

C. OCCUPANCY STATUS REPORT *(Exhibit C)*
Information regarding unit size, household composition, annual income and amount of rent paid for each household in each unit in the property is provided on this form which is submitted annually using the prior calendar year end as the information update cut-off. This form may be completed electronically and sent by email to TCCompliance@vhda.com or returned on hard copy. Properties participating in Rural Housing Service programs will not need to complete the Occupancy Status Report.

TYPE 2 - TO BE KEPT BY THE OWNER ON SITE OR IN A CENTRAL LOCATION

A. APPLICATION ADDENDUM *(Exhibit D)*
You may attach this page to your property's Rental Application or incorporate the questions into the Application to use at move-in. It is strongly recommended that this format be used for each annual recertification.

B. INCOME CERTIFICATION *(Exhibit E-1 and E-2)*
This form is prepared before move-in and signed (preferably no more than five days prior to move-in) **after** income is verified and asset information is obtained **or** is completed and signed as part of the annual income recertification procedure. The Income Certification must reflect actual information taken from the third-party verifications. Of the two Certifications attached owners may use either and either Certification is acceptable to VHDA for loan purposes, as well; however, Exhibit E-2 has been approved by many states and may be helpful when trying to coordinate all monitoring formats among different geographic areas. If Exhibit E-2 is used, Exhibit Q-2, regarding asset value, must be used as well. Supporting verification documents should include, but are not limited to, items from D, E and F. below.

C. ALTERNATE CERTIFICATION *(Exhibit F)*
Only properties that receive the IRS approval of the waiver of annual income reverifications may use this form to annually document household composition and student status. Third-party verification is not necessary.

D. EMPLOYMENT/INCOME VERIFICATIONS *(Exhibits G through O)*
These forms are used to third-party verify an individual's employment (or other) income or to document that an individual is not employed and receives no income.

E. PUBLIC HOUSING AUTHORITY INCOME CERTIFICATION *(Exhibit P)*
If an applicant participates in the Section 8 housing program, this form, completed by the local housing authority, may take the place of the property's independent third-party verification of income.

F. REQUEST FOR VERIFICATION OF ASSETS/UNDER $5,000 ASSET CERTIFICATION *(Exhibit Q-1 and Q-2)*
If an applicant owns assets, this form may be used to verify the value of all types of assets and any interest received. Exhibit Q-2 must be used with Exhibit E-2 to document that assets of the household total $5,000 or less.

G. STUDENT VERIFICATION *(Exhibit R)*
Completion of this verification is necessary only if there is concern that all household members may be full-time students and proof is needed to show that is not the case.

H. UTILITY ALLOWANCE REGULATION *(Exhibit S)* and HUD INCOME LIMITS AND RENTS (*Exhibit T)* are included in this Manual for your ease of reference.

SECTION 8 - EXHIBITS

A. Owner's Certificate of Continuing Program Compliance
B. Project Information Report (PIR)
C. Occupancy Status Report (OSR) and Instructions for Completion
D. Application Addendum (for use at move-in and recertifications)
E. -1 Income Certification (VHDA form)
   -2 Tenant Income Certification and Instructions for Completion (multiple state form) **"Under $5,000 Asset Certification" must accompany this Certification.**
F. Alternate Certification (used only for properties that have received recertification waiver)
G. Employment Verification
H. Military Pay Verification
I. Social Services Verification
J. Social Security Verification
K. Pension or Workers Compensation Verification
L. Unemployment Benefits Verification
M. Child Support and/or Spousal Support Verifications
   - individual/by person
   - court clerk
   - DCSE with addresses
N. - Non-Employment Affidavit
   - Zero Income Certification (use whichever is appropriate)
O. Self-Employment Affidavit
P. Public Housing Authority (PHA) Income Certification
Q. -1 Asset Verification
   -2 Under $5,000 Asset Certification **(must use if completing multiple state Tenant Income Certification)**
R. Student Status Verification
S. Utility Allowance Regulation
T. HUD Income Limits and Rents