

**WISCONSIN HOUSING AND ECONOMIC  
DEVELOPMENT AUTHORITY**



**WHEDA**

Housing Tax Credit Program  
Compliance Manual

## PREFACE

This manual is a training and reference guide for the compliance monitoring of the Low-Income Housing Tax Credit program (LIHTC). In Wisconsin, the program is known as the Housing Tax Credit Program (HTC). This manual is designed to answer many questions regarding procedures, rules, and regulations that govern tax credit developments and is a useful resource for owners, developers, management companies, and on-site management personnel. It provides guidance with respect to WHEDA's administration of monitoring for compliance under section 42 of the Internal Revenue Code of 1986 (the Code) and the Treasury regulations.

It is important to note that this manual is to be used only as a supplement to compliance with the Code and all other applicable laws, rules and regulations. **This manual is not considered a complete guide on compliance. The responsibility for compliance with the Code lies with the owner of the building(s) for which the credit is allowable.** Because of the complexity of the Code and the necessity to consider its applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues. WHEDA's obligation to monitor for compliance with the requirements of the Code does not make WHEDA liable for an owner's noncompliance (Treas. Reg. §1.42-5(g)(1994)).

A note for Exchange Credit and TCAP developments:

Exchange and TCAP projects will follow many of the same rules as Section 42 and be monitored accordingly. More detailed information concerning these programs can be found on our website at [www.wheda.com](http://www.wheda.com).

## **REVISIONS**

### **MARCH 2025**

4.4 G Updated Prorated Monitoring Fees for Acquisition/Rehab

5.4 Included the term “Net Family Assets” to clarify asset values used in determining whether verification of assets is required.

5.12 C Expanded Housing Trust Fund (HTF) requirements, including HTF Description, Annual Certification (HTF Form 100), Prohibited Lease Terms, NSPIRE Property Standards, and Inspection Schedule.

# REVISIONS

## NOVEMBER 2024

The HTC manual makes several references to the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs. HUD released new guidelines for determining income that supersede the current 4350.3 Handbook. HUD intends to update the 4350.3 Handbook. Until then Owners and Agents should refer to the Housing Opportunity through Modernization Act of 2016 (HOTMA) for guidance whenever the HUD Handbook 4350.3 is referenced. The HOTMA matrix on our website is also a good source of information.

3.3 D I c Updated Gross Rent Floor options to provide additional information from the “Hold Harmless” provisions from 2008 HERA Legislation

3.3 F iii Count Foster children and adults for occupancy purposes, but foster care payments and income of foster children and foster adults is not counted under HOTMA.

3.4 A 100% projects for recertifications now defined by 8609 Line 8b and 8609 attachments.

3.4 A Recertifications for 100% projects and annual certification of income under the Average Income Test (AIT) now follows the same recertification requirements of other 100% projects.

3.4 A Removed reference for HTC Form 203. Also 4.5 B ii, 4.6

3.4 B iii Removed requirement to annually recertify Income on AIT projects.

3.4 F Limit annual rent increase to 5% per year, effective January 1, 2023, beginning with projects awarded from the 2023 QAP and future allocations.

4.4 Updated sections to current procedures for Initial Reporting

4.4 A Updated 8609 Part II Line 8b election to include AIT grouping.

4.5 B i Clarified USR electronic reporting through Procorem’s Unit Status Report Portal

4.5 B ii Updated procedures for submitting corrections to past USR reports.

4.9 C ii Removed HTC Form 203 and clarified response requirements.

4.9 H In general, late recertifications will not be considered under “bright line”.

5.3 i Updated Student income with HOTMA rules

5.5 Updated Asset verification threshold to \$50,000, adjusted annually for inflation, per HOTMA

5.8 Removed requirement for annual certification on 100% Average Income Test (AIT).

5.12 A iv All units committed in the Supportive Housing scoring category will be required to be permanently Set-Aside for eligible tenants beginning with allocations from the 2025-2026 QAP

7.1 Updated Contact Information

8.3 The Unit Vacancy Rule in the Extended Use Period (EUP) will be applied in the same manner as during the initial 15-year compliance period.

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# 1. Introduction

## 1.1 Background

In 1986, Congress enacted the Low-Income Housing Tax Credit, authorized and governed by section 252 of the Tax Reform Act of 1986 and section 42 of the Internal Revenue Code. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction, acquisition, and/or rehabilitation of low-income rental housing. The amount of credit allocated is directly based on the number of qualified low-income units that meet federal rent and income targeting requirements.

