

PARTICIPANTS AND RESPONSIBILITIES

INTERNAL REVENUE SERVICE

- Administers the Housing Credit Program.
- Audits projects for noncompliance and assesses recapture of housing tax credits.
- Provides owners and the Housing Credit Agencies with regulations and guidance on Housing Credit Program requirements.

RHODE ISLAND HOUSING

- Allocates Housing Credits to eligible developers.
- Conducts Training Conference with Owners/Agents.
- Monitors Owners/Agents compliance with Section 42.
- Reports all instances of noncompliance to the IRS.
- Monitors and reports on corrective actions to the IRS.

OWNER OR GENERAL PARTNER

- Certifies annually continuing compliance with program requirements.
- Makes the property available for low-income occupancy for the required period of time.
- Hires and supervises the property management agent.

PROPERTY MANAGEMENT

- Leases the appropriate percentage of units to qualifying tenants.
- Evaluates tenant income and eligibility upon initial occupancy and at periodic recertification.
- Charges no more than the maximum rent for Housing Credit units.
- Follows proper procedures in dealing with over-income tenants and vacant units.
- Maintains the property in habitable condition.
- Complies with IRS and Rhode Island Housing monitoring and record-keeping requirements.

INVESTOR OR SYNDICATOR

- Provides majority of equity financing for a housing development project.
- Bears ultimate risk of loss of future Housing Credits and recapture of previously taken credits.

KEY STAGES

DEVELOPMENT PERIOD

The development of a Housing Credit project begins with individuals and groups joining together to finance and build residential rental property. For new construction projects, the development period usually begins before the project receives a reservation of Housing Credits from Rhode Island Housing and ends upon placement in service. Rehabilitation projects with tenants in place pose more difficult questions. It is recommended that owners and management agents begin identifying eligible low-income tenants during the development period. Once the rehabilitation is complete, the owner will want to be fully leased to qualifying tenants at the earliest possible date.

APPLICATION

A developer/owner must put together a detailed application for a reservation of Housing Credits. Rhode Island Housing ranks the applications based upon the criteria contained in the QAP. The QAP is published annually and explains the method by which credits will be allocated for the next calendar year.

RESERVATION

If a developer/owner is successful in the application stage, they receive a reservation letter that is issued by Rhode Island Housing. This is the first significant event in the process of allocating Housing Credits. The reservation letters, which are sent at the completion of the funding cycle, reserve or hold a portion of that year's Housing Credit pool for projects with successful applications. Credits are not actually allocated at this stage and other events must occur before the final allocation of Housing Credits occurs.

CARRYOVER ALLOCATION

If a credit reservation is not placed-in-service in the same year of reservation, the developer/owner should obtain a carryover allocation. A project must incur and document expenses of at least ten percent (10%) of the reasonably expected total cost of the project within the later of six (6) months following the date of reservation or the end of the calendar year in which the reservation was made, whichever is later.

LOCK-IN AGREEMENT

The developer/owner must decide whether to "lock-in" the Housing Credit rate (which is published each month by the IRS) with a written agreement on or before a Carryover Allocation Agreement is signed. If the rate is not locked-in, then the Housing Credit rate will float until the placed-in-service date of the project.

PLACED-IN-SERVICE

At the end of construction, after issuance of Certificates of Occupancy, the owner must select a "placed in service date" for the project. The Housing Credit placed-in-service date affects when the Housing Credits may flow to the investors. This date is different from the date the project begins to lease up. A project must be placed-in-service by December 31 of the second year following the Carryover Allocation date. For acquisition and rehabilitation projects the placed-in-service date is an artificial date chosen by the developer/owner.

KEY STAGES**DEVELOPMENT PERIOD**COST CERTIFICATION

A developer/owner must submit a report on the actual project costs audited by a Certified Public Accountant for approval by Rhode Island Housing before the Housing Credits are finally allocated. The cost certification details the costs associated with the building components included in the property's eligible basis.

LAND USE RESTRICTION AGREEMENT (LURA)

The developer/owner of the property must file a Declaration of Land Use Restrictive Covenants for Housing Credits, otherwise known as a LURA, in the local land records for the property by the time the property is placed-in-service. Property management should be familiar with this document because it establishes the occupancy and affordability requirements for the project as well as other obligations that go beyond the Housing Credit Program regulations.

IRS FORM 8609

Form 8609 is the Low-Income Housing Credit Allocation Certification. This form is issued for each type of credit (new construction, acquisition or rehabilitation) for each building in the project. By signing this form, the developer/owner officially (1) elects the irrevocable minimum amount of Housing Credit units for the project (2) reconfirms the placed-in-service date and (3) prescribes the eligible basis and qualified basis upon which the Housing Credits are calculated.

LEASE-UP PERIOD

The lease-up period starts once a project is approaching completion and generally overlaps with the development period. For new construction projects, the lease-up may follow a period during which the property management has marketed the units and accepted applications for tenancy. Though the project may not be officially placed-in-service, owners are accountable for meeting the occupancy, rent and other requirements under the Housing Credit Program.

For acquisition and rehabilitation projects the lease-up period is actually a period during which the property management must qualify the Housing Credit units committed to under the allocation. When eligible tenants are identified, the steps to qualify the household so that the unit can be counted as a Housing Credit unit must be completed.

During the lease-up period Rhode Island Housing requires the following:

- Training Conference – The developer/owner and/or delegated agent must participate in a Rhode Island Housing training program to assess the project's status in meeting Housing Credit Program requirements and other commitments under applicable Regulatory and Loan Agreements.
- Applicable Fraction Tracking Report and Original Qualified Basis Tracking Report – The owner must submit reports summarizing critical information on the unit, tenant and occupancy to be used in the initial compliance stage of the credit period.

KEY STAGES

COMPLIANCE PERIOD

The compliance period for a project begins with the first year of the project's credit period. The credit period is the first taxable year in which the owner claims Housing Credits for the project and lasts for 10 consecutive taxable years. A project with multiple buildings may have multiple credit periods. The compliance period continues for another 5 years and totals 15 years.

The primary goal of developers/owners and property managers during the Compliance Period is to maintain eligibility for Housing Credits and to avoid recapture of credits by continuously meeting Housing Credit requirements.

