

Alabama Housing Finance Authority

Compliance Manual

For Multifamily Funded Properties

Introduction

This manual is designed to aid owners and managers of multifamily projects which have received an allocation of Low-Income Housing Tax Credits (LIHTC) and HOME Investment Partnerships Program funds from the Alabama Housing Finance Authority (AHFA). These allocations are made pursuant to the rules and regulations established for the respective programs.

For the convenience of the owners, AHFA has combined the compliance procedures for each program into one manual. It should be noted that these are separate programs with differing compliance requirements. Owners should carefully note which regulations apply to their projects. If both of the aforementioned funding sources are combined, the more strict regulations will apply.

The procedures outlined in this manual are guidelines for helping owners ensure that assisted projects remain in compliance with the Internal Revenue Code (the “Code”), the HOME Investment Partnerships Program Final Rule (24 CFR Part 92) (the “HOME Rule”), the Regulatory Agreement, and other applicable regulations for the duration of the compliance period. **This manual is not intended to be all-inclusive.** Rather, owners should review this manual and accompanying regulatory information in the “Code” and “HOME Rule” with their legal or tax counsel to determine the applicability of said information to their projects.

COMPLIANCE WITH THE REQUIREMENTS OF THE CODE, THE HOME RULE, AND OTHER APPLICABLE REGULATIONS IS THE BUILDING OWNER’S RESPONSIBILITY. AHFA’S OBLIGATION TO MONITOR THE PROJECT FOR COMPLIANCE DOES NOT MAKE AHFA LIABLE FOR AN OWNER’S NONCOMPLIANCE.

The compliance period is established within the Declaration of Land Use Restrictive Covenants (the “Declaration”); specifying the use restrictions required under the Code, HOME RULE, and those certified by the owner during the allocation process.

This manual provides instructions on determining eligibility of families for occupancy, the maximum rents that can be charged, record-keeping procedures, occupancy rules, provisions for monitoring project files, and certifications.

All projects participating in one or both of the HOME and Low-Income Housing Tax Credit Programs are subject to compliance monitoring with rules and regulations of the Code, the HOME Rule and all other applicable regulations.

Questions regarding Housing Credit, HOME, and Bond compliance issues and procedures may be directed to AHFA’s web-site at www.ahfa.com or mailed to:

Alabama Housing Finance Authority
P.O. Box 242967
Montgomery, AL 36124-2967
Attn: **Internal Audit**
(334) 244-9200

Chapter 1: Owner's and AHFA's Role in the LIHTC Program

1.1 Owner's Role

In accordance with Section 42 of the IRC, the owner of the project receiving a housing credit allocation is required, by acceptance of the allocation, to:

- Manage the project in accordance with the Code, other applicable regulations, and any agreements reached with AHFA during the allocation process for the duration of the compliance period;
- Submit an "Owner's Certification" annually. Failure to do so will cause AHFA to file a report of noncompliance (Form 8823) with the IRS;
- Supply a completed copy of Form 8609, with schedule A attached, to AHFA after the placed-in-service date when submitting the "Owner's Certification". The form 8609 will be issued by AHFA and the schedule A must be supplied by the owner when filing the 8609 for credits;
- Supply AHFA annual financial statements;
- Certify that the property is being managed in accordance with all applicable federal, state and local fair housing laws;
- Maintain a project file for at least six years after the filing date for the calendar year in which credit was claimed for federal income tax purposes. Records for the first year of the credit period must be kept for at least six years after the federal income tax filing deadline for the last year of the compliance period (a total of 21 years);
- Assume liability for any instances of noncompliance and the correction of such deficiencies;
- Cooperate with AHFA during compliance reviews.

A. Owner's Record-Keeping Requirements

In accordance with 26 CFR 1.42-5, the owner's record-keeping requirements include, but are **not limited to**:

- The total number of residential rental units in the project, including the number of bedrooms and the square footage of each unit;
- The percentage of low-income units in the project;
- The rent charged on each unit in the project, including the utility allowances;
- The number of occupants in the unit;
- The vacancy history of the low-income units (including number of days vacant) and when and to whom the next available unit was rented;
- Income certifications for each low-income household and sufficient third-party documentation to support the certification;
- The eligible basis and qualified basis of the building at the end of the first year of the credit period;
- The character and use of the non-residential portion of the building(s) within the project (common areas, resident manager unit if not included in qualified basis).

Problems, curable or not, discovered after reviewing the above items could reduce the amount of credit an owner may claim for a specific tax year and could result in recapture of credit previously claimed. These records should be kept on site. **If records are kept in another location, AHFA must be notified of the location.**

B. Habitability Requirements

All housing credit properties will be subject to physical inspections of the exterior and interior of the property. Therefore, it is the owner's responsibility to provide an efficient maintenance program. The property will be measured according to HUD's Uniform Physical Condition Standards (UPCS). A violation of UPCS will be considered noncompliance and will be reported to the IRS. **AHFA will inspect at least 20% of the LIHTC units during the inspection. This is effective January 1, 2001 and derived from the Federal Register Volume 65, No. 10 January 14, 2000. AHFA will randomly decide which units will be inspected. It is important for the owner/management to inform their tenants of the date on which AHFA will perform the physical inspection.**

C. IRS Form Submission by Owner

Once a housing credit property is placed in service and AHFA issues the IRS Form 8609 to the owner, the owner is responsible for submitting the appropriate IRS forms to claim the credit on an annual basis.

The Code and accompanying IRS regulations (Section 1.42) outline specific procedures on the amount of credit an owner can claim during the rent-up process, the start of the credit period, and the forms to be filed.

Copies of the necessary tax forms may be obtained from the IRS Forms Office by calling (800) 829-3676 or the IRS web-site at www.irs.gov.

1.2 AHFA's Monitoring Role

In accordance with Section 42 of the Code, once a project is completed (placed in service) and receives AHFA funding, it is AHFA's responsibility to:

- Perform annual file reviews and on-site visits as needed to ensure that the owner and/or property management firm is operating the project in compliance. The areas to be reviewed for compliance may include, **but are not limited to:**
 - Determination whether the applicable set-aside has been met and maintained;
 - Household qualifications, income calculations and appropriate supporting documentation;
 - The gross rent payment and its components, including utility allowance;
 - The vacancy history of both low-income and market-rate units;
 - Items agreed to in the regulatory agreement, the Declaration, or other applicable documentation;
 - Project characteristics attested to in the initial application for which ranking points were awarded. (e.g., **tenant services**)
- Report any instances of noncompliance (past or present), when appropriate, to the Internal Revenue Service (IRS) after giving the owner appropriate time to correct the problem. AHFA must retain records of any noncompliance for six years beyond the notice of noncompliance submitted to the IRS (Form 8823).
- Maintain the information used to complete the compliance review for three years after the calendar year in which it was received.

AHFA has the right to perform on-site inspections of any housing credit project at least through the end of the respective compliance period. These on-site inspections may be separate from any review of low-income certifications, supporting documentation and rent records. The compliance monitoring procedures for AHFA have been established to conform to all current IRS and other applicable regulations. Statutory or regulatory changes may require that these procedures be revised from time to time.

A. AHFA's Monitoring Process for Housing Credit Properties

AHFA has the right to perform compliance monitoring reviews, including site visits, on any housing credit project during the full term of the compliance period. The compliance period is established in the Declaration, which is recorded on the property deed.

These reviews may be performed with **little or no prior notice**. Please be aware of this when AHFA representatives are scheduling inspections. The following records and/or documentation will be reviewed and must be available on the scheduled review date:

- All tenant household files, including the initial files;

Tenant Household Files must be in the following order:

- The most recent Tenant Income Certification (TIC)
 - Third party verifications (Income, assets, etc.)
 - Any needed affidavits (Unemployment, child support, student, etc.)
 - HOME Addendum at move in (Only for projects that received HOME funding)
 - The current lease agreement or renewal of lease addendum
 - The same order starting with the TIC for every re-certification down to the move in TIC and verifications (A self-certification for 100% housing credit properties)
 - The application should be behind the lease at move in
- The current rent roll with the following information:
 - Move in date and move in income
 - Latest re-certification date and latest re-certification income
 - The current gross rent
 - The income set-aside for the household
 - Unit number
 - Tenant Household Name(s)
 - Head of Household
 - Co-head of Household (last names only)
 - Move out date for vacancies
 - Current project utility allowance documentation;
 - A copy of the **completed** Form 8609 that was filed the first year of the credit period;
 - Building identification numbers for each building in the project and the units located in each building;

- Type of rental assistance and the number of households receiving rental assistance:
 - If the household is receiving Section 8 rental assistance place the most current Section 8 paperwork which shows the household and public housing authority's share of the rent with the tenant income certification;
 - If the household is receiving owner-financed or private rental assistance (PRA) a list of which households are receiving the assistance, the unit number and the amount of assistance each household is receiving will be required. Once the amount in the owner provided assistance (PRA) account has been spent, the AHFA monitor will request documentation of the disbursements from the PRA account until the total amount of the PRA was spent.

AHFA will review the household files and documentation for at least **twenty-five percent** (TCAP and Exchange **forty percent**) of the units in a project, conduct a physical inspection of the exterior and interior (**twenty percent** of low-income units) of the project, and if necessary conduct a physical inspection on the vacant units.

B. The Compliance Period

The compliance period for housing credit projects placed in service on or after 1990 is for 15 years.

All housing credit projects placed in service on or after 1990 entered into an extended use agreement for an additional 15 years (extended use period) to qualify for housing credits.

Site visits to housing credit projects shall be performed the first year after the project places in service and at least once every three years after, unless AHFA determines that more frequent on-site reviews are necessary due to findings discovered during subsequent reviews of the project files.

A fee may be charged to the owner of a property for which AHFA determines more frequent on-site reviews are necessary due to noncompliance.

C. Compliance Procedures (Extended Use Period)

Post year 15 compliance procedures for housing credit projects placed in service on or after January 1, 1990 which have an extended use agreement in the Land Use Restrictive Covenants will be the following:

- Every property that enters the extended use agreement must continue to submit an Annual Owner's Certification each year.
- A file review during the extended use period will consist of 10% of the files with a 15 household file limit. It will be the AHFA representative's option to review more household files if the need arises. Properties without HOME funds will be monitored every 5 years. Properties with HOME funds will be monitored every year until after year 20 of the HOME affordability period.
- The physical inspection during the extended use period will consist of 10% of the files with a 15 household file limit. It will be the AHFA representative's option to review more household files if

the need arises. Properties without HOME funds will be monitored every 5 years. Properties with HOME funds will be monitored every year until after year 20 of the HOME affordability period.

- The procedure for moving in a household will stay the same as the compliance period during the extended use period. The ownership for the property must maintain the documentation used for a household at move in and any documentation used for re-certification throughout the extended use period.
- Re-certifications will be self-certifications without third party verifications of income.
- Properties that received HOME funding must continue to re-certify as they did during the compliance period for the Housing Credit program as well as follow the HOME regulations until the HOME regulations are no longer a requirement.
- Rural Development properties will no longer be monitored. AHFA may require a copy of the Rural Development review upon request. A physical viewing of the property may be conducted whenever an AHFA representative is in the area. The property manager or property management representative will be required to be there during this time, the AHFA representative may inspect a few units and will get a rent roll. The physical viewing of the property should take place at least every five years.
- Building transfers will no longer require the verification and certification procedure during the extended use period.
- The student rule will still apply for college students that are dependents of a third party.
- If noncompliance is found during a file review or physical inspection a noncompliance letter will be sent to the owner. The owner will be given a time period to correct the noncompliance.
Noncompliance left uncorrected will result in a ban from the funding cycle for the owner.
- If a property's economic feasibility is threatened by adhering to the Land Use Restrictive Covenant, AHFA may allow changes to support the property's viability to the extent permitted by law.
- At the end of a property's extended use period AHFA will send a letter to the owner explaining the tenant protections that must be adhered to for a three-year time period after the extended use period is completed. This letter must be signed, dated and returned to AHFA.