Under the provisions of the Code, the Wisconsin Housing and Economic Development Authority (WHEDA) was appointed by the Governor as the housing credit agency for the State of Wisconsin to allocate the tax credit (the "credit") within the State.

In accordance with the Revenue Reconciliation Act of 1990, WHEDA may only allocate the amount of credit necessary to produce an economically feasible project and to assure its viability throughout the compliance period. The 1990 Act also gave housing credit agencies the additional responsibility of monitoring for compliance all projects that have been placed-in-service for which the credit is, or has been, allowable at any time since the inception of the program in 1987. This definition includes projects financed with tax-exempt bonds. The compliance-monitoring mandate became effective January 1, 1992 (26 CFR, §1.42-5).

Since January 1, 1995, the Program in Wisconsin has been called the Affordable Housing Tax Credit Program (AHTC). Wisconsin now refers to the program as the Housing Tax Credit Program (HTC). However, at the federal level the Program is still referred to as the Low-Income Housing Tax Credit Program, and any contractual and/or legal documents will continue to reference the legal program name.

## 1.2 Compliance Period

### A. All Credit Developments

In order to claim the credit, all developments receiving a credit allocation since 1987 must comply with eligibility requirements for a period of 15 taxable years beginning with the first taxable year of a building's credit period (the "compliance period").

### B. Credit Allocations after December 31, 1989

Developments receiving a credit allocation after December 31, 1989 will have entered into a Land Use Restriction Agreement (LURA) with WHEDA at the time that a final allocation of credit was issued. These developments must comply with eligibility requirements for an additional 15 years beyond the 15-year compliance period, defined as the extended use period, for a total of 30 years. The LURA is a recorded restrictive covenant.

Earlier termination of the extended use period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying enactment of such earlier termination, the owner will be bound by this election in the LURA.

### **C. Credit Allocations for 1987, 1988, and 1989 Only**

As stated above, developments receiving a credit allocation prior to January 1, 1990 have only a 15-year compliance period. However, any building in such a development that received an additional allocation of credit after December 31, 1989 must comply with eligibility requirements in effect beginning January 1, 1990 and will also be bound by a LURA.

## **2. Owner and Agent Responsibilities**

### **2.1 Owner**

Each owner has chosen to utilize the Tax Credit Program to take advantage of the available tax benefits. The owner is responsible for ensuring that the property is managed in accordance with all applicable laws, rules, regulations and policies that govern a tax credit property.

#### **A. Allocation Requirements**

The owner must provide comprehensive project information with evidence of overall economic feasibility. Prior to issuance of a final 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 program requirements could result in the loss of credit allocated.

#### **B. Proper Administration and Record Keeping**

The owner is responsible for proper administration of the project, including the Code requirement that tenant income and rent records be kept and retained for each building in the project for the appropriate time period. The owner must make certain that the on-site management team knows, understands, and complies with all rules, regulations, and policies governing the project.

#### **C. Ongoing Administration and Notification**

The Owner is responsible to keep WHEDA informed of any event that might affect the project's credit throughout all phases of development, rent-up, and operation. This includes the initial phases of construction, the scheduled placed-in-service date and the completion of the project as outlined in the Code.

#### **D. Reporting and Certification**

The owner is responsible for submitting required documentation and reports to WHEDA on a timely basis. See HTC Form 001, "Report Submission Instructions" for information on the required documentation and due dates.

#### **E. Ownership and Management Changes**

The owner and agent are concurrently responsible for notifying WHEDA of any changes in the ownership or management of the project. For ownership changes, HTC Form 990 A & B- Notice of Change in Ownership is required. Both parties are required to attest the property will continue to operate under the original terms of the allocation for the remainder of the compliance period and extended use period. In the event of an ownership change in which there is a change in General Partnership, HTC Form 100 – Owner's Certificate of Continuing Program Compliance from the beginning of the calendar year to the date of sale will be required.

For management changes, a new ACH agreement, Delegated Administrator Agreement and HTC Form 105 – Tax Credit Contact Information is required.

## **2.2 Management Agent and On-Site Personnel**

### **A. General**

Management agents and on-site personnel are responsible to the owner for implementing program requirements. Anyone authorized to lease apartment units to tenants must be thoroughly familiar with all federal and state laws, rules, and regulations governing certification, fair housing, and leasing procedures. Management agents must provide information requested by WHEDA and submit all required reports and documentation in a timely manner.

