



"We're housing Utah"

Housing Credit Compliance Manual

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Introduction

Utah Housing Corporation (UHC) is the designated administrator of the Low Income Housing Tax Credit Program (“Housing Credit Program” or “Program”) for the State of Utah under Section 42 of the Internal Revenue Code of 1986, as amended (“Code” or “Section 42”), and under Section 59-7-607 of the Utah Code, as amended (the “Utah Code”) and all regulations promulgated there under. To most efficiently administer the Program and to ensure uniform compliance from those projects having received Housing Credits, UHC has developed this Compliance Manual.

The federal laws establishing the Housing Credit Program are subject to change. Final interpretations of certain rules and regulations governing various facets of the Program may not yet have been issued. Consequently, additional requirements or conditions applying to the Program may be forthcoming.

Foreword

This Manual is a training and reference guide for the administration of the Housing Credit Program. It is intended to answer questions regarding the procedures, rules, and regulations that govern the Program. The Manual should be used in conjunction with, and as a supplement to, the Code and the Utah Code. If a determination is made that any provision of this Manual is in conflict with the Code, the Code will govern.

The laws and regulations governing the Housing Credit Program as well as the interpretation of these laws can and do change. Owners and Managers should keep abreast of all changes in the Code and the Code of Federal Regulations that may affect their properties. This may require consulting qualified legal and tax professionals for advice.

Compliance monitoring by UHC will be administered through the Multifamily Finance Department. The contacts for Housing Credit compliance monitoring are:

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Background

The Code requires Housing Credit agencies to include in their Housing Credit Allocation Plan a procedure to monitor all Housing Credit projects for compliance throughout the compliance period and to notify the Internal Revenue Service (IRS) of any noncompliance of which it becomes aware whether or not it is corrected. The monitoring requirements became effective on January 1, 1992, were amended on January 14, 2000, and apply to all Housing Credit projects, even if the projects received an allocation prior to 1992. UHC, as the state allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring. The IRS has issued final regulations, Income Tax Regulation 1.42-5 ("1.42-5"), relating to the requirements for compliance monitoring.

The purpose of this Manual is to set forth the procedures to be followed by UHC and the owners of Housing Credit projects in order to comply with the requirements of the Program. The compliance monitoring requirements are subject to modification by the IRS and income determination requirements are subject to modification by the United States Department of Housing and Urban Development ("HUD").

This Manual includes a number of chapters designed to cover the specific compliance monitoring requirements under Section 42. *Chapter 1* gives a summary of program fundamentals; *Chapter 2* sets forth the owner's annual reporting requirements; *Chapter 3* summarizes the owner's record keeping and retention requirements; *Chapter 4* covers UHC certification and review requirements; *Chapter 5* addresses the project rental requirements; *Chapter 6* discusses income determinations; *Chapter 7* sets forth the procedures to be followed at the time a Housing Credit project is sold or otherwise transferred; *Chapter 8* addresses the consequences of non-compliance; *Chapter 9* provides guidance for compliance and monitoring in the Extended Use Period.

Chapter 1 – Program Fundamentals

1. Minimum Set-Aside Election

Qualifying projects must meet rent and income targeting requirements for a minimum 15-year compliance period plus a potential extended use period of up to 84 years.

Two options are available for the minimum set-aside requirement:

- A. No less than 20% of the housing units must be set-aside for tenants whose incomes are 50% or less of the area median income; or
- B. No less than 40% of the housing units must be set-aside for tenants whose incomes are 60% or less of the area median income.

NOTE: Each building is considered a separate project under IRC Section 42(g)(3)(D), and the minimum set-aside applies separately to each building, unless the owner elects to treat buildings as a multiple-building project, in which case the minimum set-aside applies on a project-wide basis. Owners identify the building(s) in a multiple-building project by attaching a statement to the owner's first-year tax return. See instructions for Form 8609, line 8b for details.

The Minimum Set-Aside determines both the minimum percentage of tax credit units at the project and the income limit used to determine tenant eligibility. The Minimum Set-Aside must be maintained for the entire compliance period or recapture of the credit for all units will result. The Project Sponsor specifies the Minimum Set-Aside when applying for a tax credit allocation and elects the Minimum Set-Aside on IRS Form 8609. This election is irrevocable and sets the applicable income limit for *all* Housing Credit units in the project.

Managers and owners must confirm the minimum set-aside that was established by the building owner at the time the minimum set-aside was made (election is made on IRS form 8609 for the first year of the credit period), in order to remain in compliance. Once the election has been made, the project must comply with the set-aside. For example, 40/60 minimum set-aside, if the applicable fraction for building "A" is 100%, all tax credit units must adhere to the 60% rent and income restriction.

At the time of application, owners may have elected additional special set-aside requirements (additional rent restrictions, special targeted population, etc.) as a condition of obtaining additional credits. These special set-aside requirements will be stated in the Land Use Restriction Agreement (LURA). If such additional set-asides are elected, they must be maintained throughout the compliance period and extended use period, and will be monitored at the same time as, and in a manner similar to, the Section 42 requirements.

2. Rent and Income Requirements

The income necessary to be eligible to rent a unit is based on the household income limits adjusted for family size for the area in which the project is located. Income determination is similar to Section 8 income qualifications as described in 24 Code of Federal Regulations (CFR) 813.106.

For properties receiving tax credits in 1990 and subsequent years, the formula for computing gross rent is based on 1.5 persons per bedroom not to exceed 30% of the corresponding income election.

3. Tenant Income Certification

Under IRS Rules, the Project Owner must certify that annual income certifications and supporting income and asset documentation has been received from each Housing Credit tenant. Guidelines for documenting and certifying tenant eligibility are provided in Chapter 6 of this Manual.

Annual income recertification may be waived if qualified low-income tenants occupy 100 percent of the Housing Credit project.

4. Rent and Income Figures

UHC will release Income and Rent Tables on an annual basis after receiving current median incomes from the office of HUD. UHC provides this table as a courtesy. It is the owner's responsibility to make sure they are using the correct figures.

5. Building Regulations

The credit amount allocated to each building in a project is partially calculated on the following factors:

A. Eligible Basis:

In general, the Eligible Basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42 (d). As a general rule, the adjusted basis rules of Section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42 (d) are:

Buildings located in areas designated as a "qualified census tract" or "difficult development area" may be eligible for an increase in allowable basis.

If non-Housing Credit units are of a quality standard greater than that of Housing Credit units in the building, the costs of non-Housing Credit units generally are not included in eligible basis.

The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g. carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g. parking, garages, swimming pools etc.) may be included in eligible basis if there is no separate charge for use of the facilities and they are made available on a comparable basis to all tenants in the project.

Eligible Basis is reduced by federal grants, residential rental units which are above the average quality standard of the low-income units, any historic rehabilitation credits, and nonresidential rental property.

The eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the form 8609, and does not change from year to year.

B. Applicable Fraction

The applicable fraction is the lesser of:

- The unit fraction, which is the number of Housing Credit units in a building divided by the total number of residential rental units; or
- The floor space fraction, which is the total floor space of the Housing Credit units in the building divided by the total floor space of the residential rental units in the building.

When determining which units to include in the numerator (Housing Credit units), and in the denominator (total units) of the applicable fraction, please note:

- Units that have never been occupied (empty units), or are occupied by a nonqualified household cannot be included in the numerator, but must be included in the denominator;
- Vacant units that were last occupied by a nonqualified household cannot be included in the numerator, but must be included in the denominator.
- Units not suitable for occupancy, including tax credit units being rehabilitated in the first year of the credit period, cannot be included in the numerator, but must be included in the denominator.
- Common space units (units for FT manager, FT maintenance or security) are not included in either the numerator or denominator.

6. Suitability of Unit for Occupancy

Under IRS rules, a unit shall not be treated as a Housing Credit unit unless it is suitable for occupancy.

Compliance Monitoring Regulations published January 14, 2000, require Housing Credit agencies to conduct physical inspections consistent with standards governed by the Department of Housing and Urban Development's Uniform Physical Conditions Standards (UPCS). These standards require properties to be in "decent, safe and sanitary condition and in good repair"

Each building in a Housing Credit project must be suitable for occupancy, in accordance with state and local health, safety, and building codes state for credits to be claimed. The Project Owner/Management Company is responsible for correcting the violations if state or local officials have cited the building for health, safety, and/or building code violations. Uncorrected violations may render the building or low-income units unsuitable for occupancy. If the Housing Credit unit is not habitable, no tax credits can be claimed. Such violations may be considered noncompliance.

In cases where a unit is destroyed by fire, flood, or any other disaster, no credits can be claimed while the unit is being replaced. However, the IRS has ruled that if a unit is restored within a reasonable time, credits can again be claimed and no recapture would occur.

Project Owners/Management Companies should be aware that compliance with the Americans with Disabilities Act (ADA) and federal Lead-Based Paint requirements (applicable to acquisition/rehabilitation projects) is an important consideration in determining the project's suitability of occupancy.

7. Vacant Unit Rule

Under IRS rules, Project Owners/Management Companies **cannot** count a vacant unit as a Housing Credit unit if the unit did not qualify as a Housing Credit unit prior to being vacated. To be considered as a Housing Credit unit, an eligible tenant must occupy the unit on the last day of the month. A vacant unit cannot be counted as a Housing Credit unit simply because it is being held for a qualified tenant.

If a Housing Credit unit becomes vacant during the year, the unit remains eligible for the tax credit for purposes of the Minimum Set-Aside requirement and determining the Qualified Basis of the project. The unit will continue to qualify as long as **reasonable attempts** are made to rent the unit or the next available comparable or smaller size unit to an eligible household.

Reasonable Attempts means that efforts toward marketing and renting a unit that is suitable for occupancy must be made. This includes but is not limited to newspaper advertisement, vacancy posting at project site, internet, telephone outreach, etc..

Units that have never been occupied are referred to as "empty" units rather than vacant units. Empty units cannot be counted as Housing Credit units. However, they must be included in the building's total unit count for purposes of counting the Applicable Fraction.

Project Owners are required to keep records for each qualified Housing Credit building in the project showing for each year of the compliance period the Housing Credit unit vacancies and data for when, and to whom, the next available units were rented.

A. Special needs and set-aside units - At initial lease up, the owner must work with the service providers (as listed on the application and LURA) to fill the set-aside units with qualified tenants. Units must be held for specific special needs as outlined in the project application for at least 60 days before renting units to the general public. All attempts made by the owner must be documented (newspaper and internet ads, signs, flyers, records of communication with service provider, etc.) and kept in a file. Failure by the owner to fill these units with qualified tenants may result in a "Not in good standing" status with UHC. The owner must continue to fill these set-aside units with qualified tenants throughout the life of the project. The owner must make this file available during each audit.

8. Next Available Unit/140 Percent Rule

Under IRS rules, when the household income in a qualified Housing Credit unit increases to more than 140 percent of the applicable income limit, the unit is considered an “**Over-Income Unit.**” An Over-Income Unit may continue to be counted as a Housing Credit unit for Housing Credit purposes as long as two conditions are met:

1. The unit must continue to be rent-restricted.
2. The next comparable size unit in the building must be rented to an eligible low-income tenant.

The Project Owner/Management Company of a Housing Credit building must rent to qualified residents *all* comparable units that are available or that subsequently become available in the same building until the Applicable Fraction (excluding the Over-Income units) is restored to the percentage on which the Housing Credit is based. If the next comparably sized unit is leased to an *ineligible* tenant, any Housing Credit unit occupied by an Over-Income tenant ceases to count as a qualified Housing Credit unit.

The *Next Available Unit Rule* applies separately to each building in a project containing more than one Housing Credit building and is administered differently depending on whether the project has market rate units.

100 percent tax credit project - Practically speaking, the Next Available Unit rule does not apply to 100 percent Housing Credit Projects since all of the units in the Project must be rented to income-eligible tenants. Furthermore, unit rents may never exceed the maximum allowable rent for low-income units in buildings with 100 percent Housing Credit units, even if tenant incomes

increase. Tenants who are over-income at the time of recertification do not need to be removed to maintain the project's low-income occupancy and must not be evicted without proper cause.

Mixed unit project (both tax credit and market units) - Under this rule, a current tenant whose income exceeds the applicable limitation may move to a different unit within the same building without changing the Housing Credit status of the project. In effect, IRS permits the Project Owner to transfer the qualified Housing Credit unit status of the former unit to the newly occupied unit even though the household income exceeds the 140 percent limit. Moreover, because the status of the unit does not change as a result of the move under these limited circumstances, the move does not cause any other over-income Housing Credit units in the same building to lose its status as qualified Housing Credit units. This rule is violated if the unit vacated by the over-income household is rented to a non-qualified tenant. If this occurs, all over-income Housing Credit units within the same building lose their status as low-income units. ***Caution:*** ***Violating this rule means losing the credits on all 140 percent units. These units would no longer count toward the Minimum Set-Aside.***

9. Claiming Credits

The credits may be taken annually for 10 years and are based on a percentage of the qualified costs of the building. The credit percentage is a calculation based on the Applicable Federal Rate (AFR) for the month the project is placed in service, or, at the owner's election, the month in which a carryover/commitment is entered into by the owner and UHC. The credit percentage rate may also be determined by congress. Check with the Qualified Allocation Plan or your 8609 to determine the rate that applies to your project.