Rhode Island Housing currently maintains the following compliance monitoring cycle starting from the placed-in-service date and continuing through the 15 years of the compliance period.

Initial Compliance period – within 24 months from the final placed-in-service date of the project.

- Quarterly Reporting period – occupancy reporting due on calendar quarters.
- Annual Reporting period – On-site physical inspections, tenant file audits and Owner's Certification of Continuing Compliance.

EXTENDED USE PERIOD

The extended use period begins on the date the property is placed in service and continues for at least fifteen (15) years after the end of the compliance period. Rhode Island Housing requires that all project developers/owners execute a LURA committing to an extended use period of affordability for the qualifying units of at least 30 years.

For projects financed with tax-exempt bond proceeds, the required extended use period of affordability will be the greater of the period that the tax-exempt bonds remain outstanding or 30 years.

In addition, the LURA must provide that the owner waives the right to seek termination of the LURA by petitioning Rhode Island Housing to find a buyer of the development.

FUNDAMENTAL COMPLIANCE

OCCUPANCY REQUIREMENTS

A minimum number of units must be occupied by eligible residents. .

Minimum Set-Aside

The minimum set-aside is the minimum number of Housing Credit units that a project must contain to qualify for Housing Credits. An owner elects the minimum set-aside during the development period before the project is placed-in-service. The choice of minimum set-asides also establishes the income limit applicable to Housing Credit units in the project.

To establish the minimum set-aside, the owner must meet one of the following low-income tests:

- 20-50 Test. This set-aside requires that at least 20% of the units in a project be leased to tenants with incomes less than 50% of Area Median Income adjusted for household size.
- 40-60 Test. This set-aside requires that at least 40% of the units in a project be leased to tenants with incomes less than 60% of Area Median Income adjusted for household size.

Income Limits

Income limits are published annually by HUD. The limits are the basis to determine who qualifies as a low-income tenant. Only households with incomes equal to or less than the applicable income limit will qualify. HUD publishes income limits by area and indicates an effective date of new limits. Owners/Agents must use the income limits in effect on the date the tenant's income is certified. The IRS requires that Owners/Agents apply new limits by the later of (1) the effective date for the new limits, or (2) 45 days after the new limits are published.

Rhode Island Housing will provide tables of the maximum income limits and corresponding maximum allowable rents by area within its jurisdiction to Owners/Agents each year.

FUNDAMENTAL COMPLIANCE

OCCUPANCY REQUIREMENTS

Additional Occupancy Requirements

Beyond a tenant's income

Students

As a general rule, households consisting entirely of full-time students attending an accredited educational institution are not considered eligible residents, even if they meet the income requirement, unless they meet at least one of the following exceptions:

1. All members of the household are married (not necessarily to each other) and file a joint tax return; or
2. The household consists of a single parent and his/her minor children and both the parent and the children are not dependents of a third party; or
3. At least one member of the household receives assistance under Title IV of the Social Security Act (TANF, Temporary Assistance to Needy Families); or
4. At least one member of the household is enrolled in job training program under the Job Training Partnership Act or similar state or local laws.

Transient Use

Units do not qualify for Housing Credits if they are used on a transient basis.

- Units with an initial lease that has a minimum term of 6 months will not be considered transient use. Subsequent month-to-month renewals are acceptable.
- Units in a building providing transitional housing for the homeless may be qualified if:
 1. The unit contains sleeping accommodations, kitchen and bathroom facilities;
 2. The building is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and
 3. The government or a qualified nonprofit organization provides homeless individuals with temporary housing and support services designed to assist them in locating and retaining permanent housing.

Single room occupancy (SRO) units are an exception within the regulations. Although an SRO is not strictly defined, a unit will qualify given that other regulations do not characterize the unit as a transient one.

General Public Use

As a general rule, a unit must be available for occupancy by the general public in order to qualify for Housing Credits. Thus, units that are limited to members of a social organization, provided by an employer to employees, part of a hospital, nursing home, sanitarium, life care facility, trailer park, or intermediate care facility for persons with physical or behavioral health disabilities are not eligible for Housing Credits.

FUNDAMENTAL COMPLIANCE

OCCUPANCY REQUIREMENTS

Additional Occupancy Requirements

Beyond a tenant's income

Non-discrimination of Section 8 Tenants

Owners/Agents cannot refuse to rent to an applicant holding a Section 8 Certificate or Voucher; however, these applicants can be subject to the same selection criteria as non-Section 8 applicant, as long as the criteria are permissible under federal, state and local laws.

Housing for the Elderly

Projects will have exemptions to the General Public Use provision if they have been allocated Housing Credits as a project for "62 or over housing" or "55 or over housing."

RENT RESTRICTIONS AND LEASE REQUIREMENTS

The rent for Housing Credit units cannot be more than allowed under the Code and is intended to be affordable for prospective tenants.

Rent Limits

The rent limit applicable for a particular unit depends on the number of bedrooms in the unit and the minimum set-aside income limit chosen by the owner (i.e., 50% or 60% of area median income). If the tenant pays for utilities, a utility allowance must be factored in with the rent paid by the tenant, and the total tenant cost (rent plus utility allowance) must fall within the rent limit. Housing Credit rent restrictions act as rent ceilings. Actual rent that the development may achieve may be less depending on market conditions and the requirements of other programs.

Utility Allowances

Rent limits include an allowance for the cost of utilities. In properties where the owner pays all utilities, no adjustment in the rent limits is needed to determine the maximum rent that can be charged. Where tenants pay some or all their own utilities, the rent for a Housing Credit unit plus an allowance for tenant paid utilities cannot exceed the applicable maximum allowable rent for that unit. Treasury Revenue Regulation 1.42-10 deals with more specifics of utility allowances, including adjustments and coordination with other federal programs.

FUNDAMENTAL COMPLIANCE

RENT RESTRICTIONS AND LEASE REQUIREMENTS

Unit Size

The unit size is a factor in the calculation of the rent limit. The gross rent for a unit may not exceed 30% of the imputed income limitation for a type of unit. The imputed income limitation for a unit assumes that an efficiency unit is occupied by 1 person and that larger units are occupied by 1.5 persons per bedroom. Therefore the imputed income limitation for a 2 bedroom unit would be based on a 3 person household.

This rule applies to rent calculation only and does not mandate the number of tenants in a unit as under Section 8 rules.

