



LOW-INCOME HOUSING TAX CREDIT
AND
HOME INVESTMENT PARTNERSHIPS PROGRAM

OWNER'S
COMPLIANCE
MANUAL

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FOREWORD

The Department of Housing and Community Development (DHCD) is the agency responsible for the administration and monitoring of Low Income Housing Tax Credits and HOME funds for the District of Columbia. This guide has been developed to assist recipients of Tax Credits and/or HOME funds in maintaining a multi-family rental property during the compliance and/or affordability period.

This manual is not a substitute for the requirements of Section 42 of the Internal Revenue Code (the Code) as they pertain to Tax Credits or the requirements of 24 CFR Part 92 under the HOME Program. Compliance with the IRS and HUD requirements are the sole responsibility of the owner of any building with Tax Credits or HOME funds.

The following documents are important source documents provided by federal agencies for LIHTC and HOME properties:

- HUD 4350 Handbook* (Chapter 5)
- IRC Section 42
- IRS Guide for Completing Form 8823*
- 24 CFR Part 92
- HUD CPD Notices
- Housing and Economic Recovery Act of 2008

These documents should be used and available to owner representatives and management personnel.* The Office of Program Monitoring has the latest versions of the 4350.3 HUD handbook and the 8823 Guide posted on the compliance section of DHCD's website at the following link: <http://www.dhcd.dc>.

Important Disclaimer

DHCD's responsibility to monitor for compliance will not cause DHCD to be liable for an owner's noncompliance. Therefore, an owner should not rely solely on DHCD to determine if the project and its records are in compliance. DHCD recommends all Tax Credit and HOME funded recipients consult with a tax accountant, attorney, or other professional as to the specific requirements of the Tax Credit and the HOME program Federal Regulations.

The penalty for failure to adhere to DHCD's policies may be forfeiture of the right to participate in all DHCD programs in one or more future years depending upon the severity and nature of the particular circumstances and/or financial penalties.

Properties that receive both HOME and Tax Credit funding must adhere to the more restrictive regulation/requirement of either program.

- * It is the responsibility of the owner/manager to ensure that they are using the most current version of all program documents and forms. Federal Agencies such as HUD and the IRS frequently update materials. DHCD makes every effort to post these changes to our website in a timely manner. To keep abreast of all of the changes, the owner/manager should check the HUD, IRS and DHCD websites on a regular basis.

Although DHCD acknowledges that properties with other funding sources, such as Tax Exempt Bonds, Section 8, Housing Production Trust Fund, etc. must adhere to those regulations, this does not release the property from adhering to DHCD's funding source regulations/policies. The most restrictive regulation/rule will always apply.

ORGANIZATION

DHCD's Owner's Compliance Manual is organized as follows:

- PART I** Website, Training and Forms
Low Income Housing Tax Credit Compliance
- PART II** HOME Program Compliance
- PART III** Forms

Please note: This manual is intended to be used in electronic format. It contains many hyperlinks to DHCD and non-DHCD websites. As always, users should make sure they are using an up to date security web browser with current anti-virus software.

PART I

WEBSITE, TRAINING AND FORMS

A. WEBSITE

In an effort to make information available to participants in the LIHTC and HOME programs as quickly and efficiently as possible, the Office of Program Monitoring (OPM) posts all general and program wide notices on the Compliance section of the DHCD website. The internet address is: <http://www.dhcd.dc.gov>.

B. TRAINING

OPM is committed to providing training to the participants in the LIHTC and HOME programs. From time to time, workshops are scheduled when major changes or initiatives are announced. To see a schedule and list of classes currently offered, go to the DHCD Compliance website listed above. Training can also be provided for individual companies at a site and time agreed to with OPM.

1. Required Training. A representative for the owner/general partner of a funded project is required to successfully complete a compliance training provided or sponsored by DHCD or any nationally recognized affordable housing consultant prior to the beginning of lease-up. The owner of a Tax Credit or HOME property will be required to submit to DHCD evidence of attendance at the compliance training prior to the project's receipt for 8609s.

DHCD requires Owners as well as an on-site Property Management Representatives to attend this course. In the event, DHCD determines that a property is experiencing compliance problems, additional training may be required for Owners, Property Managers or other project representatives as part of the cure for noncompliance.

C. FORMS

DHCD mandates that certain forms and formats be utilized by program participants. As of the date of publication, the following forms are mandated by OPM:

- AFHMP Affirmative Fair Housing Marketing Plan - HOME
- Annual Owner's Certification - LIHTC
- Annual Owner's Certification - HOME
- Request for Recertification Waiver - LIHTC
- Tenant Income Certification

This list and the forms themselves are subject to updating or change. To ensure that the current form is being utilized, visit the compliance page on the website at www.dhcd.dc.gov.

Failure to use these forms can result in noncompliance and increased scrutiny during DHCD property reviews. Penalties can include loss of or ineligibility for future funding.

LOW INCOME HOUSING TAX CREDIT COMPLIANCE

A. INFORMATION TO BE KEPT AT EACH SITE

The following information must be kept at each site. It should be easily accessible to employees and DHCD representatives and updated as required:

- Tax Credit Regulatory Agreement
- 8609(s) – executed first year forms
- DHCD Application for Funding
- Property Management Summary (Mandatory Form)
- Utility Allowance (Current and previous)
- Income Limits (Current and previous)
- 4350 HUD Handbook, Chapter 5
- Copies of All Advertising (for past 4 years)
- Tenant Selection Criteria
- Copies of Company Policy on Reasonable Modification and Accommodation
- Current Annual Owner’s Certification
- List of all units that meet Accessibility requirements
- LIHTC Training Certificate (No more than two (2) years old)
- Certificates that staff has attended Fair Housing Training
- Copies of all Applicant Rejection Letters
- Supportive Services, if any

B. IMPORTANT TIME PERIODS

Please refer to the Code for specific regulations regarding compliance with Section 42 requirements regarding credit periods, compliance periods, and extended use periods. The Code also regulates Termination of Rent and Income Restriction prior to end of Extended Use Period.