1.3 Program Noncompliance

A. Owner Notification

During a compliance review, if AHFA finds instances of noncompliance with the requirements of Section 42, 26 CFR 1.42-5, or the Declaration of Land Use Restrictive Covenants, the owner will be notified of the violation by letter and given a time period for correcting the violation.

B. Correction Period

After a notice of noncompliance is received, an owner shall have a correction period set by AHFA (normally 30 days) to correct the findings.

The owner must provide AHFA any missing or additional documentation needed to correct the findings.

The owner must address all discrepancies individually and indicate the actions taken to correct the findings.

C. IRS Notification

AHFA is required to file Form 8823 “Low-Income Housing Credit Agencies Report of Noncompliance” with the IRS no later than 45 days after the end of the cure period, whether or not the noncompliance is corrected. Form 8823 will describe the nature of the noncompliance and will state whether or not the owner has corrected the noncompliance.

1.4 Monitoring Costs

Under current monitoring regulations and guidelines, AHFA will charge monitoring fees to all projects. AHFA may require additional monitoring charges if subsequent guidance or regulations warrant changes to AHFA’s monitoring procedures. For projects receiving housing credits before 1992, no additional fees will be required. Beginning in 1992, the reservation fee for projects is a percentage of the first year housing credit allocation amount. This reservation fee is non-refundable and must be provided to AHFA in the form of certified funds or a cashier’s check. For all projects funded in 2010 and years after, a Housing Credit Compliance Fee is due within 90 days after the project is placed in service. This fee is equal to \$750 per unit. (\$500 per unit if Housing Credits are combined with HOME funds from AHFA)

If a project’s records are not available for review during the project’s stated business hours, the project owner will be responsible for reimbursing AHFA for all resulting expenses incurred.

If a project is found to be out of compliance and requires follow-up inspections, whether in the same year or the following year, the owner will be responsible for reimbursing AHFA for all applicable expenses incurred.

Applicable expenses for conducting an additional on-site inspection will include, but are not limited to:

- The standard mileage rate in effect at the time of the re-inspection,
- Any overnight expenses,
- A per diem meal allowance,
- An hourly charge to review household files.

- AHFA will also charge \$50 per hour with a \$50 minimum to review household files.
- AHFA will also charge \$50 per hour with a \$50 minimum to review documents forwarded to AHFA to correct noncompliance.
- Any additional expenses incurred by AHFA related to an owner's noncompliance shall be the owner's responsibility.

1.5 Sale of Property after Placement in Service and First Year of Credit Period

Specific procedures govern executing the sale of a property that has received an allocation of credits. If plans to alter the ownership of the project are being considered, AHFA must be notified by the Transfer of Ownership Interest Form at least 30 days prior to the intended change. A copy of this form can be obtained by calling AHFA's multi-family compliance department or the Multi-family section under compliance of AHFA's web-site at www.ahfa.com. AHFA must approve any changes in the ownership of a housing credit property during the term of the compliance period. In the event that a property is under foreclosure, AHFA must be notified and the details of the foreclosure **must be submitted in writing**.

1.6 Change in Management Agent

AHFA must approve any change in management companies during the term of the compliance period and extended use period. The forms needed to request approval can be found in the Multi-family section under compliance of AHFA's web-site at www.ahfa.com.

1.7 Temporary un-inhabitability of a Housing Credit Unit

If a unit or building is destroyed or is not suitable for occupancy for any reason, AHFA must be notified and receive a plan in writing for when the unit(s) will be ready for occupancy. AHFA must be notified in writing when the unit or building is occupied by a qualified household again. Note: The units destroyed or are not suitable for occupancy must be replaced or suitable for occupancy by the last day of the year in which the casualty loss occurred to claim credits for those units. Reference Internal Revenue Service Chief Counsel Advice Memo 200134006, August 24, 2001 for further guidance concerning casualty loss and LIHTC credits claimed.

Chapter 2: Project Occupancy Restrictions

2.1 Income Restrictions

The project's units must be occupied by low-income qualified households. The minimum set-aside chosen by the owner on the application will determine the household's income percentage. Also, in addition to the minimum set-aside, the owner may have further restricted the income percentage on the application or within the Declaration of Land Use Restrictive Covenants (the "Declaration").

A. Minimum Set-Aside

Housing credit projects must contain enough qualified housing credit units to satisfy the chosen set-aside by the end of the tax year following the year that the project was placed in service (1991 and later years' projects). The owner must ensure that the minimum set-aside requirement specified in the application period is maintained throughout the compliance period. The owner has to choose one of the following irrevocable minimum set-aside requirements from section 42(g) of the Code:

- 20-50 Test - The project must contain 20 percent or more of the residential units in the project occupied by households whose income is 50 percent or less of area median gross income (adjusted for family size)
- 40-60 Test- The project must contain 40 percent or more of the residential units in the project occupied by households whose income is 60 percent or less of area median gross income (adjusted for family size).

If occupancy in a housing credit project falls below the IRS minimum set-aside percentage (20-50 or 40-60), the project will be deemed out of compliance with the Code and may be subject to credit recapture by the IRS, even if the violation is corrected before the end of the calendar year.

If a greater set-aside percentage than the minimum is selected by the owner during the application process, then this percentage is also irrevocable under the administrative rules of AHFA's program administration. This percentage is specified in the applicable governing documentation.

B. Income Limits

The Department of Housing & Urban Development (HUD) annually publishes median income listings for Alabama by county and metropolitan statistical area (MSA) of the State. HUD publishes the very low-income (50%) income limits and the 60% income limits on its web-site at www.huduser.org/portal/datasets/mtsp.html. AHFA provides the 50% and 60% income limits in the Multi-family section under the compliance portion of its web-site at www.ahfa.com. Also available on AHFA's web-site are the income limits for Housing Credit properties which qualify to use the US non-metropolitan income and rent limits. A copy of the current limits is also available by contacting the HUD office at (800) 245-2691. If an owner wants to calculate the 60% income limits, the 60% income limits are calculated by multiplying the 50% income limits by 1.2. **The published income limits are subject to change, and it is the owner's responsibility to obtain the most current income limits.**

2.2 Lease Requirements

In general, occupancy must be provided on a non-transient basis to the general public.

In order to satisfy this requirement a LIHTC household must sign an initial lease for a minimum of six months.

The original six month lease should not end prior to six months except for a valid reason. (Such as the household moving because one of the members accepted a job in another state)

Other exceptions are contained in IRC Section 42(i) (3) (B) the housing for the homeless and Single Room Occupancy (SRO) projects. This allows a month-to-month lease to be signed by households of the low-income portion of the property and still qualify for housing credits.

2.3 Vacant and Empty Units

When a unit that was occupied by a housing credit-eligible household becomes vacant, this unit will continue to count as a housing credit unit as long as the next available unit of comparable or smaller size is rented to a housing credit-eligible household.

Units that have never been occupied are considered empty (not vacant) and do not count as housing credit units since they do not exist for housing credit purposes until initial occupancy by a housing credit-eligible household.

An owner **must** have vacant units marketable within a reasonable period of time. (AHFA suggests thirty days)

2.4 Section 8 Tenants

Owners of LIHTC projects may not deny rental of an available unit to an applicant holding a HUD Section 8 Certificate or Voucher solely because the household receives rental assistance from HUD.

These households are still required to meet all of the project's household selection criteria contained in the project's management plan.

If an applicant holding a Section 8 Certificate or Voucher is denied occupancy, the reason for denial should be documented.

2.5 Elderly

The Fair Housing Act prohibits discrimination against families with children. However, there are two types of "housing for older persons" that allows owners to exclude families with children. The following are the two types of "housing for older persons":

- Housing intended for, and solely occupied by, persons 62 years of age or older; and
- Housing intended and operated for occupancy by at least one person 55 years of age or older per unit; at least 80% (**AHFA requires 100%**) of the units are occupied by at least one person 55 years of age or older. The housing facility or community must also publish and adhere to policies and procedures

that demonstrate the intent necessary to satisfy the definition of “housing for older persons”; and that the housing provider complies with HUD’s regulations governing the 55 or older exemption.

The above exemption criterion applies to “housing for the older person” after December 28, 1995, and is not retroactive. The exemption prior to December 28, 1995, requires “significant facilities and services” for the elderly in addition to the current criteria. Properties which are under contract with Rural Development or HUD may have additional exceptions.

2.6 Student Households

Households made up entirely of full-time students are not eligible to live in units receiving housing credits.

A full-time student is defined as any individual who has been or will be a full-time student during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins at a regular educational organization with regular facilities. (The five months do not have to be consecutive.)

Elementary schools, junior and senior high schools, colleges, universities, technical schools, trade schools and mechanical schools are defined as regular educational organizations.

Also, the individual meets all the educational organization’s requirements for full-time student status.

There are five exceptions to the full-time student restriction (Section 42 (i) (3) (D)). Full-time student households that are income eligible and satisfy one or more of the following conditions can be considered eligible tenants:

- Students of the household are married and have filed or are entitled to file a joint tax return (*Note: Students of the household do not need to be married to each other*);
- The household consists of single parent(s) and their minor child (ren). The parent(s) and the child (ren) cannot be a dependent of a third party. However, the child(ren) can be a dependent of the other parent;
- At least one member of the household receives assistance under Title IV of the Social Security Act (i.e., AFDC, TANF assistance);
- At least one member of the household was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (adults who were in the foster care system during childhood);
- At least one member of the household is enrolled in a job training program receiving assistance under the Workforce Investment Act (formerly Job Training Partnership Act), or similar federal, state or local laws, and effective for households.

Before owners can lease a housing credit unit to households of full-time students, they must obtain written documentation that one of the five exceptions applies.

2.7 Fair Housing and Equal Opportunity Laws

All properties must comply with applicable federal, state and local fair housing and anti-discrimination laws in the marketing and provision of housing.

** AHFA requests written documentation (**located on owner's certification**) to verify the owner's compliance with these laws.**

Federal laws that may be applicable to a project include, but are not limited to, the Fair Housing Act as amended by the Fair Housing Amendments Act of 1988, Older Persons Act of 1995, Section 504, the Americans with Disabilities Act, and any further amendments of said acts.

These laws include provisions for construction and design of multifamily projects as well as property management.

2.8 Equal Quality Between Low-Income and Market-Rate Units

The amount of housing credit claimed for the low-income units in a project is contingent on the comparable quality of the low-income and market-rate units. The following conditions apply:

- The low-income units of a project must be intermingled reasonably with all other dwelling units and on all floors of the building(s);
- The low-income units shall be of equal quality, and offer a range of sizes and number of bedrooms, comparable to units that are available to other households;
- Households in the low-income units shall have equal access to and enjoyment of all common facilities of the project;
- All units must be maintained to ensure a safe and sanitary condition.

2.9 Buildings with Four or Fewer Units

Buildings with four or fewer units are not eligible to receive housing credits if the owner of the property, or a relative of the owner, occupies one of the units. An exception exists if the buildings are bought or rehabilitated according to a state, local government, or qualified non-profit's development plan. Projects in this category are subject to limitations on the applicable amount of housing credit.

Chapter 3: Determining Household Eligibility

3.1 Application

All families occupying a low-income residential rental unit in a building receiving housing credits must have incomes at or below limits established under the Code.