Over Income Tenants

Rents for Housing Credit units occupied by over-income tenants remain restricted until a substitute unit has been qualified as a Housing Credit unit. In a building where the units are not 100% low income, once an over-income Housing Credit unit can be replaced, the over-income unit is no longer restricted under Housing Credit requirements. In buildings where 100% of the units are low income, the rents may never exceed the maximum allowable rents even if the tenant income increases.

Subsidy from Rural Housing Service and HUD

Maximum allowable rents to tenants receiving subsidy from Rural Housing Service and HUD's Section 8 project based program may be greater than those allowed by Housing Credit rules. Owners/Agents need to know how to assess rental charges, tenant payments and subsidy invoicing correctly. This does not permit Section 8 certificate or voucher holders to pay more than the Housing Credit rent limits.

Lease Provisions

The Housing Credit program requires certain provisions in all leases with tenants occupying Housing Credit units. These include provisions obligating the tenant to provide information, including verifications, about the household's size, income and student status necessary to determine eligibility under Section 42. In addition, the lease must provide that the tenant cannot be evicted except for "good cause".

Rhode Island Housing has developed a Lease Addendum which incorporates these required provisions. [appendix 7] This Lease Addendum must be made a part of the lease for every Housing Credit unit.

FUNDAMENTAL COMPLIANCE

RENT RESTRICTIONS AND LEASE REQUIREMENTS

Term of Lease

As previously discussed, Section 42 requires that Housing Credit units be used on a non-transient basis. Legislative guidelines recommend an initial 6-month lease. Rhode Island Housing recommends that the initial lease be for a one year period to correspond to the required recertification of tenant eligibility and cooperation with its documentation. Thereafter, the lease continues until it is terminated by the tenant or by the owner for “good cause.” The only exception to this rule is for units designated as transitional housing units supported under the McKinney Act. These units can be leased on a month-to-month basis.

PHYSICAL REQUIREMENTS

Initial and Continuing Monitoring

Housing Credit units must be suitable for occupancy taking into account local health, safety and building codes. The IRS Code states that the monitoring agency or its delegated agent must conduct on-site inspections of all buildings in the project by:

- The end of the 2nd calendar year following the placed-in-service date of the last building in the project; and
- Every 3 years thereafter.

In order to ensure that Housing Credit units are maintained in the best condition, Rhode Island Housing has elected to inspect Housing Credit properties more frequently than the minimums required under federal law. Owners/Agents will be notified at least 30 days before a site inspection occurs.

Rhode Island Housing Physical Inspection Standards

Rhode Island Housing has adopted HUD’s Uniform Physical Condition Standards. The policy states that owners of multifamily housing must maintain the properties in a manner that meets the physical condition standards set forth in order to be considered decent, safe, sanitary and in good repair.

Pattern of Minor Violations

Patterns of minor violations of Rhode Island Housing requirements and local building codes are required to be reported separately.

- Based on a single inspection, a significant number of inspection violations in multiple units or in a single unit.
- Based on 2 or more inspections a pattern of inspection violations occurs.
- A reclassification of a major violation as result of an owner’s response to a minor violation could become part of a pattern of minor violations.

All material violations of local health, safety and building codes, whether the violations are observed during the annual inspection or another source, will be reported to the IRS. See Chapter 8.

FUNDAMENTAL COMPLIANCE

COORDINATION WITH OTHER PROGRAMS AND LAWS

Fair Housing Act

Housing Credit properties are subject to Title VIII of the Civil Rights Act of 1968. The expanded coverage of the Act includes familial status and disabilities. The Fair Housing Act also mandates specific design construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

Failure of Housing Credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the Housing Credits on a per unit basis.

HUD enforces the Fair Housing Act. Rhode Island Housing is required to report potential Fair Housing Act violations discovered during its compliance monitoring activities to HUD. If Rhode Island Housing receives notification of a Fair Housing Act administrative or legal action, it must notify the IRS of the potential violation and the owner in writing. See Chapter 8.

Lead Safe Housing

Any building constructed prior to 1978 may contain lead-based paint. Federal and Rhode Island laws require Owners/Agents to abate and/or mitigate lead hazards in residential rental property.

The federal Lead Safe Housing Rule is incorporated into the HUD Uniform Physical Conditions Standards, and therefore applies to the Housing Credit Program because these standards are used by Rhode Island Housing to monitor the physical condition of a property. Additionally, Housing Credit properties are subject to the Rhode Island Lead Hazard Mitigation Act of 2002. This Act contains provisions regarding inspections and certifications, notification to tenants and responding to tenant concerns.

The Rhode Island Housing Resources Commission is the source for information on the Lead Hazard Mitigation Act of 2002, education and training on lead hazard compliance and awareness. Contact www.hrc.ri.gov.

FUNDAMENTAL COMPLIANCE

COORDINATION WITH OTHER PROGRAMS AND LAWS

Other Programs

Many Housing Credit properties receive assistance under several federal, state and local housing programs. Where Housing Credit Program requirements differ from those other programs, Owners/Agents should follow the most restrictive requirement. The obligations under the following programs may present overlapping requirements.

- Affordable Housing Program of FDIC (Federal Deposit Insurance Corporation)
- HOME Program
- HOPE VI
- HOPWA (Housing Opportunities for People with AIDS)
- Neighborhood Opportunities Program
- RHS (Rural Housing Service, formerly Farmer's Home)
- Shelter Plus Care
- Section 236 Program
- Section 8 Program
- State Rental Assistance Program

HOME Program Monitoring

The IRS permits a building that receives HOME funds to avoid being treated as “federally subsidized” and allows the owner to receive 9% Housing Credits if at least 40% of the units in the building are occupied by tenants with incomes at or below 50% of the Area Median Gross Income. This rule and any other commitments made by the project under the HOME program will be monitored as part of the Housing Credit compliance monitoring.

RHS – Rural Housing Service

- Utility Allowances – If any tenant in a building receives RHS rental assistance, then all Housing Credit units are governed by the RHS utility allowance
- Rent Limits – If RHS rules allow a rent that exceeds Housing Credit rent limits, the owner may charge the higher rent but must return the difference between the RHS rent and the Housing Credit rent to the RHS.