Owners of qualified residential rental projects must satisfy the minimum set-aside and gross rent requirements for a minimum 15-year initial compliance period, and an extended use period that is determined at the time of application for Housing Credits, and codified in the LURA.

10. Extended Use Agreement

Under IRS rules, Project Owners must make a commitment to extend the low-income use of a project for an additional 15 years or other period specified by UHC. In an effort to preserve affordable housing, UHC requires that Housing Credit projects comply with Section 42 requirements for an extended use period that is defined in the LURA.

The Extended Use Period requirement is defined in the LURA, which is recorded in the office of the County Recorder in the county in which the project is located. The LURA records the commitments and obligations of the Project Sponsor concerning the specific occupancy and affordability requirements for the project. From a compliance perspective, special attention is given to all the provisions of the LURA.

A failure to enter into an extended use commitment, execute and record the LURA will result in a loss of tax credits.

11. Compliance Period

The compliance period starts at the same time the credit period starts, however, while the credit period only lasts for 10 years, the compliance period extends an additional 5 years past the credit period, lasting for 15 years in totality.

Projects then become known as 'Post -15', however compliance with the Section 42 Program is still required. All developments receiving a credit allocation must enter into a LURA with UHC at the time a final allocation of credit is issued. Developments must comply with eligibility requirements for at least a minimum of an additional 15 years beyond the 15-year compliance period, defined as the extended use period. The LURA is a recorded covenant. See Chapter 9, Compliance and Monitoring After Year 15 for details on requirements in the extended use period. Please refer to your LURA for the extended use time period for your specific project.

12. Owner

Each owner has chosen to utilize the Housing Credit Program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met.

Prior to issuance of a final tax credit allocation, the owner must certify to the total project costs. The owner must also certify that all Program requirements have been met. Any violation of the requirements of the Program could result in the loss of tax credits to the owner.

The owner is responsible for compliance with the Section 42 Code. Owner must take any lawful action to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 of the Code. UHC is assigned the responsibility for monitoring compliance. Any and all financial consequences to the owner as a result of noncompliance, whether identified by UHC or the IRS, will be the responsibility of the owner.

Successful operation of a Housing Credit development is management intensive; the owner is responsible for ensuring that the project is properly administered. Thorough understanding of Housing Credit requirements and compliance monitoring procedures requires training of owners and managers. This training should occur before a development is occupied and should be provided to the on-site property management staff. At a minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, available unit procedures and unit vacancy rules, agency reporting and record

retention requirements, and site visits. Continuing education each year or at a minimum every other year is strongly recommended in order to keep up with regulatory and procedural changes.

13. Noncompliance

If the management agent and/or the owner determines that a building or entire project is not in compliance with program requirements, UHC must be notified immediately. The management agent and/or the owner must formulate a plan to bring the project back into compliance, and advise UHC in writing of such a plan.

Chapter 2 – IRS Reporting Requirement

The IRS and UHC require owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this Manual to either the IRS or UHC as appropriate will constitute non-compliance and may make the owner subject to recapture or ineligible for credit.

1. Low Income Allocation Certification (IRS Form 8609)

One IRS Form 8609, Low Income Housing Allocation Certification ("8609") will be issued by UHC for each building within a project.

Note: If allocations were issued in multiple years, a separate 8609 will be issued for each year's allocation. If rehabilitation and acquisition credits are issued on the same building, the rehabilitation is treated as a "separate building," and, therefore, the "acquisition" and "rehabilitation" will receive separate 8609 forms.

Part I of the form 8609 will be completed by UHC and sent to the owner after the project is placed in service and all documentation required by UHC is reviewed and approved. UHC files the original with the IRS for their records to compare with the taxpayer's return.

The owner completes Part II and files the Form(s) 8609 with the IRS at the Philadelphia Service Center, with an original signature in Part II, for the first Taxable Year in which the credit was claimed. After the owner executes Part II, a copy must be sent to UHC. See the instructions on IRS Form 8609 and Schedule A for details.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. UHC cannot give legal or tax advice on the filing or completion of tax forms since that area is out of its jurisdiction.

Part I of the 8609's is to be prepared **by UHC only**. If UHC becomes aware that an owner or its agent has filed a self-prepared 8609 with the Internal Revenue Service, UHC reserves the right to determine that all parties involved will not be eligible for future participation in Utah's Housing Credit Program for a period to be determined by the Corporation.

2. Low Income Housing Credit (IRS Form 8586)

One Housing Credit (IRS Form 8586) form must be completed to claim credits for the first Taxable Year in which credit is taken and every year thereafter in the Compliance Period.

3. Land Use Restriction Agreement (LURA)

Prior to claiming the Housing Credits, the building owner must record an approved UHC LURA which must be in effect as of the end of the first taxable year credits are claimed 42(h)(6)(A). Failure to timely and properly record this instrument is an event of noncompliance and will be reported to the Internal Revenue Service.

4. Recapture of Low Income Housing Credit (IRS Form 8611)

IRS Form 8611 is used by taxpayers who must recapture tax credits claimed in previous years. A copy of Form 8611 must be filed with the IRS upon completion by the owner.

5. Report of Noncompliance or Building Disposition (IRS Form 8823)

Form 8823 is used by UHC to fulfill its responsibility under Section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with Housing Credit provisions or any building disposition. Form(s) 8823 are to be filed with the IRS no later than 45 days after (1) the building was disposed of or (2) the end of the time allowed the building owner to correct the condition(s) that caused noncompliance.

Chapter 3 – Record Keeping and Record Retention Requirements

1. Record keeping

At a minimum, owners are expected to maintain clear and accurate records of the following information:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
- The number of occupants in each Housing Credit unit and the household's student status.
- The number and percentage of residential rental units in the building that are Housing Credit units, offices, and management units.
- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include rent rolls, leases, and utility allowances as required by the Internal Revenue Service.
- The Housing Credit unit vacancies in the building, marketing information, and information which shows when and to whom each of the next available units were rented.
- The annual income certification of each Housing Credit household.
- Documentation to support each Housing Credit Tenant's Income Certification including application/recertification questionnaire, and verifications. Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification prior to occupancy and recertified annually for continued eligibility. Income verifications (written, third party verification is always preferred) are sent directly to and returned by the source to management, not through the applicant.
- The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Records demonstrating that any state established set-aside elected by the owner has been complied with for each year of the compliance period.

2. Record Retention

An owner is required to retain the records described in this section for at least six years after the due date (with extensions) for filing the federal income tax return for the year.

The records for the first year of the Compliance period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

See Revenue Ruling 2004-82, published August 30, 2004, which clarifies that owners may comply with the record retention provisions under IRC Section 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22.

Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

Chapter 4 – Monitoring - Certification and Review

Annual Submission Requirements

Program Owners are required to submit Housing Credit program reports throughout the compliance and extended use periods as outlined below. These reports are submitted either annually or intermittently depending on the circumstance. The Owner shall also maintain a copy or original as appropriate on file at its business office or that of its agent.

1. Annual Reports - Due April 30th:

Project owners are required to submit annual reports during the calendar year after the IRS Form(s) 8609 are issued and each subsequent year thereafter including the end of the calendar year of the end of the extended use period of the project. *For example, if a project received Form(s) 8609 in 2013, annual reports must be submitted by April 30, 2014, and each year thereafter until the end of the extended use period. Please note the final annual reports from the extended use period will be due April 30th of the following year.*

A. Annual Owner Certification - The Annual Owner Certification must be submitted on-line in COL and a signed hard copy submitted to UHC. All questions must be answered and the **PROJECT OWNER** must sign and date this form for it to be valid. Below are questions asked on this form:

The owner must certify to UHC, under penalty of perjury, at least annually for each year of the 15 year compliance period and extended use period on the (Owner's Certification of Continuing Program Compliance) (On-line in COL), or other forms designated, that the project is in compliance with the requirements of Reg. 1.42-5 paragraph (c)(1), certification and review provisions. The owner's certification requires the owner to certify that the project meets the following for the preceding 12-month period:

1. The project met the minimum requirements of the 20/50 test under Section 42(g)(1)(A) of the Code; the 40/60 test under Section 42(g)(1)(B) of the Code; or the 15/40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code, whichever applies to the project.
2. There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the project.
3. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a recertification waiver letter in good standing from the IRS, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.

4. Each Housing Credit unit in the project has been rent-restricted under Section 42(g)(2) of the Code.
5. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) for the Code).
6. 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 the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
7. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or Housing Credit unit in the project.
8. There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification submission.
9. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
10. If a Housing Credit unit in the project has been 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 were or will be rented to tenants not having a qualifying income.
11. If the income of tenants of a Housing Credit unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income.
12. An extended low-income housing commitment as described in section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).

13. 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 and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
14. The owner has complied with Section 42(h)(6)(E)(ii)(I) and not evicted or terminated the tenancy of an existing tenant of any low-income unit other than for good cause.
15. The owner has complied with Section 42(h)(6)(E)(ii)(II) and not increased the gross rent above the maximum allowed under Section 42 with respect to any low-income unit.
16. There has been no change in the ownership or management of the project. **Please Note:** If there has been an Ownership Transfer, Owner Contact Change or Management Contact Change, you would mark there has been a change here and a selection would appear on the blue bar below the question to allow you to enter the updated information. If there has been a change, the updated information is required.

16. There has been no change in the ownership or management of the project:

NO CHANGE
 CHANGE

Ownership Transfer
 Owner Contact Change
 Management Contact Change

17. Owner has complied with State of Utah H.B. 75, requiring owners provide to the county assessor of each Low Income Housing Tax Credit project the most recent annual reporting statements and rent rolls, among other information, no later than April 30 of each year.

B. Audited/Unaudited Financials - Submission on COL of either audited/CPA-prepared or unaudited financial reports containing the Balance Sheet and Operating Statement as supporting documentation as of December 31 for the prior calendar year.

C. Balance Sheet - UHC requires every project to upload a completed balance sheet on the COL website containing information as of December 31 of the prior calendar year. You can find the balance sheet template under Document Templates/Financial Audit in COL.

D. Operating Statement - UHC requires every project to upload a completed operating statement on the COL website containing information as of December 31 for the prior calendar year. You can find the operating statement template under Document Templates/Financial Audit in COL.

E. Utility Documentation - Copy of documentation used during the prior calendar year to calculate a project's applicable utility allowance (utility-company averaging, public housing authority [PHA], USDA/RD, or HUD Section 8

allowance as applicable to the project[s]), **with appropriate calculations shown by highlighting amounts used and totaling to arrive at amounts actually used and which should match those used on the COL website.** If the project owner pays all utilities, a letter stating such must be enclosed in lieu of PHA or utility-company-average documentation. The utility documentation or project owner pays all utilities letter can be uploaded in the 'Miscellaneous' section of the Document Templates in COL.

F. Annual Certification of Qualified Nonprofit Organization -

Those projects which received an allocation of credits from the nonprofit set-aside are also required to submit the *Annual Certification of Qualified Nonprofit Organization* form. This form is available on-line in COL under Document Templates/Miscellaneous.

G. The IRS forms 8609, Schedule A, and 8586 - for the first year of the

credit period, only, must be submitted to UHC. These must be submitted to UHC at the time they are filed with the IRS. For projects that are in subsequent years of the compliance period, it is not necessary to submit the above IRS forms.

Annual reports must be submitted to UHC no later than April 30th of each year following the end of the previous program year throughout the compliance and extended use periods.

Upon receipt of the annual reports, UHC will review them. This is called a “Desk Audit”. This review includes noting any missing items or substantial errors. If there are missing items or substantial errors, UHC will inform the Project Owner/management who will be given a correction period of 30 days in which to rectify the reports.

If the missing items or needed corrections are not made within the 30 day period, UHC will take further actions including 1) extensions for extenuating circumstances if requested by the Project Owner/management, or 2) the notification to the IRS of an event of noncompliance on form 8823.

2. Compliance Occupancy Reporting

Project owners and managers are required to use the two reporting websites below. Failure to update project information in a timely manner will constitute a “not in good standing” status with UHC and may result in the issuance of 8823 form to the IRS.

- A. Certification On-Line 'COL' Website:** UHC has installed software that will assist with compliance monitoring. Project managers are required to use the web based interface to submit all transactions (move-in, move-out, re-certifications and transfers) and other project information. On-site managers will be required to

update project information, at minimum, on a quarterly basis. All must be entered and completed no later than 30 days after the end of each quarter.