The applicants should be advised in the initial visit of the maximum income limits and that income and asset information for all adults (18 or over) occupying the unit **MUST** be collected and verified.

Then management must obtain sufficient information at the time of application to determine household eligibility.

The LIHTC application should obtain the following household information:

- The name, age, and Social Security number of each person who will occupy the unit (legal name should be given just as it will appear on the lease and Tenant Income Certification);
- All sources and amounts of current and anticipated annual income for the next twelve-month certification period;
- Value of all current assets or the imputed income from assets;
- The signature of the head of household and all adult occupants able to sign a lease and the date when the application was completed.

3.2 Verifications

All regular sources of income, including assets valued at \$5,000 or more, must be verified by a third-party.

Actual income from assets is considered a source of income and should be verified by a third-party or verified by using the Under \$5,000 Affidavit Form on AHFA's web-site.

Verifications must be received by the management **prior** to the completion of the Tenant Income Certification and move in by the household.

The applicants should sign a release and consent form authorizing management to verify the information given by the household on the application.

Written third party verification of income is required.

The third party income verification request must be sent directly to and from the source, *not through the applicant*. **INFORM THE SOURCE NOT TO USE LIQUID PAPER ON ANY VERIFICATION.**

AHFA has provided mandatory verification forms in the Multi-family section under the compliance portion of AHFA's web-site.

If a Housing Credit/Rural Development property has mandatory Rural Development verification form(s) that are different from AHFA's mandatory verification form(s), the Rural Development verification

form(s) may be used if they are dated within one hundred twenty days of the AHFA mandatory Tenant Income Certification.

The AHFA mandatory Tenant Income Certification must be used and the housing credit paperwork must be separated from the Rural Development paperwork. Use copies of the Rural Development verification form(s) for the housing credit verification(s).

Make sure the originals are available if AHFA needs to see the original verification during an AHFA review.

When written verification is not possible prior to move in, the following can be used:

- Direct contact with the source may be acceptable **ONLY AS A LAST RESORT** and must be followed with written verification within 15 days.
- The conversation must be documented in the applicant's file including all the information that would be included in a written verification.

Written verifications are valid for 120 days.

If third party verification of income is **impossible** to get, household provided documents may be used, such as:

- A minimum of two months of income source documentation
- A minimum of six pay-stubs
- Forms W-2
- Bank statements

Owners must document the attempts made trying to obtain third party verification.

For households with existing Section 8 certificates or vouchers, the public housing authority providing the assistance can provide a statement to the building owner declaring that the household's income does not exceed the applicable income limit under section 42(g).

The household **MUST** still complete a Tenant Income Certification Form that lists all sources of income as defined under the rules of the Section 8 program.

3.3 Social Security, SSI and Pension Verifications

The most current benefit letters or annual statements prepared by third parties are sufficient verification documentation for household members receiving Social Security, SSI and pension benefits.

If the benefit letter or annual statement is not available, verification may also include bank statements noting the transfer of funds.

A. Social Security Cost of Living Adjustment

The most accurate way to determine anticipated income for Social Security and SSI benefits is to use the cost of living adjustment (COLA) the Social Security Department releases at the end of the third quarter of each calendar year.

The owner/management representative should use the cost of living adjustment when calculating the income of a household at move in or when calculating the income for a re-certification for the months of November and December.

For example the months of November and December would be calculated using the amount the household received during the current year and the months of January through October would be calculated using the amount the household received during the current year plus the cost of living adjustment. The totals for the two months and the ten months are then added together to accurately anticipate the household's income.

Households that move in before the rate increase is announced must use the amount for that particular year multiplied by twelve because there is no way of knowing what the amount of increase will be at that time.

Re-certifications of household Social Security or SSI income should be calculated the same way income is calculated for new move-ins.

3.4 Applicants Claiming Zero (0) Income

Households of LIHTC units may not have regular, verifiable income. If an applicant is claiming zero (0) income, the household's income may be determined based on actual income received or earned within the previous twelve months.

The zero income household member **MUST** complete an Income Verification (For Unemployed Persons) Form.

3.5 Household Income Evaluation

Annual income under the LIHTC program must be calculated in a manner consistent with the methods used under HUD's Section 8 program. Annual income under the Section 8 program is not necessarily identical to the household's income for federal income tax purposes. If questions arise about what types of income must be included or excluded to determine household income, refer to HUD Handbook 4350.3 REV-1, CHG-2. Also, be aware that income limits change every year.

It is the owner's responsibility to obtain the most current published income limits when determining household eligibility.

A. Determining Household Size

Since the LIHTC income limits are based on the household size, it is very important to determine the correct number of household members. **All of the following members should be counted toward the size of the household:**

- All year-round occupants;
- Members temporarily absent due to placement in foster home, away at school but live with the household during school recesses, children in the process of being adopted, temporarily absent family members due to working on assignment who are approved to live in the unit and Armed Forces personnel on temporary duty (unless the Armed Forces personnel on temporary duty are not the Head, Spouse or Co-Head);
- Family members in the hospital, or a rehabilitation facility either temporarily or for a fixed period of time;
- Persons permanently confined to a hospital or nursing home. If the family decides to count the confined family member as a member of the household the confined family member's income must be included when calculating the household's income;
- Child(ren) under joint custody and resides in the unit at least Fifty percent of the year; and
- Unborn children. (Documentation should be obtained in a manner consistent with the Fair Housing Laws) A self-affidavit (Tenant Income Certification signed by mother) is an acceptable form of verification.

The following members should NOT be counted toward the size of the household:

- Live-in attendant or aid;
- Foster child or Foster adult;
- Guests temporarily staying in the unit with the consent of a member of the household.

Note: A Live-in attendant or aide should be someone who is determined to be essential to the care and well-being of the person(s) and not obligated for the support of the person(s) they are caring for. (For example, the live-in attendant should not contribute towards the rent or other living expenses of the low-income household)

The live-in attendant or aide should be someone who would not be living in the unit except to provide the necessary supportive services. (A live-in aide may be related to the household member if they meet the above stated criteria.)

B. Determining Countable Income

Count the income of the following household members:

- Annual income of the head, spouse or co-head and other adult members of the household:
 - Include the annual income of members under the age of 18 who have entered into a lease under state law. (They will be the head, spouse or co-head.) Such persons are sometimes referred to as emancipated minors (e.g., a person under the age of 18 who is married).
 - Count only the first \$480 in earnings of a full-time student 18 and over who is not the head, co-head or spouse. However, all of the full-time student's unearned income is counted. (Unearned income is any income that is not employment income).
- Unearned income of children under the age of 18 who are members of the household. This is any income that is not employment income. (Example, interest income.) Also include any unearned income of children temporarily absent due to placement in a foster home and children who are away at school but who live with the household during school recesses;
- To determine when the income of an absent member of the household is counted, refer to the HUD Handbook 4350.3 REV-1, CHG-2 or call AHFA.

Do **NOT** count the income of the following household members:

- Live-in-attendant/aid;
- Guest;
- Foster child or Foster adult.

C. Determining Asset Income

Asset income is income that is generated by savings accounts, real estate, and other investments to which **any member of the household has access to**. For a list of Annual Income Net Family Asset inclusions and exclusions please refer to 24 CFR Part 5.

The way that asset income is calculated depends on the cash value of the asset.

Cash value is the amount the household would receive if the asset were converted to cash. It is the market value minus any reasonable expenses that would be incurred in selling or converting the asset to cash.

Examples of reasonable expenses are penalties for early withdrawals, broker and legal fees, settlement costs for real estate transactions, or repayment of loans on the asset.

- If the total cash value of all assets is \$5,000 or less, owners include the actual income to be derived from these assets (for example income from interest, dividends or cash payments).
- If the total cash value of all assets is greater than \$5,000, owners include in annual income the greater of the following:

- Actual annual income to be derived from these assets,

OR

- Imputed income of the assets derived by taking the total of all assets and multiplying by a HUD provided passbook rate. (The USDA Rural Development passbook rate may be used if the owner received housing credits for rehabilitation of a USDA Rural Development property.)
- If a household is receiving interest from an asset it must be verified and counted.
- For further instructions and examples on determining asset income refer to HUD Handbook 4350.3 REV-1, CHG-2 or call AHFA.

D. Calculating Annual Income

Annual Income Includes:

- Interest, dividends and other income from net family assets;
- The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including persons under the age of 18 who are the head, spouse or co-head);
- Net income, salaries and other amounts distributed from a business (three years of tax returns if available);
- The gross amount (before deductions for Medicare, etc.) of periodic social security payments (award or benefit letters);
- The full amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- Delayed periodic payment received because of delays in processing unemployment, welfare or other benefits;
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;
- Welfare assistance;
- Alimony and child support received by the household (third party verified if possible);
- Alimony and child support **paid** by a member of the household;
- Recurring monetary contributions or gifts regularly received from persons not living in the unit;
- Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant household;
- Financial assistance in excess of amounts received for tuition under the Higher Education Act of 1965, from private resources, or from an institution of higher education for any student(s) under the age of 24 that is seeking housing without his or her parent will be considered income if the household is a Section 8 household. The only exception is a person(s) over the age of 23 with dependent children.

Excluded from Annual Income:

- Meals on Wheels, or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act of 1966;
- Amounts paid by a State agency to a household with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled household member at home;
- Grants or other amounts received specifically for:
 - Medical expenses
 - Set aside for use under a Plan to Attain Self Sufficiency (PASS)
 - Out-of-pocket expenses for participation in publicly assisted programs;
- The full amount of student financial assistance either paid directly to the student or to the educational institution. This includes scholarships, grants, fellowships and any other kind of student financial assistance. It does not matter what the assistance is actually used for;
- Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household, co-head, and spouse);
- Adoption assistance payments in excess of \$480 per adopted child;
- Loans (e.g., personal loan or student loan);
- Temporary, nonrecurring or sporadic income (e.g., gifts);
- Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- The special pay to a household member serving in the Armed Forces who is exposed to hostile fire;
- Amounts received under training programs funded by HUD;
- Compensation from State or local employment training programs and training of a household member as resident management staff;
- A resident service stipend (the resident may not receive more than one stipend during the same period of time and the stipend may not exceed \$200 per month);
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;
- Payments received for the care of foster children or foster adults;
- Amounts that are received on behalf of someone who does not reside with the household, as long as the amounts:
 - Are not intermingled with household's funds;
 - Are used solely to benefit the person who does not reside with the household;
- Recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit;
- Military employees' basic allowance for housing is excluded from income if they qualify based on Section 3005 of HR 3221;
- Income excluded by Federal statute.

Please refer to 24 CFR Part 5 for additional income inclusions and exclusions.

E. Annualizing Household Income

Owners must convert all verified income to annual amounts. Owners should use the current circumstances to project income, unless verification forms indicate that an imminent change will occur. To annualize full-time employment, multiply:

- Hourly wage by 2,080 hours
- Weekly wages by 52
- Bi-weekly wages by 26
- Semi-monthly wages by 24
- Monthly wages by 12

If the employment verification provides a range of hours, such as 35 to 40 hours per week, you will want to use the higher number.

Example 1:

The rate of pay is \$7.50 per hour, the applicant is paid weekly, and the applicant works 30 to 40 hours a week.

$$\$7.50 * 40 * 52 = 15,600$$

If the employment verification provides a rate of pay and year-to-date income amount, you will want to use the highest amount. Example using the same rate of pay from above:

- The applicant started 1/1/2013, the year-to-date is \$7500 through 3/31/13.
 $\$7500/3 \text{ months} = \2500 per month , $\$2500 * 12 \text{ months} = \$30,000$ as the yearly gross income

The year-to-date gross income is \$30,000 and the rate of pay gross income is \$15,600; you would use the higher amount, which is \$30,000.