### **B. Noncompliance**

If the management agent and/or the owner determines that a building or entire project is not in compliance with program requirements, WHEDA must be notified immediately. The management agent and/or the owner must formulate a plan to bring the project back into compliance, and advise WHEDA in writing of such plan. (See Section 4.9 Noncompliance, for additional information.)

### **C. Ownership and Management Changes**

The owner and agent are concurrently responsible for notifying WHEDA of any changes in the ownership or management of the project. For ownership changes, HTC Form 990 A& B- Notice of Change in Ownership is required. In the event of an ownership change in which there is a change in General Partnership, HTC Form 100 – Owner’s Certificate of Continuing Program Compliance from the beginning of the calendar year to the date of sale will be required.

For management changes, a new ACH agreement, Delegated Administrator Agreement and HTC Form 105 – Tax Credit Contact Information is required.

## 3. Regulations

Program requirements are contained in section 42 of the Code. Program changes and revisions made by the Budget Reconciliation Acts of 1989, 1990 and 1993 are incorporated within the Code. Congress passed additional legislation, including the Housing & Economic Recovery Act (H.R. 3221 aka HERA) published July 30, 2008. Additionally, the IRS publishes periodic revenue notices, rulings, regulations, and procedures that clarify and/or expand on the law.

The following items highlight some of the Code provisions directly affecting project compliance. **The following is not a complete listing of compliance regulations.**

### 3.1 Project Regulations

#### A. Minimum Set-Aside Election

The minimum set-aside establishes the income limit and rent limit applicable to low-income units in the project. Following the passage of the Consolidated Appropriations Act of 2018, a new minimum set-aside option became available.

The owner must make one of the following minimum set-aside elections on a project basis during the application process for housing tax credits:

- i. At least 20% of available rental units must be rented to households with incomes not exceeding 50% of county median income (CMI) adjusted for household size.
- ii. At least 40% of available rental units must be rented to households with incomes not exceeding 60% of CMI adjusted for household size.
- iii. At least 40% of available rental units must be rented to households with an imputed average income of 60% of the county median income (CMI) adjusted for household size based on an aggregate from 20% CMI to 80% CMI in 10% increments using the MTSP published limits.

If the project does not meet the minimum set-aside by the end of the first year of the credit period, the property does not qualify as a low-income housing project and the credit cannot be claimed in any year. Noncompliance also occurs if the project drops below its minimum set-aside anytime during the subsequent compliance period; in which case, the entire credit is lost for that year.

Each building is considered a separate project under IRS 42(g)(3)(D) unless, before the close of the first calendar year in the project period, each building that is, or will be, part of a multiple-building project is identified as such by checking the “yes” box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b. The minimum set-aside documented on Form 8609 line 10c and the First Year Credit must be the same for all buildings in a multiple-building project. Defining the project with buildings that

do not have the same credit year will cause the buildings that may still be in rent-up to be used for the minimum set-aside calculation and may result in the project not meeting the First Year Minimum Set-Aside.

Owners should be aware of the potential risks associated with electing AIT.

The IRS published the Final Rule on October 12, 2022, to provide guidance on AIT. There are several potential complexities involved in using AIT, including increased complexity in compliance and challenges regarding the next available unit rule, particularly in developments that include market-rate units. Projects must meet all requirements of non-HTC funding sources and projects funded with tax-exempt volume limited bonds should help ensure the development satisfies the minimum set-aside requirements as the AIT election is not available for tax exempt bond purposes. Owners are responsible for satisfying the requirements of Section 42 and Section 142 of the Internal Revenue Code and should seek advice from appropriate legal and tax professionals to ensure a project can successfully use AIT. Wisconsin only allows projects that are 100% low-income to select the Average Income Test (AIT).

## **B. Special Set-Asides**

An owner or developer may receive extra points in scoring on WHEDA's tax credit application for setting aside units for lower-income (less than 50% or 60% of CMI) households and restricting rents accordingly. The requirements necessary to obtain the extra points are in addition to the federal regulations. WHEDA may enforce compliance with these requirements through all or any of the following:

- Cancellation of tax credits if IRS Form 8609 has not yet been issued;
- Notification to the IRS of noncompliance with agency requirements;
- Legal enforcement of the owner's obligations under contract documents and Land Use Restriction Agreement(s) (LURA);
- Consideration of noncompliance in future applications for tax credits by the owner, developer, or related party.