Tenant Data Reporting			
Quarter:		Period:	Due by:
1st Quarter:	Enter transactions covered in reporting period:	January 1st through March 31st	4/30
2nd Quarter:	Enter transactions covered in reporting period:	April 1st through June 30th	7/30
3rd Quarter:	Enter transactions covered in reporting period:	July 1st through September 30th	10/30
4th Quarter	Enter transactions covered in reporting period:	October 1st through December 31st	1/30

Please note the use of this website is mandatory for all Housing Credit projects. The website is located at <https://mfcompliance.utahhousingcorp.org/> (This 'COL' portal will need to be opened in Internet Explorer or Google Chrome web browser for the program to work correctly). For new property managers or anyone uncertain about how to use the system, there is a manual available on the compliance page of our website at <http://utahhousingcorp.org/PDF/EmphasysCOL.pdf> and a separate COL training available.

The COL website is also used to upload financial data for all projects.

a. Audited/Unaudited Balance Sheet - Must be entered and completed no later than April 30 of every year. This is part of the required annual report.

b. Audited/Unaudited Operating Statement - Must be entered and completed no later than April 30 of every year. This is part of the required annual report.

c. Operating Statement - Actual - Must be entered and completed no later than 30 days after the end of each quarter. *For example, the 1st quarter actual operating financials for quarter ending March 31, 2013, will be due on April 30, 2013.*

Financial Data Reporting			
Quarter:		Period:	Due by:
1st Quarter:	Enter actual figures covering period:	January 1st through March 31st	4/30
2nd Quarter:	Enter actual figures covering period:	April 1st through June 30th	7/30
3rd Quarter:	Enter actual figures covering period:	July 1st through September 30th	10/30
4th Quarter:	Enter actual figures covering period:	October 1st through December 31st	1/30

d. Budgeted Operating Statement - Must be entered and completed no later than November 1 of every year. *For example, the budget for 2014 will be due on November 1, 2013.*

An instruction guide regarding how to navigate through the COL system is available on our website at: <http://utahhousingcorp.org/PDF/EmphasysCOL.pdf>

Should you have problems with the COL website, please contact our office.

B. Special Needs and Set-Aside Tracker Website: NOTE – Only projects with special needs and set-aside units are required to use this website. If you are unsure as to whether your project has any special needs or set-aside units, please refer to your LURA or contact our office. It is strongly recommended the information be entered on the same day the household occupies the unit. The information provided on the website will be used by compliance auditors when they conduct on-site audits.

This website was created to assist service providers in referring tenants to Housing Credit projects. Please note that the use of this website is mandatory for all projects that contain special needs and set-aside units. The website is located at <https://b2b.utahhousingcorp.org/cgi-bin/G>

Anyone uncertain about how to access and use this website should contact our office.

3. Compliance Monitoring Review Requirements

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

In 2014, UHC became a participant in the Interagency Physical Inspection Alignment Pilot Program with HUD. In becoming a participant of this program, properties in Utah which have both HUD funding and Tax Credit funding, and have inspections which ‘align’ for both funding sources for the year, have the possibility of the physical inspections for both funding sources to be combined into one single physical inspection conducted by UHC. File inspections for both funding sources may still need to occur separately during that same year.

UHC must inspect each project at least once every three years. Our office shall inspect the tenant income certification(s), the documentation to support the certification(s), and the rent record for each tenant. Effective February 25, 2016, the minimum number of low-income units for inspection and file review will be the less of (1) or (2) below:

- (1) 20% of the low-income units in the low-income housing project, rounded up to the nearest whole number of units, or
- (2) the Minimum Unit Sample Size set forth in the following Low Income Housing Credit Minimum Unit Sample Size Reference Chart:

Low Income Housing Credit Minimum Unit Sample Size Reference Chart	
Number of Low-Income Units in the Low-Income Housing Project	Number of Low-Income Units Selected for Inspection or Low-Income Certification Review (Minimum Unit Sample Size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11

Low Income Housing Credit Minimum Unit Sample Size Reference Chart	
Number of Low-Income Units in the Low-Income Housing Project	Number of Low-Income Units Selected for Inspection or Low-Income Certification Review (Minimum Unit Sample Size)
19-21	12
22-25	13
26-29	14
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

REAC inspections which are part of the Pilot Program with HUD will satisfy the UHC inspections as long as vacant units are inspected if included in the sampling, the most recent UPCS REAC inspection software is used during the inspection, the inspection is conducted by a REAC certified inspector, and the results of the inspection are sent to and scored by HUD.

Please note the sampling numbers above are minimums. UHC reserves the right to increase the sample size if needed.

The first inspection for new projects will occur no later than the end of the second year of the credit period. This initial inspection will consist of 100% file review and a physical inspection according to the sample size listed above.

NOTE: As of January 1, 2011, UHC will conduct audits once every one, two, or three years, depending on the level of noncompliance found in the previous audit (see criteria below). UHC reserves the right to change the frequency of audits or conduct an unannounced visit to the project when Auditors are within the project area.

If 35% or more of the audit sample show signs of noncompliance (files and physical exceptions combined), the audit may be expanded and the next UHC audit will be scheduled for the following year. Please note that additional fees will apply to audit expansions and follow-up inspections (see Chapter 4 section H).
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If 16%-34% of the audit sample contains noncompliance (files and physical exceptions combined), the next UHC audit will be scheduled in two years.
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If 15% or less of the audit sample contains noncompliance (files and physical exceptions combined), the next UHC audit will be scheduled in three years.
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The Housing Credit units to be inspected or reviewed must be chosen in a manner that will not give owners of Housing Credit projects advance notice that their records will or will not be inspected. UHC may give an owner reasonable notice that an inspection will occur so that the owner may assemble records. Noncompliance that is identified and corrected by the owner *prior to notification* of an upcoming compliance review or inspection need not be reported to IRS. IRS considers the date of the notification letter a “bright line” date.

4. Compliance Inspection Procedure

In the year a compliance inspection is due, UHC will send a letter notifying the owner of the inspection at least 30 days before. The letter will state the date, time and place of meeting. Information, such as a copy of the Utility Allowance used during the prior year and supporting documentation that covers the full compliance period under review, rent rolls, and other information, must be provided to UHC at the time of the audit.

The compliance inspection includes, but is not limited to, a review of: (1) a sampling of the low-income tenant files including a full inspection and calculation of income eligibility and student status, (2) utility allowance information and other documentation, and (3) an inspection of the general physical condition of the property including a sampling of the low-income units.

Compliance Monitoring Regulations published January 14, 2000, require Housing Credit agencies to conduct physical inspections consistent with standards governed by the Department of Housing and Urban Development's Uniform Physical Conditions Standards (UPCS). These standards require properties to be in "decent, safe and sanitary condition and in good repair" and require agencies to inspect the following five major areas:

- (1) **Site** – The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair.
- (2) **Building exterior** – Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
- (3) **Building systems** – The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.
- (4) **Dwelling units** – (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. (ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water. (iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. (iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.
- (5) **Common areas** – The common areas must be structurally sound, secure and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the

extent applicable, must be free of health and safety hazards, operable, and in good repair.

All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead based paint. *For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies.* The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

Notwithstanding the above inspection requirements, all Housing Credit projects under Section 42 must continue to satisfy local health, safety, and building codes. UHC may rely on local code inspections rather than performing a separate physical inspection of the property.

5. Compliance Forms

Required Forms: These forms must be used at all times.

Owner compliance certificate – Online	
UHC TIC – Form 06	
Non-Profit Certification – Online	Annual Student Certification – Form 21
Owner/Manager contact – Online	UHC Self-Certification TIC – Form 28

Recommended Forms: These forms are not required, but ***highly recommended*** by UHC.

Alimony/Child Support (Enforcement Agency) – Form 08	Non-Employed Affidavit – Form 14
Alimony/Child Support Payer – Form 09	Pension/Annuity Verification – Form 15
Checking/Savings – Form 32	Pregnancy Affidavit – Form 27
Clarification Record – Form 30	Real Estate Verification – Form 16
Employment Verification – Form 10	Recurring Gift Verification – Form 17
Existing Business Verification – Form 18	Stock/Bonds Verification – Form 20
Foster Care Verification – Form 11	Student Status Verification – Form 22
Income/Asset Calculation Sheet – Form 12	Under \$5,000 Certification – Form 13
Live-In Aide Verification – Form 29	Unemployment Verification – Form 23
Marital Separation – Form 26	Veteran’s Benefit Verification – Form 24
Natural Parent/Child Support/Alimony Affidavit – Form 07	Zero Income Certification – Form 25
New Business Verification – Form 19	401K Verification – Form 31

Each household file must have a fully executed Tenant Income Certification (*UHC Form 06*) with supporting documentation and an Annual Student Certification (*UHC Form 21*) for each year of occupancy. For more information file documentation requirements please refer to Chapter 6 - Income.

A. Corrections to Documents

We understand that management will need to make changes and corrections to documents. UHC will not accept a document that has been altered with correction fluid or “white-out”. When a change is needed on a document for the Program, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial the change.

6. Annual Monitoring Fees

The following are fees to be paid to UHC for administering the Compliance Monitoring Plan. All projects will be required to pay these fees.

For projects receiving tax credit allocation in the 2015 application rounds or prior:

Initial Compliance Monitoring Fee:

≤25 Units \$500 plus \$20 per Housing Credit unit.

≥26 Units \$1,000 plus \$20 per Housing Credit unit.

Annual Compliance Monitoring Fees for 2nd and subsequent years:

\$20 per Housing Credit unit annually. Projects that are on a three (3) year audit schedule will receive a 15% discount on annual compliance monitoring fees.

Projects that are on a two (2) year audit schedule will receive a 7.5% discount on annual compliance monitoring fees. See Section 3 above for the criteria for one (1), two (2), or three (3) year audit schedules.

For projects receiving tax credit allocation in the 2016 application round and forward:

Initial Compliance Monitoring Fee:

≤ 25 Units \$500 plus \$30 per Housing Credit Unit.

≥26 Units \$1,000 plus \$30 per Housing Credit Unit.

Annual Compliance Monitoring Fees for 2nd and subsequent years:

\$30 per Housing Credit unit annually. Projects on a three (3) year audit schedule will receive a 15% discount on annual compliance monitoring fees. Projects on a two (2) year audit schedule will receive a 7.5% discount on annual compliance monitoring fees. See Section 3 above for the criteria for one (1), two (2), or three (3) year audit schedules.

For all projects:

Starting in 2016, the Annual Compliance Monitoring per Housing Credit Unit fee will increase on an annual basis of 3% per year.

(1) The per unit portion of the Initial Compliance Monitoring fee will be prorated for the number of months between the issuance of IRS Form(s) 8609 and February 1 of the following year, when the next full year's annual compliance monitoring fees are due. Pro-rated Initial Compliance Monitoring fees will be collected with the Final Cost Certification fees.

(2) Annual Monitoring Compliance Payments are due February 1 of each year.

Projects will be charged additional inspection fees when:

1. An expanded file inspection is required due to a noncompliance trend or,
2. Additional units are inspected because of a trend of code or other violations.

(3) Annual Compliance Monitoring fees will be discounted by 7.5% if the audit is extended to every second year because of performance standards described in Section 3 above. Fees will be discounted by 15% if the audit is extended to every third year because of performance standards described in Section 3 above.

Additional inspection fees will be charged as follows and are due within 30 days of billing:

1. Additional files or units requiring inspection according to the requirements of UHC Audit Procedures	\$10 per file \$15 per unit
2. Issuance of IRS Form 8823 Each IRS Form 8823 issued	\$150 plus \$25 per 8823 Form
3. Follow-up inspections subsequent to noncompliance (If deemed necessary by UHC)	\$150
<u>UHC will add travel and per diem charges as appropriate to the above fees.</u>	Plus above fees as applicable

At the discretion of UHC, any project receiving an IRS Form 8823 reportable violation may be required to provide its manager with professional independent compliance training at its own cost within 90 days from the date the non-compliance was discovered. UHC strongly recommends that the owner provide professional compliance training for on-site managers at least every 2 years.

UHC reserves the right to revise the fee schedule from time to time, at its sole discretion, to offset the cost of conducting the compliance monitoring requirements of the Program.

7. UHC Records Retention

UHC will retain records of non-compliance or failure to certify for six years beyond the filing date of the respective Form 8823. In all other cases, UHC will retain the certifications and records described in Reg. 1.42-5(c) for three years from the end of the calendar year the Agency receives the certifications and records.

8. Liability

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. UHC's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance (Reg. 1.42-5(g)).

Chapter 5 – Project Rental Requirements

1. Tenant Allowances, Charges, and Fees:

Gross rents for the Program are the rents paid by tenants (excluding federal or state rent assistance such as Section 8) plus an allowance for utility costs paid directly by tenants (except telephone, internet and cable) and any other mandatory charges. Please note any fees charged *may* affect your Gross Rent and the Max Allowable Rent you may charge to tenants. The total gross rent cannot exceed the limits for the county where the development is located based on the respective 50% or 60% of median income and LURA specified limits.