Example 2: Benefits for Indefinite Time Period

John makes \$9 an hour, 40 hours a week. He does not work overtime, has no other source of income. His anticipated income is computed as:

$$\$9 * 40 * 52 = 18,720$$

Example 3: Benefits for Definite Time Period

A teacher's assistant works nine months annually and receives \$1300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$500 a month. The anticipated income is computed as:

$$1300 * 9 = 11,700$$

$$500 * 3 = 1500$$

$$\text{Total income is } 11,700 + 1500 = 13,200$$

Example 4: Anticipated Changes in Income

In May 2013, an applicant is receiving unemployment benefits of \$250 per month and will qualify for benefits for four months. Beginning in October, the applicant will be employed at \$1500 per month. The anticipated income is computed for the period from May to September 2013, plus the income for October 2013 through May 2014.

$$(250 * 5 \text{ months}) + (1500 * 7 \text{ months}) = 11,750$$

3.6 Initial Tenant Certification

The initial determination of eligibility of the low-income household is very important and can have an effect on the amount of credits that can be claimed for the project.

The information obtained during the application and verification process should be carefully examined before allowing the applicant to occupy the unit.

After it has been determined that the applicant has met all the owner's criteria and the applicant meets the housing credit qualifications, the household and the owner/management must complete a Tenant Income Certification Form.

The Tenant Income Certification Form should be signed by any household members 18 years of age or older and the owner/management representative the same day the lease is signed at move in.

All of the verifications, the Tenant Income Certification Form and other applicable documentation should be placed in the household's file in the order AHFA requires and kept for the required period of time.

DO NOT USE WHITE-OUT ON THE TENANT INCOME CERTIFICATION FORM. Simply place a line through the error and write in the correction placing your initials beside the correction.

AHFA has provided the mandatory Tenant Income Certification Form in the Multi-family section under the compliance portion of AHFA's web-site.

ALL HOUSEHOLDS OCCUPYING LIHTC UNITS MUST COMPLETE A TENANT INCOME CERTIFICATION FORM.

3.7 Tenant Income Certification Effective Date

The Effective Date of the Tenant Income Certification is the date the tenant actually moves in the unit.

The recertifications must be completed annually within 120 days of the effective date.

When additional adult individuals join the household, the effective date will remain the same until the unit is completely vacated.

Example: Determining the Tenant Income Certification Effective Date

A potential household consisting of Jon and Jane Doe and their child completed a rental application and income certification on April 12, 2013. The property manager completed the third party verifications and determined that the household was income eligible on April 21, 2013. Jon and Jane signed the rental lease on April 25th, and took possession of the unit May 1, 2013.

The effective date of the tenant income certification is May 1, 2014. All subsequent tenant income recertifications must be performed within 120 days before May 1 of each subsequent year.

3.8 Re-certification of Household Income

Re-certification of household income eligibility is required **ANNUALLY**.

Owners may set the re-certification date as long as the date falls within 120 days of the effective date (move in date).

In planning re-certifications, owners of LIHTC properties must have all of the verifications completed within 120 days of the effective date.

If a property has 100% of the units set aside for low-income households, owners are not required to do the full verification process at re-certification.

The re-certification will be a self-certification process.

The self-certification process should at a minimum include one of the two options:

- The Re-Certification Form found in the Multi-family section under compliance on AHFA's website, www.ahfa.com.
- The Tenant Income Certification Form and the Student Form must be used.

Owners should begin early enough to allow sufficient time to complete the self-certification process.

If the property does not have 100% of the units set aside for low-income households, the owner has to complete a full recertification.

3.9 Households with Income Exceeding the Limit

A household **cannot** reside in a LIHTC project if, at the time of the initial occupancy, the estimated gross annual income is greater than the applicable percentage of the area median income, adjusted for family size.

If an income-qualified household occupies a unit and, during tenancy, the gross annual income increases beyond the income limit, the household is not required to vacate the unit. The current unit would still be considered a “low-income unit” as long as the rent remains restricted to less than or equal to the maximum allowed under the Code, and the household was income eligible at the time of initial occupancy.

In LIHTC projects with less than 100% of the units set aside for low-income households, if a household’s gross annual income increases to more than 140% of the maximum qualifying income, the unit is still considered a low-income unit as long as the next available unit of comparable or smaller size in the same building is rented to an income-eligible household. An owner must use the income limit that is applicable at the time of the new household’s occupancy to determine income eligibility.

In LIHTC projects with 100% low-income occupancy, increases in income beyond the applicable income limit do not require any action by the owner because the next available unit would be rented to a LIHTC-qualified tenant. The unit would still be considered a “low-income unit” as long as the rent remains restricted to less than or equal to the maximum allowed under the Code, and the household was income eligible at the time of initial occupancy.

3.10 Addition to the Household (Adult)

If fraud is not suspected, an addition to the existing household is considered the same initial qualified household.

However, the addition to the household must have their income certified with a tenant income certification (self-certification if addition to the household occurs at the time of the first re-certification of the initial household or after) and have their income added to the initial household’s income.

If the household’s income exceeds the limit, the household should be treated the same as any other household that the income exceeds the limit.

A household may continue to add members and still qualify as long as at least one member of the original household remains in the unit.

If all of the original household members move out of the unit, the remaining household members must be certified and qualify as a household.

However, if the remaining household members were certified when they moved in the unit and the certification indicates they qualified at move in, then the household will remain a qualified household.

For all projects, the income limit that is applicable at the time of the initial tenant certification or re-examination of household income is the appropriate limit to use.

3.11 Management Unit and Courtesy Officer Ruling

Management units should be reserved for management staff.

A courtesy officer may **NOT** live in a non-revenue management unit unless the property has received approval from AHFA.

A courtesy officer may, however, live on the property as an income-qualified tenant.

3.12 Transfers within a Project

Owners no longer have to verify or certify a household's income when a household transfers between units in the same building or within different buildings in a 100% Low Income Housing Credit property.

This exception does **NOT** apply to Low Income Housing Credit properties which also received HOME funds.

3.13 Self-Correction

If documentation at the time a certification was performed was insufficient and sufficient documentation was subsequently obtained by the owner *before* the notification of the compliance review, which allowed the auditor to make a reasonable determination that the unit was in compliance.

Such self-corrected documentation is not reported to the IRS as noncompliance, because the owner has demonstrated due diligence and reasonable attempts to maintain sufficient documentation of tenant eligibility.

Example 1: Failure to Obtain Third Party Verification

An owner failed to verify court-ordered child support when the household moved in. The oversight was identified a few months later when the management company conducted a quality review of the file. The deficiency was immediately corrected by getting a copy of the court ordered child support and the amount was added to the move-in income, the annual income did not exceed move-in eligibility.

Example 2: Correction after Notification of Upcoming Review

Unit A went out of compliance on January 15, 2013, when a household with income exceeding the limit moved in. The owner was notified on March 15, 2013, that the inspection will be May 1, 2013. The owner realized the problem while preparing for the review and paid the moving costs for the over-income household to move out immediately. A new income-qualified household moved into Unit A on April 13, 2013.

Unit A was selected as part of the 25% file inspection and reviewed the new tenant's income certification. Because the effective date of this certification was after the date of the notification of the upcoming review, the previous tenant file was reviewed and determined that Unit A was out of compliance from January 15 to April 13, 2013.

Chapter 4: Project Rent Restrictions

4.1 Components of Gross Rent

- Inclusions:
 - an approved utility allowance, if the household is paying a portion or all of the utilities;
 - any fees charged to tenant households for use of common areas or mandatory services attached to the building(s).

- Exclusions:
 - any payment made under Section 8 of the U.S. Housing Act of 1937 or any comparable rental assistance program;
 - any fee for a supportive service paid to the owner of the unit by any governmental program assistance if such program provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services;
 - any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the RHS under Section 515 of the Housing Act of 1949

4.2 Fees

A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis.

A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees.

Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year.

A Unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit.

An owner cannot avoid the disallowance of the Low Income Housing Credit by rebating excess rent or fees to the affected tenants.

- Provision of Services
 - Any charges to tenants for services that are not optional generally must be included in gross rent (example: a hook-up fee for washer and dryer installation)
 - A service is optional when the service is not a condition of occupancy and there is a reasonable alternative
 - No separate fees should be charged for tenant facilities (example: pools, parking, recreational facilities)

- Condition of Occupancy
 - The cost of services that are required as a condition of occupancy must be included in gross rent
 - Refundable fees are not included in the rent computation (example: security deposits, fees paid if a lease is prematurely terminated)
 - Required costs or fees, which are not refundable, are included in the rent computation (example: fees for month to month tenancy, renter's insurance)
 - Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining units in a manner suitable for occupancy.
- Application Processing
 - Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history, and landlord references.
 - The fee is limited to recovery of the actual out-of-pocket costs
 - No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project.

In-Compliance Examples

Example 1: Provision of Optional Services

A property provides hot meals twice a day for the convenience of its tenants in a common dining facility. They charge a nominal fee to cover their costs, but do not include the cost in the rent charged for the apartments. Each unit in the property includes a fully functional kitchen.

In this case, a practical alternative exists for tenants to obtain meals other than from the dining facility, and payment for the meals in the common dining facility is not required as a condition of occupancy. The cost of the meals is not included in the gross rent.

Example 2: Fee for Late Payment of Rent

A tenant pays the maximum rent of \$525 for a one bedroom unit. The tenant did not pay the rent timely and was charged a late fee of \$25, as stated in the lease.

The \$25 late fee is a penalty for failure to perform according to the lease agreement and the fee is not included in the rent.

Out of Compliance Examples

Example 3: Rent Exceeds Limit on a Monthly Basis

The maximum rent for a two bedroom unit is \$800 per month. The owner charges \$795. In addition to rent, the owner charges a one-time \$35 hookup fee for the tenant's washer and dryer the month the tenant moves in. A new tenant moves in on June 1, 2013 and pays \$830 for rent the first month. For July through December, the tenant pays \$795.

The one-time hookup fee is included in rent for one month. The rent of \$830 for June exceeded the monthly limit.

Example 4: Owner Charges Impermissible Fee

The owner charges new tenants a one-time optional fee of \$125 to clean a unit before move-in; example, the new tenant may move into the unit as the previous tenant left it (which is not suitable for occupy) or pay the fee to the owner to clean and prepare the unit for occupancy. A new tenant paid the \$125 cleaning fee and moved into the unit on March 15, 2013.

It is not permissible for owners to charge tenants a fee for maintaining low-income units in a condition suitable for occupancy; this is the responsibility of the owner of the building for which the credit is allocated. The unit is out of compliance as of March 15, 2013.

Example 5: Overcharged Rent

The owner leased all the units to eligible tenants during 2013, the third year of the credit period. However, the owner inadvertently overcharged rent to tenants occupying 3 bedroom apartments. The error impacted 15 out of 75 units. The owner is a calendar year taxpayer.

The applicable fraction for 2013 is 60/75, which equals 80%. The unit is back in compliance on January 1, 2014 if the owner correctly limits the rent for all units.

4.3 Where to find the Gross Rent Limits

The gross rent limits are available for each county on AHFA's web-site at www.ahfa.com in the Multi-family section under compliance.

4.4 Changes in Gross Rent Resulting from Changes in Area Median Income

The gross rent may decrease with changes in the gross area income. This provision is contained in Section 42(g) (2) (A) of the Code.