## **3.2 Building Regulations**

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

### **A. Eligible Basis**

The eligible basis is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609, "Low-Income Housing Credit Allocation Certification"). The eligible basis is composed of allowable cost elements subject to depreciation. (Many special rules apply in determining the eligible basis that are not detailed herein.) Although the owner apportions the amount of eligible basis for each building on Allocation Certification Requests to WHEDA, the total project eligible basis will be limited by the total amount of credit that WHEDA actually allocated to the project. In calculating the credit

amount for each building, WHEDA may adjust the owner's eligible basis apportionment per building to not exceed the maximum credit amount allocated to the project.

**Note:** Manipulation of the maximum qualified basis by artificially raising the eligible basis and lowering the applicable fraction violates section 42 and the contracts between WHEDA and the owner. If WHEDA determines that such manipulation has occurred, it may cancel credits if IRS Form 8609 has not yet been issued. Additionally, WHEDA will report the action to the IRS as noncompliance.

## B. Fees

**Full Inclusion in Eligible Basis:** If the cost of facilities and/or amenities (i.e., pools, parking, and recreational facilities) for use by tenants has not been fully excluded from Eligible Basis there cannot be a separate fee and/or charge. Facilities and/or amenities that cannot be determined to have been excluded from Eligible Basis are considered to have been included in Eligible Basis.

**Partial inclusion in Eligible Basis:** An owner included the cost of a laundry facility in the eligible basis. The owner installed coin operated washers and dryers that are available to everyone in the building. The owner can include the cost of the laundry facility in eligible basis because all tenants have access to the facility. However, because the tenants must pay an additional fee to use the washers and dryers, the appliances must not be included in eligible basis.

**Optional Services:** A service is optional when the service is not a condition of occupancy and there is a reasonable alternative. Charges for non-optional services such as a washer and/or dryer hookup fee and built-in/on storage sheds (paid month-to-month or a single payment) would always be included within gross rent.

*Assuming they are optional*, charges such as pet fees, laundry room fees, garage, and storage fees may be charged in addition to the rent; i.e., they are not included in the rent computation. (See also discussion concerning Costs not excluded from Eligible Basis.)

**Fees – Condition of Occupancy:** Under Treas. Reg. §1.42-11(a)(3), the cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law required that the services be offered to tenants by building owners.

1. Refundable fees associated with renting an HTC unit are not included in the rent computation. For example, security deposits and fees paid if a lease is prematurely terminated are one-time payments that are not considered in the rent calculation.
2. Required costs or fees, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and renter's insurance.

Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining HTC units in a manner suitable for occupancy. 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. It is also acceptable for the applicant to pay the fee directly to the third party actually providing the applicant's rental history.

### **C. Resident Manager Units**

An owner may designate a full-time resident manager unit to be included in the building's eligible basis but excluded from the building's applicable fraction. The unit must be reasonably required by the project and only those employees (positions) that work full-time exclusively for the project are eligible. Examples are units that are designated for resident managers, maintenance personnel, and security officers. (See §1.103-8(b)(4)(iii).) If the owner is charging rent for the unit, the Service may determine that the unit is not reasonably required by the project because the owner is not requiring the manager to occupy the unit as a condition of employment.

A unit for a full-time security officer may occupy a designated manager's unit when reasonably required by the project because of the level of crime in the area. (See Revenue Ruling 2004-82, A-1.)

When designating a full-time resident manager's unit, submit HTC Form 120, Full-time Resident Manager Unit Designation Certification, to WHEDA.

### **D. Police Substation (Facility)**

A local police department may lease a unit in a building located in a Qualified Census Tract to be used as a police substation or facility. The adjusted basis of the property constituting the facility cannot exceed 10 percent of the eligible basis of the building and a need for the facility must be demonstrated through a comprehensive market study or other method. For example, a study could demonstrate that due to the high rate of crime in the community, a police substation located in the building would be appropriate and helpful to individuals in the area whose income is 60 percent or less of AMGI. If the requirements are met, the substation is includable in the Eligible Basis and is not included in the applicable fraction calculation. (See §42(m)(1)(A)(iii) for more information.)

### **E. Model Unit**

If a unit is never rented or available to a qualified household, it is considered a market-rate unit and not part of the numerator of the Applicable Fraction. It is part of the denominator of the Applicable Fraction.

### **F. Calculating the Applicable Fraction**

The applicable fraction represents the percentage of a building intended for qualified low-income units.

The **targeted** applicable fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609) by the owner. However, a final

determination of the maximum applicable fraction is made on the last day of a building's initial tax credit year. The maximum credit an owner can claim on a building is based on the lesser of the targeted applicable fraction or the actual applicable fraction on the last day of the initial tax credit year. (See IRS Form 8609 - Schedule A, "Annual Statement" for complete instructions on calculating the building's first year applicable fraction.)

