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LOW-INCOME HOUSING TAX CREDIT, MULTIFAMILY BOND & HOME PROGRAMS

COMPLIANCE HANDBOOK

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TABLE OF CONTENTS

PURPOSE

The purpose of this handbook is to set forth the guidelines and procedures for monitoring compliance of properties funded by the Low Income Housing Tax Credit (LIHTC), Multifamily Bond (MBP) and HOME programs in the state of Maryland. The Maryland Department of Housing and Community Development (DHCD) has developed this handbook to be a source of information for owners, developers, management companies and on-site management personnel as well as for DHCD staff in the monitoring of compliance with these programs.

The laws and regulations governing the LIHTC, MBP and HOME programs as well as the interpretation of these laws can and do change. ***This handbook has not been reviewed or approved by the Internal Revenue Service (IRS) or the United States Department of Housing and Urban Development (HUD) and should not be relied upon for interpretation of federal law or regulations.*** DHCD encourages project owners to consult with qualified legal and tax professionals for advice and attendance at available training seminars.

Compliance with the requirements of federal laws and regulations governing the LIHTC, MBP, and HOME programs is the responsibility of each project owner. DHCD is responsible for administering these programs under certain provisions of federal law and this handbook is provided to assist property owners in managing their properties in accordance with federal law. However, this handbook is not a complete statement of the law. Any representation by DHCD in this handbook or any interpretation of these laws by DHCD is not binding on the IRS or HUD. DHCD neither represents nor warrants to any owner, investor, property manager or other program participant how the IRS or HUD will interpret or apply any provision of federal law in any instance. DHCD strongly recommends that participants in the LIHTC, MBP, and HOME programs become familiar with the relevant State and federal laws and regulations and consult with their tax advisors, legal counsel, accountants, or financial advisors regarding their participation in these programs.

Chapters 2, 3, 4 and 5 of this handbook apply to all LIHTC projects. If the project also has financing from HOME or MBP, refer to Chapter 6, HOME Program, and Chapter 7, Tax Exempt Bonds with LIHTC, for additional requirements and guidance.

ACRONYMS

Area Median Gross Income	AMGI
Building Identification Number	BIN
Community Development Administration	CDA
Cost of Living Adjustment	COLA
Extended Low Income Housing Covenant	ELIHC
Internal Revenue Code	IRC
Internal Revenue Service	IRS
Low-Income Housing Tax Credits	LIHTC
Maryland Department of Housing and Community Development	DHCD
Multifamily Bond Program	MBP
Multifamily Housing Programs	MFH
National Council of State Housing Agencies	NCSHA
Qualified Allocation Plan	QAP
Qualified Project Period	QPP
Public Housing Authority	PHA
Rural Development Service	RDS
Single Room Occupancy	SRO
Temporary Assistance to Needy Families	TANF
U. S. Department of Housing and Urban Development	HUD

CHAPTER 1: BACKGROUND AND OVERVIEW

1.1 Background

The Community Development Administration (CDA), an agency in the Division of Development Finance within the Maryland Department of Housing and Community Development (DHCD), was created in 1970 by the Maryland General Assembly in response to a growing shortage of affordable housing throughout the State, particularly for people with limited incomes, the elderly, individuals with disabilities, and people with special needs. As Maryland's housing finance agency, CDA funds programs with proceeds of taxable and tax-exempt revenue bonds and notes, State general obligation bonds, State general funds, revolving funds of prepayments and repayments of previously made loans, and federal subsidies. CDA provides rent subsidies for low-income tenants and operates federal and state housing programs that reduce the cost of developing or rehabilitating owner-occupied homes and rental properties.

Low Income Housing Tax Credits

In 1986, Congress enacted the Tax Reform Act creating the Low Income Housing Tax Credit Program (LIHTC). The LIHTC Program is authorized and governed by the Tax Reform Act of 1986 as amended, codified as Section 42 of the Internal Revenue Code (IRC). The Act, among its various purposes, encouraged the construction and rehabilitation of housing for low and moderate-income individuals and families. In August 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993, which permanently extended the LIHTC program. In December 2000, Congress increased the Tax Credit Cap to $1.50 per resident for 2001 and $1.75 per resident for 2002. The Cap after 2002 is indexed for inflation. Also in 2000, for the first time, Congress required regular site inspections by the housing credit agency to monitor compliance with habitability standards applicable to the project. While the statute does not specify frequency, IRS regulations mandate site visits at least once every three years.

The tax credit is a dollar for dollar reduction in tax liability to the owner(s) of a qualified affordable housing development for the rehabilitation, acquisition, or construction of income- and rent-restricted housing.

HOME Program

The HOME Program was created by passage of the Cranston-Gonzalez National Affordable Housing Act of 1990. HOME provides federal financial assistance to cities, counties, and states to facilitate their ability to best meet local housing needs. HOME funds are used to leverage other sources of funds, such as LIHTC and tax exempt bonds, to increase the availability of affordable housing. When the HOME Program is used in conjunction with LIHTC or other programs, the housing units must meet the more restrictive occupancy and rent restrictions of the programs in order to comply with all program requirements.

The Multifamily Bond Program

In enacting the Tax Reform Act of 1986, Congress also amended and reorganized the tax exempt private activity bond program. In Maryland, this program while commonly referred to as the "Tax Exempt Bond" program is formally known as the Multifamily Bond Program (MBP). Since 1986, most properties receiving MBP financing "automatically" qualify for and receive LIHTC. In addition to CDA, other local governments around the State also finance properties with tax exempt bonds. However, all tax exempt financed projects whether or not financed by CDA through MBP must qualify under the current QAP in order to claim LIHTC.

Therefore, MBP-financed properties are subject to at least 2 regulatory agreements; one each for LIHTC and MBP, or, as applicable, the local tax exempt bond financing program. For MBP compliance purposes, CDA will monitor MBP properties in accord with the most restrictive requirements of the applicable programs. It is important for owners and managers to remember that while there are important similarities between LIHTC and MBP, there also are significant differences including:

- ***Minimum Set Asides*** – while both programs use the "20/50" or "40/60" elections to qualify projects, LIHTC generally qualifies projects on a building basis as opposed to a project basis for tax exempt properties;
- ***Compliance Periods*** – LIHTC properties must remain affordable for at least 30 years, but tax exempt properties are subject to a "Qualified Project Period" terminating on the later of when no private activity bonds are outstanding, the date when Section 8 assistance (if any) terminates, or the date which is 15 years from when 50% of the units are first occupied;
- ***Rent Restrictions*** – tax exempt properties generally are not subject to federal rent restrictions while LIHTC properties are both income- and rent-restricted;
- ***Over Income Units*** – tax exempt properties are subject to the "Next Available Unit Rule" on project-wide basis while LIHTC properties generally must comply on a building basis; and
- ***Tenant Transfers*** – in tax exempt properties, <u>all</u> tenants transferring among units must be income recertified, but for LIHTC, only transfers between buildings require recertification.

The above list is intended for illustrative purposes only and is neither definitive nor inclusive. As always, owners and managers should consult with qualified legal and tax professionals and attend available training seminars in order to stay current on the many issues affecting all of these programs.