- Housing Credit Projects On or After January 1 1990 - Regardless of changes in the area median gross income, the rent does not have to be lowered below the rent established during the year for which the project or building first satisfied the minimum unit set-aside requirement (i.e. the 20-50 or 40-60 test).
- After September 23, 1994, an owner can make the election to use the carryover allocation date or the placed-in-service date to establish the rent floor (IRS Revenue Procedure 94-57).

4.5 Households charged more than Maximum Gross Rent

For projects receiving a housing credit allocation in 1991 or later, an owner may charge more than the maximum gross rent allowed under Section 42, **IF**:

- The project is receiving rental assistance under the RHS or HUD's Section 8 program;
- The household's rent contribution (30% of adjusted annual income) required by RHS and HUD is not greater than the housing credit maximum gross rent.

This provision does not apply to projects receiving allocations in 1987, 1988, 1989, or 1990. Consult Section 42(g) (2) (E) of the Code for the specific statutory basis for this provision.

4.6 Utility Allowances

A utility allowance is an allowance for the cost of any utilities paid directly by the household and is a component of gross rent.

Do not include the telephone, internet and cable utilities.

The utility allowance must be updated **annually**.

The following methods are acceptable forms of obtaining a utility allowance:

1. If the building or household receives Rural Development assistance then an **approved** utility allowance from Rural Development with an effective date should be used.
2. If the building has Rural Development assistance and is monitored by HUD, then a Rural Development utility allowance should be used.
3. Buildings monitored by HUD should use an **approved** utility allowance from the appropriate local housing authority.
4. If the household receives Section 8 rental assistance, then the property should use an **approved** utility allowance from the housing authority that provides the household. The utility allowance must have a cover sheet or some type of documentation to indicate the source and effective date of the utility allowance.

Numbers 1-4 above are mandatory, if applicable to the building/household.

If numbers 1-4 above are not applicable, the following options are available:

5. An **approved** utility allowance from the local housing authority which has jurisdiction over the area the property is located.
6. An estimate received from the local utility provider (electric provider, gas provider, water works, etc.) is acceptable. This estimate must be on the utility provider's letter head and have estimates for **each** utility paid directly by the household. Management should always round up estimates to the next dollar amount (for example \$25.01 would be \$26.00).

7. An estimate calculated using the HUD Utility Schedule Model found at www.huduser.org/portal/resources/utlallowance.html. The estimate must follow these guidelines:
- This estimate must list the type of units (apartments, homes, townhomes, etc.), bedroom sizes, square footage of the units and what the calculated rates are for those units.
 - Supporting documentation such as letters from the utility companies stating the rates, taxes and fees.
 - The utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day implementation period allowed under Section 42.
 - This 90-day period will allow AHFA time to review the HUD Utility Schedule Model submitted, ask for further clarification if needed and either accept or reject the submission.
 - The HUD Utility Schedule Model must be renewed at least once every 12 months and completed so that the approval date is within 12 months of the previous year's utility allowance.
 - If the submission is rejected, the owner will need to obtain a current acceptable form of utility allowance.
 - The owner must bear the full cost of using this method including the cost of making the results available to the residents of the project for comment as well as to AHFA at the beginning of the 90-day implementation period allowed under Section 42.
8. An energy consumption model estimate provided by a properly licensed engineer or qualified professional (together qualified professional) approved by AHFA which follows the guidelines below:
- This estimate must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.
 - The qualified professional must not be related to the building owner within meaning of section 267 (b) or 707 (b) of the appropriate IRS regulations. The owner must certify to this in writing as well as send the credentials (licensed engineer documentation, years of experience conducting utility estimates, etc.) of the qualified professional.
 - A complete copy of the energy consumption model documenting all of the steps in the process must be submitted.
 - This documentation should include projected consumptions with any taxes or fees included. Correspondence with the utility companies should be submitted.

- The data and utility rates used must be for a 12-month period with the 12-month period ending no earlier than 60 days prior to the beginning of the 90-day implementation period allowed under Section 42.
- This 90-day period will allow AHFA time to review the energy consumption model submitted, ask for further clarification if needed and either accept or reject the submission.
- If the submission is rejected the owner will need to obtain a current acceptable form of utility allowance.
- For new properties with less than 12 months of consumption data the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located. This data must be for a 12-month period ending no earlier than 60 days prior to the beginning of the 90-day implementation period allowed under Section 42.
- After the first year of using the energy consumption model the qualified professional should compare the actual consumption data with their energy consumption model to determine if their model needs adjusting to closer reflect actual consumption. This information should be submitted to AHFA along with the qualified professional's energy consumption model for the next year's utility allowance.
- The energy consumption model must be renewed at least once every 12 months and completed so that the approval date is within 12 months of the previous year's utility allowance.
- The owner must bear the full cost of using this method including the cost of making the results available to the residents of the project for comment as well as to AHFA at the beginning of the 90-day implementation period.

Any properties which have HOME funds committed on or after January 24, 2015 as well as housing credits and have household(s) with Section 8 rental assistance must have a utility allowance from the housing authority that provides the rental assistance and a project specific utility allowance using the methods described in 6-8 above.

All of the above utility allowance documentation must be **current and approved** by the agency or utility provider and updated **within each calendar year**.

The utility allowance must also be the effective utility allowance at the time of AHFA's review.

Current IRS regulations specify if the utility allowance changes due to an increase or decrease in utility costs, the new allowances must be used in the rent calculation within 90 days of the effective date of the change.

The effective date for the Rural Development, HUD and a local Public Housing Authority utility allowance is located on the utility allowance form.

The effective date for the utility provider allowance will be the date on the letter from the utility provider.

The effective date for the HUD Utility Schedule Model and the energy consumption model estimate will be the date AHFA approved the utility model estimate.

There is no provision for a “utility allowance floor” as there is for rent.

The method of obtaining the utility allowance for a project is initially chosen by the owner on the application for funding.

The method of obtaining the utility allowance initially chosen by the owner cannot be changed until after the Form 8609(s) has been issued by AHFA.

Chapter 5: Combining HOME with Housing Credits

5.1 AHFA's HOME Program

AHFA has specifically designed the HOME Investment Partnerships Program to meet the needs of low- and moderate-income Alabamians consistent with the HUD guidelines. In its administration of the HOME Program, AHFA combines HOME funds with the Low-Income Housing Tax Credits (LIHTCs). As a result, both HOME and housing credit compliance regulations must be considered.

Compliance with requirements of the HOME Regulations and Section 42 are the responsibility of the owner of the building for which HOME funds are loaned and for which the credit is allowable. AHFA's obligation to monitor for compliance with the requirements of the HOME Regulations and Section 42 does not make AHFA or the State of Alabama liable to any owner or to any shareholder, officer, director, partner, member or manager of any owner or of any entity comprising any owner for an owner's non-compliance therewith.

5.2 Owner's Role

In accordance with HOME program regulations, the owner of the project receiving a HOME allocation with housing credits is required, by acceptance of the allocation, to:

- Manage the project in accordance with the HOME Rule, Code, other applicable regulations, and any agreements reached with AHFA during the allocation process for the duration of the compliance period;
- Submit an "Owner's Certification" by the date specified by AHFA. Failure to do so will cause AHFA to file a report of noncompliance (Form 8823) with the IRS, (except for HOME projects without housing credits);
- Supply a completed copy of Form 8609, with schedule A attached, to AHFA after the placed-in-service date when submitting the "Owner's Certification". The form 8609 will be issued by AHFA and the schedule A must be supplied by the owner when filing the 8609 for credits, (except for HOME projects without housing credits);
- Supply AHFA with quarterly bank statements on the replacement reserve account, operating deficit account, and the taxes and insurance account;
- Supply AHFA with annual **audited** financial statements and any other project information requested;
- Provide a copy of the current property insurance policy;
- Certify that the property is being managed in accordance with all applicable federal, state and local fair housing laws;

- Ensure management is familiar with the required steps when an accessible unit becomes vacant. (guidance is available at www.hud.gov/offices/fheo/disabilities/sect504.cfm);
- Require management knows and follows the following tenant selection steps:
 - Be consistent with the purpose of providing housing for low-income and very low-income families;
 - Be reasonably related to HOME Program eligibility and the tenant's ability to perform the obligations of the lease;
 - Provide for the selection of tenants based on a written waiting list in the chronological order of application, to the extent practicable;
 - State that the owner or manager will give prompt written notice to any rejected applicant, with an explanation of the grounds for the rejection;
 - Maintain a project file for at least six years after the last year of the compliance period (total of 26 years);
 - Assume liability for any instances of noncompliance and the correction of such deficiencies;
 - Cooperate with AHFA during compliance reviews.

A. Owner's Record-Keeping Requirements

In accordance with 24 CFR and 26 CFR 1.42-5, the owner's record-keeping requirements include, but are **not limited to**:

- The total number of residential rental units in the project, including the number of bedrooms and the square footage of each unit;
- The percentage of low-income units in the project;
- The rent charged on each unit in the project, including the utility allowances;
- The number of occupants in the unit;
- The vacancy history of the low-income units (including number of days vacant) and when and to whom the next available unit was rented;
- Income certifications for each low-income household and sufficient third party documentation to support the certification;
- Providing an affirmative marketing plan and maintain records which support the affirmative marketing plan is being followed;

- Maintain a written tenant selection process and make it available upon request;
- For properties which are owned, developed, or sponsored by a community housing development organization (CHDO) a written tenant participation plan ensuring residents are involved in the management and decision-making of the property must be available at the property site;
- The eligible basis and qualified basis of the building at the end of the first year of the credit period;
- The character and use of the non-residential portion of the building(s) within the project (common areas, resident manager unit if not included in qualified basis).

Problems, curable or not, discovered after reviewing the above items could reduce the amount of credit an owner may claim for a specific tax year and could result in recapture of credit previously claimed.

These records should be kept on site.

If records are kept in another location, AHFA must be notified of the location.

B. Habitability Requirements

All HOME projects will be subject to physical inspections of the exterior and interior of the property.

It is the owner's responsibility to provide an efficient maintenance program.

The property will be measured according to a combination of HUD's Housing Quality Standards (HQS) and HUD's Uniform Physical Condition Standards (UPCS).

A violation of these standards will be considered noncompliance and will be reported to the IRS and HUD.

If the property has 5 or more units, then AHFA will physically inspect at least 20% of the units chosen randomly and if necessary the vacant units. If the property has less than 5 units, then AHFA will physically inspect 100% of the units.

It is important for the owner/management to notify their tenant households of the date when AHFA will conduct the physical inspection.

C. IRS Form Submission by Owner

Once a HOME property with housing credits is placed in service and AHFA issues the IRS Form 8609 to the owner, the owner is responsible for submitting the appropriate IRS forms to claim the credit on an annual basis.

The Code and accompanying IRS regulations outline specific procedures on how much credit an owner can claim during the rent-up process, when the credit period starts, and which forms to file.

Copies of the necessary tax forms may be obtained from the IRS Forms Office by calling (800) 829-3676 or using the IRS web-site at www.irs.gov.