Any non-refundable charges, regardless of the frequency charged or paid, must be included in the Gross Rent calculation and not cause the Gross Rent for the unit to exceed the Maximum Rent Limits for the property.

All fees not specifically listed in this Manual are considered non-allowable fees and may not be charged.

Application Fees:

Application fees may be charged to cover the *actual cost* of checking a prospective tenant's income, credit history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project.

Security Deposit (s):

Any deposit (including pet deposits) paid to the owner/management company must:

- (a) Be fully refundable for the entire amount paid AND;
- (b) Be comparable to amounts charged for Housing Credit units as well as Market units AND;
- (c) Not be excessive.

It is permissible to charge eligible tenants the first and last months' rent if the same is charged to other tenants.

Lease Initiation Fee:

An eligible tenant cannot be charged for a fee for the work involved in completing the additional forms or documentation required, such as the Tenant Income Certification. This also includes the customary forms such as the lease.

Unit Preparation Fee:

Decorating fees or fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining units in a manner suitable for occupancy. This includes any amounts offered by tenants to ‘move-up’ or hurry their move-in date. These amounts may not be charged or accepted by the owner/management company.

Project Amenity Fees (parking, storage, club houses, garages, etc.):

Please Note: If tenant facilities (e.g. parking, garages, swimming pools, etc.) were included in the eligible basis, they must be made available to all tenants on a comparable basis, and a separate fee must not be charged for their use. Please refer to your specific property’s LURA, Final Cost Certification and Tax Credit Application *before* starting to charge fees for any amenity. If you need assistance to determine if an amenity/facility was or was not included in eligible basis, please contact UHC.

Month-to-Month Fees:

Month-to-Month fees are permissible fees as long as:

- (a) the fee is included in the Gross Rent calculation (regardless if the tenant is actually being charged the fee) AND;
- (b) the fee doesn’t cause the Gross Rent for the unit to exceed the Maximum Rent Limits for the property.

When completing the Tenant Income Certification (***UHC Form 06***) or the Self Certification TIC (***UHC Form 28***) – if applicable to your property – include the amount in the column with tenant paid rent.

Required Renters Insurance:

Required renters insurance is a permissible fee as long as:

- (a) the fee is included in the Gross Rent calculation (regardless if the tenant is actually being charged the fee) AND;
- (b) the fee doesn’t cause the Gross Rent for the unit to exceed the LURA Maximum Rent Limits for the property.

When completing the Tenant Income Certification (***UHC Form 06***) include the amount in the Other Non-Optional Charges column, or the Self Certification TIC (***UHC Form 28***) – If applicable to your property – include the amount in the Mandatory Charges column.

Non-Optional Fees or Services/Mandatory Fees:

Charges for non-optional services such as a washer and/or dryer hookup fee and built in/on storage sheds or lockers (paid month-to-month or in a single payment) must always be included within gross rent. Additionally, any non-optional fees or services provided by the property, or any fees that are a condition of occupancy must also be included in gross rent. Please note: A service/fee is considered optional only when:

- (a) It is not a condition of occupancy AND;
- (b) There is a reasonable alternative.

When completing the Tenant Income Certification (*UHC Form 06*) include the amount in the Other Non-Optional Charges column, or the Self Certification TIC (*UHC Form 28*) – If applicable to your property – include the amount in the Mandatory Charges column.

Condition of Occupancy Fees:

Any fees that are a condition of occupancy, even if state or local laws require the services be provided, must be included in the Gross Rent calculation and not cause the Gross Rent for the unit to exceed the Maximum Rent Limits for the property.

If after occupying a unit an eligible tenant cannot pay the rent or is otherwise in violation of the lease provisions, the owner has the same legal rights in dealing with the eligible tenant as with any other tenant. Note, however, that during the compliance period, extended use period and for three years after expiration of the Declaration of Land Use Restrictive Covenants, households in qualified Housing Credit units may not be evicted or tenancy terminated for other than good cause.

‘Good cause’ depends on State and local laws. UHC recommends consultation with an attorney knowledgeable with Utah landlord law, the local laws applicable to your property and the Tax Credit Program.

Marijuana Use

As of early 2015, a number of states have legalized the use of marijuana specifically for medicinal purposes and some states have legalized the use of marijuana for recreational purposes. Regardless of the purpose of legalization under state law, the use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA).

QHWRA requires owners/agents to establish lease standards that prohibit admission to assisted housing for any household with a member determined to be illegally using a controlled substance. Further, owners may not establish lease provisions or policies that affirmatively

permit occupancy by any member of a household who uses marijuana. Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety or right to peaceful enjoyment of the residents. Section 577 of QHWRA affords owners the discretion to evict or not evict current tenants for their use of marijuana. Please see 'Use of Marijuana in Multifamily Assisted Properties' released from HUD on December 29, 2014 for more information.

<http://portal.hud.gov/hudportal/documents/huddoc?id=useofmarijinmfassistpropty.pdf>

3. Minimum Lease Requirement

All tenants occupying Housing Credit units are required to be certified and to execute at least an initial six-month lease. (Exceptions for housing for the homeless and single room occupancy are listed below). The six-month requirement may include free rental periods of one month or less. Succeeding leases 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.

At a minimum, the lease must include:

- the legal name of parties to the agreement and all other occupants
- a description of the unit to be rented (number of bedrooms)
- the date the lease becomes effective
- the term of the lease
- the amount of rent
- the use of the premises
- the rights and obligations of the parties, including the obligation of the household to annually recertify its income
- the signatures of all household members 18 years of age or older and/or persons under the age of 18 who are the head of household, co-head or spouse
- a statement explaining that the development is participating in the Program, and that tax credit units are under certain program regulations including income eligibility, student eligibility, and annual recertification of household income.

Single room occupancy (SRO) housing must have a minimum lease term of one month. Tenants in SRO housing may share bathrooms, cooking facilities, and dining areas.

Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

- A. SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
- B. SRO units intended as permanent housing and not receiving McKinney Act assistance;
- C. SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

4. Household Size

The number of household members is needed in order to determine the maximum allowable income.

- A. Minimum and Maximum Household Size:** While IRS regulations do not specifically address occupancy requirements, UHC encourages maximum utilization of space. Therefore, it is UHC's recommendation that written occupancy policies be established which reflect maximum utilization. UHC suggests that owners set a maximum standard of no fewer than two persons per bedroom. In situations where there is more than one qualified applicant for a unit, UHC recommends giving preference to the household that is most suitable to the unit size. Owners should comply with state and local laws, regulations and financing requirements (e.g. if Rural Housing Service, use RHS regulations).
- B. Factors that Affect Household Size.** When determining family size for income limits, the owner must include the following individuals who are not living in the unit:
- Children temporarily absent due to placement in a foster home;
 - Children in joint custody arrangements who are present in the household 50% or more of the time;
 - Children who are away at school but who live with the family during school recesses;
 - Unborn children of pregnant women; when a pregnant woman is an applicant, the unborn child is included in the size of the household, and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question: "Will there be any changes in household composition within the next 12 month period?" If an applicant answers that a child is expected, the manager should explain to the tenant that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided (*UHC Form 27*).
 - Children who are in the process of being adopted;
 - Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse or has no dependents living in the unit). If the person on active military duty is the head, co-head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person's income must be counted in full;
 - Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above; and
 - Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must be listed on the Tenant Income

Certification as “other adult family member”. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income.

When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following:

- A live-in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
 - Is determined to be essential to the care and well-being of the person(s); Is not obligated for the support of the person(s); and
 - Would not be living in the unit except to provide the necessary supportive services.
 - HUD 4350.3. Change 4, effective 8/7/2013, states that in order to qualify as a live-in aid, a person must now disclose and provide verification of their social security number. (paragraph 3-6.E.3.a.(2) (e))

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the second. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide’s services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. Managers must obtain verification of the need for a live-in care attendant and should not add the attendant to the lease.

- Foster adults or children should be included in the size of the household, and as of 8/7/2013 (HUD 4350.3 Change 4), **should be** included for the purpose of determining the maximum allowable income. **Please note foster care stipends are still excluded from income.**

5. Utility Allowance

The Internal Revenue Service requires that utility allowances be set according to 26 C.F.R. 1.42-10 (April 24, 1994), effective May 2, 1994. Please read this notice carefully.

A copy of the most recent utility allowance(s) in use at the property must be made available during the audit. This includes a copy of the utility allowance(s) from the appropriate source, i.e., the Public Housing Authority, RHS, or the utility company.

Section 42 lists the different sources of utility allowances for tax credit projects. The following is a summary of the sources of utility allowances:

- A. **RHS Utility Allowance** - USDA Rural Housing Services (RHS) financed projects, or units with tenants receiving RHS assistance.

- B. **HUD Utility Allowance** – All HUD-regulated buildings.

Buildings without RHS or HUD assistance:

- C. **Public Housing Authority Allowance** - Use the Utility Allowances as given by the local Public Housing Authority (PHA) for building type.
- D. **Utility Company Estimate** - An interested party may request the utility company's estimated utility cost for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by a local utility company official, prepared on the utility company's letterhead, and maintained in the Project File. In the case of deregulated utility services, the owner is required to obtain an estimate from only one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company providing the estimate must offer service to the building. Use of the actual utility rates, whether higher or lower, is required once they have been requested and must be updated annually.

The Internal Revenue Service published new utility guidance in the Federal Register – Vol. 81, No. 42, effective March 3, 2016, which impacted Section 42 Utility Allowance Regulations by adopting a sub-metering provision from IRS Notice 2009-44 and providing temporary guidance on energy obtained from renewable energy sources.

- E. **Energy Consumption Model** - An Energy Consumption Model using an energy and water and sewage consumption and analysis model. Owners must submit a written request to UHC requesting to use this option. The model must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by a qualified mechanical engineer properly licensed in the State of Utah that has jurisdiction over the building. The engineer and building owner must not be related within the meaning of IRC section 267(b) or 707(b), to which the engineer and building owner must certify. The owner and engineer must also certify that the model complies with the minimum requirements described above. Use of the energy consumption model is limited to a building's available historical data including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances and characteristics of the building location. Utility rates used for this model must be no older than the rates in place sixty days prior to the effective date of the utility allowance.
1. **Ration Utility Billing Systems (RUBS)** – RUBS uses a formula when there are no sub-meters, that allocates a property's utility bill among its units based on the units' relative floor space, number of occupants, or some other quantitative measure, but not actual consumption by the tenant(s) in the unit. Under this model, any amount paid by a tenant for utilities must be included

in gross rent and the owner or owner's agent must be able to prove for each month, all Housing Credit units were below the applicable rent limit.

2. **Actual Consumption Sub-Metering** – Treas. Reg. 1.42-10(a): “If the cost of a particular utility for a residential units is paid pursuant to an actual-consumption sub-metering arrangement within the meaning of paragraph (e)(1) of this section, then that cost is treated as being paid directly by the tenant(s) and not by or through the owner of the building.”

§1.42-10 Utility Allowances.

(a) Inclusion of utility allowances in gross rent. If the cost of any utility (other than telephone, cable television, or Internet) for a residential rental unit is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent for that unit includes the applicable utility allowances determined under this section. This section only applies for purposes of determined gross rent under section 42(g)(2)(B)(ii) as to rent-restricted units.

3. **Energy Acquired Directly From a Renewable Source** (Temporary until March of 2019) – This model assumes sub-metering principles to electricity generated from renewable sources by the building owner or by some other person from whom the building owner purchases it directly. Qualification for this sub-metering treatment requires the charges to the tenants for this energy to be comparable to local utility rates. To the extent that tenants consume this energy, charges by the building owner must not exceed the rates the local utility company would have charged the tenants if they had acquired the energy from that company instead of the building owner.

F. **HUD Utility Schedule Model** - This model can be found on HUD's website at www.huduser.org/portal/resources/utimodel.html. Utility rates using the HUD utility model must be no older than the rates in place 60 days prior to the effective date of the utility allowance.

G. **Agency Estimate** – **please note:** UHC will not be implementing the Agency Estimate Model.

Contact the appropriate agency to request current utility allowance information. UHC does not collect or maintain the various utility allowances.

Any increase in the utility allowance will increase the total apartment rent and may cause the rent to exceed the limit.

For example, assume the rent charged on an apartment is at the maximum allowable rent; if the \$50 utility allowance is increased to \$60, the rent paid by the tenant must be lowered by \$10 in order to remain below the rent limit.

Any changes to the utility allowance must be implemented within 90 days of the new utility allowance effective date.

6. Physical Requirements of Qualified Units, Suitable for occupancy

Qualified Units rented to, or reserved for, eligible tenants:

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the Project;
- Must be substantially the same size as other units in the Project; and
- Cannot be geographically segregated from other units in the Project.
- Housing Credit units must be suitable for occupancy under Uniform Physical Conditions Standards (UPCS) and local health, safety and building codes. Units that are not suitable for occupancy, including previously qualified Housing Credit units being rehabilitated in the first year of the credit period, are considered “out of compliance”. The noncompliance is corrected when the unit is again suitable for occupancy, and the unit’s character will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

The UPCS does not supersede or preempt local health, safety and building codes. A Housing Credit project under Section 42 must also satisfy the local standards.