1.2 Responsibilities

The United States Treasury Department through the Internal Revenue Service (IRS) is responsible for the actual administration of the LIHTC program nationwide. Under the provisions of the Internal Revenue Code (IRC) and its implementing regulations, each state is required to designate a housing credit agency to allocate and monitor the credits. The authorization in Maryland from the Governor for DHCD to allocate and monitor tax credits may be found in Executive Order 01.01.1987.26, Section K. Within the Department this function is assigned to CDA.

Section 42 (m)(I)(B)(iii) of the IRC requires housing credit agencies to adopt an allocation plan and to include in their plan a procedure to monitor all LIHTC projects for compliance with the requirements of the IRC throughout the compliance period. CDA's Multifamily Housing Programs (MFH) unit is responsible for monitoring each project for compliance with the tax credit provisions and for reporting noncompliance to the IRS. Within MFH, the Tax Credit Team is responsible for income compliance monitoring as well as inspections of LIHTC-assisted properties.

HUD administers the HOME Program under regulations found in 24 CFR Part 92. These regulations require that DHCD, as a HOME grantee or participating jurisdiction, monitor all HOME-assisted activities to ensure that the provisions of the HOME regulations are being met. When a project has both LIHTC and HOME funding, MFH will monitor the project for both programs concurrently.

Each owner or sponsor who receives the benefits of the LIHTC, the Multifamily Bond Program (MBP) and/or HOME Program(s) has the responsibility for fulfilling the requirements of the IRC and/or 24 CFR Part 92. In exchange for these benefits, certain requirements must be met which will benefit lower-income residents.

It is the responsibility of the owner to keep MFH informed of all material facts relating to the project, such as the completion of the development and the date the project is placed in service, as well as any change in ownership, management, or rent level.

The management agent and all on-site personnel are responsible to the owner or sponsor for implementing the program requirements correctly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with all federal and state laws, rules and regulations governing certification and leasing procedures. It is also important that the management agent provide information, as needed, to MFH and submit all required reports and documentation in a timely manner.

CHAPTER 2: QUALIFYING THE PROJECT

2.1 Credit Allocation

Among other requirements for claiming LIHTC, a project (other than those financed by tax-exempt bonds) must receive an allocation of LIHTC from CDA. The LIHTC allocation restricts the maximum amount of LIHTC available for the project. Owners take the credit annually over a 10 year credit period beginning with the tax year in which the project is placed in service or, at the owner's election, the next tax year. The amount of LIHTC is based on the qualified basis of the buildings in the project.

The LITHC amount for a building for each taxable year of the credit period equals the lesser of i) the product of the applicable percentage multiplied by the qualified basis of the building as of the end of the taxable year or ii) the actual amount of LIHTC allocated by CDA.

The LIHTC amount for the first year may be smaller, since it reflects the number of full months that the low-income units are occupied. Any shortfall in the LIHTC amount in the first year may be claimed in the eleventh year. In all circumstances, the amount of annual credit claimed may not exceed the amount of LIHTC allocated to the building by CDA.

For more information on the allocation of LIHTC, please see DHCD's Maryland Low Income Housing Tax Credit Program: Qualified Allocation Plan ("QAP"), which is available on the DHCD website at www.mdhousing.org, in the "Programs" menu, under the "Housing Development" tab.

2.2 Eligible Basis

Eligible basis is a dollar amount based on the owner's adjusted depreciable basis as of the close of the first taxable year of the credit period. In accordance with IRS regulations, the owner must determine the eligible basis for each building in the project. Adjusted basis excludes certain costs and adjustments to basis required under the IRC.

2.3 Applicable Percentage

The applicable (also referred to as "credit") percentage is a rate based on federal borrowing rates that will yield a return over a 10-year period, of a present value equal to 70% (for allocated tax credits on new construction or rehabilitation) or 30% (for tax credits awarded for acquisition of existing buildings or federally-subsidized, including tax-exempt bond, financed buildings), of the qualified basis of the building. Currently (as of September 2006), the applicable percentages are 8.19% and 3.51% respectively. The IRS adjusts the percentages monthly to maintain the 70% and 30% present values and publishes these adjusted credit percentages for buildings placed in service that month.

2.4 Qualified Basis

The qualified basis of a building is determined on the last day of each taxable year, beginning with the first year of the credit period. The qualified basis is a specified percentage of the building's eligible basis and LIHTC units. This percentage, called the **applicable fraction**, is the lesser of:

1. The total number of LIHTC units divided by all residential rental units in the building; **or**
2. The total floor space for the LIHTC units divided by the aggregate floor space for all residential rental units.

EXAMPLE

1st Year Applicable Fraction:

Property has 20 units. Total Square Footage = 16,000 sq. ft
Owner has committed to 20% @ 50% set-aside with LIHTC allocation for 10 units.

Year 1: Affordable units occupied = 10
Square Footage = 7,500

Calculations: Unit Fraction = 10/20 = 50.00%

Sq. Ft Fraction = 7,500/16,000 = 46.88%

First Year Applicable Fraction = 46.88%

Applicable Fraction:

- The applicable fraction is calculated to two decimal places;
- The applicable fraction must be maintained at a level equal to or greater than the first year applicable fraction for each building for the entire compliance period; and
- For buildings receiving credits after 1989, the minimum applicable fraction for each building in a project must be recorded in the project's Extended Low Income Housing Covenant (ELIHC).

It is important to note that the qualified basis at the end of the first year of the credit period determines the qualified basis for the remainder of the credit period. The owner may claim the initial tax credit during the year the project is placed in service or, at the owner's election, in the following year. Before making the decision of which year to place the project into service, the number of LIHTC units should be carefully determined.

Additional increases in qualified basis due to an increase in the number of low-income units are possible, but the additional LIHTC is computed at two-thirds of the credit percentage allowable for the initial qualified basis over the remaining compliance period. No recapture occurs on additions to qualified basis, since the applicable percentage used to calculate the additional LIHTC is already only two-thirds of the original credit percentage.

Owners should address questions regarding qualified basis for their projects to their accountants and/or legal counsel.

2.5 Management or Security Officer Occupied Units

Revenue Ruling 92-61, 1992 CB 7 provides that owner or management occupied units, will not be regarded as qualified residential units for the purpose of determining the applicable fraction. However, the units are included in the eligible basis and are considered functionally related and subordinate residential property or “common space.” Owners should avoid housing employees involved with the management or operations at other properties unless that employee provides all of the required services for the property in which the employee is housed.

All owners, especially those with new allocations, need to notify MFH of the status of the owner occupied units. When notifying MFH, during the annual desk review, it is necessary to include the project name, Building Identification Number (BIN), the unit number, the number of bedrooms, the square footage, and the responsibilities to the project of the staff member currently residing in the unit.

Units set aside for occupancy by security officers pursuant to IRS Revenue Ruling 2004-82 also will be treated by MFH as a “community service facility” and therefore as functionally related and subordinate residential property similar to owner or management-occupied units provided the notification described above is provided as part of the annual desk review. Before leasing a previously regulated unit to a security officer the owner should:

1. Review the unit’s eligible basis and any other community service facility on site to ensure that the total eligible basis does not exceed 10% of the project’s total eligible basis;
2. Not charge rent for the unit and report the unit to MFH in the annual certification as non-income generating;
3. Document the project files to evidence an increasing crime problem in and around the project; and
4. Enter into and file an agreement with the security officer detailing the conditions of occupancy for the unit. These conditions should specify the officer’s duties in assisting management with maintaining security at the project.