The applicable fraction is calculated (IRC §42(c)(1)(B)(1994)) as the lesser of:

- i. Low-income units divided by total units (whether or not occupied) in a building; or
- ii. Total square footage of low-income units divided by total square footage of all units (whether or not occupied) in a building, with the exception of the **manager's unit**. The manager's unit may or may not be included, depending on the following circumstances.

**a. Buildings Placed-In-Service Prior to September 9, 1992**

The full-time resident manager's unit may be treated as follows:

- 1) The manager's unit is considered a qualified low-income unit. The rent is restricted and the resident manager's household income does not exceed the applicable income limit.

**Example:** A tax credit building with 25 units (of the same size) is placed-in-service on January 1, 1990. One unit is set aside for a full-time resident manager. The resident manager is income qualified and the rent is restricted. If 21 of the units are qualified low-income units (including the manager's unit) and 4 of the units are market-rate, the applicable fraction for this building is 84.00% (21/25).

- 2) The manager's unit is considered common space. The unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis.

**Example:** A tax credit building with 25 units (of the same size) is placed-in-service on January 1, 2000. One unit is set aside for a full-time resident manager. If 20 of the units are qualified low-income units and 4 of the units are market-rate, the applicable fraction for this building is 83.33% (20/24).

**b. Buildings Placed-In-Service after September 9, 1992**

The full-time resident manager's unit is treated as common space. The unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis.

- iii. When determining which units to include as low-income units in the numerator of the fraction and total units in the denominator of the fraction, please note:

**a. Units Never Occupied**

Units that have never been occupied cannot be included in the numerator (low-income units), but must be included in the denominator (total units).

**b. Vacant Units**

Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered to be low-income for determining the amount of credits claimed, only if the units were occupied for a minimum of one month (IRC §42(f)(2)(A)(i)(1994)).

**c. Transferring Low-Income Households to Never Occupied Units**

Transferring low-income households to never occupied units in order to establish a higher first year's applicable fraction is not allowed. Any household that transfers to a different unit during the initial year of the compliance period will only be counted as qualifying one unit. (IRS Revenue Ruling 2004-82, A-8).

**Example:** A building with 10 units (of the same size) is placed-in-service on March 1, 2000. The owner has a targeted applicable fraction of 100% and plans to take credit for the first time for 2000. On November 30, 2000, nine of the units were rented to qualified low-income households. Unit #108 has never been occupied. The applicable fraction is 90% for the month.

On December 1, 2000, Unit #101 transferred to Unit #108. The applicable fraction remains at 90% for December.

**d. Average Income Test Grouping**

The Applicable Fraction (AF) is calculated at a building level using the lesser of unit count or square footage. If a project has multiple buildings, it is not a requirement for all the Low-Income units in one building to average an imputed designation of 60% or lower. To maintain an imputed average, units from other buildings in the project can be grouped together to establish an imputed average of 60% or less. Units grouped together, whether in one building or multiple buildings, can only be used once to establish a grouping. This same grouping must be used to calculate the Applicable Fraction for all buildings contained in the group separately.

The grouping itself is not a calculation of the Applicable Fraction but rather determines the numerator for the AF calculation. The numerator is the total number of units and square footage within the building contained in the grouping. The denominator is the total of all units and square footage in the building. Additional guidance is found in 1.42-19.

Under Average Income Test (AIT), when determining which units to include in the numerator of the Applicable Fraction,

- 1) Only include units that meet the requirements of low income.

- 2) Only include units that when grouped together the average of the imputed income limitations of all of the units in the group does not exceed 60% of the area median gross income (AMGI). This grouping can include units that are in other buildings in the project as defined by Form 8609, Part II, Line 8b selection and required attachment. However, once the applicable grouping is determined, only include in the numerator those units that are in the building for which you are calculating the Applicable Fraction.
  - i) Example: Buildings 1 & 2 are in a multiple building project and grouped together in the same project as defined by Form 8609, Part II, Line 8b. There are 3 low-income units in building 1 and 4 low-income units in building 2 for a total of 7 units that are grouped together, and their imputed designations do not exceed 60% AMGI. When calculating the Applicable Fraction, you will use 3 in the numerator for building 1 and 4 in the numerator for building 2.

**G. Calculating the First Year Credit Percentage:**

To determine the credit percentage for the first year, an average of all monthly applicable fractions must be used. This is done by dividing the sum of each monthly applicable fraction by twelve (per IRS Form 8609, Schedule A).