HUD Section 8 Project Based

- Utility Allowances – Buildings subject to HUD required allowances must use that amount for all rent-restricted units.
- Rent Limits – Under certain circumstances gross rent to an owner of a Housing Credit unit receiving Section 8 project-based subsidies are permitted to exceed the rent limits for the unit, as long as the tenant's portion of the rent is within the limit.

FUNDAMENTAL COMPLIANCE

RECORDKEEPING AND RECORD RETENTION

Housing Credit developments must maintain project records in accordance with program requirements and provide periodic reporting to Rhode Island Housing to document project occupancy compliance. Owners must keep all required project records for at least 6 years beyond the due date for filing the tax return for that year.

- ❑ All records concerning the property must be kept separate from any business unrelated to the property and in a condition that allows for a proper audit.
- ❑ Files to document program compliance at the end of each month of the first year of compliance and at the end of each subsequent year for the remainder of the compliance period.
- ❑ IRS required records for each Housing Credit building include:
 - Total number of residential rental units including number of bedrooms and size in sq.feet
 - Percentage of residential rental units that are Housing Credit units
 - Rent charged for each unit including any utility allowances
 - Number of occupants in the unit
 - Housing Credit unit vacancies together with Next Available Unit information
 - Annual tenant income certifications unless building operates under an exception for 100%
 - Documentation and verifications supporting each Housing Credit tenant certification
 - Eligible basis and qualified basis at the end of the first year of the Credit period
 - Character and use of non-residential portions of buildings
- ❑ Tenant files for each Housing Credit unit must contain the items below:

<ul style="list-style-type: none"> — Rental application — Tenant Unit Inspection Checklist — Verifications — Tenant Income Certification — Lease 	<ul style="list-style-type: none"> — Proof of identification (SS Card, Driver's License, Birth Certificate)
---	--
- ❑ Monthly unit listing must provide the following information by building for every unit in the project

<ul style="list-style-type: none"> — Unit number — Tenant name — Move-in date (occupied unit) — Move-out date (vacant unit) — Number in household — Unit status: Housing Credit or market 	<ul style="list-style-type: none"> — Subsidy amount and type — Tenant-paid rent — Utility allowance, if applicable
---	---

REQUIRED FORMS AND REPORTING**Qualified Basis Tracking Report**

Rhode Island Housing requires submission of the Original Qualified Basis Tracking Report to document the original qualifying tenant households in each building of the Housing Credit development. The report should also include market rate tenants.

Quarterly Recordkeeping Report

The Quarterly Recordkeeping Report includes a Building Data Report, Next Available Unit Table and a property management certification. This report must be filed by the 10th business day following the last day of the calendar quarter.

Tenant Income Certification

Rhode Island Housing has adopted the format recommended by the National Council of State Housing Agencies. As of January 1, 2005 these forms are required to be used for all initial tenant income certifications and recertifications.

Owner Certification of Continuing Program Compliance

The owner must certify annually to Rhode Island Housing for each year in the compliance period that the development is in compliance with all Housing Credit Program requirements. The certification is due on the last business day of January effective as of December 31 of the preceding year.

INITIAL COMPLIANCE

Qualifying Housing Credit Units

Owners/Agents must qualify the units that are to be counted as Housing Credit units. The following 6 conditions must be met for each Housing Credit unit.

- Tenant's income upon initial occupancy may not exceed the applicable Housing Credit limit. Tenant income must be certified on a Tenant Income Certification form.
- Rent paid by the tenant plus an allowance for tenant-paid utilities may not exceed the maximum rent for the type of unit.
- Units must be suitable for occupancy under Rhode Island Housing Physical Condition Standards and local health, safety and building codes.
- Owners/Agents must execute an RIH-approved lease with the tenant upon initial occupancy.
- Owners/Agents must record the tenant and unit data on the Original Qualified Basis Tracking Report submitted to Rhode Island Housing.
- Owners/Agents must re-examine the tenant's eligibility annually and keep rents at or below applicable Housing Credit rent limits.

Establishing the Minimum Set-Aside

The minimum set-aside is the minimum number of Housing Credit units that a project must contain to qualify for Housing Credits. An owner elects the minimum set-aside during the development period before the project is placed-in-service. The choice of minimum set-asides also established the income limit applicable to Housing Credit units in the project.

To establish the minimum set-aside, the owner must meet one of the following low-income tests:

- 20-50 Test. This set-aside requires that a minimum of 20% of the units in a project be leased to tenants with incomes less than 50% of the Area Median Gross Income adjusted for household size.
- 40-60 Test. This set-aside requires that a minimum of 40% of the units in a project be leased to tenants with incomes less than 60% of the Area Median Gross Income adjusted for household size.

The minimum set-aside is determined on a project basis. Each building may have a different percentage of Housing Credit units as long as the project, as a whole, meets the applicable minimum set-aside.

The Area Median Gross Income is published in the first quarter of a calendar year by HUD from US Census data. The areas are known as Metropolitan Statistical Areas or MSAs.

INITIAL COMPLIANCE

Buildings' Applicable Fraction

The amount of Housing Credits for which a building is eligible is based on the percentage of low-income units and the eligible cost of the building. The benchmark value that reflects the number of Housing Credit units is called the building's applicable fraction.

*The applicable fraction is the portion of a building leased as low-income units.
The fraction is the lesser of:*

- Number of low-income units as a percentage of total residential units also known as the Unit Fraction; or*
- Total floor space of low-income units as a percentage of total floor space of total residential units also known as the Floor Space Fraction*

The anticipated applicable fraction for a project is found in the Declaration of Land Use Restrictive Covenant. The fractions for individual buildings should be obtained from the Owner/Agent.

The applicable fraction is established in the first year of the Compliance Period.. Projects that are not 100% low- income need to maintain the correct number of low-income units or square feet in order to be in compliance with Section 42. If the percentage of units rented to qualified households in subsequent years drops below the applicable fraction, the amount of Housing Credits the building is eligible for in that year will also decrease, and the owner may also be subject to credit recapture.

Buildings' Qualified Basis

The Housing Credits allocated to the owners result from their investment in constructing, buying and or rehabilitating the buildings in the project. Each building's qualified basis is determined by multiplying its applicable fraction of low-income units by the eligible cost basis for the building. The original qualified basis is the amount established at the close of the first year of the Compliance Period.