2.6 Minimum Set-Aside

In the LIHTC Program, every property owner must elect an irrevocable minimum set-aside of LIHTC units. The owner must select one of the two options below for the minimum set-aside requirement:

1. **20%** of the housing units must be both rent-restricted and occupied by tenants whose incomes are **50%** or less of the area median gross income (AMGI); or

2. **40%** of the housing units must be both rent-restricted and occupied by tenants whose incomes are **60%** or less of the area median gross income (AMGI).

Rental agents or managers should confirm the set-aside that was established by the building owner at the time the set-aside option was made. Please review IRS Form 8609, Part II, Question 10c for guidance. This set aside election must be consistent with the set aside made in the ELIHC.

Qualifying projects must meet rental and income targeting requirements for a minimum of 15 years and the extended compliance period of 15 years or more. Meeting the set-aside by the end of the first year of the credit period is crucial. ***Failure to meet the minimum set aside by the end of the first year of the credit period may disqualify the property from receiving credits.*** In addition to the LIHTC required minimum set-aside, projects may have other set-aside requirements which will be stated in the regulatory agreement for CDA loans, if any, or other covenants or agreements.

2.7 Form 8609

Effective for allocations made in 2005 or later or for buildings financed by tax exempt bonds and placed in service in 2005 or later, CDA will issue the original IRS Form 8609 (“8609”), *Low-Income Housing Credit Allocation and Certification*, directly to the owner with a copy to the IRS.[1] Once issued to the building owner, the 8609 will be used by the owner to document the building’s eligibility for credits through the remainder of the compliance period.

After receipt of the Form 8609 from CDA, the owner is then required to make a "First Year Certification" which is Part II of the 8609 under IRC Section *42(l)(1*). The owner is required to complete Part II of the 8609 and provide a copy of each 8609 with Part II completed along with additional information regarding the project to MFH. This information includes the date the building was placed in service, the eligible basis of the building, original qualified basis of the building, whether the building is part of a multiple building project, and various elections including the irrevocable minimum set-aside target.

[1] See IRS Announcement 2006-2 and instructions on IRS From 8609 (rev Dec. 2005).

After Part II of the 8609 is completed by the owner, the 8609 and Schedule A to the 8609, known as the "Annual Statement," are included with the Form 8586, which is the form used by a taxpayer to claim the low-income housing credit, and are then filed as part of the owner's first year tax return. For properties placed in service in 2005 and after or for properties receiving allocations of credit in 2005 or after, the owner will only need to file the 8609 once with IRS. Owners should review the IRS filing instructions attached to their copy of the 8609 or consult their attorney, accountant or tax advisor for more information.

CHAPTER 3: QUALIFYING HOUSEHOLDS

3.1 Household Determination

The total number of household members is needed in order to determine the maximum allowable income of a LIHTC household. Maximum rents for units in pre-1990 developments must be determined based on household size and not on the number of bedrooms in the units.

In qualifying households for LIHTC units, property managers should count unborn children in determining household size and applicable income limits. The property manager should require documentation of pregnancy in such circumstances.

The following household members are excluded from income eligibility determinations:

- Foster Child(ren);
- Foster Adult(s);
- Live-in Attendants; and
- Children not living in the unit at least 50% of the time.

EXAMPLE

Household Members:
Head
Spouse
Child 1: 10 Years
Child 2: 6 Years
Foster Child: 3 months
Number of Household Members to Consider for Unit Size = 5

Number to consider for Income Limit = 4 (excludes foster child)

3.2 Student Eligibility

A full-time student is defined as any individual who has been or will be a full-time student (as determined by the educational institution) at an educational institution with regular facilities, other than correspondence school, for five months of the year in which the application is submitted.

A unit rented solely to a full-time student (or students) will <u>not</u> qualify as a low-income unit for purposes of LIHTC even if the student qualifies as a low-income tenant, unless:

1. The student files a joint return for federal income tax purposes and can provide a copy from an independent preparer or a certified copy from the IRS; or

2. A student is receiving assistance under Temporary Assistance to Needy Families (TANF), Title IV of the Social Security Act, or is enrolled in a job training program under the Job Partnership Training Act (JPTA), Job Corps, veterans employment program, state job training program, career intern program, or other programs under similar federal, state, or local laws; or

3. The household consists of a single parent and at least one dependent, neither of whom is listed as a dependent on a non-household member's most recent tax return. This exception applies only to properties allocated credits after June 30, 1992. This must be documented with a copy of the households' most recent tax return from an independent preparer or a certified copy from the IRS. A student who is a dependent minor of an income eligible primary tenant(s) would also be eligible

In order to prevent non-compliance, owners must ask on the application about the student status of all members of the household and verify it through a third party. Provided the household is eligible for an exception described above, MFH will not treat K-12 students as fulltime students.

Recent supplementary HUD guidance requires that financial assistance received by either full- or part-time students other than for tuition must be counted as income.[2] There are exceptions if the student is over age 23 and has a dependent child, or the student is living with a parent. In those cases, financial assistance would not be treated as income. Student loans, since they must be repaid, are not treated as income in any case.

3.3 Anticipated Tenant Income

Property Managers qualifying tenants for LIHTC units must calculate household income using the gross income the household anticipates it will receive in the 12-month period following the effective date of the income certification or recertification. Anticipated income should be documented in the tenant file by third party verification whenever possible or by an acceptable alternate method of verification per the HUD Handbook 4350.3 REV-1 or most current revision.

If the household has a member that is self-employed, owners must include the gross income less business expenses in accordance with the HUD Handbook 4350.3 REV-1 or most current revision.

[2] See Federal Register; FR-5036-N-02; April 10, 2006 for more information.

If the household has a member that is a seasonal worker, or a day worker, property managers should use the most current year's tax return, if available, and multiply the current amount by the Social Security Cost of Living Adjustment (COLA) percentage.

EXAMPLE

Current Year Tax Return: $20,000

Social Security COLA: 1.2%

Anticipated Annual Income: $20,240
($20,000 x 1.2%= 240 $20,000 + 240 = $20,240)

If the most current year tax return is not available, household bookkeeping records should be obtained and reviewed. If these records are not available, then the tenant can self-declare the last year's income and this amount can be multiplied by the Social Security COLA percentage to calculate anticipated income. Property Managers should refer to HUD Handbook 4350.3 REV-1 (or most current version) for guidance on the proper calculations of income and acceptable methods of obtaining, and documenting attempts to obtain, third party income verifications.

3.4 Assets

Property Managers qualifying tenants for LIHTC units must include the income earned from assets when calculating a family's total annual income for eligibility determinations. Cash Value or Earned Income should be documented in the tenant file by third party verification whenever possible or by an acceptable alternate method of verification. The Property Manager must use the average balance for the past six months for checking accounts and the current balance for all other asset accounts.

Property managers should refer to HUD Handbook 4350.3 REV-1 (or most current version) for guidance on the calculation of assets.