A unit is treated as a low-income unit eligible for inclusion in the numerator of the monthly applicable fraction if a qualified tenant resides in the rent-restricted unit on the last day of the month. However, the building must have been placed-in-service for a full month. (See IRS Revenue Ruling 2004-82, A-4, §42(f)(2)(A)(i), §42(g)(1) for further information.)

**Example:** A ten-unit building places in service on January 15. A qualified household moves into a unit on January 20. Since the building was not placed-in-service for the full month of January, the unit is not included in the numerator of the monthly applicable fraction. Another qualified household moves into a unit on February 10. Since the building was in-service for the entire month of February and two units were occupied on the last day of the month, two units are included in the numerator of the monthly applicable fraction for February.

Refer to the chart below to see how the example plays out in calculating the First Year Credit Percentage.

Month	Move-in Date	Low-Income Units	Total Units	Percent Divided by 12	Monthly Percentage
January	January 20	0	10	0% ÷ 12	0.00%
February	February 10	2	10	20% ÷ 12	1.67%
March	March 1 March 10	4	10	40% ÷ 12	3.33%
April	April 1	6	10	60% ÷ 12	5.00%

May	May 1	7	10	$70\% \div 12$	5.83%
June		7	10	$70\% \div 12$	5.83%
July		7	10	$70\% \div 12$	5.83%
August	August 15	8	10	$80\% \div 12$	6.67%
September	September 1	9	10	$90\% \div 12$	7.50%
October	October 15	10	10	$100\% \div 12$	8.33%
November		10	10	$100\% \div 12$	8.33%
December		10	10	$100\% \div 12$	8.33%
<b>Total First Year Credit Percentage</b>					<b>66.65%</b>

The amount of credit allowed on this building for the first year would be 66.65% based on the lease-up schedule. The applicable fraction at the end of the first year of the credit period is 100%.

## H. Qualified Basis

The qualified basis is used to determine the amount of tax credit allowed per building in the project. The qualified basis of a building is determined by multiplying its eligible basis by its applicable fraction. The annual tax credit amount is computed by multiplying a building's qualified basis by the applicable tax credit percentage (approximately 4% or 9%) for that building.

Both the eligible basis and the applicable fraction are determined as of the last day of the initial tax year in which the tax credit is claimed.

Tax credits can be claimed annually by the owner of the project for a period of 10 years. At the option of the owner, the initial year in which the tax credits are claimed is either the year in which the building is placed-in-service or the year following the placed-in-service year.

- i. **Increasing the Qualified Basis in Subsequent Years:** If an owner is unable to obtain the desired applicable fraction and qualified basis in the first year of the credit period, the qualified basis of a building may be increased in subsequent years. Two-thirds of the additional credit can be claimed during the remainder of the compliance period, as long as the amount of credit taken does not exceed the amount allocated by the allocating agency.

WHEDA requires notification from the owner when a building has increased its qualified basis and the owner is claiming the additional credit.

- ii. **Decreasing the Qualified Basis in Subsequent Years:** If at the close of a year, the qualified basis of a building has decreased (due to a decreased applicable fraction) from the close of the previous year, the credit for the

building may be subject to recapture. (For complete instructions, see IRS Form 8611, "Recapture of Low-Income Housing Credit".)

## I. Rehabilitation Projects

For projects that receive only rehabilitation credit, the Placed-In-Service date for a rehabilitation building is artificial. The date is established by the owner at the end of any 24-month period within which the Housing Credit rehabilitation expenditure threshold has been met. Tenants must be certified low-income tenants upon rehabilitation placed-in-service date.

For all rehabilitation projects, the rehabilitation expenditures must exceed the greater of:

1. \$6,000 per low-income unit (\$3,000 for projects allocated on or prior to July 30, 2008), or
2. 20 percent of the adjusted basis of the building (10 percent for projects allocated on or prior to July 30, 2008).

In addition, properties that received an allocation from the preservation set-aside must meet a rehabilitation expenditure threshold as defined in the Qualified Allocation Plan (QAP).

## J. Acquisition Projects

An existing building is normally in service upon its acquisition. However, if the building is not in habitable condition, it will not be in service until restored.

**Note:** Even though an occupied building is in service when it is acquired, its **Credit Period** cannot begin until the year in which the building has met the rehabilitation requirement.

Under Rev. Proc. 2003-82, a unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period, even if the household's income exceeds the income limit at the beginning of the first year of the credit period, if two conditions related to income qualifications are met, and the unit is rent restricted.