Units which have not been leased for the first time to low-income tenants by the end of the first year of the Compliance Period will earn Housing Credits at a reduced rate rather than the maximum dollar amount available.

Original Qualified Basis and Applicable Fraction Tracking Reports

Rhode Island Housing requires that Owners/Agents report the unit and tenant information that qualifies each unit in each building in the development by the end of the first year of the Compliance Period. If appropriate to the Owner/Taxpayers election on their tax returns, the reporting is required monthly during the first year. The information on the reports must be documented in the unit file with:

- Tenant Income Certification (TIC) form
- Certifications and verifications to support values on TIC
- Square footage for the unit (as certified on the Qualified Basis Tracking Report)

CONTINUING COMPLIANCE

Recertification of Tenant Eligibility

- The eligibility of every member in the household of a Housing Credit unit must be recertified annually.
- The recertification must occur within 12 months of the most recent annual tenant certification.
- Verification of tenant income information must be obtained to support values on recertification.
- All forms and supporting documentation must be in a file available for audit testing.
- Previously qualified tenants remain eligible at recertification as long as their income is below 140% of the Housing Credit income limit for admission and their student status has not changed.
- Tenants at recertification whose income is over 140% of the Housing Credit income limit remain eligible until the Next Available Unit Rule is triggered by unit turnover in the building.
- The Tenant Income Recertification Addendum may be used for tenants receiving Section 8 or Rural Housing subsidy.

Rent Adjustments

Rent adjustments, including adjustments to initial lease-up rents, are allowed without prior approval in accordance with Rhode Island Housing policy under the following conditions:

- New rents cannot exceed the amount permitted under Section 42 based on current median income data for the income level originally approved for the development. For example, if rents were initially based on 45% of area median income levels, the new rent cannot exceed 30% of the current 45% area median income levels.
- Rent adjustments must comply with all Section 42 requirements and other federal and state program rules that may apply.
- For units occupied by eligible tenants since September 1, 2002 in Rhode Island Housing financed properties, rent cannot increase more than \$25 per month in a 6 month period.
- Rent adjustments must be made at the time of lease renewal unless specifically authorized in the lease

Physical Inspection

Rhode Island Housing will inspect the common areas and a percentage of units in all Housing Credit properties annually using the Rhode Island Housing Physical Inspection Standards.

Occupancy Reporting

Rhode Island Housing requires that Owners/Agents submit a quarterly report on occupancy activity, move-ins, move-outs and vacant unit status. The Quarterly Recordkeeping Report consists of a Building Data Report, the Next Available Unit Table and a certification form. It is due to the Compliance Department of the Loan Servicing Division on the 10th business day after the calendar quarter or in the months of January, April, July and October.

CONTINUING COMPLIANCE

Available Unit Rule

The Available Unit Rule requires that in each building of a Housing Credit development another unit must be made available to a new low-income tenant if the income of an existing low-income tenant increases above 140% of the income limit. This rule is also known as the Next Available Unit Rule or the 140% Rule. Under this rule:

- The over-income unit can continue to be treated as a Housing Credit unit as long as available vacant units of comparable or smaller size in the same building are rented to eligible tenants.
- In a 100% low-income building, over income tenants may remain in the unit as long as they were eligible when they moved in or were qualified as an existing tenant.
- The rent for the over-income tenant remains rent restricted as long as the unit is needed to maintain the applicable fraction for the building.
- The Available Unit Rule applies on a building basis.

Vacant Unit Rule

The Vacant Unit Rule allows the owner to count a vacated unit as a qualified Housing Credit unit as long as reasonable efforts are made to re-rent the vacated unit to a qualified tenant and no available unit of comparable or smaller size in the project is rented to an ineligible tenant.

- The Vacant Unit Rule operates on a project basis.
- The Vacant Unit Rule can prevent all comparable market-rate units from being leased until reasonable efforts have been made to rent a unit to a qualified tenant.
- Reasonable efforts are indicated by actively marketing the unit for at least 30 days. Evidence of the marketing effort must be fully documented by maintaining copies of advertisements, records of prospective tenant visits, copies of rejected applications and any other evidence demonstrating the attempts to rent the Housing Credit unit in the project's files for review by Rhode Island Housing Compliance staff.

Annual Certification of Continuing Program Compliance by Owner

Housing Credit regulations require owners to document the project's continuing compliance by submitting a certification to the Housing Credit Agency each year throughout the Compliance Period for the project. This certification must be properly executed by the owner or an agent with full authority to legally bind the owner.

Rhode Island Housing has adopted the format recommended by the National Council of State Housing Agencies for the Annual Owner's Certificate of Continuing Program Compliance. It is due to the Compliance Department of the Loan Servicing Division on the last business day of January.

The form for the Owner's Certificate of Continuing Program Compliance is in Appendix 7.

MANAGEMENT REVIEW

As the Housing Credit Agency Rhode Island Housing is required to conduct an initial on-site review of Housing Credit properties and their records, and to evaluate owner compliance with program requirements. This first review is required by the end of the second calendar year following the placed-in-service date of the project's last building. Subsequent reviews for properties without Rhode Island Housing financing will be reviewed at least once every 3 years thereafter.

Housing Credit properties financed through Rhode Island Housing and/or monitored under other federal or State programs administered by Rhode Island Housing will be reviewed annually. Furthermore, projects whose operations do not meet Rhode Island Housing financial and operating management standards may be subject to more frequent examination.

The management review process is as follows:

- Rhode Island Housing will give property management at least 30 days notice before an on-site visit.
- A desk review analyzing the quarterly Building Data Reports and Next Available Unit Tables will be made.
- The review must include inspection of 20% of the Housing Credit units and of the corresponding tenant income certifications and documentation.
- Rhode Island Housing also will review other property management documentation such as waiting lists, rent rolls, marketing materials and other such information to gain assurance of compliance with Housing Credit requirements.
- Owners/Agents must provide monitoring staff with access to all documents regarding continuing compliance and other materials as may apply.
- Rhode Island Housing will evaluate the state of continuing compliance and report the results to the Owners/Agents on the conclusion of the management review.

NONCOMPLIANCE

There are 2 general types of compliance violations

- Violations of the requirements of Section 42 of the Internal Revenue Code and its related regulations and IRS guidance..
- Violations of Rhode Island Housing policies, administrative requirements and commitments made in the Declaration of Land Use Restrictive Covenant.