3.5 Assets Disposed of For Less than Fair Market Value

Assets the family has disposed of for less than fair market value during the two years preceding the income certification or recertification are to be included as assets when determining anticipated tenant income. The rule applies if the total fair market value of the assets disposed of by the applicant or tenant exceeds the amount received by $1,000.00 or more. Each applicant or tenant must sign a statement attesting that they have, or have not, disposed of any assets for less than fair market value at each annual recertification.

NOTE: A household's annual income, which includes income from assets, is the **gross annual income** without any adjustments or Section 8 Program allowances. Because of the importance of accurate income eligibility to the building's eligibility to claim LIHTC, MFH recommends that the owner/owner's agent verify and calculate the household income directly from the third party verification(s) and not rely on the Public Housing Authority's (PHA's) verification for households which receive Section 8 tenant-based assistance.

3.6 Income Requirements

The maximum income allowable to be eligible to rent a unit is based on the household income limit adjusted for family size for the area in which the project is located. Income determinations follow HUD income qualifications as described in 24 CFR 813.106.

3.7 Rent and Income Limits

The U.S. Department of Housing and Urban Development (HUD) annually publishes median income figures for all Maryland counties and Baltimore City. MFH uses these figures to calculate the maximum allowable rents and tenant incomes for rental units receiving the tax credits. Owners must begin using the current year's income and rent limits within the later of 45 days of HUD's publication date or the effective date of the new income limits as stipulated by HUD.[3] Income and rent limits are available through the HUD website at www.hudclips.org or the DHCD website at www.mdhousing.org under "Federal Low Income Housing Tax Credits (LIHTC)."

3.8 Utility Allowances

The gross rent includes any charges for utilities other than telephone and cable that a resident is required to pay. If any utilities are paid directly by the resident, the IRC requires those utilities to be included in the gross rent calculation, after taking into account certain determinations under Section 8 of the United States Housing Act of 1937. The sum of tenant rent and tenant utility allowance must not exceed the maximum allowable rent for that household.

Utility allowance regulations are applied, individually, to each building in the project. Therefore, depending on the project, an owner or manager could have buildings in the same project using different utility allowances.

The IRS requires that utility allowances be established according to 26 CFR 1.42-10. Effective May 2, 1994, utility allowances must be reviewed and updated annually by the owner. IRS regulations addressing utility allowances also require that revised utility allowances be implemented by the owner within 90 days of the revision.

[3] See IRS Revenue Ruling 94-57 for more information.

NOTE: A copy of the most recent utility allowance must be submitted to MFH upon notice of inspection/review of files. The utility allowance should be obtained from the appropriate source. Examples of utility allowance sources include the local PHA, Rural Development Services (RDS), or the utility company. Utility allowances may not be determined by an engineering study unless that study is performed by or on behalf of the utility company.

Section 42 of the IRS code mandates the utility allowance source under the following situations:

1. HUD regulated (i.e. project-based HUD financing) buildings must use the HUD utility allowance.

2. Units occupied by residents who receive HUD tenant-based assistance must use the PHA utility allowance.

3. If the building is HUD regulated and RDS assisted, the RDS utility allowance must be used.

For buildings without RDS or HUD assistance, the owner may use the PHA utility allowance or may request that the utility company provide an estimate of utility allowance consumption for the building based on unit size. The estimate must be in writing. A copy must be provided to the residents in the building and MFH and a copy must be kept in the compliance file for the development.

NOTE: If any utilities are paid by the tenant, any increase in the utility allowance will increase the gross tenant rent. An increase in the allowance may cause the gross tenant rent to be greater than the LIHTC maximum allowable rent. An adjustment may, therefore, be needed in the rent to avoid noncompliance.

The utility allowance must be updated annually. The utility allowance change must be applied to all affected units at the same time. It is the project owner's responsibility to contact the appropriate agency for a current utility allowance. MFH does not maintain utility allowances.

3.9 Maximum Allowable Rent (Gross Rent)

The IRC defines "gross rent" as the unit rent plus utility allowance to cover any utilities a resident is required to pay other than telephone and cable. Gross rent does not include any rental assistance payments under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program, or any fees for supportive services (any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent) that are paid to the owner of the unit by any governmental program of assistance. The gross rent cannot exceed the applicable maximum rent as listed on the current applicable ***LIHTC Rent and Program Income Limits*** table on the DHCD website. The table is updated annually upon the release by HUD of national income limits.

3.10 Section 8 Rents

Subsidy payments to an owner under various HUD Section 8 programs or other comparable programs are excluded and are not considered in determining gross rent. There is also a stipulation in the IRC for Section 8 only, that if the tenant portion exceeds the LIHTC maximum after move-in, the excess tenant contribution over the tax credit maximum can be charged by the owner in order to lower the subsidy burden to HUD and tax payers.

Owners of LIHTC properties are prohibited by federal law from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 Housing Choice Voucher.

3.11 Additional Fees

Fees for the use of facilities or services by residents or their guests may be charged to residents in addition to gross rent only if:

- The cost of the facilities are not included in eligible basis;
- The facilities or services are truly optional; and
- A reasonable alternative is either provided by the owner or otherwise available to the residents.

3.12 Minimum Lease Requirements

All tenants occupying LIHTC units are required to be income certified and to execute a minimum six-month lease at move-in. Montgomery County requires a minimum two-year lease or a waiver of the two-year minimum. The six-month requirement may include free rental periods of one month or less. Lease renewals are not subject to a minimum lease period.

The lease must reflect the correct date of move-in, or the date the tenant takes possession of the unit. Per IRS Revenue Ruling 2004-82, the owner may not evict a tenant or refuse to renew a lease for other than good cause during the full term of the extended use period as well as the 3 year period following termination of the ELIHC, if applicable.

At a minimum, the lease should include:

- The legal name of parties to the agreement and all other occupants;
- A description of the unit to be rented;
- The date the lease becomes effective;
- The term of the lease;
- The amount of rent and other one time or recurring charges assessed as a condition of occupancy;
- Limitations, if any, on the use of the premises;
- The rights and obligations of the parties, including the obligation of the household to annually re-certify its income;
- The signatures of all household members 18 years or older;
- The signature of the owner/owner's representative; and
- A statement explaining that the development is participating in the LIHTC program and that the LIHTC units are under certain program regulations including income and rent restrictions.

Single Room Occupancy (SRO) housing must have an initial minimum lease term of one month. SRO housing may have shared bathrooms, cooking facilities and dining areas.

3.13 Certification of Income

All sources of income must be declared by the household applying for occupancy in a LIHTC development. The owner must verify each and every source of income before a family is allowed to occupy a unit.

Tenant provided verification, such as employment pay stubs, W-2s, and 1099s, should be used only after documented third party verification has been attempted. Verifications are valid for 90 days from the date of receipt by the owner. An oral update during the first 90 days will extend the validity date of the verification for an additional 30 days from the date of the update, providing appropriate documentation is included in the tenant's file.

MFH suggests the use of its certification form (CDA-102). It is not a required form. However, the use of a form other than the CDA-102 or NCSHA's "Best Practices" form must be approved by MFH prior to its use and must contain all information shown on the CDA-102.