- a. The household must be initially certified within 120 days of acquisition using HTC income limits and guidelines in effect on the day of acquisition. These households will be considered qualified as of the date of acquisition.
- b. Existing households certified more than 120 days following the date of acquisition will be treated as a new move-in. The certification effective date is the date executed by the last adult household member who signed the certification.

Example: The building was acquired on April 1. The rehabilitation was complete and placed-in-service on December 1. The Credit Period can begin with the date of acquisition on April 1. Households that are certified between April 1 and July 30 are qualified as of April 1. Households certified following

this date are qualified as of the date the last adult household member signed the certification.

#### **K. Safe Harbor test under the Available Unit Rule**

Tenants in place prior to commencement of the First Credit Year are tested for purposes of the Next Available Unit Rule.

1. The test must be completed within 120 days before the beginning of the first year of the credit period.
2. The “test” consists of confirming with the household amount of anticipated income included on the tenant income certification are still current. If additional sources or amounts of income are identified, the tenant income certification will be updated based on the household’s documentation. It is not necessary to complete third party verifications.
3. If the household is over-income based on current income limits, the Next Available Unit Rule is applied.

If the effective date of the initial tenant income certification is 120 days or less before the required “test”, it is not necessary to “test” for purposes of the Next Available Unit Rule because of the time period for completing the initial tenant income certification and the time period for the “test” is the same.

#### **L. Household status in Extended Use Period with additional acquisition and/or rehabilitation credit.**

Households determined to be income-qualified for purposes of the IRC 42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for the purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit.

#### **M. Vacant unit status in Extended Use Period with additional acquisition and/or rehabilitation credit.**

- i. **Existing owner receives additional credit for rehabilitation.** Vacant units previously occupied by income-qualified households continue to qualify as low-income units if the units are suitable for occupancy. However, the owner is subject to the Vacant Unit Rule.
- ii. **New owner receives credit for acquisition and rehabilitation.** Vacant units previously occupied by income-qualified households are not low-income units on the start of the credit period for the new credits.

### **3.3 Unit Regulations for Determining Eligibility**

#### **A. Maximum Income Limits**

In order for a household to qualify for a low-income unit in a section 42 project, their income must first be certified so as not to exceed the county income limit for that project, according to the minimum set-aside the owner elected.

Qualifying tenants in projects operating under the "20/50" election may not have total household incomes that exceed 50% of the appropriate county median income (CMI) adjusted for household size. Qualifying tenants in projects operating under the "40/60" election may not have total household incomes that exceed 60% of the appropriate CMI adjusted for household size.

The United States Department of Housing and Urban Development (HUD) publishes median income information for each Wisconsin County on a periodic basis. Limits remain in effect until HUD officially publishes new limits. Owners can not anticipate increases in income limits and corresponding rents.

Upon receipt of the updated HUD median income information, WHEDA makes available new annual income limits and corresponding rent limits for projects in Wisconsin counties by publishing the information on WHEDA's Internet site ([www.wheda.com](http://www.wheda.com)). However, it is the owner's responsibility to obtain the limits when they are updated by HUD.

A 1987 Housing and Community Development Act amendment to the U.S. Housing Act of 1937 established a minimum income limit based on the state non-metropolitan median family income level. This provision increases income limits in a number of counties that had lower income limits than the state non-metropolitan median family income level.

When determining if a household's income is at or below the maximum qualifying limit, the income from each household member who will be living in the unit must be included. Imputed income from certain assets must also be included. (See Section 5 of this manual for a more detailed explanation.)

The Housing and Economic Recovery Act of 2008 (H.R. 3221 aka HERA) signed July 30, 2008 created multiple sets of income limits for projects funded with tax credits and/or financed with tax exempt housing bonds (TE Bonds). These limits are now calculated and presented separately from the Section 8 income limits. Beginning with the publication of FY2009 Median Family Income estimates and Income Limits, the Section 8 income limits CAN NO LONGER be used for tax credit or TE Bond projects. Projects may be subject to 3 different income limits.

1. Project is defined on IRS Form 8609, Line 8b and attachment. (See Section 3.1 A) If the project consists of multiple buildings, the placed in service date for purposes of using the correct income limit is the earliest placed in service date for all of the buildings in the defined project. If each building is defined as a separate project, use the placed-in service date for each building separately for determining the correct income limit.
2. Projects that were placed-in-service 1/01/2009 or later are subject to the published Multifamily Tax Subsidy Project (MTSP) income limits.
3. HERA established a second set of income and rent limits due to the hold harmless provision that was determined in 2007 or 2008. If the project was in service as of 12/31/2008 and is in one of the affected counties, the project is subject to the HERA Special income limits. These limits do not apply to HUD, RD or HOME.