The applicant’s compliance responsibilities begin with the award of the Tax Credits and will continue through the end of the Compliance Period or the Extended Use Period whichever is longer.

The Credit Period (IRC 42(f)) is usually 10 years following the date the building was placed in service. It is the time period in which the owners of the project receive tax credits, which they can then apply to their respective income tax liabilities.

The Compliance Period (IRC 42(i)(1)) is the duration of the credit period plus 5 years. The compliance period is 15 years beginning with the first year of the tax credit period (placed in service year or subsequent year if deferral was elected).

The Extended Use Period (IRC 42(h)(6)(D)) restricts the eligibility of developments to receive an allocation of Tax Credits to only those developments that agree to keep the property income and rent restricted for an extended period of time. The term for this period is a minimum of 15 years in addition to the normal 15 year compliance period. This results in a total term of **compliance period of 30 YEARS**.

Minimum Period for DHCD Rent, Income and Occupancy Restrictions. Many projects have additional rent and occupancy restrictions as a result of the DHCD scoring process. These restrictions remain in effect through the "Compliance Period."

Termination of Rent and Income Restriction prior to end of Extended Use Period. The extended use period for any building that is part of the Project shall terminate:

- On the date the building is acquired by foreclosure or instrument in lieu of foreclosure except that for a period of three years following the termination of the extended use period, the Owner shall not evict the tenant of a Low-Income Unit or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to any such Low-Income Unit.
- On the last day of the one-year period that begins on the date Owner properly submits a written request to the DHCD, asking the DHCD to assist in procuring a "qualified contract," as defined in Section 42(h)(6)(F), for the acquisition of the low-income portion of the building, but only if the DHCD is unable to present a qualified contract during such one-year period; provided, however, such request may not be made before the end of year 14 of the compliance period or as agreed to by the Owner in its application.

Waiver of Right to Opt Out. As part of its scoring process, some projects have elected to waive their right to request a qualified contract from DHCD after the end of year 14 of the Compliance Period. Project Owners should review their Applications and recorded Land Use Restriction Agreements to determine whether there has been such a waiver for the project.

DHCD is required to monitor projects for compliance with the requirements of the Code, the representations set forth in the Application, the requirements stated in the QAP, and the requirements set forth in DHCD's various program manuals. DHCD's plan for compliance monitoring described below outlines the overall requirements, offers explanations for individual program regulations, and sets forth the requirements for properties participating in multiple programs.

C. TAX CREDIT REGULATORY AGREEMENT

DHCD will enforce income, rent and occupancy requirements and agreements through covenants running with the property. For all projects allocated Tax Credits, the owner is required to execute a Regulatory Agreement for Low Income Housing Tax Credits with DHCD. This document must be recorded with the local Recorder of Deeds and is a deed restriction that carries forward to all subsequent owners of the property. When there is more than one financing source imposing land use restrictions on a project, e.g., a HOME Loan and Credits, there may be restrictions from one program that are more restrictive than similar restrictions in the other program(s). In such instances, the more restrictive requirements will apply to the project. Extended low-income housing commitment means any agreement between the owner and DHCD in which the owner agrees to all terms and conditions in regard to the IRS compliance period of 15 years, the additional 15 year extended use period. An owner may also make additional commitments during the application phase. These commitments may include occupancy restrictions, structural restrictions, additional rent and income restrictions, single-family dwelling lease to purchase or that a local public housing authority will sponsor the project. Owners must adhere to all pledges made during the application phase throughout the compliance and extended use periods.

The land use restrictions will be enforced by DHCD. The use restrictions will not be removed until the agreement has expired.

Record Keeping Requirements. DHCD asserts the right to perform an on-site inspection of tenant records on any project receiving Tax Credit funding at any time from initial allocation through the end of the Compliance Period or the Period of Affordability whichever is longer. Copies of tenant records of any project receiving credits may be requested at anytime during the compliance period.

D. RECORD KEEPING (*Treas. Reg. 1.42-5(b) (1)*)

Under the Tax Credit record keeping provision, the owner of a low-income housing project must keep records for each qualified low-income building in the project for each year in the compliance period:

- (i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

- (ii) The percentage of residential rental units in the building that are low-income units;
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances);
- (iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under I.R.C. Section 42(g) (2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989);
- (v) The low-income unit vacancies in the building and information that shows when and to whom, the next available units were rented;
- (vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see I.R.C. Section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);
- (vii) Documentation to support each low-income tenant's income certification (for example, verifications of income from third parties such as employers or state agencies paying unemployment compensation, a copy of the tenant's federal income tax return, or Forms W-2. Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under I.R.C. Section 42(g);
- (viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- (ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under I.R.C. Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the project).

Tax Credit Record Retention (*Treas. Reg. 1.42-5(b)(2)*). Under the record retention provision, the owner of a Tax Credit housing project is required to retain the records described in *Treas. Reg. 1.42-5(b)(1)* for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. Owners must retain first year records for a minimum of 21 years plus DHCD's requirement of the extended use period.

Tax Credit Inspection Report Retention (*Treas. Reg. 1.42-5(b)(3)*). Under the inspection record retention provision, the owner of a low-income housing project is required to retain the original local health, safety or building code violation reports or notices that were issued by the state or local government unit. Retention of the original violation reports or notices is not required once

DHCD reviews the violation report or notices and completes its inspection, unless the violation remains uncorrected.