5.3 AHFA's Monitoring Role

In accordance with Section 42 of the Code, 26 CFR 1.42-5, and 24 CFR Part 92 of the HOME Rule once a project is completed (placed in service) and receives AHFA funding, it is AHFA's responsibility to:

- Perform annual file reviews and on-site visits as needed to ensure that the owner and/or property management firm is operating the project in compliance. The areas to be reviewed for compliance may include, **but are not limited to:**
 - Determination whether the applicable set aside has been met and maintained;
 - Household qualifications, income calculations and appropriate supporting documentation;
 - The gross rent payment and its components, including utility allowance;
 - The vacancy history of the units;
 - Items agreed to in the regulatory agreement, the Declaration, or other applicable documentation;
 - Project characteristics attested to in the initial application for which ranking points were awarded. (e.g., **tenant services**)
- Report any instances of noncompliance (past or present), when appropriate, to the Internal Revenue Service (IRS) and HUD after giving the owner appropriate time to correct the problem.
- AHFA must retain records of any noncompliance for six years beyond the notice of noncompliance submitted to the IRS (Form 8823) or HUD.
- Maintain the information used to complete the compliance review for three years after the calendar year in which it was received.
- AHFA has the right to perform on-site inspections of any HOME project at least through the end of the respective compliance period. These on-site inspections may be separate from any review of low-income certifications, supporting documentation and rent records.
- The compliance monitoring procedures for AHFA have been established to conform to all current IRS, HUD, or other applicable regulations. Statutory or regulatory changes may require that these procedures be revised from time to time.

A. AHFA's Monitoring Process for HOME Properties

AHFA has the right to perform reviews, including site visits, on any HOME project during the full term of the compliance period.

The compliance period is established in the Declaration, which is recorded on the property deed.

These reviews may be performed with **little or no prior notice**. Please be aware of this when AHFA representatives are scheduling inspections.

The following records and/or documentation will be reviewed and must be available on the scheduled review date:

- All tenant household files; including the initial files;
Tenant Household Files must be in the following order:
 - The most recent Tenant Income Certification (TIC)
 - Third party verifications (Income, assets, etc.)
 - Any needed affidavits (Unemployment, child support, student, etc.)
 - HOME Lease Addendum at move in
 - The current lease agreement or renewal of lease addendum
 - The same order starting with the TIC for every re-certification down to the move in TIC and verifications
 - The application should be behind the lease at move in

- The current rent roll with the following information:
 - The move in date and move in income
 - The number of household members at move in and recertification
 - The number of household members at the time of the latest re-certification
 - The latest re-certification date and the latest re-certification income
 - The percentage of 50% income limit households and 60% income limit households per building
 - The household paid rent and the amount of rental assistance the ownership receives
 - The unit number
 - The tenant household name(s)
 - Last name of the Head of Household
 - Last name of the Co-head of Household
 - Move out date for vacancies

- Current project utility allowance documentation;

- A copy of the **completed** Form 8609 that was filed the first year of the credit period;

- Building identification numbers for each building in the project and the units located in each building;

- Type of rental assistance and number of households receiving rental assistance;
 - If the household is receiving Section 8 rental assistance, place the most current Section 8 paperwork which shows the household and public housing authority's share of the rent with the Tenant Income Certification form;
 - If the household is receiving owner-financed or private rental assistance (PRA); a list of which households are receiving the assistance, the unit number and the amount of assistance each household is receiving will be required.

- Once the amount in the owner provided assistance (PRA) account has been spent, the AHFA monitor will request documentation of the disbursements from the PRA account until the total amount of the PRA was spent.
- The Affirmative Marketing Plan and documentation to show how management is implementing the plan.

AHFA will review the household files and documentation for at least twenty-five percent (TCAP and Exchange forty percent) of the units in the project, conduct a physical inspection of the exterior for at least twenty percent of the low-income units in the project, and if necessary physically inspect vacant units.

B. Compliance Period

The compliance period for HOME projects is twenty years. Site visits to HOME properties shall be performed annually.

5.4 Income Restrictions

The project's units must be occupied by low-income qualified households. The minimum set-aside chosen by the owner on the application will determine the household's income percentage.

A. Minimum Set-Aside

HOME projects combined with housing credits must contain enough qualified HOME and housing credit units to satisfy the chosen set-aside.

In order for the property to be eligible for the housing credits the housing credit minimum set-aside must still be met by the end of the tax year following the year that the project was placed in service.

Also, in order for the property to qualify for the nine-percent credit, the HOME set-aside must be met at initial rent-up and maintained throughout the compliance period of the project. For properties funded before January 1, 2009 the owner had to choose one of the following irrevocable minimum set-aside requirements:

- At least 40 percent of the residential units in the project occupied by households whose income is 50 percent or less of the area median gross income with the remaining 60 percent occupied by households whose income is 60 percent or less of the area median gross income.
- 100 percent of the residential units in the project occupied by households whose income is 50 percent or less of the area median gross income.

Housing Credit/HOME projects funded before January 1, 2009 must meet the set-aside on a building-by-building basis.

If occupancy in a HOME project with housing credits falls below the minimum set-aside percentage, the project will be violating the Declaration of Land Use Restrictive Covenants that is recorded against the property.

Therefore, the project will be deemed out of compliance with AHFA and the buildings in the project will be treated as federally-subsidized buildings and subject to the four percent credit percentage.

Furthermore, if the occupancy falls below the IRS minimum set-aside percentage (20-50 or 40-60) the project may be subject to credit recapture by the IRS, even if the violation is corrected before the end of the calendar year.

Housing Credit/HOME properties funded **after** January 1, 2009 will have the following irrevocable minimum set-aside requirement:

- At least 20 percent of the residential units in the project occupied by households whose income is 50 percent or less of the area median gross income with the remaining 80 percent occupied by households whose income is 60 percent or less of the area median gross income.

Housing Credit/HOME properties funded after January 1, 2009 will have to meet this set-aside on a project basis. (Not on a per building basis)

B. Income Limits

The Department of Housing & Urban Development's Office of Affordable Housing annually publishes median income listings for Alabama by county and metropolitan statistical areas (MSA) of the State. HUD publishes the very low income (50%) and the 60% income limits on the HOME program portion of its web-site at www.onecpd.info/home/.

AHFA provides the owners with a current copy of the 50% and 60% income limits and HUD HOME Low and High Rent limits in the Multi-family section under the compliance portion of AHFA's web-site at www.ahfa.com. However, if the owner would like to obtain a copy of the current limits from HUD they can call the HUD office at (800) 245-2691.

5.5 Lease Requirements

In general, occupancy must be provided on a non-transient basis to the general public.

To satisfy this requirement a household occupying a HOME unit must sign a lease with a minimum term of one year.

AHFA has prepared a HOME Lease Addendum that is to be signed with the lease by the household occupying the HOME unit and the landlord or landlord's representative at move in.

The HOME Lease Addendum is required to contain the following tenant protections according to the HOME Rule:

1. Neither the Lease nor any of the terms, conditions, covenants or agreements thereof shall breach or be in violation of that certain Declaration of Land Use Restrictive Covenants for Alabama's HOME Program.

2. The Lease must be for not less than one year, unless by mutual agreement between the landlord and the tenant.
3. If any of the following provisions are contained in the Lease, they are hereby deleted:
 - A. Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Landlord in a lawsuit brought in connection with the Lease.
 - B. Agreement by the tenant that the landlord may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the apartment after the tenant has moved out of the apartment. The landlord may dispose of this personal property in accordance with Alabama law.
 - C. Agreement by the tenant not to hold the landlord or the landlord's agents legally responsible for any action or failure to act, whether intentional or negligent.
 - D. Agreement of the tenant that the landlord may institute a lawsuit without notice to the tenant.
 - E. Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - F. Agreement by the tenant to waive any right to a trial by jury.
 - G. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the Lease.
 - H. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the landlord against the tenant. The tenant, however, shall be obligated to pay costs if the tenant loses.
4. The landlord may not terminate the tenant's tenancy or refuse to renew the Lease except for (a) serious or repeated violation of the terms and conditions of the Lease, (b) violation of applicable federal, state or local law, completion of the transitional housing tenancy period or (c) other good cause. Any termination or refusal to renew must be preceded by not less than thirty days by the landlord's service upon the tenant of a written notice specifying the grounds for the action.
5. The landlord must maintain the apartment, the building of which the same is a part and the grounds surrounding said building in compliance with all applicable housing quality standards and local code requirements.
6. The landlord must adopt written tenant selection policies and criteria that (a) are consistent with the purpose of providing housing for very low-income and low-income families, (b) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the Lease, (c) give reasonable consideration to the housing needs of families that would have a preference under CFR 960.211 and (d) provide for (i) the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, and (ii) the prompt written notification to any rejected applicant of the grounds for and rejection.

Notwithstanding anything to the contrary in the lease (the "Lease") to which the Addendum is attached, the terms, conditions, covenants and agreements in the Addendum shall apply. In the event of any

conflict between the terms, conditions, covenants or agreements in the Addendum and those in the Lease, the terms, conditions, covenants and agreements of this Addendum shall control.

Failure to have the tenant(s) and the landlord or landlord's representative sign and date the HOME Lease Addendum or failure of the landlord or landlord's representative to comply with the terms of the HOME Lease Addendum will be deemed as noncompliance with the HOME Rule regulations.

A copy of the HOME Lease Addendum can be obtained by calling the compliance department at AHFA or by going to the Multi-family section under the compliance portion of AHFA's web-site at www.ahfa.com.

If an owner rents an accessible unit to a non-disabled household, AHFA strongly encourages the owner to include a special provision in the lease requiring the non-disabled household to move into a non-accessible unit of the same size if a household which requires the accessible features of their unit applies and is eligible for the unit.

5.6 Section 8 Tenants

Owners of HOME projects may not deny rental of an available unit to an applicant holding a HUD Section 8 Certificate or Voucher solely because the household receives rental assistance from HUD.

The owner verifies this on the owner's certification.

These households are still required to meet all of the project's tenant selection criteria contained in the project's management plan.

If an applicant holding a Section 8 Certificate or Voucher is denied occupancy, the reason for denial should be documented.

5.7 Elderly

The Fair Housing Act prohibits discrimination against families with children. However, there are two types of "housing for older persons" that allows owners to exclude families with children. The following are the two types of "housing for older persons":

- Housing intended for, and solely occupied by, persons 62 years of age or older;
- Housing intended and operated for occupancy by at least one person 55 years of age or older per unit; at least 80% (**AHFA requires 100%**) of the units are occupied by at least one person 55 years of age or older. The housing facility or community must also publish and adhere to policies and procedures that demonstrate the intent necessary to satisfy the definition of "housing for older persons"; and that the housing provider complies with HUD's regulations governing the 55 or older exemption.

The above exemption criterion applies to "housing for the older person" after December 28, 1995, and is not retroactive. The exemption prior to December 28, 1995, requires "significant facilities and services" for the elderly in addition to the current criteria.

5.8 Student Households

Households made up entirely of full-time students are not eligible to live in units receiving HOME funds with housing credits.

A full-time student is defined as any individual who has been or will be a full-time student during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins at a regular educational organization with regular facilities. (The five months do not have to be consecutive.)

Elementary schools, junior and senior high schools, colleges, universities, technical schools, trade schools and mechanical schools are defined as regular educational organizations.

The individual must also meet the educational organization's entire requirement for full-time student status.

There are five exceptions to the full-time student restriction (Section 42 (i) (3) (D)). Full-time student households that are income eligible and satisfy one or more of the following conditions can be considered eligible tenants:

- Students of the household are married and have filed or are entitled to file a joint tax return. (*note: Students of the household do not need to be married to each other*);
- The household consists of single parent(s) and their minor child (ren). The parent(s) and child (ren) cannot be a dependent of a third party. However, the child(ren) can be a dependent of the other parent;
- At least one member of the household receives assistance under Title IV of the Social Security Act (i.e., AFDC, TANF assistance);
- At least one adult household member was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (adults who were in the foster care system during childhood); or
- At least one member of the household is enrolled in a job training program receiving assistance under the Workforce Investment Act (formerly Job Training Partnership Act), or similar federal, state or local laws, and effective for households.