Noncompliance and corrective action is reported to the IRS on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. These violations can lead to the loss and/or recapture of Housing Credits

Federal Requirements

Violations of Section 42 that can cause a project to lose Housing Credits include:

- Project failed to meet minimum set-aside requirements
- Household income above income limit upon initial occupancy
- Major violations of the Uniform Physical Condition Standards or local inspection standards
- Pattern of minor violations of the Uniform Physical Condition Standards or local inspection standards
- Failure to submit annual certification
- Gross rents exceed Housing Credit limits
- Project not available to the general public
- Failure to follow the Available Unit Rule and the Vacant Unit Rule
- Occupancy by non-qualified full-time students
- Failure to maintain or provide tenant income certification and documentation
- Improperly calculating utility allowance
- Failure to respond to agency request for monitoring review and fees
- Housing Credit units used on a transient basis

Rhode Island Housing Requirements

Failure to follow Rhode Island Housing Policies

- Rent adjustments
- Documentation of the marketing of vacant units
- Elections and commitments under the Declaration of Land Use Restrictive Covenants
- Terms and conditions of the Regulatory Agreement, where applicable

NONCOMPLIANCE

Reporting and Corrective Action

Instances of noncompliance can be reported to Rhode Island Housing from:

- Desk audit or site visit performed by Compliance department staff
- Tenant complaint
- Annual Housing Credit audit
- Financial asset management review

Noncompliance Reporting Procedures

1. Rhode Island Housing prepares and provides the owner with a summary report of findings of noncompliance issues.
The letter may identify administrative or technical issues, recommend changes to improve future management of the project or suggest corrective actions to remedy reported noncompliance issues.
2. The owner must respond to Rhode Island Housing within a maximum of 30 days. Shorter periods may apply depending on the nature of the problem.
The correction period may be extended up to 60 days upon written appeal of the owner if received before the expiration of the initial 30 day period.
3. Rhode Island Housing will determine whether the noncompliance issue has been remedied.
 - a. If remedied – Rhode Island Housing will notify the owner in writing within 45 days of the owner’s response and file Form 8823 reporting the noncompliance and the correction
 - b. If not remedied – Rhode Island Housing will file Form 8823 with the IRS.
4. Rhode Island Housing will send a copy of Form 8823 to the owner.
5. If remedied, the IRS will process the ‘back in compliance’ Form 8823 without contacting the owner.
6. If not remedied, the IRS will instruct the owner to contact Rhode Island Housing to resolve the noncompliance issue.
7. Depending on the nature of the noncompliance, the IRS will determine if an audit is warranted and will forward the case file to the appropriate field office for examination.

Recapture of Credits

Recapture refers to the disallowance of a portion of Housing Credits previously taken during a specific period due to noncompliance. The IRS determines the amount of recaptured Housing Credits. Violations of Rhode Island Housing policies may cause recapture of Housing Credits and may subject the owner to other penalties.

RHODE ISLAND HOUSING POLICIES

Training Policy

In accordance with the Qualified Allocation Plan, the owner must certify that the Management Agent or a member of the on-site staff attends training for compliance in managing a Housing Credit property at least once annually. Certifications of training must be submitted to Rhode Island Housing by June 30th of each year.

Training must be through a recognized Housing Credit training consultant. The training at a minimum should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures and unit vacancy rules, agency reporting requirements, record retention requirements and site visits.

A list of training resources is in Appendix 5.

Annual Compliance Monitoring Fee

Rhode Island Housing assesses an annual compliance monitoring fee of \$20 per Housing Credit unit in the development.

For a new Housing Credit project, Rhode Island Housing will perform an on-site review of within 12 months following the placed-in-service date of the project's last building. The fee will be first assessed in the fiscal year that the review is scheduled to occur.

Thereafter, the fee will be billed each July. The fee is due on receipt of the bill.

Rhode Island Housing Physical Inspection Standards

Rhode Island Housing has adopted the federal Uniform Physical Condition Standards as a basis of monitoring the physical condition of Housing Credit properties in the following major areas:

- Site
- Building exterior
- Building systems
- Dwelling units
- Common areas

The Rhode Island Housing Physical Inspection Standards can be found in Appendix 4.

GLOSSARY**20/50 TEST**

Requirement whereby 20 percent or more of the residential rental units are rent-restricted and occupied by households with incomes of 50 percent or less of the area median gross income, adjusted for family size. This test is referred to as one of the "minimum set-aside" requirements. Compliance with the minimum set-aside requirements must be maintained at all times during the 15-year compliance period. Failure to meet the elected test would disqualify a project from being eligible for the credit.

25/60 TEST

Requirement whereby 25 percent or more of the residential rental units are rent-restricted and occupied by households with incomes of 60 percent or less of the area median gross income, adjusted for family size. This test is available only to buildings located in New York City and is offered in lieu of the 40/60 test.

40/60 TEST

Requirement whereby 40 percent or more of the residential rental units are rent-restricted and occupied by households with incomes of 60 percent or less of the area median gross income, adjusted for family size. This test is referred to as one of the "minimum set-aside" requirements. Compliance with the minimum set-aside requirements must be maintained at all times during the 15-year compliance period. Failure to meet the elected test would disqualify a project from being eligible for the credit.

ALLOCATION

A building must receive low-income credit authority from the credit agency in whose jurisdiction the qualifying low-income building is located.

APPLICABLE FRACTION

Used in the determination of qualified basis, the applicable fraction is the smaller of either the unit fraction or floor space fraction and represents the low-income portion of the building.

APPLICABLE PERCENTAGE

This is the credit percentage specific to a low-income housing project. Depending on the nature of the project, the applicable percentage may be either 4 percent or 9 percent (restated as approximating 30 percent and 70 percent in present value terms).

AREA MEDIAN GROSS INCOME (AMGI)

Term which represents the "midpoint" (that is, half are above and the other half are below) income level for a given area. These figures are published annually by HUD based on various population and earnings data. The AMGI figure, as adjusted for family size, is used in the determination of whether or not a household qualifies as "low-income" for purposes of the Housing Credit Program.