DHCD requires that an owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to DHCD. In addition, the owner must state whether the violation has been corrected.

Electronic Storage (*Revenue Procedure 97-22*). This Revenue Procedure outlines the type of electronic storage and processes that are acceptable in the Tax Credit Program.

E. PROPERTY STANDARDS

DHCD inspects LIHTC properties according to Uniform Physical Conditions Standards (UPCS). Please see the following links for standards:

http://www.hud.gov/offices/reac/products/pass/upcd_comp_list.xls

http://www.hud.gov/offices/reac/pdf/pass_dict2.3.pdf

The LIHTC program does not use a weighted score as in REAC. Deficiencies that are found during an inspection are reported on IRS form 8823, unless self-corrected prior to the inspection. DHCD may also comment on and require, under local ordinances, additional repairs not listed under UPCS guidelines.

Tax Credit Properties-Non-transient Occupancy and Suitable for Occupancy Requirement (*I.R.C. Section 42(i)(3)(B)*). A unit shall not be treated as a Housing Credit unit unless the unit is suitable for occupancy and used other than on a transient basis. The suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary of the Treasury taking into account local health, safety and building codes. A unit is considered to be used on a non-transient basis if the initial lease term is six months or greater. Therefore, owners may meet this requirement by executing a minimum six month lease with Housing Credit occupants. The only exceptions are Single Room Occupancy (SRO) and transitional housing units supported under the Stewart B. McKinney Homeless Assistance Act. All Housing Credit units must be suitable for occupancy at all times to be deemed eligible for credit. Owners are encouraged to make periodic inspections of vacant and occupied Housing Credit units utilizing UPCS to ensure that the units are suitable for occupancy.

General Public Use – (*Treas. Reg. 1.42-9*)

- (a) If a residential rental unit in a building is not for use by the general public, the unit is not eligible for Housing Credit.

- (b) If a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for Housing Credit. In addition, any residential rental unit that is part of a

hospital, nursing home, sanitarium, life care facility, trailer park or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for Housing Credit. The Housing and Economic Recovery Act of 2008 clarifies the general public use test to explicitly allow Tax Credit developments that establish tenancy restrictions for persons with special need, tenants who are involved in artistic or literary activities, and person who are members of a specified group (effective for buildings placed in service before, during and after date of enactment).

If DHCD determines that a project does not meet these requirements, it is required to report the noncompliance and whether or not the problem is corrected to the Internal Revenue Service on IRS Form 8823. Failure to maintain a building will result in the loss of tax credits. All incidents of noncompliance will be reported.

F. TAX CREDIT RENT AND INCOME REQUIREMENTS

Minimum Section 42 Set-Aside Elections. For every tax credit project, the owner must record a restrictive covenant agreeing to one of the following tax credit set asides ("Section 42 Rent and Occupancy Restrictions"):

At least 20% of the Units in the Project are and will continuously be maintained as both rent-restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income. (If an Owner makes this election, all tax credit units will be rent and income restricted to 50% or less of Area Median Gross Income).

(or)

At least 40% of the Units in the Project are and will continuously be maintained as both rent-restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income. (If an Owner makes this election, all tax credit units will be rent and income restricted to 60% or less of Area Median Gross Income).

The owner has until the end of the first year of the tax credit period for the building to lease the specified number of units to eligible low-income tenants necessary to meet the minimum low-income occupancy requirements (20 percent or 40 percent based on the minimum percentage elected). **For projects consisting of more than one building, low-income occupancy compliance for the entire project must be met within this same time period.** (*Section 42 (g)(3)*)

A property is in compliance if the elected minimum set aside test is met by the end of the first year of the owner's credit period and continues to be met throughout the compliance period. In an acquisition and rehabilitation project in which a tenant is living in the unit prior to acquisition and plans to remain in the unit after the rehabilitation is completed, the tenant should be certified within ninety (90) days of the time of acquisition or loan closing unless the unit is not suitable for occupancy.

If the project does not meet the minimum set aside by the end of the first year of the credit period, the property does not qualify as a low income housing project and the credit cannot be claimed in any year. Non compliance also occurs if the project falls below the minimum set aside anytime during a subsequent year in the compliance period.

Elimination of 40/50 Rule. The Housing and Economic Recovery Act of 2008 eliminates below-market federal loans from the definition of federally subsidized properties, allowing, 9% Credit on all federally subsidized properties, except for tax-exempt bond financed properties. In such projects, there is no longer a requirement for 40% of the units to be leased to households at 50% or less of the Area Median Income (AMI). This change is only effective for buildings placed in service after the date of enactment.

Rent, Income and Occupancy Requirements. In an Application submitted by the Owner of a project, the Owner may make additional representations to DHCD regarding rent, income and occupancy restrictions which may be more restrictive than those required by Section 42. These limitations may include, but are not limited to:

- Very Low Rent and Income Restrictions where the Applicant agrees to reserve a specified number of units for occupancy by households earning annual gross incomes greater than 30%, but less than or equal to 50% of AMI and to set rents for those units at or below 30% of 50% of the area gross median income, adjusted for bedroom size.
- Very, Very Low Applications that propose dwelling units with rents set at the 30% rent level and reserved for occupancy by very-very low-income (those earning annual gross incomes of 30% or less of the AMI).
- Mixed income projects in which a specified percentage of the units are designated as market rate units which are not subject to any rent or income restrictions.

The use of Project Based Rental Assistance is not prohibited for Very Low and Very, Very Low units, but an owner cannot accept PBRA in excess of the applicable restricted rent amount for those units if points have been received for the deeper targeting. Please refer to HUD 24 CFR Part 983 for new project-based certificate regulations and to the appropriate year Qualified Allocation Plan (QAP).