7. Discrimination Prohibited in Project and General Public Use

Housing Credit 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. See 42 U.S.C. Sections 3601 through 3619. Effective March 5, 2012, HUD published a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity adding a person's marital status, sexual orientation or gender identity to the Fair Housing discrimination list. See 24 CFR Parts 5, 200 Docket No. FR 5359–F–02.

The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of Housing Credit projects to comply with the requirements of the Fair Housing Act will result in the denial of the housing tax credit on a per unit basis.

The Department of Housing and Urban Development (HUD) enforces the Fair Housing Act. UHC will refer complainants to HUD for follow-up and/or investigation. Any finding of discrimination, adverse final decision by HUD, adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court is a violation that UHC must report to the Internal Revenue Service.

Anyone with questions regarding the accessibility requirements can obtain the Fair Housing Act Design Manual at www.huduser.org/portal/publications/destech/fairhousing.html.

IRS also requires Housing Credit properties be otherwise available to the general public. Under Treas. Reg. 1.42-9(b), if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. Residential rental units either designated for a single occupational group, or through a preference for an occupational group, also violate the general public use requirements.

8. Assisted Living Units

Assisted living units are units in projects developed for elderly residents who are of retirement age or older with project-based assistance. These units, whether publically or privately operated, may not be part of, on the grounds of or immediately adjacent to a public institution, hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, hotels, motels, dormitories, fraternity & sorority housings, rooming houses, sanitariums, rest homes, trailer parks and courts, or for use on a transient basis, or any other setting having the effective of isolating individuals receiving Medicaid Home and Community Based from the broader community of individuals not receiving Medicaid.

Units must be similarly constructed housing having separate, private and complete facilities for living, sleeping, eating, cooking, bathing and sanitation (specifically a cooking range, refrigerator and sink). Units must be the principal place of residence and rentable under a lease to provide the same responsibilities and protections from eviction other multifamily tenants have under landlord/tenant law. Each unit must have entrance doors lockable by the tenant, with only appropriate staff having access to keys. The units must be physically accessible to the tenant and rented in a manner consistent with the housing policy governing non-discrimination by HUD.

Tenants sharing units must have a choice of roommates in that setting. Each tenant must have the freedom to furnish and decorate their units within the lease or other agreement, have the freedom and support to control their own schedules and activities, have access to food at any time and must be able to have visitors of their choosing at any time. Each tenant must be able to enter into a lease agreement for the unit.

Supportive Services

Usually, the cost of services which are required as a condition of occupancy must be included in gross rent, even if federal or state law requires the service be offered to tenants by building owners. The exception to the rule is certain fees paid for supportive services. Supportive services are any service provided under a planned program of services designed to enable tenants

of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

Assisted living units must have a person-centered-planning process for services. These services must be separately defined and may not be open ended in scope and not limit a beneficiary's access to, or free choice of providers. If the assisted living unit is in a mixed project, the person-centered service plan must include the mixed use facility. Please note the allocable portion of the facility in which continual or frequent nursing, medical, or psychiatric services are made available is not residential rental property.

“Basic Supportive Services” can include: laundry; housekeeping; regular daily meals in a common dining area; 24 hour monitored emergency call service using call buttons and two-way communication devices in units; planned social activities; and scheduled transportation to various sites in the vicinity including commercial areas, shopping centers, hospitals, and doctor's offices.

Additional supportive services may include: medication management by a technician, maintenance of detailed medication records; consultation with a nurse as needed about health concerns and medication plans; assistance by non-medically certified aides each day during waking hours in activities of daily living including getting in and out of bed and chairs, walking, using the toilet, dressing, eating and bathing; and routine checks by staff to insure the resident's general well-being. Tenants can have incapacitating infirmities requiring continual assistance as long as the assistance needed is not continual or frequent nursing, medical or psychiatric services.

Please note: If a facility makes available continual or frequent nursing, medical or psychiatric services, the facility will not be residential rental property and not eligible for tax credits. The nature and degree of the services provided by the facility controls if it is labeled as an assisted living or a health care facility.

9. Vacant Units

If a Housing Credit unit in a property becomes vacant, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualifying household before any units can be rented to non-qualified households. The owner or manager must be able to document reasonable attempts to rent the vacant units to eligible tenants.

Only units that have been previously occupied by an eligible household may be included as a qualifying low-income unit for compliance purposes. If a unit has never been occupied by an eligible household or has been vacated by a market rate household, that unit is not counted as a qualifying Housing Credit unit.

10. Student Eligibility

Under Section 42 Regulations, most households where all of the members are full-time students are not eligible and units occupied by these households may not be counted as Housing Credit units. IRS Code Section 151(c)(4) defines a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC Sec 170(b)(1)(A)(ii). Treas. Reg. Sec. 1.5 1-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.

An educational organization, as defined by IRC Sec. 170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job-training courses.

There are five exceptions to the limitation on households where all members are full-time students. Full-time student households that are income eligible and satisfy one or more of the following conditions are considered eligible:

1. Students are married and entitled to file a joint tax return;
2. The household consists of a single-parent with child(ren) and the parent is not a dependent of someone else, and the child(ren) is/are not dependent(s) of someone other than a parent;
3. At least one member of the household receives assistance under Title IV of the Social Security Act (formerly Aid to Families with Dependent Children (AFDC), now known as Temporary Assistance for Needy Families (TANF)); or
4. At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local laws*.
5. At least one member of the household was previously in foster care**.

*The JTPA program was repealed in 1998, and replaced with the Workforce Investment Act (WIA). WIA, and JTPA when it existed, funds programs such as adult literacy, English as a second language, General Education Diploma (GED) courses, vocational services for the blind, employment and training programs for Native Americans and migrant and seasonal farm workers,

job corps, veterans employment programs, summer youth employment and training, employment and training for dislocated workers and displaced homemakers, etc. Students in those programs are eligible for the JTPA exemption provided the school or community education dept., verifies that the applicant/resident is a participant in a program similar to those funded under JTPA or WIA.

**Previously means within five (5) years of the effective date of the initial income certification. “Foster care” means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes.

In order to properly document student eligibility, all households must complete an Annual Student Certification (*UHC Form #21*) as part of the initial certification and at each recertification.

Verification also must be obtained, when applicable, to support the full or part-time student status (*UHC Form 22*, Student Status and Financial Aid Verification recommended).

Part-time students are not “students” for this section and their eligibility is not subject to special restrictions. However, verification of part time status is required for households comprised entirely of students that do not meet one of the five exemptions.

11. Unit Transfers

Same Building - When a current Housing Credit household moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household, whose income exceeds the applicable income limitation moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit.

Different Building – UHC does not allow transfers between buildings. Household must initially certify if management allows transfer to different building.

Chapter 6 – Income

Potential tenants for rent-restricted units should be advised early in the application process of the maximum income limits that apply to these units. Management should explain to potential tenants that the anticipated income of all persons 18 years of age or older and unearned income of minor children expecting to occupy the unit must be included, verified, and certified on a Tenant Income Certification.

This section of the Manual explains the procedures for determination of income. According to the Compliance Monitoring Regulations contained in Section 1.42-5 for the Housing Credit Program, *"Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability."*

Owners and managers should use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. For guidance in this section and in determination of tenant income, the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. The HUD Handbook 4350.3 can be obtained by calling 1-800-767-7468 or by visiting HUD's web site at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsg/4350.3.

To determine if a household meets the income test, look at the sources of income as stated in 24 CFR 813.106, which is the test for HUD Section 8 program (IRS Notice 88-80). If the amounts from these sources when aggregated are equal to or less than the applicable income limit for the county and household size, then the household is an income-qualified household.

Please keep in mind that Housing Credit projects are both rent restricted and income restricted. Therefore, if a leasing agent intends to include the applicant as an eligible tenant, income from all required sources must be verified and included in the income calculation.

1. Income Certification/Recertification

It is the owner's responsibility to select and rent to qualified tenants. UHC will not qualify or approve eligible tenants. The Tenant Income Certification is to be completed, signed and dated by the owner or manager and signed and dated by all adult household members (adults include persons under the age of 18 who are treated as adults because they are the head, spouse or co-head of household).

A. Initial Eligibility Determination

Initially, tenant eligibility is determined at the time of move-in certification. Before a household takes occupancy, owners or managers must determine that the household will cause the unit to be a qualifying Housing Credit unit.

Since the Program uses special definitions for income and households, standard property management application forms may not collect sufficient information to determine tenant eligibility. Owners and managers need to make sure their applications collect all the necessary information. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets.

An application, fully completed by the applicant in their own handwriting, unless assistance is requested or required, is critical to an accurate determination of tenant eligibility. The following items need to be included in the application:

- The full name and birth date of each person that will occupy the unit (legal name should be given just as it will appear on the lease and tenant income certification).
- The student status of each applicant.
- All sources and amounts of current and anticipated annual income expected to be received during the twelve-month certification period (this should include total assets and asset income).
- The name of any person not listed on the application expected to move into the unit during the next 12 months.
- The signature of all applicants age 18 and older, and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered sensitive and will be handled accordingly.

It is correct to first have potential residents disclose their income and assets, family composition, etc., on an Eligibility Application and complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Certification (*UHC Form #21*) must be completed at the time of application. Third party verification should then take place (note that verifications are valid only if they are no older than 120 days from the effective date of the certification—the application must also be no older than 120 days). Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the resident file. A Clarification Record can be used for this purpose (only after a 3rd party verification has been obtained). Note that Management cannot initially verify any income/asset information over the phone. Finally, management should calculate income and income from assets based on information provided on the verification forms, and complete the Tenant Income Certification (TIC). This process must take place prior to the effective date of the Initial Certification (move-in date). The TIC must be signed no later than the move-in date. The

TIC should be effective as of the date of move-in. An Initial Certification that is done after the move-in date is considered late and would cause a noncompliance event.

If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Rural Housing Service projects must use the Section 8 method of calculating income based on "annual income", not the RHS method of "adjusted annual income" for Housing Credit qualified tenants.

B. Annual Recertification

I. Mixed Income Properties. Owners of mixed income properties are required to recertify annually as to the gross annual income of Housing Credit households. Income recertification should be performed in accordance with the verification requirements for an initial certification.

The recertification process should begin 120 days prior to the anniversary date of the previous certification. The residents must complete a recertification application/questionnaire to disclose income, assets, family composition and student status and also complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Certification must be completed at the time of recertification. Third party verification should then take place. Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the resident file. Finally, calculate income and income from assets based on information provided on the verification forms, and complete a Tenant Income Certification (TIC). The TIC is to be signed after all verifications are received and management has completed the form, but it must be effective on or before the anniversary date of the previous certification. It is acceptable to do a recertification before the anniversary date (to conform to the annual recertification date for a Section 8 household, for example). Re-certifications that are done after the anniversary date cause a noncompliance event. However, if an owner sends timely notice informing a tenant that annual recertification is due, but the household vacates the unit, the unit will not be considered out of compliance. Owners must document attempts to timely obtain the recertification and the date the tenant actually moves out of the unit.

II. 100% Housing Credit Properties. All households that were initially qualified and moved-in to 100% Housing Credit Projects in 2008 and in prior years will only need to complete a "self certification" TIC beginning in 2010.

Example: *A household initially qualified on December 1, 2008. On December 1, 2009, a re-certification was completed and signed. In December 2010, the*

tenant will only have to complete a “self certification” TIC (UHC Form 28).

For tenants that initially moved-in in 2010, one full re-certification must be completed in 2011 and a “self-certification” every year thereafter. NOTE – A waiver of re-certification does not waive the verification of the student status. The Student status must be verified every year.

Example: *A household moved-in to a 100% Housing Credit project in December 2009 (property qualified using 3rd party income/asset verifications). A full re-certification must be completed for 2010. In 2011, tenant will only need to complete a self certification TIC (3rd party verifications will not be required).*

Effective February, 2015, UHC requires an application be completed by the household for the self-certification, and management or the owner representative completes the self cert TIC. Please see the self-certification TIC instructions for more information on how to correctly complete the self cert TIC form.

UHC reserves the right to discontinue the automatic recertification waiver if a trend of noncompliance is observed.

C. Change in Household income within the first six months

If in the initial six month period after occupancy, the income of the household increases to exceed the income limit for the unit, noncompliance is not immediately identified ***as long as*** owners can show due diligence was used at the time of move-in by asking necessary follow-up questions when the income certification process revealed unusual circumstances suggesting additional sources of income. Please note if a household’s income does exceed the limit, the next available unit rule may apply.

D. Change in Household Composition

For all properties, if there is a change in household composition within the first six (6) months of occupancy, owners or managers must certify the household as if it were a new move-in. This requirement to certify does not apply in cases of natural changes in household composition such as birth, adoption, or death. The combined household income must be at or below the applicable move-in income limit for the new household size. The purpose of this rule is to not allow the addition or removal of household members in order to “manipulate” move-in eligibility.