BUILDING IDENTIFICATION NUMBER (BIN)

This is the 9 digit, alphanumeric designation assigned by the state Housing Credit agency to a low-income building. Essential to the monitoring process for IRC section 42, IRS Notice 88-91 provides information regarding building identification number requirements.

CARRYOVER ALLOCATION

Added by Congress in 1988, a carryover allocation allows the state to allocate credits to a project which has not yet been placed-in-service. Restrictions are included in this agreement, stating that (1) 10 percent of the reasonably expected costs have been incurred by the end of the year in which the carryover allocation was granted and (2) the building must be placed-in-service generally no later than the end of the second calendar year following the year of such allocation. The state Housing Credit ceiling is reduced by the amount of any carryover allocations made during the year. Guidelines regarding information to be included in a carryover allocation document are provided in Treas. Reg. section 1.42-6(d)(2).

GLOSSARY**CERTIFICATE OF OCCUPANCY**

This is the authorization from the municipality or jurisdiction that approves the building for occupancy under the local housing codes.

COMPLIANCE PERIOD

This is the 15-year period over which a project must maintain compliance with IRC section 42. This period begins with the first taxable year of the credit period.

CREDIT PERIOD

This is a 10-year period which generally begins in the year a property is placed-in-service. A taxpayer may instead elect to begin the credit period in the year following the one in which the building was placed-in-service. The housing tax credit is claimed annually for this 10-year period.

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

The restrictive covenant term used by Rhode Island Housing. Signed by the owner and officers of Rhode Island Housing. It is filed with the municipality where the property is located.

ELIGIBLE BASIS

Eligible basis consists of (1) the cost of new construction, (2) the cost of rehabilitation, or (3) the cost of acquisition of an existing building. Eligible basis includes only the adjusted basis of the building (including certain items of personal property and site improvements) and does not include the cost of land. Basis is generally determined at the time the building is placed-in-service.

EQUITY

Funds provided by investors in a project represent equity. The amount of this investment is contingent upon the value attributed to the tax benefits generated by ownership in the project. Represents one of the basic financing layers in a project.

EXTENDED USE COMMITMENT

Program requirement applicable to post-1989 years. The extended use period begins with the first day of the 15-year compliance period and ends 15 or more year after the close of the initial compliance period -- creating a 30 or more year period under which the building owner must be in compliance with IRC section 42.

FLOOR SPACE FRACTION

The proportion of low-income related floor space to all residential rental floor space (whether occupied or not) in the building.

GENERAL PUBLIC USE

The legislative history of IRC section 42 and Treas. Reg. section 1.42-9 provides that the residential rental units upon which a Housing Credit is taken must be available for use by the general public. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination. HUD Handbook 4350.3 is the appropriate reference source.

GROSS RENT FLOOR

There is a gross rent floor for every building. It is normally based upon when Credits were first allocated to a building or when the building was first placed-in-service. Even if median incomes decline such that the calculated Housing Credit rent limits would be lower than the floor, the owner is not obligated to reduce rents below that level.

GROSS RENT LIMITATION

Gross rent may not exceed 30 percent of the applicable qualifying income as adjusted for household size. Gross rent includes the cost of any utilities, except telephone. If utilities are paid directly by the tenant, the maximum rent must be reduced by the amount of the utility allowance. The gross rent limitation applies only to payments made directly by the tenant. Any rental assistance payments (such as [HUD] Section 8 payments) are not included in the gross rent limitation.

GLOSSARY**HOME INVESTMENT PARTNERSHIPS ACT (THE HOME PROGRAM)**

The HOME Program, administered by HUD, provides grants to state and local governments for use in projects which increase home ownership and affordable housing opportunities for low and very low-income households. Any below-market loan funded under this program and meeting the special set-aside test of 40/50 is not a federal subsidy. Projects funded with these loans are eligible for the 70 percent present value credit.

HOUSEHOLD INCOME LIMITATIONS

One of the requirements of the minimum set-aside test, the income level of a qualifying unit is a set percentage of the Area Median Gross Income figure. In accordance with the minimum set-aside elections, the income level may be no greater than 50 percent or 60 percent of the respective area median gross income.

HOUSING CREDIT AGENCY

The state of local housing agency that has the authority to allocate and commit federal Housing Credits to a building.

INCOME CERTIFICATION

All qualifying units must have adequate documentation to support the household income limitation at initial lease-up as well as annually throughout the compliance period. Treas. Reg. section 1.42-5(b) provides guidance on this compliance monitoring requirement.

INTERMEDIATE CARE FACILITY

Generally defined as a facility which provides frequent or continual nursing, medical or psychiatric care, these facilities do not qualify for the Housing Credit Program.

HOUSING CREDIT UNIT

A unit that (1) is rent-restricted and (2) has individuals occupying it who meet the income limitation applicable under the elected minimum set-aside test.

LURA (LAND USE RESTRICTION AGREEMENT)

This is the most common term to describe the extended use agreement in the Housing Credit Program. Like the restrictive covenant a LURA must constitute restrictions that 'run with the land' and are enforceable by the State Agency and certain third parties.

McKINNEY ACT

The Stewart B. McKinney Homeless Assistance Act provides definitions regarding "transitional housing," "homeless" individuals and related issues which must be reviewed to evaluate whether or not a building qualifies under the Housing Credit Program under IRC section 42(i)(3)(B)(iii).

MINIMUM SET-ASIDE TEST

This is a requirement which must be met at all times during a project's 15-year compliance period. This test restricts rent and dictates which households qualify as low-income and how many units must be occupied by the qualifying households. The 2 general minimum set-aside tests are the 20/50 and the 40/60 tests. Refer to each for additional specifics.

MIXED-INCOME PROJECTS

Mixed-income projects are buildings with both low-income and market rate tenants.

MULTIPLE BUILDING PROJECTS

A project may consist of multiple buildings if such buildings are similarly constructed, located on the same tract of land, owned by the same party and financed under a common plan of financing. These projects may meet the minimum set-aside by having each separate building meet the test within a year of their placed-in-service date or by an election to aggregate the buildings.

NEXT AVAILABLE UNIT RULE

The rule states that if a tenant's income in a Housing Credit unit increases above 140 percent of the applicable income limitations (over-income unit), available units of comparable or smaller size must be rented to low-income tenants to continue treating the over-income unit as a Housing Credit unit. See Treas. Reg. 1.42-15.