These additional rent and income restrictions will be referenced in the Tax Credit Regulatory Agreement for the project.

Minimum Period for Rent and Income Restrictions. Section 42 Rent and Occupancy Restrictions shall remain in effect throughout the "Extended Use Period." In accordance with Section 42, the Extended Use Period shall commence with the first day in the compliance period on which any building that is part of the Project is placed in service and end on the date which is 15 years after the close of the compliance period, generally a period of 30 years. The DHCD Rent, Income and Occupancy Restrictions shall remain in effect through the "Compliance Period." Compliance

period shall be the period of fifteen (15) taxable years beginning with the 1st taxable year of the credit period.

Termination of Rent and Income Restriction prior to end of Extended Use Period. The extended use period for any building that is part of the Project shall terminate:

On the date the building is acquired by foreclosure or instrument in lieu of foreclosure except that for a period of three years following the termination of the extended use period, the Owner shall not evict the tenant of a Low-Income Unit or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to any such Low-Income Unit.

On the last day of the one-year period that begins on the date Owner properly submits a written request to DHCD, asking DHCD to assist in procuring a "qualified contract," as defined in Section 42(h)(6)(F), for the acquisition of the low-income portion of the building, but only if the DHCD is unable to present a qualified contract during such one-year period; provided, however, such request may not be made before the end year 14 of the compliance period or as agreed to by the Owner in its application.

G. INCOME LIMITS

Determining Income Limits. Owners and managers must understand how income limits are applied if they are to be successful in maintaining a project in compliance. Each year HUD publishes new income limits with an effective date. The household's total annual gross income must be at or below the applicable income limit as elected by the owner. Revenue Ruling 94-57 states that owners and managers may rely on the list of income limits until 45 days after HUD releases a new list or until HUD's effective date for the new list, whichever is later. Once HUD publishes the new income limits, DHCD will complete the necessary calculations and release the new income and rent limits on its webpage.

H. CALCULATING INCOME

Please refer to the 4350.3 Handbook, Chapter Five, (or most recent edition), for guidance on calculating and determining household incomes. Also refer to the mandatory forms that must be used in the verification process.

Qualifying Section 8 Tenants. When an applicant with Section 8 rental assistance applies for occupancy in a Housing Credit unit, the owner may obtain verification of the household's annual gross income from the issuing Housing Authority in lieu of obtaining verifications from each

income source. The applicant must give the proper authorization to obtain verification of the household's annual gross income. Then, the property manager should request third party written verification from the issuing Housing Authority of the household's annual gross income (the Housing Authority verification of income and assets cannot be over 90 days old). Once the verification is received, the Tenant Income Certification (TIC) must be completed, signed and dated by the applicant and the owner. During a tenant's initial certification, **DHCD recommends that property management verify all income and assets via third party documentation and that the Housing Authority verification of household income only be used when the household is recertified.**

I. OVER INCOME TENANT RESTRICTIONS (140% RULE)

Over Income Tenant Rule. The Code provides that a tenant's income may increase during tenancy to exceed 140% of the allowable household income. The Housing Credit Program allows for the increase of income for all initially qualified residents in a Housing Credit unit. (Please refer to the IRS Good Cause Eviction set forth below for more information.)

If the gross income of the occupants of a qualifying unit increases to more than 140% of the applicable current income limit, the unit may continue to be counted as a low income unit as long as the unit continues to be rent-restricted and the next unit of comparable or smaller size is occupied by a qualified low-income tenant. (Documentation of the implementation of the next available unit rule must be in both the over income tenant and the replacement tenant files). When a building is restricted to 100% Housing Credit, this rule does not typically affect the building because all units should be rented to Housing Credit qualified households.

J. EVICTIONS

Eviction for good cause. IRS Revenue Procedure 2005-37 prohibits evictions or the termination without good cause of tenancy of an existing tenant of any low-income unit throughout the entire commitment period. The Owner, as part of its certification under 1.42.-5c(1)(xi), must certify annually that for the preceding 12 month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenant had an increase in gross rent with respect to a low-income unit not otherwise permitted under Section 42.

Good cause does not include the following: failure to sign a new lease, failure to pay a utility bill that is made payable to the landlord, failure to move if over income, (except in cases of tenant fraud), the loss of job or for a mistake made by management in the qualification process. This is by no means an exhaustive list. Please refer to IRS regulations and the IRS Guide for Completing Form 8823 for further direction.

Tenant files must be well documented showing why evictions were filed. Copies of all notices leading up to the eviction and copies of all legal evidence must be included. All fees charged to the tenant leading up to the eviction must also be documented in the tenant file.

K. DETERMINING RENTS

Section 42(g)(2)(A) provides that a residential unit is rent restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit. The imputed income limitation applicable to a unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

1. In the case of a unit that does not have a separate bedroom, one person income figures must be used in rent calculation,
or
2. In the case of a unit that has one or more separate bedrooms, 1.5 person for each separate bedroom must be used in rent calculation.

In determining the appropriate rent, the owner must also consider the utility allowances, services provided, revisions to HUD Income limits, rent calculation methods, changes in the tenant's income, and Section 8 tenants.

L. HOUSEHOLD SIZE

Please refer to HUD 4350.3 Handbook for a complete discussion. Also see Compliance webpage for up to date clarifications.

M. FEES

Application Fees: **Only the amount the owner incurs may be charged for an application fee.** Please refer to the 8823 Guide for a more complete explanation.

Non-Optional Services. Any charges for services that are considered to be mandatory for low-income tenants must be included in gross rent. Please refer to the 8823 Guide for a complete explanation.

Supportive Services and Fees. Owners may pledge to provide various supportive services in their Application. Fees cannot be charged for supportive services that are provided to the tenants.