To claim LIHTC for a unit, the household must be income qualified. The initial certification of income must be completed at, or within the five days prior to, the move-in date. The effective date must correspond to the move-in date and the certification form must be completed in its entirety including the dated signatures of all adult household members and the owner/owner's representative.

3.14 Recertification of Income

IRS rules require LIHTC property owners to recertify tenant income eligibility at least annually. MFH does not require interim recertification for changes in household composition or when there is a transfer of a household within the same building. However, an initial certification must be completed if a household moves to a different building.

3.15 Timing

Owners must annually recertify all LIHTC tenants. Recertification must be completed by the first day of the month that the tenant moved into the project. With approval of MFH, an owner may schedule recertification to be effective on dates other than the first day of the month that the tenant moved into the project. An owner must request approval to:

- Recertify all tenants on the Place in Service date;
- Vary recertification effective dates by building or unit numbers; and
- For households with Social Security Income, make recertification effective on the date the cost of living adjustment (COLA) increases are implemented by the Social Security Administration.

3.16 Special Waiver of Annual Recertification

IRS Revenue Procedure 2004-38 provides guidance to owners of certain LIHTC developments on requesting a wavier of annual income recertification requirements under Section 42(g) of the IRC. Eligible properties must have 100% of the units set aside for LIHTC tenants and may not have other financing that requires annual income recertification.

If an owner receives a waiver of annual recertification under the LIHTC program, the recertification requirements will also be waived by CDA if the project receives financing under HOME, Rental Housing Production Program (RHPP), Maryland Housing Rehabilitation Program (MHRP), Nonprofit Rehabilitation Program (NRP), and Elderly Rental Housing Program (ERHP). The waiver is not effective and recertification is still required for projects financed with tax-exempt revenue bonds (either MBP or local issues), Rural Housing Service Programs, Project-Based Section 8, and Partnership Rental Housing Programs (PRHP). Projects with outstanding uncorrected instances of noncompliance also are not eligible to request a waiver.

To apply for the waiver, the owner should review the procedures for requesting a recertification waiver on DHCD’s website through the link appended below. Upon receipt of a request, the Administrator will review the project’s financing and compliance file to determine the eligibility of the project to apply for a waiver. If the property is eligible, the Administrator will refer the owner to several independent contractors approved by CDA. The owner should select a contractor and execute a contract at the owner’s expense to perform an income and eligibility review of the project. Because the contract is between the owner and the independent contractor, any issues of noncompliance discovered by the contractor need not be reported to DHCD or the IRS. After the independent contractor determines that 100% of the units are in compliance with Section 42 of the IRC, the contractor will issue a certificate of compliance. Once DHCD receives the certificate along with IRS Form 8877 executed by the owner, the Administrator will request that the Director, Multifamily Housing execute Form 8877 for CDA and will return the approved from to the owner. The owner will then deliver the request for the wavier to the IRS. Once the IRS returns the approved waiver, the owner must copy the Administrator with evidence of approval of the waiver by the IRS.

Until the IRS issues the approved wavier, the owner ***must*** continue to complete annual income recertifications. Approval of the waiver by the IRS relieves the property owner only from conducting the annual recertification of income. Each household must continue to complete an annual self-declaration of income. The self-declaration will capture any changes in household composition, student status and gross income. The head of household will certify to the owner that the information is correct. The owner must continue to certify the incomes of initial move-ins and transfers of households between buildings.

The special recertification waiver cannot be transferred to a new owner. CDA or the IRS also may revoke approval of the waiver in the event of substantial noncompliance. This information also is separately available through DHCD's website at:

http://www.dhcd.state.md.us/Website/programs/lihtc/lihtc.aspx

CHAPTER 4: OWNER'S RESPONSIBLITIES

4.1 Record Retention

The owner must retain project and tenant records 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 must be retained for at least six years beyond the due date (with extensions) to file the federal income tax return for the last year of the compliance period of the building. The owner also must make these records available upon request to CDA or its duly authorized delegates for inspection.

4.2 Compliance Certification

The owner must certify, under penalty of perjury, at least annually for each year of the compliance period to MFH that the project is in compliance with the requirements of Section 42 of the IRC. The Owner's Certification of Continuing Compliance requires the owner to certify that the project meets the following for the preceding 12-month period:

1. Each building in the project complied with the restrictions of the LIHTC Program as administered by the State of Maryland, including, but not limited to, Section 42 of the IRC, all regulations thereunder, and COMAR Section 05.05.06.

2. The project met the requirements of the 20-50 test under Section 42(g)(1) (A), the 40-60 test under Section 42(g)(1)(B) or, if applicable, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects.

3. There was, or was not, a change in the applicable fraction (as defined in Section 42 (c)(1)(B) of any building in the project. If there was a change, a description of the change must be provided.

4. The owner has received an annual certification for each low-income tenant and documentation to support the certification, or in the case of a tenant receiving Section 8 housing assistance payments, the statement from the Public Housing Authority declaring that the tenant's income does not exceed the applicable limits under Section 42(g).

5. Each low-income unit in the project was rent-restricted under Section 42(g)(2).

6. All low-income units in the project were for use by the general public and used on a non-transient basis (except for transitional housing units for the homeless as provided under Section 42 (i)(3)(B)(iii)).

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

8. There was, or was not, a change in the eligible basis (as defined in Section 42(d)) of any building in the project. If there was a change in the eligible basis, a description of the change must be provided.

9. All tenant facilities included in the eligible basis under Section 42(d) of any building, such as swimming pools, other recreational facilities, or parking areas, were provided on a comparable basis without charge to all tenants in the building.

10. If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.

11. If the income of a tenant of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to a tenant having a qualifying income.

12. An extended low-income housing commitment as described in Section 42 (h)(6) was in effect (for buildings subject to Section 7108(c)(10) of the Revenue Reconciliation Act of 1989) including the requirement under Section 42 (h)(6)(B)(iv), that an owner cannot refuse to lease a unit in the project because the applicant holds a Section 8 voucher.

13. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency per 42 U.S.C. 3616a(a)(1), or an adverse judgment from federal court.

14. There has been no change in the ownership or management of the project. (Additional information must be provided if a change occurred.)

15. No tenants were evicted from the project or their leases were not renewed for other than good cause.

16. If the owner received its credit allocation from the portion of the state ceiling set-aside for a project involving “qualified non-profit organizations” under Section 42(h)(5) of the code, then the participating non-profit entity materially participated

in the operation of the development within the meaning of Section 469(h) of the IRC.