GLOSSARY**OWNER CERTIFICATION**

Annually, a building owner must provide certification to the State Housing Credit agency that the Housing Credit units in a project are occupied by qualifying households. Failure to provide such certification and in a timely manner, will result in the filing of Form 8823 (Noncompliance Report) by the State Housing Credit agency.

PLACED-IN-SERVICE

"Placed-in service" is defined in IRS Notice 88-116, 1988-2 C.B. 449, as being the date on which the first unit in the building is first certified as being suitable for occupancy under state or local law. For rehabilitations which qualify for treatment as a separate new building, the placed-in-service date would occur at the end of the 24-month period over which such expenditures are aggregated.

PTO (PERMISSION TO OCCUPY)

The authorization from Rhode Island Housing that approves the building for occupancy under the terms of the loan agreement.

QUALIFIED BASIS

This is the figure which, when multiplied by the applicable percentage, equals the Housing Credit. Qualified basis equals product of the applicable fraction and the eligible basis.

Housing Credit = Qualified Basis x Applicable Percentage

Qualified Basis = Applicable Fraction x Eligible Basis

QUALIFIED HOUSING CREDIT BUILDING

A building subject to the 15-year compliance period that meets the minimum set-aside and other requirements for all 15 years.

QUALIFIED PROJECT

A project that meets the minimum set-aside requirements and other requirements related to those units during the entire 15-year compliance period.

RECAPTURE

Recapture refers to an adjustment in which the accelerated portion of the credit, plus interest, is recovered as a result of reductions in qualified basis (including but not limited to the partial or full dispositions of the building or interest therein). If the qualified basis on which credit is taken decreases, recapture applies to that portion of the qualified basis that is no longer eligible for the credit. If a project ceases to meet the minimum set-aside requirement, the project no longer qualifies as a Housing Credit project until the minimum set-aside is again met and recapture is applied to all credits previously taken on the entire project.

RESIDENT MANAGER UNIT

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified Housing Credit building, but the unit is excluded from the applicable fraction for determining the building's qualified basis. See Rev. Rul. 92-61, 1992-2 C.B.7.

RESTRICTIVE COVENANT

A "restrictive covenant" is an agreement drafted to reflect the IRC section 42(h)(6) extended-use commitment made by the building owner to the Housing Credit Program. The extended-use commitment period encompasses the 15-year compliance period and extends a minimum of 15 years past the end of the compliance period. The extended use agreement is recorded as a restrictive covenant and attaches to the property under state law.

GLOSSARY**RURAL HOUSING SERVICE**

The Rural Housing Service, formerly known as the Farmers Home Administration, is an agency of the U.S. Department of Agriculture, which provides qualified public, nonprofit organizations and public agencies with grant funds for programs to assist very-low and low-income homeowners repair and rehabilitate their homes in rural areas and to assist rental property owners and co-ops repair and rehabilitate their units if they agree to make such units available to low and very-low-income persons. Financial assistance provided by grantees may include loans, grants, interest reduction on commercial loans or other assistance.

SCATTERED SITE PROJECT

A project consisting of multiple buildings having similarly constructed housing units which are located on the same tract of land, are owned by the same person for Federal income tax purposes and financed pursuant to a common plan of financing. If all units are 100-percent rent restricted, the buildings need not be on the same tract of land.

SECTION 8 PROGRAM

Refers to the rental assistance programs under Section 8 of the United States Housing Act of 1937 which assist low and very-low income families obtain decent housing in private accommodations.

SECTION 515 PROGRAM

Administered by the Rural Housing Services, the section 515 Rural Rental Housing Loan Program provides loans to finance rental and cooperatively-owned housing of modest design for very-low, low and moderate income families, the elderly and the handicapped. Funds can be used to construct new housing or to purchase and/or rehabilitate existing structures for rental purposes.

SINGLE ROOM OCCUPANCY (SRO) UNITS

Residential rental units must generally contain complete living, sleeping, eating, cooking and sanitation facilities. IRC section 42 provides an exception to this definition which allows SRO units to qualify as residential rental units even if eating, cooking and sanitation facilities are on a shared basis.

STATE HOUSING CREDIT AGENCY

An agency generally consisting of 2 separate divisions (allocation and compliance) that is a governmental unit within a state which allocates the Housing Credit. The allocation division is responsible for scoring applications, making reservations and granting allocations. The compliance division reviews the annual income certifications and the compliance audits required under the Treas. Reg. Section 1.42-5.

STUDENT TENANTS

Units occupied entirely by full time students will not be considered to qualify for the Housing Credit. Exceptions apply for students who are single parents of children which are also full time students, provided no one is claimed as a dependent of a third party. Married students who file a joint return are also exceptions, as are students enrolled in certain job training programs or those receiving assistance under Title IV of the Social Security Act.

SUBSTANTIAL REHABILITATION

These are expenditures of a capital nature, which apply to or substantially benefit one or more of the Housing Credit units and also meet the greater of either 10 percent of the adjusted basis of the building or an average of \$3,000 of qualified basis per Housing Credit unit. These expenditures are tested over a 24-month period selected by the building owner.

SYNDICATOR

This is an agent involved in the sale of a project. Expenses related to the sale, (soft costs), are not depreciable and therefore not included in the project's eligible basis.

TRANSITIONAL HOUSING

A project designed to provide short-term housing and appropriate supportive services to homeless persons, including those persons with mental disabilities and those with children.

GLOSSARY

UNIT FRACTION

The proportion of Housing Credit units to all residential rental units (whether occupied or not) in the building.

UTILITY ALLOWANCE

A portion of the gross rent figure represents utility expenses (other than telephone). In a situation where the tenant pays directly for utilities, the maximum rent charged must include the amount of the utility allowance.

WAIVER OF TENANT INCOME RECERTIFICATION

A request by a building owner to the Secretary of the Treasury to waive the annual income re-certification for each low-income tenant in a qualified Housing Credit building to the state housing agency. This applies to 100-percent Housing Credit buildings only and does not release the building owners from the responsibility of having to satisfy the requirements of the monitoring procedure adopted by the state housing agency. The request is made through filing form 8877 with the IRS. See Rev. Proc. 2004-38, 22CFR601.105.