Owners must provide pledged supportive services through the compliance period or period of affordability whichever is longer. In addition, pledged supportive services will be monitored for existence during compliance monitoring reviews. No change may be made in supportive services without the express written consent of DHCD.

N. CALCULATING UTILITY ALLOWANCES

New Utility Allowance Regulation. The final regulation amending the utility allowance regulations for Section 42 properties was effective July 29, 2008 or January 1, 2009 depending on the tax year of the property.

Tenant-Paid Utility Allowances. If the cost of any utilities (other than telephone, cable television and internet) for a residential rental unit is paid directly by the tenant(s), the gross rent for that unit includes the applicable tenant-paid utility allowance. Any changes in utility type or source must be approved by DHCD prior to implementation. Project Owners should establish utility allowances for the property as follows:

1. USDA-Assisted Buildings – If a building receives assistance from the USDA (formerly called the Farmer’s Home Administration, or FmHA), the USDA-prescribed utility allowance applies to all rent-restricted units in the building. The USDA-approved allowance applies even if the building is assisted by any other program or agency. Examples of USDA assistance include assistance provided under the USDA Section 515 rural rental loan program and USDA rental assistance.
2. Buildings with USDA-Assisted Tenants. If any resident of a building receives USDA rental assistance, the USDA-approved utility allowance applies to all rent-restricted units in the building. This is even the case if residents of some units receive rental assistance from the U.S. Department of Housing and Urban Development (HUD).
3. HUD-Regulated Buildings. If neither a building nor any resident in the building receives USDA assistance, and HUD annually reviews the rents and utility allowances for the property (such as for Section 8 and Section 236 projects), the HUD-prescribed utility allowance is used. This rule doesn’t apply to buildings that have only FHA-insured mortgages.
4. DHCD HOME and Tax Credit Buildings. If a building is neither an USDA-assisted nor HUD regulated property and no tenant in the building receives USDA rental assistance, there are several other methods of calculating utility allowances available:
 - a. The allowance established by the local Public Housing Agency (PHA) for the Section 8 Program where the property is located must be used. However, the electric allowances may be calculated as outlined in Section C below. (Many Public Housing Agency utility allowance tables for the Section 8 Program include a deduction for “elderly”. This deduction can only be used at DHCD funded properties that are 100% PBRA properties and which satisfy DHCD’s definition of Elderly.)

- b. A written allowance established by a Utility Provider based on actual usage may also be used.
- c. The HUD Utility Schedule Model: This model may be found at www.huduser.org/datasets/lihtc.html.
- d. An allowance calculated by an Energy Consumption Model: the property owner may retain either a properly licensed engineer or a qualified professional approved by DHCD (with no identity of interest to the owner) to calculate an estimate using an energy and water and sewage consumption and analysis model. The model must, at a minimum consider unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the buildings for a 12-month period.

The new revisions also state that submetering and RUBS will no longer entitle an owner to create/claim a utility allowance. In order to claim an allowance, the cost of the utilities must be paid directly by the tenant to the utility provider, not by or through the owner of the building. Owners that have been using such a system will now have to discontinue the use of a utility allowance and not bill the tenants for the cost of utilities. Owners will now pay the utilities but owners may charge full gross rent to the tenants.

O. TENANT CERTIFICATION - RECERTIFICATION

Annual Tax Credit Certification. (*Treas. Reg. 1.42-5(c)(1)*) Owners are required to annually certify the household's Housing Credit eligibility. The re-certification must be effective no later than 12 months from the effective date. The effective re-certification date is the annual anniversary of the move in date specified on the Tenant Income Certification form. See the IRS Guide for Completing Form 8823 for additional discussion. Owners must obtain third-party documentation to support the household's income eligibility and verification of the household's student status during an annual re-certification. The owner must also maintain evidence to support the gross rent for the unit. Once this information has been obtained, a Tenant Income Certification form must be completed and signed by all adult household members. (*Treas. Reg. 1.42-5(c)*)

Exceptions for Tenant Income Certifications. Properties that receive project-based Section 8 rental assistance and complete the Form HUD-50059 or HUD-50058 annually (with all adult household members' signatures and income and asset verifications no older than 90 days) do not have to complete the DHCD Tenant Income Certification form. However, owners and managers should remember that the household's student status must be verified, gross tenant-paid rent documented and a tax credit addendum completed.

Tenant Income Re-certification and HERA (the Housing and Economic Recovery Act). In the District, the elimination of the annual income re-certification requirement for 100 percent Tax Credit developments is subject to OPM approval. To apply for recertification exemption, go to the Compliance section of the DHCD website under mandatory forms and complete the Request for Recertification Exemption. Until the property is approved for the waiver, the tenant re-certification must continue.

P. VACANT UNIT RULE AND NEXT AVAILABLE UNIT RULE

Please refer to The Code and the 8823 Guide for a complete explanation of implementing the Vacant Unit rule.

In addition to IRS regulations, DHCD mandates that all units be made ready for occupancy within 30 days of the last qualified tenant vacating the unit. Owners must keep documents showing that vacant units are ready for occupancy and being marketed to low-income tenants.

Down Units. Vacant units not ready for occupancy within the above stated guidelines may be considered down units and reported to the IRS on form 8823. Units with major health and safety violations will also be reported as such. All units and common areas must satisfy UPCS requirements.

Notice of Casualty Loss. DHCD must be notified within 24 hours if the loss results from a major event such as fire or flood, the loss results in a household being transferred or removed from the unit, or if an occupied unit will not pass a UPCS inspection for more than 48 hours.