For mixed properties, after six months, the addition of a household member to an existing low-income household requires the income certification for the new member of the household, including third party verification. The new tenant’s income is added to the income disclosed on the existing household’s tenant income certification. The household continues to be considered

income-qualified; however, if the combined income exceeds 140%, owners must apply the available unit rule. Note that a certification done in conjunction with adding a household member does not “re-set” the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

UHC strongly recommends owners and managers screen subsequent household members in the same manner as any new household (i.e., credit check, landlord reference, etc.) prior to allowing them to occupy a unit and to add them to the lease at the time they move-in.

Decreases in family size do not trigger an immediate income certification. Subsequent annual income re-certifications will be based on the income of the remaining members of the household.

For all properties, a household may continue to add and remove members as long as at least one member of the original Housing Credit household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit. For this reason, managers must document all decreases in household composition even where an annual recertification is not required.

E. Available Unit Rule

Following initial certification, an eligible household's income can increase to 140% of the maximum income level. A household whose income exceeds the maximum income level by more than 140% (an “over-income” household) will remain in compliance as long as the unit continues to be rent restricted and the next available unit or any available unit of comparable or smaller size in the same building is rented to an eligible household at the qualifying rent. The owner must continue to rent any available comparable unit to a qualified household until the percentage of Housing Credit units in a building (excluding the over-income units) is equal to the percentage of Housing Credit units on which the credit is based. At that point, failure to maintain the over-income units as Housing Credit units has no immediate significance.

If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified household, all over-income units for which the available unit was a comparable unit within the same building lose their status as Housing Credit units; thus, comparably sized or larger over-income units would lose their status as Housing Credit units.

2. Tenant Income Certification

The Tenant Income Certification, *UHC Form 06*, has been provided for your use in certifying a project's eligible tenants. The use of this Tenant Income Certification is required in order to ensure the continuity necessary for accurate monitoring of these projects. The form is a legal

document which, when fully executed, qualifies the applicant to live in a Housing Credit unit. It is not to be used as a rental application.

After all income and asset information has been verified and computed, management personnel must prepare the Tenant Income Certification. It must be signed and dated by all household members over age 18 and by the owner or owner's agent at initial move-in and upon annual recertification.

A Tenant Income Certification that is unsigned, undated, or completed late - either after the date the household occupied the unit, or after the anniversary date of the previous certification, will cause the unit to be considered out of compliance until a proper and complete certification or recertification is performed. To avoid issues of noncompliance, UHC strongly advises owners and managers to certify and recertify on a timely basis.

3. Forms to Verify Income

The Forms listed in Chapter 4, section 5 are provided to assist you in qualifying eligible tenants. The release of information (at top of form) must be completed and signed by the person who is the subject of the verification prior to sending the form to an employer or other income source. Completed and returned verifications must be attached to the Tenant Income Certification.

The use of recommended forms is optional as long as a form that contains the same or additional information is used. A Calculation Worksheet form can be used to assist managers in showing the individual calculations of income and asset income. This is highly recommended and will greatly assist an auditor during a file review.

Note: Supporting documentation (application/questionnaire, income verifications, asset verifications, etc.) is considered part of the Tenant Income Certification and must be added to the file each year.

Management should instruct the prospective tenant(s) to sign the Tenant Income Certification exactly as the name appears on the form. The tenant's legal name should be given and used just as it will appear on the lease. A unit does not qualify for tax credits unless the household is certified and under lease.

4. Annualized Income

Income determination is based on the annual gross income a household anticipates it will receive for the 12-month certification period. Verification of all sources of current and anticipated income for all household members age 18 and older, persons under the age of 18 who are treated as adults because they are the head of household, co-head or spouse, and unearned income of minor children must be obtained in order to establish that the income limits are not exceeded.

Owners must convert all verified incomes to annual amounts.

1. To annualize full-time employment, multiply:

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

2. To annualize income from other than full-time employment, multiply:

- Hourly wages by the number of hours the individual is expected to work per week by 52. If verification shows a range of hours, use the higher number of hours (i.e., verification shows 30-35 hours per week, use 35 hours).
- Average weekly amounts by the number of weeks the individual is expected to work.
- Other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the individual expects to work.

Use an annual wage without additional calculations. *For example, if a teacher is paid \$23,000 a year, use \$23,000, whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.*

- Seasonal or Sporadic Income

If an eligible tenant indicates that income might not be received for the full 12 months (e.g. unemployment insurance), the owner should still determine an annual income as described below.

If an eligible tenant is in a seasonal line of work, for example, a job dependent on weather conditions such as roofing, and normally collects unemployment during the "off" months, both incomes are used for the appropriate number of months. For example, if an individual makes \$1,400 a month, typically works 9 months per year and collects unemployment in the amount of \$700 a month for the remaining 3 months, income is calculated as follows:

$$\begin{aligned} \$1,400 \times 9 &= \$12,600 \\ \$700 \times 3 &= \underline{\$2,100} \\ \$14,700 &= \text{Total Annualized Income} \end{aligned}$$

The income of unemployed applicants with regular income from any source, such as Social Security, Pension, recurring gifts, etc., must be verified as covered previously. If an applicant is currently unemployed with no regular verifiable income from any source and claiming zero (0) income, he/she must execute a Certification of Zero Income (*UHC Form 27*) or similar form which asks all required questions. Note that the HUD Handbook requires non-monetary contributions (excluding groceries) to be counted as income.

5. Annual Income

The Housing Credit Program uses HUD's definition of "annual income" as contained in the U.S. Housing Act of 1937 as amended. HUD's definition of annual income is very specific and is not simply the amount contained on tax returns.

Annual income is the gross income the household anticipates it will receive from all sources, including all net income derived from assets, during the 12-month period following the effective date of the income certification or recertification. This includes income received by all adult members of the household (18 years of age and older, including full-time students), and unearned income of minor children. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

Please note that annual income is not the same as adjusted income. Annual income generally corresponds to gross income, with no adjustments (deductions) for child-care, medical expenses, dependents, etc. Adjusted income is used in some federal housing programs, such as Section 8 and Rural Development Section 515, to determine the level of benefit provided to a household. However, it is not used in the Housing Credit Program.

Total Income from all Sources = Annual Income

$$\begin{array}{rcccl} \text{Earned/} & & & & \\ \text{Unearned} & & & & \\ \text{Income} & + & \text{Income} & = & \text{Annual} \\ & & \text{from} & & \text{Income} \\ & & \text{assets} & & \end{array}$$

Annual income has two components: Earned/Unearned income and Asset income.

Earned/Unearned income includes the following sources: gross wages and salaries including tips and overtime; gross income from social security or welfare; and payments in lieu of earnings (e.g., unemployment compensation, workers' compensation). There are certain mandated inclusions and exclusions which apply when determining earned/unearned income.

Asset income is the amount generated by savings accounts, real estate, and other investments. Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household.

Please refer to the HUD Handbook 4350.3 for a complete listing and discussion of earned/unearned income and asset income.

The following are examples of income that are included in Annual Income. Also listed are specific types of income that are excluded from income. Generally, if a particular type of income is not specifically mentioned as being excluded, then it is included in Annual Income:

- Interest, dividends and other income from net family assets;
- The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including foster adults and persons under the age of 18 who are the head, spouse or co-head). This includes salaries of adults received from a family-owned business.
- Net income, salaries, and other amounts distributed from a business.

Self-Employed Income Verification: The following documents show income verification for the previous year. Owners or their agents must consult with tenants and use this data to estimate income for the next 12 months:

- a. Copy of individual federal income tax return (1040) including any:
 - Schedule C (Small Business)
 - Schedule E (Rental Property Income)
 - Schedule F (Farm Income);
- b. Copy of Corporate or Partnership tax return (if applicable);
- c. Audited or unaudited financial statement(s) of the business (such as a recent profit and loss statement); and
- d. Applicant's notarized statement or affidavit as to net income realized from the business during previous year.

Note: All tax returns and related documents must be signed and dated if not filed electronic.

If the business is new and the resident has not yet filed a tax return showing income from a business, a Self-Employment Verification – New Business should be completed and the resident must self-certify the anticipated net income from the business. Self-employment can be annualized for the current year business activity based on the number of full months in business. The formula is:

$$\frac{(\text{Net Income Year to Date}) \times 12 \text{ months}}{\text{Number of Months in business during the current year}}$$

The gross amount (before any deductions for Medicare, etc.) of periodic social security

payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support);

The following item is required to verify the income derived from the above sources:

- Copy of award or benefit statement. This statement is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living raise. If an eligible tenant does not have a benefit statement from Social Security, the eligible tenant (or rental applicant) may call 1-800-772-1213 (TTY 1-800-325-0778) or get one instantly online at www.socialsecurity.gov/myaccount. Tenants will need a valid E-mail address, their social security number, and their U.S. mailing address on file with Social Security. They will also need access to a computer and a few minutes to set up an account with Social Security if they haven't already done so. Once signed in, they can print a Benefit Verification Letter directly from the website.

The Social Security Administration implemented a 'paperless' policy as of March 1, 2013 which eliminated the option for social security and SSI recipients to receive their benefits in the form of paper checks. Recipients still have the option of direct deposit for their benefits or they may choose to receive a 'Direct Express Debit Card'. This Express Card is automatically loaded with the recipient's benefits each month and is not associated with any other bank account the recipient may own.

In order to remain consistent with HUD regulations, benefits received through direct deposit OR the Direct Express Debit Card will continue to be treated as income. The balance on the Direct Express Debit Card is also considered an asset and will be verified consistent with existing savings account verification requirements. Specifically, tenants who receive their benefit on a Direct Express Debit Card will need to provide an account balance no more than 120 days old at the time of certification. This balance can be obtained from an ATM, through the online account service, or a paper statement. The verification document must identify the account and the account holder. If the total household assets do not exceed \$5,000, no income will be derived from this asset. If the household assets exceed \$5,000, assets should be imputed at the standard rate.

Annual income at an assisted living unit:

Annual income at an assisted living unit must include:

- a) The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus
- b) All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations;

- c) Any income from assets; and
- d) The personal allowance of an individual IS NOT included in annual income.

The local agency responsible for Medicaid provides funds directly to assisted living providers for services. Annual income DOES NOT include the enhanced benefit portion of the SSI that is provided to pay for services.

- The full amount of periodic amounts received from annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (e.g. Black Lung Sick Benefits, Veterans Disability). The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.

In Section 5-7 G.4 of the HUD 4350.3 handbook, HUD instructs owners not to include the balance of retirement accounts in the calculation of income from an annuity, retirement fund, pensions, etc., if the resident is receiving periodic payments.

The definition of a periodic payment used by UHC is a payment that occurs minimum of annually, generally around the same time. The payment must have been received in two or more consecutive years for a "periodic payment" to exist. If the resident can provide documentation of a contract or other agreement which exhibits a schedule of payments, the initial payment can be considered periodic.

- Clarifications regarding the calculation of annual income and income from assets for individuals with federal, state, or local government pensions.
 - ◆ Federal government pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.
 - ◆ Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.
 - ◆ In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding

to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant.

◆ Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as above.

- Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits.
- Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay. Any payments that will begin during the next 12 months must be included. Unemployment compensation should be included when calculating the annual income and may be verified by:
 - A verification form completed by the unemployment compensation agency; or
 - Records from unemployment office stating payment dates and amount.
- Student Financial Assistance

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income except for students receiving Section 8 assistance. This is true whether the assistance is paid to the student or directly to the educational institution.

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. Notice PIH 2015-21 updates what should be included as 'tuition' and states, "The Department of Education . . . defines tuition and fees as the amount of tuition and required fees covering a full academic year most frequently charge to students. . . values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit—hour basis, the average full-time credit hour load for an entire academic year is used to estimate average tuition. Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the

charges is an exception.” Examples given of required fees to include in tuition include, but are not limited to, writing and science lab fees and fees specific to the student’s major or program. Examples given of what not to include as tuition are room and board, books, supplies, meal plans, transportation and parking, student health insurance plans and other non-fixed sum charges. See Paragraph 3-13 of HUD Handbook 4350.3 for further information on eligibility of students to receive Section 8 assistance. This rule applies to both full-time and part-time students.

- Welfare assistance.

Documentation Required: To verify income from welfare or public assistance, a written statement from the welfare agency is required. The statement should address the type and amount of assistance the family is currently receiving and note any changes in assistance expected during the next 12 months.

Annual Income for Section 8 Household: The annual income for a household receiving housing assistance payment under Section 8 may not rely solely on information stated on HUD form 50059.

Please note: The annual income is the gross annual income without any adjustments or Section 8 Program allowances. Due to the seriousness of accurate income eligibility, UHC recommends that the owner/owner's agent verify and calculate the household income directly from the source(s) and not rely on PHA verification for certifications.