Before owners can lease a HOME unit with housing credits to households of full-time students, they must obtain written documentation that one of the five exceptions applies.

The Student Rule For projects with *HOME funds Only* (**No Housing Credits**) says the following:

Households made up entirely of students enrolled in an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) must meet one of the exceptions listed below to qualify for HOME funded housing:

- Is at least 24 years of age
- Is a veteran of the United States military

- Is married
- Has a dependent child
- Is a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005
- Is individually eligible, or has parents who, individually or jointly, are eligible on the basis of income to receive assistance under section 8 of the 1937 Act

5.9 Fair Housing and Equal Opportunity Laws

All properties must comply with applicable federal, state and local fair housing and anti-discrimination laws in the marketing and provision of housing.

AHFA requests written documentation on the owner's certification to verify the owner's compliance with these laws.

Federal laws that may be applicable to a project include, but are not limited to, the Fair Housing Act as amended by the Fair Housing Amendments Act of 1988, Older Persons Act of 1995, Section 504, the Americans with Disabilities Act, and any further amendments of said acts. These laws include provision for construction and design of multifamily projects as well as property management.

During a monitoring review the AHFA monitor will require the owner to submit a copy of the property's current Affirmative Marketing Plan along with documentation indicating the procedures in the plan are followed.

AHFA monitors will also look for the Equal Housing logo on the project sign and the bulletin board in the office for the property.

5.10 Application

All households occupying a low-income residential rental unit in a building receiving HOME and housing credits must have incomes at or below limits established under the HOME regulations and the Code.

The applicants should be advised in the initial visit of the maximum income limits and that income and asset information for all adults (18 or over) occupying the unit **MUST** be collected and verified.

The management must obtain sufficient information at the time of application to determine household eligibility.

The HOME and LIHTC application should obtain the following household information:

- The name, age, and Social Security number of each person who will occupy the unit (Legal name should be given just as it will appear on the lease and Tenant Income Certification);
- All sources and amounts of current and anticipated annual income for the next twelve-month certification period;
- Value of all current assets or the imputed income from the assets;

- The signature of the head of household and all adult occupants able to sign a lease and the date when the application was completed.

5.11 Verifications

All regular sources of income, including **ALL** assets, must be verified by a third party.

Verifications must be received by the management **prior** to the completion of the Tenant Income Certification and move in by the household.

The applicants should sign a release and consent form authorizing the management to verify the information given by the household on the application.

Written third-party verification of income is required.

The third-party income verification request must be sent directly to and from the source, **not through the applicant**.

NOTIFY THE SOURCE OF THE VERIFICATION NOT TO USE WHITE-OUT.

AHFA has provided mandatory verification forms in the Multi-family section under the compliance portion of our web-site.

When written verification is not possible prior to move-in, direct contact with the source may be acceptable **ONLY AS A LAST RESORT** and must be followed with written verification within 15 days.

The conversation must be documented in the applicant's file noting all information that would be included in a written verification.

Written verifications are valid for 120 days.

If third party verification of income is **impossible** to get, household provided documents such as:

- A minimum of two months of income source documentation
- A minimum of 6 pay-stubs
- Form W-2
- Bank Statements

These documents have to be within 60 days of the effective date of the certification.

Owners must document the attempts made trying to obtain third party verification.

For households with existing Section 8 certificates or vouchers, the public housing authority providing the assistance can provide a statement to the building owner declaring that the household's income does not exceed the applicable income limit under Section 42(g) or the very low-income limit (50%) established by HUD.

However, the household **MUST** still complete a Tenant Income Certification Form that lists all sources of income as defined under the rules of the Section 8 program.

For information on anticipating Social Security and SSI income refer to Chapter 3 section 3.3

Projects that received HOME funding without Housing Credits need verifications dated at least within 180 days of the Tenant Income Certification.

5.12 Household Income Evaluation

Annual income under the HOME program must be calculated in a manner consistent with the methods used under HUD's Section 8 program.

Annual income under the Section 8 program is not necessarily identical to the household's income for federal income tax purposes.

If questions arise about what types of income must be included or excluded to determine household income, refer to HUD Handbook 4350.3 REV, CHG-2. Also, be aware that income limits change every year.

It is the owner's responsibility to obtain the most current published income limits when determining household eligibility.

To determine the household size, whose incomes to count, how to calculate asset income, and what income to include and exclude from annual income, refer to chapter 3 section 3.5 (A), (B), (C) and (D) of this manual.

Owners must convert all verified income to annual amounts. Owners should use the current circumstances to project income, unless verification forms indicate that an imminent change will occur. To annualize full-time employment, multiply:

- Hourly wage by 2,080 hours
- Weekly wages by 52
- Bi-weekly wages by 26
- Semi-monthly wages by 24
- Monthly wages by 12

If the employment verification provides a range of hours, such as 35 to 40 hours per week, you will want to use the higher number.

Example 1:

The rate of pay is \$7.50 per hour, the applicant is paid weekly, and the applicant works 30 to 40 hours a week.

$$\$7.50 * 40 * 52 = 15,600$$

If the employment verification provides a rate of pay and year-to-date income amount, you will want to use the highest amount.

Example 2: Using the same rate of pay from above

The applicant started 1/1/2013, the year-to-date is \$7500 through 3/31/13.

\$7500/3 months = \$2500 per month, \$2500 * 12 months = \$30,000 as the yearly gross income

The year-to-date gross income is \$30,000 and the rate of pay gross income is \$15,600; you would use the higher amount, which is \$30,000.

5.13 Initial Tenant Certification

The initial determination of eligibility of the low-income household is very important and can have an effect on the amount of credits that can be claimed for the project.

The information obtained during the application and verification process should be carefully examined before allowing the applicant to occupy the unit.

After it has been determined that the applicant has met all the owner's criteria and the applicant meets the HOME and housing credit qualifications, the household and the owner/management must complete a Tenant Income Certification Form.

The Tenant Income Certification Form should be signed by the tenant(s) and the owner/management representative the same day the lease is signed at move in.

All of the verifications and other applicable documentation should be attached to the Tenant Income Certification Form and kept in the order AHFA requires in the household's file for the required period of time.

DO NOT USE WHITE-OUT ON THE TENANT INCOME CERTIFICATION.

To correct an error, simply place a line through the error and write in the correction placing your initials next to the correction.

AHFA has provided the mandatory Tenant Income Certification Form on our web-site.

ALL HOUSEHOLDS OCCUPYING HOME OR HOME AND LIHTC UNITS MUST COMPLETE A TENANT INCOME CERTIFICATION FORM.

5.14 Re-certification of Household Income

Re-certification of household income eligibility is required **ANNUALLY**.

Owners may set the re-certification date as long as the date falls within 120 days of the effective date (move in date).

In planning re-certifications, owners of LIHTC/HOME properties must have all of the verifications completed within 120 days of the effective date.

If a LIHTC/HOME property has 100% of the units set aside for low-income households, the owner must conduct the full verification and certification process at the household's move in.

At the first re-certification and re-certifications through a household's fifth year of occupancy of a unit a self-certification process can be used.

The self-certification process should at a minimum include one of the two options listed:

- The Re-Certification Form
- The Tenant Income Certification and a Student Form

The re-certification for the start of the sixth year of a household's occupancy of a unit must include the full verification and certification process.

The self-certification process can be used for years seven through eleven of a household's occupancy of a unit.

The re-certification for the start of the twelfth year of a household's occupancy of a unit must include the full verification and certification process.

The self-certification process can be used for years thirteen through seventeen of a household's occupancy of a unit.

The re-certification for the start of the eighteenth year of a household's occupancy of a unit must include the full verification and certification process.

The self-certification process can be used for years nineteen and twenty of a household's occupancy of a unit.

Example:

If the household moved in the unit in 2013, when is the first full recertification do?

2013 is year 1, 2014 is year 2, 2015 is year 3, 2016 is year 4, 2017 is year 5, and 2018 is year 6.

The full recertification needs to be completed in 2018.

5.15 Households with Incomes Exceeding the Limit

A household **cannot** reside in a HOME and LIHTC project if, at the time of the initial occupancy, the estimated gross annual income is greater than the applicable percentage of the area median income, adjusted for family size.

If an income-qualified household occupies a unit and, during tenancy, the gross annual income increases beyond the income limit, the household is not required to vacate the unit.

The current unit would still be considered a “low-income unit” as long as the rent remains restricted to less than or equal to the maximum allowed, and the household was income eligible at the time of initial occupancy.

In HOME projects with housing credits that have selected a set-aside of two income levels (40% at 50% and remaining at 60%), if a household’s gross annual income increases to more than 140% of the maximum qualifying income (50% or 60%), the unit is still considered a low-income unit as long as the next available unit of comparable or smaller size in the same BUILDING is rented to a qualifying household with the applicable income percentage (50% or 60%) that will maintain the particular set-aside selected.

In HOME projects with housing credits that have selected a set-aside with 100% low-income occupancy at 50% income limit, increases in income beyond the applicable income limit do not require any action by the owner because the next available unit would be rented to a household at the 50% income level.

The unit would still be considered a “low-income unit” as long as the rent remains restricted to less than or equal to the maximum allowed, and the household was income eligible at the time of initial occupancy.

In HOME projects without housing credit funding and Housing Credit/HOME projects funded after January 1, 2009 the income set-aside does not apply on a building by building basis.

The income set-aside is on a **project** basis.

Therefore the unit transfer rule that applies to transfers from one building to another does **not** apply to projects that received HOME funding without housing credits or Housing Credit/HOME projects funded after January 1, 2009.

5.16 Addition to the Household (Adult)

If fraud is not suspected, an addition to the existing household is considered the same initial qualified household.

However, the new addition to the household must be certified (self-certified if addition to the household occurs at the time of the first re-certification of the initial household or after) and their income must be added to the initial household to see if the household’s income is over the limit.

If the household is over the appropriate income limit the household should be treated the same as any other over-income household.

For all projects, the income limit that is applicable at the time of the initial household certification or re-examination of household income is the appropriate limit to use.

5.17 Management Unit and Courtesy Officer Ruling

Management units should be reserved for management staff.

A courtesy officer may **NOT** live in a non-revenue management unit unless the property has received approval from HUD through AHFA. (For properties receiving housing credits)

A courtesy officer may, however, live on the property as an income-qualified tenant.

5.18 Transfers Within a Project

A property which received HOME funds with housing credits funded before January 1, 2009 must certify the income of a household wishing to transfer between units within different buildings prior to the transfer.

The owner must be sure the household's transfer does not cause noncompliance with the 40/50; 60/60 gross income set-aside for each building.

HOME properties **without** housing credits and HOME/housing credit properties funded after January 1, 2009 can transfer existing households between units within different buildings without certifying the household's income because the gross income set-aside is a project set-aside. (20/50; 80/60)

5.19 Projects Rent Restrictions

The components of gross rent for all HOME projects are as follows:

The household's portion of the rent plus any rental assistance paid to the owner, plus any fees charged to the tenants for use of common areas or mandatory services attached to the building(s), plus an approved utility allowance if the household is paying a portion of or all of the utilities.

AHFA must approve all rent schedules for a property prior to lease-up and during the affordability period.

AHFA provides the applicable rent limits to the owner before the property begins to lease up and on an annual basis throughout the property's affordability period.

When a household receives tenant-based rental assistance provided by the Section 8 Program, HOME, or another funding source, the maximum allowable rent cannot exceed the applicable HOME rent limits. This means that the tenant rent + utility allowance + rental assistance cannot exceed the HOME rent limits.