Q. TRANSFER OF OWNERSHIP

DHCD must be notified of **all** changes in ownership interest or project participant structure. Current and potential owners are reminded that the Tax Credit Regulatory Agreement for Low Income Housing Tax Credits will be enforced by DHCD. The Extended Use Agreement will not be removed until the agreement has expired. Owners are encouraged to contact their tax consultant prior to the sale of any Housing Credit property. If a transfer is approved, the previous owner must provide a completed Property Information Form to DHCD prior to disposition of the property. In addition, the new owner must submit a completed IRS Form W-9 Request for Taxpayer Identification Number and Certification to DHCD within 30 days of acquisition of the property.

R. STUDENTS

DHCD recognizes all five student exceptions. A Student Affidavit must be completed with each re-certification. Please see the DHCD website for the current student forms.

See the HUD 4350.3 Handbook and the 8823 Guide for a detailed discussion of student income. Even if the student exception is satisfied, the student(s) must still be income eligible.

S. MATERIAL PARTICIPATION OF A NONPROFIT ORGANIZATION

The Code requires that 10% of the total Housing Credit ceiling amount be available only to projects with qualified nonprofit participants and owners. Applicants must indicate that they are applying for credit from the non-profit set aside.

The nonprofit must meet the criteria defined as material participation in Treas. Reg. 469(h) and the owner must maintain documentation to support compliance. The owner must certify on the Owner's Annual Certification of Compliance which of the tests defined in Treas. Reg. 469(h) the nonprofit met in order to satisfy the material participation of the nonprofit (as outlined below). DHCD will review the documentation during on-site reviews of the project. Owners should immediately notify DHCD of any change in the nonprofit organization who is materially participating in a project.

Treas. Reg. 469(h) Tests for Material Participation

1. Nonprofit participates in the activity for more than 500 hours during the tax year.
2. Nonprofits participation constitutes substantially all of the participation in the activity of all individuals (including non-owners) for the tax year.
3. Nonprofit participates in the activity for more than 100 hours during the tax year, and its participation is not less than the participation of any other taxpayer for such year.
4. Nonprofit activity is a significant participation activity for the tax year, and the taxpayer's participation in all significant participation activities during the year exceeds 500 hours. A significant participation activity is one in which the taxpayer has more than 100 hours of participation during the tax year but fails to satisfy any other test for material participation.
5. The nonprofit materially participated in the activity for any five of the ten tax years immediately preceding the year in question.
6. Based on all facts and circumstances, the nonprofit participates in the activity on a regular, continuous and substantial basis during the tax year. To satisfy the facts-and-circumstances test, a nonprofit must participate in an activity for more than 100 hours. The nonprofit's management services are not taken into account unless no other individual is compensated for management services and no other individual performs management services exceeding the hourly total of such services performed by the nonprofit.

T. ADDITIONAL SECTION 42 REQUIREMENTS

IRS Form 8609 Elections. IRS Form 8609 is the document issued by DHCD for the final allocation of credit to the owner. Once received, the owner must make important elections for each building that will be in effect during the compliance period of the project.

DHCD will not issue an 8609 for a property which is not built in accordance with DHCD approved plans and specifications, which do not contain amenities pledged in the Project Application and which does not meet DHCD or Federal requirements. Prior to issuance of an 8609, a property must also be in compliance with all accessibility requirements.

Please note that the issuing of 8609s does not indicate that the project meets all accessibility requirements or that DHCD approves any in place project changes that were not approved by DHCD. It signals that, to the best of DHCD's knowledge at that time, the project meets requirements. The owner is ultimately responsible for meeting all Federal and State requirements.

Placed-In-Service Date. The placed-in-service date for new construction is the date the first unit in the building is ready and suitable for occupancy under state or local law and the unit received a Certificate of Occupancy. The acquisition placed-in-service date is generally the date of loan closing or purchase of the property occurs. The placed-in-service date for a rehabilitation development is established by the owner when it is determined that required expenditures have been met, whether or not the building is occupied, but must be no later than 24 months after the credit allocation.

U. COMPLIANCE MONITORING REVIEWS

DHCD compliance staff will conduct periodic compliance monitoring reviews of each project funded under the Qualified Allocation Plan. DHCD will contact project staff to schedule the review at least three weeks prior to the on-site review. Prior to the site review, the owner may be requested to submit certain information to DHCD. It is the responsibility of the owner to ensure that all tenant income certifications are available and all units are accessible for physical inspection by DHCD staff during the on-site review.

DHCD considers the failure to respond to monitoring requests or to provide access to tenant files or access to units to be major instances of noncompliance. **IRS form 8823 line 11n will be completed for each project that fails to respond to requests for monitoring. It is the responsibility of the owner/manager to contact DHCD with changes in contacts or mailing/emailing addresses.**

DHCD monitors for compliance with District and Federal requirements and agreements made in the Formal Application and Regulatory Agreement.

V. OWNER REPORTING REQUIREMENTS

Under the certification provision, the owner of a low-income housing project is required to certify at least **annually** to DHCD on DHCD mandated forms. The forms can be found on the main Compliance page at www.dhcd.dc.gov.

Annual Owner Certification. Owner certifications are due on the 31st of March covering the previous calendar year. This certification is due annually throughout the LIHTC compliance period. Please note that the annual certification covers the previous calendar year, not the upcoming year.

W. ANNUAL MONITORING FEES

An annual compliance monitoring fee for all LIHTC projects will be charged in the amount of \$35.00 per unit. The fee shall apply to all tax credit units. The fee will be charged on February 15th of each year for the preceding calendar year. Fees and fee procedures may be adjusted in the future at the discretion of DHCD. DHCD relies upon prompt remittance of compliance monitoring fees by owners to fund its compliance monitoring activities. Because nonpayment of fees by owners may cause DHCD to fail to meet its federal obligations, DHCD may treat the nonpayment of compliance monitoring fees as the owner's decision to withdraw the project from the Tax Credit program. Withdrawal from the Tax Credit program is reportable to the IRS via IRS Form 8823.