4.3 Record Keeping

Owners of all tax credit projects, for each year of the compliance period, must maintain records and submit information on requested forms (see Section 4.8 below) annually to MFH for each qualified low-income building in the project which provide:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square footage of each residential unit);

2. The percentage of residential rental units in the building that are low-income units;

3. The rent charged on each residential rental unit in the building (including any utility allowance);

4. The number of occupants in each low-income unit;

5. The low-income unit vacancies in the building and when, and to whom, the next available units were rented;

6. The annual income certification of each low-income tenant;

7. Documentation to support each low-income tenant's income certification;

8. The eligible basis and qualified basis of the building as defined in the IRC at the end of the first year of the credit period;

9. The character and use of any nonresidential portion of the building included in the building's eligible basis under Section 42(d); and

10. Any other demographic information about each tenant household as may be required by DHCD.

4.4 File Management

The owner must maintain a resident file on each household that occupies a LIHTC unit. Each resident file must contain the application for housing, the income certification form (CDA-102) or another approved certification form as described in Section 3.13 of this manual; all qualifying income, asset, and other eligibility verifications; signatures of all adult household members and owner/owner's representative on the certification form; and the lease with all attachments. It must also include any static information regarding the household's eligibility, including but not limited to documentation of eligibility for fully accessible or visual/hearing impaired units, birth certificates, social security numbers and marriage licenses. Static information is documentation that does not change. The file should clearly demonstrate that the owner has performed the annual recertification each year of continued occupancy. This information should be placed in the file in an organized manner so that an MFH staff member can easily determine LIHTC Program eligibility. The format should be consistent for all resident files.

MFH recommends that the initial certification with supporting documentation and each recertification with supporting documentation be maintained together.

It is important to remember that the owner must retain the resident file, and all of the supporting documentation proving eligibility, including the tenant income certification and the lease, for each year the household resides in the unit.

Files may be stored in their original paper format, in an unalterable electronic format, or on microfilm. MFH recommends that a project have two or more storage methods as backup in case of damage to or loss of the original files.

4.5 Next Available Unit Rule

The Next Available Unit Rule is applied on a building-by-building basis. It is intended to enable the owner to sustain the first year applicable fraction for each building.

If an owner determines that a resident's income is above 140% of the current income limit for their current household size at the annual recertification, the owner may continue to include the unit in the applicable fraction if the owner rents the next available unit of comparable or smaller size in the same building to an eligible household and the original unit continues to be rent restricted.

All comparable or smaller units must be rented to LIHTC eligible households at restricted rent levels until the actual applicable fraction is at least equal to the first year applicable fraction.

For properties that deep rent skew, the Next Available Unit Rule must be implemented whenever a current household has an income level above 170% of the current income limit for their current household size. If an owner determines that a household's income is above 170% of the current income limit, the unit may continue to be included in the applicable fraction if the manager rents the next available unit in the same building to a household with an income at or below 40% of the area median income.

4.6 Affirmative Fair Housing Marketing Plan

The owner must make reasonable attempts to affirmatively market LIHTC units in a manner consistent with the goals of applicable federal, state and local fair housing and civil rights laws or regulations. Marketing plans should be maintained to document that such marketing efforts are being made. MFH may, at its discretion, review marketing plans. Plans should contain at a minimum:

1. A statement as to how affirmative marketing strategies will be implemented, inclusive of occupancy and lease-up goals;
2. Copies of all advertisements and promotional marketing plans;
3. A listing of special groups targeted for marketing;
4. Waiting lists and denial lists indicating whether or not applicants held vouchers under the Section 8 Housing Choice Voucher Program; and
5. Traffic records.

Owners may wish to consult the HUD Handbook 4350.3 REV-1, Chapter 2. Civil Rights and Nondiscrimination Requirements, (or most current version) for guidance on Affirmative Fair Housing Marketing Plans.

NOTE: Before a household takes occupancy, the owner (or manager) must determine that the household will meet the rent and income restrictions to qualify for LIHTC unit.

4.7 Fair Housing, Equal Opportunity, and Health, Safety and Building Code Violations

Beginning January 2001, property owners must certify annually to DHCD any findings of discrimination under the Fair Housing Act. LIHTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability.

All qualified units rented to, or reserved for, LIHTC eligible tenants:

1. Must have substantially the same equipment and amenities (excluding luxury amenities such as fireplaces) as other units in the Project;

2. Must be substantially the same size as other units in the Project; and

3. Cannot be geographically segregated from other units in Project.

LIHTC units must be suitable for occupancy under the local health, safety, and building codes. If a building is cited for any health, safety or building code violations, the owner must report the violations to MFH immediately. The owner of the cited building must report to MFH when the violations have been corrected to continue to be in compliance. Copies of code violation notices along with evidence documenting their disposition must be kept on file and made available for inspection by MFH.

4.8 Documents to be submitted for Review

Owners of all projects must submit the following documents to MFH on or before the last day of February in each year during the compliance period:

1. Owner's Certification of Continuing Compliance;
2. LIHTC Attachment to the Annual Certificate of Compliance;
3. LIHTC Vacancy Table; and
4. Utility Allowance.

These required forms, as well as instructions for their completion, may be downloaded from the DHCD's website at:

http://www.dhcd.state.md.us/Website/programs/lihtc/lihtc.aspx

4.9 Correction Period

Owners with any compliance violations during the LIHTC compliance period will be provided a correction period. The correction period will be established by MFH in a notice of noncompliance and will be a period of up to 90 days from the date of the first notice of non-compliance to the owner as described in paragraph (e)(2) of IRS Regulation 1.42-5. MFH is permitted to extend the correction period for up to six months, but only if it determines there is good cause for granting the extension. All extension requests **must** be in writing.

4.10 Transfer of Ownership

It is the owner's responsibility to notify MFH of any change in management or ownership of the project. If the ownership of any building or substantial interest therein that receives a tax credit allocation is transferred by the owner, a bond must be posted in accordance with Section 42(j)(6). Owners are advised to seek legal counsel regarding this requirement before transferring any building or ownership interest in a building.

CHAPTER 5: REVIEW PROCEDURES

5.1 General

Under MFH review procedures, owners must maintain ongoing tenant records on MFH-approved forms for each unit in the project. The forms provide a historical record of tenant compliance for each unit.

Owners will submit these forms to MFH for review. During an inspection, a Tax Credit Officer, Compliance Officer, or CDA's authorized delegate, will review files for the current year as described below and may request copies of the files from previous years.

The Tax Credit Officer, Compliance Officer, or authorized delegate, will select at least 20% of the units for an on-site compliance review at least every three years. At the discretion of MFH, inspections may be conducted at more frequent intervals. On-site staff shall accompany the Tax Credit Officer, Compliance Officer, or authorized delegate, during the inspection. MFH staff is not authorized to enter leased units in the property without being accompanied by the owner or on-site staff. The Tax Credit Officer, Compliance Officer, or authorized delegate, will review the documentation the project owner has received to support the certification and the rent record for each LIHTC tenant in at least 20% of the LIHTC units in the project. The first on-site compliance review must be conducted within two years of the end of the year the final building in the project was placed in service.

MFH, or the designated agent, will give the owner a two-week advance notice that an inspection will occur so that the owner may assemble records. All files must be available during the review. Extensions may be given for extenuating circumstances.

MFH reserves the right to conduct an on-site review of the building after serving appropriate notices and to examine all records pertaining to the rental of LIHTC units. MFH may perform the on-site review at any time through the end of the extended use and vacancy decontrol period of the project.

5.2 Compliance Period

Developments receiving a LIHTC allocation after January 1, 1990 must comply with eligibility requirements for a period of 15 taxable years beginning with the first taxable year of the building's credit period (the "compliance period"). Eligibility requirements must also be maintained during the period of the extended low-income housing commitment (the "extended use period") which is a minimum of an additional 15 years, pursuant to a recorded ELIHC between the owner and CDA. Developments receiving allocations during 1987, 1988, and 1989 have only a 15-year compliance period, unless they received additional allocations in 1990 or later.