Depending on the set-aside selected, the HOME projects with housing credits may have two maximum rents that can be charged to the household. The two types of rents are as follows:

A. Low Rents

At least 40% for properties funded before January 1, 2009 (20% for properties funded after January 1, 2009) or 100% of the assisted units in each building must have rents that are **not higher than the lessor of:**

- 30% of annual incomes for households at 50% of median income, adjusted for family size, minus tenant-paid utilities

OR

- The Fair Market Rents (FMRs), minus tenant-paid utilities.

B. High Rents

If not 100% at Low Rents, all remaining assisted rental units must have rents **not higher than the lessor of:**

- 30% of annual incomes for households at 60% of median income, adjusted for family size, minus tenant-paid utilities

OR

- The Fair Market Rents (FMRs), minus tenant-paid utilities.

The Department Of Housing and Urban Development's Office of Affordable Housing publishes the HOME program gross rent limits. No other program gross rent limits can be used. (Note: HUD's HOME program rent limits use the 65% limits when calculating the High Rents. Gross rents cannot exceed the housing credit or 60% gross rent limit.)

5.20 Utility Allowances

A utility allowance is an allowance for the cost of any utilities paid (excluding telephone, internet and cable) directly by the household and is a component of gross rent.

The utility allowance must be updated **annually**.

The following methods are acceptable forms of obtaining an AHFA approved utility allowance:

- If the household receives Section 8 rental assistance, then the property should use an **approved** utility allowance from the housing authority that provides the assistance to the household. The utility allowance must have a cover sheet or some type of documentation to indicate the source and effective date of the utility allowance.

*The above is mandatory only if the property received housing credits and HOME funds and if applicable to the building/household. Every property which received HOME funds from AHFA must use one of the options listed below:

- An **approved** utility allowance from the local housing authority which has jurisdiction over the area the property is located, if HOME funds are committed before January 24, 2015.
- An estimate received from the local utility provider (electric provider, gas provider, water works, etc.) is acceptable. If the local utility provider is used it must be on the utility provider's letter head and have estimates for **each** utility paid directly by the household. Management should round up estimates to the next dollar amount (example \$25.01 would be \$26.00)
- An estimate calculated using the HUD Utility Schedule Model found at www.huduser.org/portal/resources/utilallowance.html. The estimate must follow these guidelines:
 - This estimate must list the type of units (apartments, homes, townhomes, etc.), bedroom sizes, square footage of the units and what the calculated rates are for those units.
 - Supporting documentation such as letters from the utility companies stating the rates, taxes and fees.
 - The utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day implementation period allowed under Section 42.
 - This 90-day period will allow AHFA time to review the HUD Utility Schedule Model submitted, ask for further clarification if needed and either accept or reject the submission.
 - The HUD Utility Schedule Model must be renewed at least once every 12 months and completed so that the approval date is within 12 months of the previous year's utility allowance.
 - If the submission is rejected, the owner will need to obtain a current acceptable form of utility allowance.
 - The owner must bear the full cost of using this method including the cost of making the results available to the residents of the project for comment as well as to AHFA at the beginning of the 90-day implementation period allowed under Section 42.
- An energy consumption model estimate provided by a properly licensed engineer or qualified professional (together qualified professional) approved by AHFA which follows the guidelines below:
 - This estimate must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.
 - The qualified professional must not be related to the building owner within meaning of section 267(b) or 707(b) of the appropriate IRS regulations. The owner must certify to this in writing as well as send the credentials (licensed engineer documentation, years of experience conducting utility estimates, etc.) of the qualified professional.

- A complete copy of the energy consumption model documenting all of the steps in the process must be submitted.
- This documentation should include projected consumptions with any taxes or fees included. Correspondence with the utility companies should be submitted.
- The data and utility rates used must be for a 12-month period with the 12-month period ending no earlier than 60 days prior to the beginning of the 90-day implementation period allowed under Section 42.
- This 90-day period will allow AHFA time to review the energy consumption model submitted, ask for further clarification if needed and either accept or reject the submission.
- If the submission is rejected the owner will need to obtain a current acceptable form of utility allowance.
- For new properties with less than 12 months of consumption data the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located. This data must be for a 12-month period ending no earlier than 60 days prior to the beginning of the 90-day implementation period allowed under Section 42.
- After the first year of using the energy consumption model the qualified professional should compare the actual consumption data with their energy consumption model to determine if their model needs adjusting to closer reflect actual consumption. This information should be submitted to AHFA along with the qualified professional's energy consumption model for the next year's utility allowance.
- The energy consumption model must be renewed at least once every 12 months and completed so that the approval date is within 12 months of the previous year's utility allowance.
- The owner must bear the full cost of using this method including the cost of making the results available to the residents of the project for comment as well as to AHFA at the beginning of the 90-day implementation period.

All of the above utility allowance documentation must be **current and approved** by the agency or utility provider and updated **within each calendar year**.

The utility allowance must also be the effective utility allowance at the time of AHFA's review.

Current IRS regulations specify if the utility allowance changes due to an increase or decrease in utility costs, the new allowances must be used in the rent calculation within 90 days of the effective date of the change.

The effective date for the local Public Housing Authority utility allowance is located on the utility allowance form.

The effective date for the utility provider allowance will be the date on the letter from the utility provider.

The effective date for the HUD Utility Schedule Model and the energy consumption model estimate will be the date AHFA approved the utility model estimate.

There is no provision for a “utility allowance floor” as there is for rent.

The method of obtaining the utility allowance for a project is initially chosen by the owner on the application for funding.

The method of obtaining the utility allowance initially chosen by the owner cannot be changed until after the Form 8609(s) has been issued by AHFA.

5.21 Rent Increases

An owner of a property that received HOME funds must provide at least thirty days written notice to the households before implementing any increase in rents to stay in compliance with 24 CFR Part 92.

A property that received HOME funds with housing credits cannot raise the rent amounts placed on the application for funding before receiving the Form 8609's for the property without written approval from AHFA.

AHFA has to approve all rent increases.

5.22 Program Noncompliance

A. Owner Notification

During a compliance review, if AHFA finds instances of noncompliance with the requirements of Section 42, 26 CFR 1.42-5, 24 CFR PART 92, or the Declaration of Land Use Restrictive Covenants, the owner will be notified of the violation by letter and given the time period for correcting the violation.

B. Correction Period

After a notice of noncompliance is received, an owner shall have a correction period set by AHFA (normally 30 days) to correct the findings.

The owner must provide AHFA any missing or additional documentation needed to correct the findings.

The owner must address all discrepancies individually and indicate the actions taken to correct the findings.

C. IRS Notification

AHFA is required to file form 8823 “Low-Income Housing Credit Agencies Report of Noncompliance” with the IRS no later than 45 days after the end of the cure period, whether or not the noncompliance is corrected.

Form 8823 will describe the nature of the noncompliance and will state whether or not the owner has corrected the noncompliance. (For properties receiving housing credits with HOME funds)

D. HUD Notification

AHFA may notify HUD if a project receiving HOME funds has a noncompliance issue that has not been corrected after the time period given for correcting the noncompliance has expired.

5.23 Sale of Property after Placement in Service

Specific procedures govern executing the sale of a property that has received HOME funds.

If plans to alter the ownership of the project are being considered, AHFA must be notified by the Transfer of Ownership Interest Form at least 30 days prior to the intended change. A copy of this form can be obtained by calling the compliance department at AHFA or by going to the Multi-family section of AHFA’s web-site.

AHFA must approve any changes in the ownership of a HOME property during the term of the compliance period.

5.24 Change in Management Agent

AHFA must approve any change in management companies during the term of the compliance period.

The forms needed to request approval can be found in the Multi-family section under compliance of AHFA's web-site at www.ahfa.com.

5.25 Temporary Un-inhabitability Of A HOME Unit

If a unit or building is destroyed or is not suitable for occupancy for any reason, AHFA must be notified and receive a plan in writing for when the unit(s) will be ready for occupancy.

AHFA must be notified in writing when the unit or building is occupied by qualified tenant(s) again.

If the HOME unit has housing credits as well read Section 1.7 in Chapter 1 of this compliance manual.

5.26 Tenant Selection Procedures

Each property which received HOME funding from AHFA should have tenant selection procedures. (The procedures must have the steps listed in Section 5.2 Owner's Role of Chapter 5 in this compliance manual.)

The AHFA compliance auditor may request the tenant selection procedures during the compliance audit.

Chapter 6: Special Needs Set-Aside Projects Funded in 2001 and 2002

6.1 Set-Asides for Special Needs

Housing Credit/HOME and Housing Credit Only- 10% or 15% of the units are set-aside for the mentally retarded/mentally ill (MR/MI) special needs. The owner representative had to choose one of the above percentages on the application.

HOME funded without Housing Credits- 100% of the units must be set-aside for MR/MI special needs.

Provision for Converting the Supportive Housing Units

If the supportive housing units are not rented within 60 days of the **initial** lease up, the unit(s) may be rented to an otherwise income-eligible household(s).

Also, the owner of the project will be required to maintain a separate waiting list of eligible supportive housing households and rent to all eligible supportive housing households on the list.

However, if there are no eligible supportive housing households on the waiting list, the owner must notify the local service provider and the DMH/MR.

After the owner has notified the local service provider and the DMH/MR, the unit may be rented to an otherwise income-eligible household(s).

AHFA will verify that the project remains eligible for and entitled to supportive services for its households from an appropriate service provider.

All files for households with MR/MI special needs should contain the **Confidential Tenant Eligibility Certificate** for the special needs tenant.

6.2 Special Needs Set-Aside Rents

A. Housing Credit and Housing Credit/HOME

Effective for all household leases starting January 1, 2010 and after net tenant paid rents are \$180 for a 1 Bedroom unit and \$240 for 2 or more Bedrooms (total combined rent if the unit is shared by more than 1 person).

These net tenant paid rent limits can increase if the household's income can support higher rent (30% of the tenant's gross income) or the household is holding a Section 8 voucher.

Gross rent includes tenant paid rent and the utility allowance.

Tenant's income is 15,000; the maximum gross rent that can be charged is 375 per month

$$15,000 * 30\% = 4500/12 \text{ months} = 375$$

If the rent is increased for a household with the special needs set-aside the owner must keep in mind the rent restrictions for Housing Credit and Housing Credit/HOME projects.

B. HOME funded without Housing Credits

Effective for all household leases starting January 1, 2010 and after net tenant paid rents are \$250 for a 1 Bedroom unit and \$310 for 2 or more Bedrooms (total combined rent if the unit is shared by more than 1 person).

These net rent limits can increase if the household's income can support higher rent (30% of the tenant's gross income) or the household is holding a Section 8 voucher.

- If the rents are increased in projects with five or more units, 20% of the units must be rent restricted at or below the 50% rent level or Fair Market Rent whichever is less. The remaining units must be rent restricted at or below the 60% rent level or Fair Market Rent whichever is less.
- If the rents are increased in projects with four or fewer units, 100% of the units must be rent restricted at or below the 60% rent level or Fair Market Rent whichever is less.

AHFA will notify the owner representatives when the net tenant paid rents increase.

C. Income Set-Asides For Special Needs

Housing Credit and Housing Credit/HOME- The income set-asides are the same as the income set-asides for all other Housing Credit and Housing Credit/HOME properties.

HOME funded without Housing Credits- if the project has four or fewer units, the units must be occupied by households with incomes at or below 60% of the median family income.

HOME funded without Housing Credits- if the project has five or more units, at least 20% of the units must be occupied by households with incomes at or below 50% of the median family income. The remaining units must be occupied by households with incomes at or below 60% of the median family income.