- Alimony and child support awarded by the court. Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

Documentation Required: If alimony or child support is being received, obtain one of the following:

- Copy of a separation or settlement agreement or copy of a divorce decree stating the amount and type of support and payment schedule.
- Verification form completed by the person paying the support or support enforcement office (ORS – Office of Recovery Services) as to amounts being paid.
- When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received. Please note that this is only acceptable as the last resort.

In many cases, child support has been court ordered but the full amount is not being received. If this is the case, verification from the child support enforcement agency will be sufficient. Or, request tenant to provide a statement attesting to the fact that support payments are not being received; the likelihood of support payments being received in the future, and that a reasonable effort has been made to collect the amounts due.

Alimony or child support paid by a member of the household is not deducted from income, even if it is garnished from wages.

- Recurring monetary contributions or gifts regularly received from persons not living in the unit. Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

Documentation Required: Verification of continuing monetary gifts may be verified in one of two ways:

- A statement or affidavit, signed by the person providing the assistance, stating the purpose, dates and value of the monetary gifts; or
- A statement or affidavit from the tenant stating the purpose, dates and value of the gifts. This is only a last resort when a signed affidavit from the provider could not be obtained.

Groceries and/or contributions paid directly to the child care provider by persons not living in the unit are excluded from annual income.

Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

- Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant family.

Armed Forces/Military Reserve Pay:

Military pay is determined by rank, years of service and active duty or reservist. All Military pay is paid from a 'LES' or a Leave and Earning Statement. These contain quite a bit of information and can be overwhelming. Please see this website for help understanding how to read a LES for each branch of the military: <http://www.dfas.mil/militarymembers/payentitlements/aboutpay.html>

Once you know the rank and years of service, visit this website and click on the most current pay chart. <http://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html> Then look up the rank and years of service.

Drill pay (one weekend a month), If looking up for a reservist or National Guard, Drill Pay and Annual Training Pay needs to be included. Each drill Reserve members perform is paid as one day. The minimum duration of a drill is four hours, and Reservists usually perform two drills per day, or four per weekend. Each weekend generally counts as 4 days of active duty for pay purposes. To calculate the monthly amount of Drill Pay, take the Rank by the years of service amount. Divide by 30 days and times by four. This will be the monthly amount for the Drill Pay. Scrolling down to the Drill Pay and looking of the Rank and years of service will give you the same amount.

Annual Training (AT) (Two weeks a year). In addition to monthly drills, Reservists typically work an additional two weeks per year call Annual Training. This income must be included in annual income. AT pay is considered active duty pay which also entitles them to receive food and housing allowances (BAS and BAH respectively) for that time period. These benefits are also countable toward annual income.

Remember to include all regular pay, special pay, and allowances of a member of the Armed Forces, except hostile fire pay.

6. Exclusions from Annual Income

- Income from employment of children (including foster children) under the age of 18 years;
- Meals on wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC);
- Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;
- Grants or other amounts received specifically for medical expenses, including Medicare premiums paid by an outside source, set-aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income eligibility, out of pocket expenses for participation in publicly assisted programs (such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, child care, etc.);
- Earnings in excess of \$480 for each full-time student 18 years of age or older (excluding the head of household, co-head or spouse);
- Adoption assistance payments in excess of \$480 per adopted child;
- Temporary, nonrecurring or sporadic income (e.g. gifts);
- Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- Special pay to a household member serving in the armed forces who is exposed to hostile fire;
- Amounts received under training programs funded by HUD;

- Compensation from state or local employment training programs and training of a household member as resident management staff. Amounts excluded under this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance under the program by the state or local government;
- A resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time.
- Reparation payments made by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. Examples include payment by the German and Japanese governments for atrocities committed during the Nazi era.
- Deferred, periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.
- Payments received for the care of foster children or foster adults.
- Amounts received in behalf of someone not living in the unit as long as the amounts are (i) not inter-mingled with the family funds, and (ii) used solely to benefit the person not residing with the family. For such amounts to be excluded, the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the family and the amounts meet the conditions above.
- Recurring child care payments paid directly to a provider by persons not living in the unit.

7. Income Excluded by Federal statute

- The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
- Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).
- Interests of individual Indians in trust or restricted lands, and the first \$2,000 per year of income received by individual Indians that is derived from trust or restricted lands.
- Payments received under the Alaska Native Claim Settlement Act (43 U.S.C. 1626(c)) received from a Native Corporation, Including:
 - Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum;
 - a partnership interest;
 - land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution of stock); and
 - an interest in a settlement trust.

- Payments from certain sub-marginal U.S. land held in trust for certain Indian tribes.
- The First \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe.
- Payments, rebates or credits received under Federal Low-income Home Energy Assistance Programs. Includes any winter differentials given to elderly.
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs, AmeriCorps.
- Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program).
- Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat. 1785).
- Any earned income tax credit to the extent it exceeds income tax liability. (26 U.S.C. 32(j)).
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (CCDBG) (42 U.S.C. 9858q).

Whose Income is Counted?		
	Employment	Other Income (including income from assets)
Members		
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult (including foster adult)**	Yes	Yes
Dependents		
-Child under 18	No	Yes
-Full-time student over 18*	Yes	Yes
-Foster child under 18**	No	Yes
Nonmembers		
Live-in aide	No	No
<p>*The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds \$480.</p> <p>**Exclude foster care payments made through the official foster care relationships with local welfare agencies for foster children or foster adults. HUD 4350.3 Change 4.</p>		

8. Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household.

Verification of assets is required. The asset information (total value and income to be derived) should be obtained at the time of application or recertification. The applicant will affirm that this information is correct by executing the Tenant Income Certification.

Third party verification of assets is required when the combined value of assets exceed \$5,000.

Effective October 11, 1994, an owner may satisfy the third party documentation requirement for a tenant's income from assets if the tenant submits to the owner a signed, sworn statement that the value of the combined assets is less than \$5,000. The use of UHC's form entitled Under \$5000 Asset Certification (*UHC Form 14*) or similar form is required for this procedure. The form must also be used when an applicant/tenant declares there are no assets including checking and/or savings accounts. If a project is required to obtain third party verifications because of participation in another housing program (i.e., Section 8, RHS, etc.), or an owner's or management company's policy is to third-party verify assets, then do not also use the Under \$5000 Asset Certification.

UHC's monitoring procedure and IRS Revenue Procedure 94-65 do not permit an owner to rely on a Housing Credit tenants signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the Housing Credit tenant's annual income from assets to satisfy the documentation requirement of third party asset verification.

The following information is based upon the HUD Section 8 Program. The owner must use the definition of "Net Family Assets" in 24 CFR 813.102, which provides definitions for the HUD Section 8 Program.

Household Assets include:

- Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.

Documentation Required:

- Verification forms, account statements (must obtain 6 months worth of statements to determine 6 month average balance for checking accounts), passbooks,

certificates of deposit, letters or documents from a financial institution or broker. **Note:** The balance on the Direct Express Debit Card is also considered an asset and will be verified consistent with existing savings account verification requirements. Specifically, tenants who receive their benefit on a Direct Express Debit Card will need to provide an account balance no more than 120 days old at the time of certification. This balance can be obtained from an ATM, through the online account service, or a paper statement. The verification document must identify the account and the account holder. If the total household assets do not exceed \$5,000, no income will be derived from this asset. If the household assets exceed \$5,000, assets should be imputed at the standard rate.

- If an owner accepts an IRS Form 1099 from the financial institution, the owner must adjust the information to project earnings expected for the next 12 months.
- Revocable trusts. Include the cash value of any revocable trust available to the household.
- Equity in rental property or other capital investment. Include the current fair market value less (a) any unpaid balance on any loans secured by the property; and (b) reasonable costs that would be incurred in selling the asset (i.e., penalties, broker fees, etc.). Note: If the person's main business is real estate, then count any income as business income. Do not count it as an asset and as business income.

Documentation Required: Only the interest portion of the monthly payment received by the tenant is included. For interest income from the sale of real property, if said property was sold on an installment sales contract, request:

- A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next 12 months. (A copy of the check(s) paid by the buyer to the tenant is NOT sufficient since appropriate breakdowns of interest and principal are not included.); or
- Amortization schedule showing interest for the 12 months following the date the purchaser intends taking occupancy.

For rental income from property owned by the tenant, request:

- IRS Form 1040 with Schedule E (Rental Income).
- Lessee's written statement identifying monthly payments due the tenant and tenant's affidavit as to net income realized.
- Stocks, bonds, treasury bills, certificates of deposit, money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after income is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received.

Documentation Required: Broker's quarterly statements showing value of stocks or bonds and any earnings or dividends, or quotes from a stock broker as to net amount the family or household would receive if they liquidated securities.

- IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty, *unless benefits are being received through periodic payments*. If no periodic payments are being received, determine the amount of the asset by using the average balance for the previous six months.
- Retirement and pension funds. While the person is employed include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. At retirement, termination of employment, or withdrawal, periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:
 - If benefits will be received in a lump sum, include the lump sum receipt as an asset.
 - If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset. HUD 4350.3 Change 4.
 - If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset. HUD 4350.3 Change 4 In instances where the applicant/tenant is a retired Federal government employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorized OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal government employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant.
- Cash value of life insurance policies available to the individual before death (i.e., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.
- Personal property held as an investment. Include gems, jewelry, coin collections, and antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.
- Lump sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution; settlements on insurance claims (including health and accident insurance, worker's compensation and personal or property losses); and any other amounts that are not intended as periodic payments.
- A mortgage or deed of trust held by an applicant (e.g., contract for deed). Payments on this type of asset are often received as one combined payment of principal and interest

with the interest portion counted as income from the asset.

This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

To count the cash value of this asset, determine the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off.

9. Household Assets Do Not Include

- Necessary personal property including clothing, furniture, cars, etc.
- Interests in Indian trust land.
- Term life insurance policies.
- Equity in the cooperative unit in which the family lives.
- Assets that are part of an active business (not including rental of properties that are held as investment and not a main occupation).
- Assets that are not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and that other person is responsible for income taxes incurred on income generated by the assets.
- Assets that are not accessible to the applicant and provide no income to the applicant (i.e., a battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash). Non-revocable trusts are not covered under this paragraph.

10. Assets Owned Jointly

Assets owned by more than one person should be prorated according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.

11. Valuing Assets

In computing assets, owners must use the cash value of the asset; that is, the amount the family or household would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. Expenses which may be deducted include:

- Penalties for withdrawing funds before maturity;

- Broker/legal fees assessed to sell or convert the asset to cash; and
- Settlement costs for real estate transactions.

For non-liquid assets, enough information should be collected to determine the current cash value -- the net amount the family would receive if the asset were converted to cash.

Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. If a tenant has sold his/her home (either a private residence or rental) or disposed of other assets within the past two years for less than fair market value, request:

- Copies of closing documents (HUD-1, settlement statement) showing the selling price, the distribution of the sales proceeds and the net amount to the tenant.
- Divestiture of Assets Verification identifying the disposed-of asset, the cash value and amount actually received.

If net family/household assets exceed \$5,000.00, the annual income must include the greater of:

- The actual income from assets; or
- An imputed income from assets.

Owners must determine estimated asset income by multiplying total net assets by the interest rate specified by HUD. Effective February 1, 2015 the imputed rate of interest on cumulative assets to be used for all household assets over \$5,000 is 0.06%. Future changes to the passbook savings rate will be published in accordance with the HUD notice found at the following link:

<http://portal.hud.gov/hudportal/documents/huddoc?id=14-15hsgn.pdf>

12. Income Verification Requirements

All income sources, including asset income, must be verified. A good application must be used as a basis for determining which written third party verifications may be necessary. The application, along with all supporting documentation and the Tenant Income Certification, will be reviewed by UHC staff during a tenant file review.

Written verification directly from the source (third-party verification) is the standard and most reliable method of verifying income. Written verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on

the computer screen. Use of a printout from the Internet may also be adequate verification in many instances.

Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

Income verification requests must be sent directly to and from the source. They are never given to the tenant to obtain signatures. It is suggested that a self-addressed stamped envelope be included with the request for verification. If the verifications do not contain complete information (typical examples include failure to indicate interest rates, dates of anticipated raises, amounts of anticipated raises, etc.), managers must follow up with the source to obtain complete information. All pertinent information must be documented in the file and must also include the name, phone number and title of the contact, the name of the person accepting the information, and the date.

Third party contacts are considered impossible if an employer does not respond, third party charges a fee, or no third party is available. Generally, a third party contact is considered delayed if a response will not be received within two weeks, but can be less if it is determined that the third party will not respond. When written, third-party verification is not possible, there are two options:

1. Second party verification including copies of pay stubs (the most recent four to six, consecutive, recent pay stubs are required, but six months worth is recommended and more may be needed particularly in situations where a person works varying hours during different seasons), quarterly or monthly asset statements, W-2's, etc. Copies of paychecks or bank statements showing direct deposit are not acceptable because deductions are not shown.
2. An owner may accept a tenant's sworn statement regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

Prior steps used to obtain written verification must be documented to show just cause for using other types of verification. The owner must include the following documents in the tenant file:

1. A written note explaining why third-party verification is not possible; or
2. A copy of the date-stamped original request that was sent to the third party;
3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and
4. A written note indicating the request has been outstanding without a response from the third party.