Following the close of the extended use period, projects remain subject to a 3 year vacancy decontrol period. During this period, the low-income tenants will remain protected from increases in gross rent otherwise not allowed under the IRC. Tenants also may not be evicted nor have their leases non-renewed for reasons other than good cause.

5.3 Noncompliance

Noncompliance is defined as an owner's failure to meet and maintain the requirements of Section 42 of the IRS code. CDA will notify the IRS of an owner's noncompliance, whether or not the noncompliance is corrected, no later than 45 days after the end of the time allowed for correction by filing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance. All instances of noncompliance are reported and corrected on a building-by-building basis.

Some of the most common compliance violations found are as follows:
1. Leasing units to income ineligible households.
2. Failure to certify/recertify household income when due.
3. Failure to verify all sources of income.
4. Lease term violations.
5. Violations of Uniform Property Compliance Standards or local inspection standards: inoperable emergency lighting and signs, inoperable ground fault circuit interrupters and inoperable smoke detectors, are the most common findings under this category.

NOTE: MFH monitoring procedures are designed to test a sampling of tenant record and dwelling unit compliance. A successful management review and unit inspection does not mean the project has completely satisfied all of the IRS program requirements since undetected noncompliance may still exist. It is the responsibility of the owner to ensure compliance.

5.4 Procedures for Desk Review

Tax Credit Compliance Monitoring

As described in Section 4.8 above, the owners of all tax credit properties within the State of Maryland are required to submit annually the Owner's Certification of Continuing Compliance, LIHTC Attachment to the Annual Certificate of Compliance, Vacancy Table, and Utility Allowance documentation. If applicable, the Low Income Housing Credit Allocation Certification (Form 8609) and Schedule A must also be submitted.

Conducting Tax Credit Reviews

MFH staff shall collect the following documentation before beginning a tax credit review for any given project:

- A copy of the ELIHC showing evidence of recordation;
- Owner's Certificate of Continuing Compliance as signed and dated by the owner or duly authorized representative;
- LIHTC Attachment to the Annual Certificate of Compliance with current information is listed by building with the inclusion of the corresponding Vacancy Table;
- Utility Allowance documentation; and
- Each 8609 with Part II completed and signed and Schedule A, if applicable.

Review Procedures

1. MFH staff will obtain the following information from the LIHTC Compliance Database or files or sources as appropriate:
    - Jurisdiction where the property is located;
    - Allocation year;
    - Number of buildings;
    - Total number of units;
    - Total number of tax credit units;
    - Minimum set-aside; and
    - Number of units with additional income- and rent-restrictions.

2. MFH staff shall determine the applicable income and rent limits for the compliance year.

3. MFH staff shall review the LIHTC Attachment to the Annual Certificate of Compliance report and determine the number of buildings and total number of units in each building to confirm information listed on LIHTC Project Monitoring sheet.

Note: When reviewing pre-1990 properties, MFH staff shall note any units with initial certification dates which occurred prior to the owner's election (if applicable) to use bedroom size rents. The rents for these units will be reviewed against the table used to calculate rents based on household size.

4. The tenant rent will be added to the utility allowance to determine gross rent.

5. MFH staff will then compare the gross rent with the applicable LIHTC maximum allowable gross rent.

6. The current annual income will be compared to the applicable LIHTC income limit.

7. Tenant certification dates will be reviewed to confirm that the certifications were completed between the period of January 1 and December 31 of the compliance reporting year.

8. MFH staff will confirm from the ELIHC the applicable fraction for each building.

9. MFH staff will review the vacancy table for compliance with the "Next Available Unit" and "Available to the General Public" Rules.

10. A description of any findings found on the Attachment to the Annual Certificate of Compliance or vacancy table will be provided for each BIN or unit number.

11. If the review results in no findings, the owner will be issued a letter by MFH indicating that there were no compliance findings for the period covered by the review.

12. If MFH staff identifies findings during the review, they will prepare a warning letter to the owner with a listing of the findings. The owner will be given a minimum 30 day correction period as allowed under the QAP and this Handbook to respond to the findings.

13. If the project is in non-compliance even if corrected, the Form 8823 (Low-Income Housing Credit Agencies Report of Non-Compliance) will be filed with the IRS with a copy provided to the owner.

5.5 Procedures for On-Site Monitoring Reviews

MFH, or its authorized delegate, will conduct on-site inspections of all buildings in all LIHTC projects by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent of the low-income units in the project, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

At least once every three years thereafter for the balance of the compliance and extended use periods, on-site inspections of all buildings in all low-income projects will be performed. The IRS requires that during the compliance period at least 20 percent of the low-income units in the project will be inspected and the corresponding tenant files will be reviewed for compliance. The rent records and security deposits collected for each low-income unit will also be reviewed.

MFH, or its authorized delegate, will review the project's screening procedures to ensure that the project is not in violation of the requirements of the Fair Housing Act, the Equal Opportunity Housing Act, or The Omnibus Budget Reconciliation Act of 1993.

The applications of households who were denied units will also be reviewed. The owner will be required to provide a copy of the project's screening criteria for tenant selection. Unless promptly corrected, any apparent fair housing or civil rights violations will be reported to the HUD Office of Fair Housing and Equal Opportunity or the Maryland Commission on Human Relations (MCHR) as appropriate. Unless fair housing or civil rights violations culminate in adverse final decisions by HUD, a federal court or MCHR; violations uncovered as a result of MFH's monitoring activities are not reported directly to the IRS.

Tenant files will be reviewed for accuracy in the calculation of income and eligibility. Third-party income and asset verifications will be reviewed to determine if the project is in compliance with the calculation and verification methods contained within the HUD Handbook 4350.3 REV-1 (or most current version).

LIHTC units will be inspected to ensure that they meet the HUD-Uniform Physical Condition Standards which require housing to be decent, safe, sanitary, and in good repair.

Within two weeks following the on-site review, an owner's report will be issued, which notes any findings or procedural issues discovered at the time of the review. A minimum 30 day correction period will be allowed to supply missing documentation or to correct noncompliance. Extensions will be granted (within reason) if requested in writing for 30 day periods not to exceed 180 days in the aggregate. Extensions beyond 90 days must be approved in writing by the Tax Credit Administrator.

5.6 Assistance through Other Programs

LIHTC projects may be receiving assistance from other federal or state housing programs, such as:

- HOME Investment Partnership (HUD)
- HOPE IV and other Public Housing Development funds (HUD)
- Public Housing Operating Subsidies (HUD)
- Historic Tax Credits
- Section 8 Program (HUD)
- CDBG grants/loans (HUD)
- Affordable Housing Program of the Federal HOME Loan Bank
- RHS 515 Program (USDA)
- Section 236 (HUD)
- Multi-Family Tax Exempt Bond Program
- FHA Insurance Programs (HUD)
- CDA Multifamily Rental Housing Programs

In cases where the LIHTC requirements differ from those of the other programs, the owner/manager should follow the **most restrictive** requirement to ensure that the project meets the LIHTC requirements as well as those of the other programs.