X. PROPERTY INSPECTIONS

Tax credit physical inspections (*Treas. Reg. 1.42-5(d)*). DHCD will conduct a physical inspection on all buildings in the project by the end of the second calendar year following the year the last building in the project was placed in service and at least every three years thereafter. DHCD will conduct a physical inspection on at least 20 percent of the project's low income units, inspect the units and review the low income certifications, the documentation supporting the certifications and the rent records for the tenants in those units. DHCD will randomly select which low-income units and tenants' records will be inspected and reviewed. The units and tenant records to be inspected will be chosen in a manner that will not give owners notice of which records will be reviewed. In addition to unit inspections, the site and grounds, all buildings exteriors, common areas and building systems will be physically inspected. Owners will be required to notify all residents of possible unit inspections at least two days prior to the scheduled inspection date.

Copies of notices should be maintained in tenant files. In addition, the owner must ensure that all units are accessible for physical inspection by DHCD.

Units unavailable for inspection. From time to time, for reasons not the fault of the owner, DHCD will be unable to inspect a unit. The owner/manager will then complete with the tenant a Certification of Habitability. If tenants are not given proper notice of possible physical inspection or if there is a pattern of inability to gain access, the units will be deemed out of compliance and a Form 8823 will be issued. Follow-up visits will not be conducted to merely gain access to a unit and the unit will remain out of compliance until the next regularly scheduled review.

The reviewer/inspector will wait a reasonable time for entry to be gained to any given unit. Reasonable will be determined by the inspector at the site. Cooperation and preparedness of management up to that point will be a major determining factor. Once a unit has been skipped during an inspection, time constraints may prevent an inspector from going back to the unit.

Tenant refuses an inspection. The unit will be skipped if a tenant refuses inspection in the presence of a DHCD inspector. The right for management to inspect a unit should be in all leases. At the time of the attempt to enter the unit, the Owner's representative should inform the tenant of a possible lease violation if access is denied. If at that time, the tenant refuses the inspection the unit will be skipped. The owner/manager should not instigate an argument with the tenant. Evidence that the violation of the lease was pursued and photographs of the unit along with a Certification of Habitability (signed by tenant and owner representative) must be submitted as a cure.

Follow up inspections of increased frequency will be scheduled for sites with significant physical noncompliance.

X. "NOTICE TO CURE FILE AND PHYSICAL REVIEW FINDINGS" LETTER

Approximately three weeks following a property inspection or review, the owner of a project will receive a letter outlining the findings noted during the inspection or review and requesting additional clarification or documentation or a letter which indicates that there were no reportable findings.

Generally, the owner may submit follow-up documentation within 30 days of the date of the letter. DHCD reserves the right to request follow-up documentation within 24 hours for noncompliance

relating to health and safety issues. The follow-up documentation must address whether the noncompliance issues have been corrected, uncorrected or no noncompliance existed. The definitions are as follows:

No Noncompliance Exists.

Generally this is the most difficult response for an owner to present. This response is presented if the owner feels an error in fact or interpretation of The Code and/or QAP has occurred. DHCD evaluates this response on a case by case basis.

Corrected

Tenant Files: The eligibility of the household during the time period in question has been established. Only in cases where the household is or was not eligible will an IRS Form 8823 be issued.

Physical: Documentation provided clearly supports that the violation is corrected. DHCD may conduct a follow-up visit to ensure noncompliance is corrected. An IRS Form 8823 will be prepared showing the earliest possible out of compliance date, and the date the unit was back in compliance.

Uncorrected

Tenant Files and Physical: No documentation has been provided, or unacceptable documentation is received or site visit indicates noncompliance is not corrected. The IRS Form 8823 will indicate that the building is out of compliance.

IRS Report of Noncompliance. IRS Form 8823: Low-Income Housing Agencies Report of Noncompliance or Building Disposition is the document used to communicate information concerning the project to the IRS. DHCD is required to report all findings of noncompliance to the IRS no later than 45 days after the close of the review and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. If the noncompliance or failure to certify is corrected within three years after the end of the correction period, DHCD will file Form 8823 with the IRS reporting the correction of the noncompliance or failure to certify. When a unit is out of compliance, it is the responsibility of the owner to present to DHCD an acceptable proof of cure at a later date. Once DHCD issues a non-corrected IRS Form 8823, the property owner will be contacted by the IRS.

Y. ADDITIONAL COMPLIANCE ISSUES

1. Employee Units. *(Revenue Ruling 92-61).*

According to Revenue Ruling 92-61, the adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under Section 42(d)(1), but the unit is excluded from the applicable fraction under Section 42(c)(1)(B) for purposes of determining the building's qualified basis. On-site maintenance personnel are treated similarly to managers.

Under Treas. Reg. 1.103-8(b)(4), units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units. Therefore, the project should thoroughly document the need for such a unit to avoid violations and identify the unit as a "Manager's Unit" on the annual Building Status Report. DHCD will not issue a written opinion as to the designation of such unit(s) or that the unit(s) will continue to be eligible for Housing Credit.

DHCD policy under QAP. For Applicants electing to house management, security, or maintenance personnel in a project unit, the employee unit can be either designated as part of the residential unit count or as part of the common space. If the employee unit is designated as part of the residential unit count, and is also designated as a low-income unit, it must be occupied by an income eligible household that may be the on-site management, security or maintenance personnel and rent can be charged or collected by the Owner for this unit. If the employee unit is designated as part of the common space, it need not be occupied by an income-eligible household, but must be occupied by a full time on-site manager, security or maintenance personnel. **No rent can be charged or collected by the Owner for a unit designated as common space.**

2. Unit Transfers.

The first reference for unit transfers should be the IRS Guide for Completing Form 8823.