Note: If a tenant is employed by a business owned by the tenant's family or is employed by the property owner or the management company, a copy of a recent pay stub, verifying year-to-date earnings, is also required. This is in addition to the third party written verification.

Upon receipt of all verifications, owners or managers should determine if the resident is qualified for participation in the Housing Credit Program. All verifications should be reviewed and calculations made as necessary.

A. Effective Term of Verification

Written verifications of income are valid for 120 days prior to the effective date of move-in and annual recertification. After this time, new written verification must be obtained.

Chapter 7 – Sale, Transfer or Disposition of the Project

Since UHC is required to notify the Internal Revenue Service via form 8823 in the event of sale (including change in ownership or ownership interest), foreclosure, abandonment, casualty loss, and/or destruction, owners must notify UHC of such events.

When a sale or transfer occurs after the placed-in-service date, the owner must submit a letter within 30 days advising UHC of the transfer of ownership. The new owner must include a copy of the recorded Statutory Warranty Deed indicating the change of ownership or a copy of the title policy indicating the new owner as the vested owner of the property.

UHC will recognize a new owner or ownership entity only after all required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the owner of record and any compliance violations will be reported to the IRS under the name of the owner of record.

The IRS has also suggested in Reg. 1.42-5 that, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed.

The owner is also required to notify UHC in writing when there is a change with the management company. The written notification must be received by UHC no later than 30 days after the change has taken place.

Chapter 8 – Correction and Consequences of Non-Compliance

In October 2009, the Internal Revenue Service issued its Updated Guide for Completing Form 8823, Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), which provides instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are to be reported.

Owners and property managers are encouraged to read the guide and refer to it when questions arise as to how noncompliance should be corrected. The 8823 Guide can be found on the IRS website at: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Guide-for-Completing-Form-8823-Low-Income-Housing-Credit-Agencies-Report-of-Noncompliance-or-Building-Disposition>.

1. Notice to Owner

UHC is required to provide a written notice to the owner detailing any file and physical exceptions discovered during the on-site visit and annual review of owner report.

2. Correction Period

The correction period will be established by UHC and set forth in the notice of non-compliance and will be a period of up to 90 days from the date of the notice to the owner described in paragraph (e)(2) of Reg. 1.42-5. UHC is permitted to extend the correction period for up to six months, but only if UHC determines there is good cause for granting the extension. Requests for an extension must be in writing, must be received by UHC no later than the last day of the correction period identified on the Notice of Noncompliance, and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

UHC will review the owner's response and supporting documentation, if any, to determine whether the noncompliance has been clarified or corrected.

3. Notice to Internal Revenue Service

UHC is required to file Form 8823, "Low Income Housing Credit Agencies Report of Non-Compliance or Building Disposition," with the IRS no later than 45 days after the end of the correction period (including permitted extensions) and no earlier than the end of the correction period.

UHC must check the appropriate box on Form 8823 indicating the nature of the non-compliance or failure to certify and indicate whether the owner has corrected the non-compliance or failure to certify. If the non-compliance or failure to certify is corrected, UHC will provide a date on

which the noncompliance was corrected. If UHC cannot determine that an owner's actions have corrected all noncompliance, no correction date will be provided. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of Reg. 1.42-5, respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is non-compliance that must be reported to the IRS. UHC will send the owner a copy of the form 8823 at the time it is filed with the IRS.

If uncorrected noncompliance is reported to IRS, a corrective 8823 cannot be filed until all instances of noncompliance are corrected for that building.

4. Recapture of Credit

Generally, during the Compliance Period a project is out of compliance and recapture applies if:

- You dispose of a building or an ownership interest in it; or
- There is a decrease in the qualified basis of the building from one year to the next; or
- The building no longer meets the minimum set-aside requirements of Section 42(g)(1), the gross rent requirements of Section 42(g)(2), or the other requirements for the units which are set-aside.

Vacant units that were previously occupied by Housing Credit tenants can continue to be counted for minimum eligibility as long as the owner/manager has made reasonable attempts to rent the unit to an eligible tenant. See Revenue Ruling 2004-82, Q9 for guidance on what constitutes reasonable attempts.

If the project is out of compliance, a penalty will apply to all units in the Project (IRS Form 8611). Penalties may include:

- Recapture of the Accelerated Portion of the tax credits for prior years;
- Disallowance of the credit for the entire year in which the non-compliance occurs; and
- Assessment of interest for the recapture year and previous years.

If the non-compliance is due to a reduction in qualified basis and the minimum eligibility requirements of twenty percent (20%) or forty percent (40%) are still met, recapture and disallowance of credit will apply only to units not in compliance.

In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period of time.

The above information has been provided for informational purposes in order to give a general understanding of recapture procedures. The Internal Revenue Service bears the responsibility for determining whether a building owner has claimed the correct amount of credit each year and whether a building owner is subject to recapture. UHC is not responsible for determining whether or not a specific event of noncompliance is a recapture event.

5. LURA Noncompliance

Income and rent limits are specified in the Land Use Restrictions Agreement (LURA) between the owner and UHC. It is the owner's responsibility to ensure rents and income limits are followed throughout the credit and extended use periods. If rents are found to be over the LURA specified limits, the owner is required to reimburse the overage amount to the tenant(s). If the income limits are found to be over the LURA limits, the owner/management company will not be in good standing with UHC. All future applications for credit allocation will not be accepted while the Owner, Partner or Management company is considered to be "Not in good standing" with UHC. If rent and/or income limits are found to be over Program limits, UHC must issue IRS Form(s) 8823.

Chapter 9 – Post Year 15 Compliance and Monitoring

Background

Post Year 15 compliance monitoring ensures that properties comply with the requirements of the Extended Use Period specified in the Land Use Restriction Agreement (LURA). Pursuant to its Post Year 15 policy, UHC provides owners a waiver of some compliance and monitoring restrictions beginning year 16. Owners are reminded that properties may continue to be required to be in compliance with more restrictive rules associated with programs such as Section 8, RD and other federally or state sponsored programs.

1. Determining the End of the Compliance Period

The owner must provide UHC with a copy of the signed first-year IRS 8609 for each building in order to determine the end of the 15 year compliance period. Should the owner not provide the signed form as required, UHC will determine the end of the compliance period as 15 years after the last building was placed in service.

2. Extended Use Period

The Extended Use Period for each property is specified by the LURA. It may be a minimum of fifteen years or may extend to eighty four years. The Extended Use Period begins the first day after the end of the project's fifteen year compliance period.

3. Owner Responsibilities during the Extended Use Period

- A. Under IRC Section 42(h)(6)(E)(ii) the termination of an Extended Use Period due to foreclosure or deed in lieu, or for failure to present a qualified contract shall not be construed to permit before the close of the 3-year period following such termination:
 - a) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
 - b) any increase in the gross rent with respect to such unit not otherwise permitted by the applicable rent limits.
- B. Under the UHC LURA, the Owner agrees to comply with the following during the extended use period:
 - a) it will maintain the minimum set aside by leasing units to individuals or families whose income is 50% or 60%, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income as determined in accordance with IRC Section 42;
 - b) it will maintain the applicable fraction for each building in the project.
 - c) it will maintain the Section 42 rent and income restrictions;
 - d) the owner agrees to comply fully with the requirements of the Fair

- Housing Act as it may from time to time be amended;
- e) the owner will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective tenant as such a holder;
- f) each Housing Credit unit will remain suitable for occupancy;
- g) the determination of whether a tenant meets the Housing Credit requirement shall be made by the owner at least annually on the basis of the current income of such Housing Credit tenant; and
- h) other restrictions as required under the specific year's Qualified Allocation Plan (QAP) and related points the owner received in order to obtain a credit allocation. These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the Extended Use Period.

Note that the Declarations have changed from year-to-year according to the respective Qualified Allocation Plans. However, the basic language pertaining to the Extended Use Period required by the Internal Revenue Code has not materially changed.

4. Tenant Eligibility Criteria and Record Retention

During the Extended Use Period, UHC requires tenant eligibility and certification of income, as follows:

- A. **Tenant Income Certification.** Initial certifications and verifications of household income are required prior to move-in for all units of 100% Housing Credit and mixed income projects.
 - a. **100% Housing Credit projects** – Tenants need only complete one recertification after initial move-in. A self-certification will be required every year after the recertification.
 - b. **Mixed income projects** – Tenants must continue to annually re-certify income and assets.
- B. **Student Status.** UHC will continue to enforce the student rule.
- C. **Unit Transfers.** Unit transfers from building to building are allowed without triggering noncompliance regardless of whether a household's income is over the applicable limit at the time of transfer.
- D. **Available Unit Rule.** The available unit rule is revised to provide that if a household's income goes over 140% of the applicable income limit, a currently vacant unit or the next unit in the same building must be rented to a qualifying household (the "comparable or smaller" requirement no longer applies). This is essentially a one-for-one unit replacement.
- E. **Rent Limits.** Rent limits as elected by the owner at the time of allocation continue to be in force during the Extended Use Period.

- F. Utility Allowances. Utility Allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.

UHC will continue to update the Program income and rent limits based on the Section 8 income limits published by HUD annually.

5. Monitoring Compliance during the Extended Use Period

The following is the monitoring procedure UHC will follow during the Extended Use Period:

- A. Annual Certification. By April 30, or the next business day, UHC will require all owners to submit an annual certification of compliance. The Owner will continue to provide Owners Certification of compliance (now online in COL).
- B. Inspections. At least every three years, UHC will perform a physical inspection of the property and review of tenant files and other pertinent documentation. UHC will continue to randomly select the lesser of 20% of the low income units rounded up to the nearest whole number or the minimum unit sample size in the Low Income Housing Credit Minimum Unit Sample Size Reference Chart (See Chapter 4, Section 3). UHC will use this this number for units and files to be inspected. Different units may be chosen for the file review as those receiving a physical inspection and at UHC's discretion, the file and physical inspection may occur on different dates. UHC reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of Housing Credit units.

6. Noncompliance

Noncompliance includes but is not limited to:

- Any violation of the provisions of the LURA or Code not revised by this notice;
- Owner or the Owners Agent repeatedly delaying or refusing UHC requests to schedule management reviews: or
- Failure to submit annual submissions or compliance monitoring fees.

If a noncompliance event occurs, written notice of the noncompliance will be issue to the owner along with a correction period not to exceed 90 days. An extension of up to 90 additional days or longer may be granted under the following conditions:

- UHC determines the noncompliance cannot be reasonably corrected within 90 days; and
- The Owner submits a Correction Plan detailing the timeline for the corrections which is approved by UHC.

If the noncompliance is not corrected within the correction period, including extensions, UHC shall reserve the right to apply the following remedies:

- The property, Owner, Partner and Owner’s Agent, if applicable, shall be considered to be “Not in Good Standing” with UHC until the noncompliance is corrected to the satisfaction of UHC;
- Applications for Housing Credit allocations will not be accepted while the Owner, Partner or Owners Agent associated with the application is “Not in Good Standing” with UHC; and
- UHC may declare a default under the LURA and may apply to any court, State or Federal, for specific performance of the LURA or an injunction against any violation of the LURA; secure the appointment of a receiver to operate the project in compliance with the LURA; or exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct the noncompliance with the LURA.

Common File Audit Findings to Consider:

- Move-in/effective dates not provided or the dates differ for the initial certification (excluding the first tax credit year for rehabs).
- Tenant Income Certification Form not signed or dated by all adults and management.
- Blanks on forms in file and/or missing forms in file.
- Use of white out/correction tape or fluid on forms and verifications in files.
- All possible income/assets sources were not verified.
- The income and assets sections on the Tenant Income Certifications are incomplete and/or totals are different than totals shown in the file documentation.
- Income and assets calculations are not correctly calculated based on 12 months following the effective date and in accordance with HUD 4350.3.
- All disclosed assets were not noted on Tenant Income Certification form.
- Incorrect rent and income AMIs used for the property.
- Marital status has not been asked and documented at each certification. If separated, plans for divorce and income received from separated spouse have not been disclosed and verified.

Common Physical Audit Findings to Consider:

Site

- Tripping hazards
- Damage to fences
- Erosion
- Damaged/missing playground equipment

Building

- Missing/damages shingles
- Walls with cracks or holes
- Emergency Fire Exits blocked by bushes/trees
- Loose/broken stair(s)

Building System

- Extinguishers expired
- Open breaker slots in electrical box

Common Area

- Graffiti
- Dryer vent missing or blocked

Unit

- Smoke detector missing/inoperable
- Clogged drains
- Holes in doors
- Infestation
- TPR valve greater than 18 inches from floor
- Open breaker slots in electrical box
- Tripping hazards
- Blocked egress