5.7 Annual Monitoring Fee

CDA, as the LIHTC allocating agency, will charge a reasonable fee to cover the costs of compliance monitoring.

An annual compliance-monitoring fee for all LIHTC projects will be charged in the amount of $25.00 per unit. The fee shall apply to all tax credit units. The fee will be charged on January 1 of each year for the preceding calendar year. Fees and fee procedures may be adjusted in the future at the discretion of CDA. CDA depends upon prompt remittance of compliance monitoring fees by owners to fund its compliance monitoring activities. Because nonpayment of fees by owners may cause CDA to fail to meet its obligations under the IRC, CDA may treat the nonpayment of compliance monitoring fees as a decision on the part of that owner to withdraw the project from the Tax Credit Program, and CDA may report the withdrawal to the IRS.

5.8 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents in the tenant files. MFH will not accept a document with correction fluid or “white-out”. MFH recommends that when a correction or change is needed on a document, the person making the correction or change should draw a line through the error, write or type the correction, and initial the change. The tenant should also initial any changes. If changes are being made to an entire document, the entire document should be resubmitted with corrections made.

5.9 MFH Retention of Documents

MFH will retain the information sent by the projects for the annual certification of compliance with the rent and income restrictions, as required by Section 42 of the IRC, for a period of seven years. MFH will retain records of non-compliance or failure to certify for seven years beyond the filing of the IRS Form 8823, Low-Income Housing Credit Agencies Report of Non-Compliance. MFH will retain the allocation documents for a project for six years beyond the last year of the compliance period or extended use period of the project, whichever comes later.

CHAPTER 6: HOME Program

6.1 HOME Funds with LIHTC

Only households that are eligible as low-income families and that meet the requirements in accordance with 24 CFR Sec. 92 may occupy HOME-assisted units in a LIHTC project.

6.2 Rent Limitation for HOME

The maximum HOME rents, as determined by HUD, are the lesser of:

1. The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 111; **or**

2. A rent that does not exceed 30 percent of the adjusted income of a household whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. (HUD provides the rent limits for average occupancy per unit and adjusted income assumptions per Directive Number 92.252.)

In projects with five or more HOME-assisted rental units, very low-income households must occupy 20% of the HOME-assisted units, ("Low HOME Rent Unit"), and meet one of the following rent requirements:

1. The rent does not exceed 30 percent of the annual income of a household whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households. The calculated rent will not exceed the allowable maximum HOME rent; **or**

2. The rent does not exceed 30 percent of the household's adjusted income. If the unit receives federal or state project-based rental subsidy and the very-low income household pays as contribution towards rent not more than 30 percent of the family's adjusted income, then the maximum rent (tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

6.3 Period of Affordability

Rehabilitation or acquisition of existing structures with HOME investment per unit of:	**Period of Affordability**
Less than $15,000 $15,000-$40,000 $40,000 or more	5 years 10 years 15 years
Refinance of Rehabilitation project:	
Any Amount	15 years
New construction, including acquisition of new units:	
Any Amount	20 years

6.4 Tenant Eligibility

The income of each household must be determined initially in accordance with 24 CFR Section 92.203 (a) (1) (i). In addition, each year during the period of affordability, the project owner must re-examine the income of each household.

6.5 Occupancy Requirements for HOME-Assisted Units

If the household income for a Low-HOME Rent unit rises above 50 percent of area median income (AMGI) but is below 80 percent of AMGI at recertification, the unit may be designated as a High HOME Rent unit but the next available unit must be designated as a Low HOME Rent unit. If the income of a household in a HOME-assisted unit rises above 80 percent of AMGI at recertification, the tax credit rent is implemented and the next available unit is designated for a Low HOME Rent Unit.

When households vacate or become over-income in HOME-assisted units, property managers must rent to qualified families based on the following requirements:

- Low HOME Rent units must be reoccupied by households with incomes at or below 50 percent of AMGI; and
- High HOME Rent units must be reoccupied by households with incomes at or below 80 percent of AMGI.

6.6 Fixed HOME units vs. Floating HOME units

At the time of commitment, CDA designates the units as being either fixed or floating. Fixed units must remain designated as HOME units throughout the term of the loan. The restrictions are the same throughout the period of affordability. Floating units are not required to remain designated as HOME units throughout the period of affordability. In such cases, each substituted unit must be comparable in terms of size, features, and number of bedrooms as to the originally designated HOME-assisted unit.

6.7 Rent Requirements

HOME unit rents can not exceed the HUD maximum HOME rents. These rents are published annually and are available on HUD's website. New rents take effect 30 days after HUD publishes the new rents and tenants are notified of the increase.

Both the High and Low HOME Rents represent the maximum that tenants can pay for rent and utilities combined. These rents are also the maximum amount from all sources that the owner may receive for HOME-funded rental assistance or Section 8.

There is one exception to this rule. If the project receives federal or state project-based rental assistance for tenants with incomes at or below 50 percent of AMGI, the rent limits from the project-based rental assistance program can be used.

NOTE: If a project has HOME funding, the property manager must report all sources of rent payments to MFH.

6.8 Income Eligibility

The definition of income for the HOME Program is the same as for the LIHTC Program. Both Programs use the Section 8 definition of income.

CHAPTER 7: TAX EXEMPT BONDS With LIHTC

7.1 Tax Credit Only Projects

Projects using tax-exempt bond financing must contain complete independent rental units. SRO's and shared housing may be financed only with taxable bonds or 501(c)(3) bonds if owned by an eligible nonprofit corporation. Projects financed with tax-exempt bonds whether issued by CDA through MBP or by local government issuers must comply with the QAP in order to receive unallocated or "automatic" 4% tax credits.

7.2 Tenant Eligibility

In addition to the minimum tax credit set-aside requirement that 20% of the units be set-aside for residents with incomes less than 50% of the AMGI or 40% of the units be set aside for residents with incomes less than 60% of the AMGI, 51% of the units may be occupied by limited income households whose annual incomes do not exceed 85% of the statewide median income, which is adjusted for household size. For projects funded with taxable bonds, 20% of the units must be occupied by households whose annual incomes do not exceed 85% of the statewide median income.

7.3 Loan Terms

Income restrictions on MBP-financed properties must be maintained for the full term of the Qualified Project Period (QPP). Per Section 142(d)(2)(A) of the IRC, the QPP commences on the first day on which 10 percent of the residential rental units of the project are occupied. The QPP ends on the latest of the following three dates:

1. The date that is 15 years after the date on which 50 percent of the residential units in the project are occupied;
2. The date on which no tax exempt private activity bond issued with respect to the property is outstanding; or
3. The date on which any assistance provided with respect to the project under the Section 8 program terminates.

Therefore, prepayment by the owner of any MBP financing on the property will not necessarily terminate the income restrictions established under the MBP Declaration of Restrictive Covenants and Regulatory Agreement. In addition, if the property is subject to an ELIHC, those restrictions also will continue to be enforced.

Owners seeking MBP payoff information from CDA will be advised in writing as to the termination date for the QPP. The date will be established by CDA Finance in consultation with the Office of the Attorney General and MFH.