Unit transfers can only occur within the building in which the tenant currently resides. Owners must consider the current location and requested destination of any current tenant requesting to be relocated within a project. Consideration must also be given to whether the tenant is an eligible Housing Credit occupant at the time of the transfer.

If a current resident moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit. The vacated unit adopts the status of the newly occupied

unit prior to the transfer. Therefore, a tenant that was originally eligible at move-in would not have to be re-certified at the time of transfer. If a current resident requests to move to a different unit in a different building, this should be treated as a new move-in and new verifications and certifications must be obtained and the household certified as income eligible at the time of move.

If, for reasons not the fault of the tenant, the resident requires a transfer to a unit in a different building and they are not qualified at time of transfer, please contact DHCD, especially in cases of a Casualty Loss or when the tenant requires a transfer because of a disability

Please note that in a lease-up situation, one household cannot be used to qualify more than one unit.

Documenting Transfers on the Building Status Report:

Within the same building

1. Record the transfer date in the move-out column of the unit being vacated.
2. Record the initial move-in date to the building as the move-in date in the new unit being occupied. Also, the move-in and re-certification data should be carried over and recorded as if the transfer never occurred.

Not within the same building

1. Record the move-out date in the move-out column of the unit being vacated.
2. The newly occupied unit should be treated as a new move-in. A move-in certification should be completed and reported on the Building Status Report and a new re-certification cycle will begin.

3. Move out fees, Move out records and fees

“Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy.” Chapter 11, Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

Fees are acceptable at move out only if damages exceed reasonable wear and tear. In cases where excessive wear and tear is well documented (photos), the Owner/Manager must be able to provide documentation of the actual cost for repair or replacement of non-capital items. In the case of capital items, replacement/repair may not exceed the actual pro-rated replacement cost based on expected life span.

Documentation of charges should include copies of bills from vendors, with contact phone numbers, showing that the work was completed. **(If a vendor fails to cooperate with a DHCD investigation, the bill will be disallowed, and the charge included in rent.)**

Move-Out Cost Manual. Each site must keep a Move-Out Cost Manual The following is a list of standards and materials to be kept in the manual:

Section 1: Standard charges. For standard charges to residents at move out, such as drip pans, light bulbs, hardware and non-capitol fixtures, a price list by vendor must be maintained at the site. This manual may be updated at any time, and records must be kept for three years.

Section 2: Labor. If labor is to be billed to a resident, it must be billed on an actual cost basis. Only time in excess of the normal turn process should be billed.

Example: A tenant moves out after one year. It is determined that the tenant did damage in excess of normal wear and tear. If the average turn time for a unit is 4 hours, only time in excess of 4 hours may be billed to the tenant. The time to complete the task should be reasonable, and a copy of time card or sheet kept with the file.

Section 3: Outside contractors. The property and vendor should agree in writing that the vendor will respond to all questions posed by DHCD regarding a bill or service. A copy of this agreement must be included in this section. When an outside contractor is being used to make repairs to a unit (turn key, plumber, electrician), a copy of their bill must be maintained with the resident move out file. In the case where charges from normal turnkey vendors are being billed, it should be clear what the normal fee is, and what excess fee was charged. The bill should be signed by the vendor.

Section 4: Written management company policy on move-out charges and adjustments.

Resident Files

Move-In. All resident files should have a copy of the signed move-in condition form. Each line detailing an item or unit amenity should be initialed separately. Blank forms with "OK" written once are not acceptable. The form should be sufficiently detailed to document the unit condition at move in.

Move-Out. A detailed report of the move-out condition should be in all files of previous tenants. Residents must be notified of their right to conduct a move-out inspection with the management. A copy of this notification should be in the file.

A copy of the letter notifying the resident of proposed charges, and their legal rights under Landlord/Tenant Law must be in the file. The charges in this notice must be itemized and documentation of each charge must also be in the file.

If the owner/manager is making damage claims in excess of the deposit, then pictures must be included in the file as well as complete documentation of all the charges. Unjustified charges will be reported as a rent over charge on form 8823.

4. Other Federal Compliance

Non Discrimination (Tax Credit and HOME)

The owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, marital status, age or handicap. Additionally, owners of post-1989 allocated projects cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All owners, managers and staff members should be familiar with both state and federal civil rights and fair housing laws. An adverse finding of discrimination must be reported to DHCD on the Owner's Annual Certification of Compliance. **The Owner should include a copy of the finding included with the annual certification.**

Fair Housing and Equal Opportunity. All Tax Credit recipients must comply with any and all federal laws, state and local laws relating to fair housing and equal opportunity including but not limited to the following:

The Federal Fair Housing Act (42 U.S.C. §3601 et seq. (1968)) requires each owner to affirmatively further fair housing. It is illegal to discriminate against any person because of race, color, religion, familial status, sex, handicap, or national origin: in the sale of rental or housing of residential lots; in advertising the sale or rental of housing or residential lots; in the financing of housing or residential lots; in the provision of real estate brokerage services; or in the appraisal of houses or residential lots.

Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) which prohibits discrimination based on age.

Executive Order 11063 which requires that all action necessary and appropriate be taken to prevent discrimination based on race, color, religion (creed), sex, national origin, familial status or disability in the sale, rental, leasing or other disposition of residential property and related facilities, or in the use or occupancy thereof, where such property or facilities are owned or operated by the Federal Government, or provided with HOME funds and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the U.S. Department of Housing and Urban Development.

Title VI Civil Rights Act - 1964 (42 U.S.C. 2000d) which provides that no person in the United States may, on the basis of race, color, or national origin, be excluded from participation in, or be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Housing and Urban Development.