4. In the event published income limits decrease in any year, projects are held harmless and may continue to use the highest income limit the property has achieved since it was placed in service.

To avoid noncompliance, be sure you are using the correct limits for projects in these counties.

**B. Maximum Rent Limits**

Similar to restrictions on tenant income, restrictions also exist on the amount of rent that can be charged for a low-income unit.

- i. **Projects Receiving a Credit Allocation from 1987 through 1989:** *(Chapter 3.3 B i and iii is codified into the code and is presented here for historical purposes only. See 3.3 B ii for current requirements.)* Gross rent, including utilities paid by tenants, in qualifying units may not exceed 30% of the county median income limit adjusted for household size. (Exception: the Omnibus Budget Reconciliation Act of 1993 allowed owners to make a one-time election to make the change from maximum rents based on household size to maximum rents based on number of bedrooms. See Section 3.3 C. of this manual for more information.)

**All rent calculations for pre-1990 rents must be rounded down to an even dollar amount.**

**Example:** To calculate pre-1990 rents based on a household size of four, using the County Median Income Limit for a household of four = \$23,350

Maximum Allowable Rent for a low-income unit:

CMI divided by 12 months	Multiplied by 30%	Maximum Gross Rent per Month
\$23,350 ÷ 12 = \$1,945.83	\$1,945.83 × .30 = \$583.75	\$583.00

- ii. **Projects Receiving a Credit Allocation after December 31, 1989:** Gross rent, including utilities, paid by tenants in qualifying units may not exceed 30% of maximum qualifying income based on an assumed 1.5 persons per bedroom.

**All rent calculations must be rounded down to an even dollar amount.**

- iii. **Any Building Receiving a Pre-1990 Allocation for Credit and an Additional Allocation of Credit after December 31, 1989:** rents must be calculated both ways. Charge the lesser of:

- a. Rent based on actual household size, or
- b. Rent based on 1.5 persons per bedroom.

- iv. **Overcharged Rent:** A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees. Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. An owner cannot avoid the disallowance of the HTC by rebating excess rent or fees to the affected tenants.
- v. **Overcharged Rent Impacted Minimum Set-Aside:** The owner leased the rental units in a 100% HTC building to eligible tenants by the end of the first year of the credit period. However, the owner overcharged rent for all the units and, as a result, failed to meet the minimum set-aside for the first year of the credit period. The building does not qualify for HTC.
- vi. **Utility Allowance:** Gross rent must include an allowance for any utilities paid by the tenant. Utility allowances must be determined according to program requirements set forth in 26 CFR §1.42-10[T.D. 8520, 59 FR 10073, Mar. 3, 1994, as amended by T.D. 9420, 73 FR 43867, July 29, 2008]. (See Section 4.5 D. Utility Allowance Documentation in this manual for further information.)
- vii. **Third party payment:** Gross rent does not include any third party payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program with respect to such unit or occupants thereof (IRC §42(g)(2)(B)(1994)). In other words, only the rent and utilities (if applicable) paid by the tenant are counted toward the maximum rent of a qualified tax credit unit.

An increase in the rent paid by a Section 8 or Section 515 (Rural Development) tenant to an amount that is greater than the maximum tax credit rent may not disqualify the unit for tax credits if the rent increase is mandated under the provisions of the Section 8 program or the Section 515 Rental Assistance or Interest Credit programs.

Rent increases for Section 8 and Rural Development may not affect tenant rent. The amount of rent paid by the tenant in excess of the tax credit rent limit is known as the "rent overage".

The rent overage is treated as follows:

**a. Section 8 Project-Based**

The increase in the tenant's rent payment is allowed if the Section 8 subsidy is reduced by the rent overage.

**b. Rural Development**

- 1) For properties built before 1991, the rent overage cannot be charged to the tenant, and the owner is responsible to pay the difference.

- 2) For properties built in 1991 and later, the rent amount exceeding the tax credit rent limit can be collected by the owner, but the owner must pay the overage to Rural Development.

### **C. Maximum Rent Election**

On August 10, 1993 the Omnibus Budget Reconciliation Act of 1993 was signed into law. This allowed owners of projects receiving allocation(s) of credit prior to December 31, 1989 to elect to make the change from maximum rents based on household size to maximum rents based on number of bedrooms. The one-time election had to be completed by February 7, 1994 and filed with the IRS and WHEDA. Once made, the election applies to all low-income units in a tax credit building and is irrevocable. The election to change the rent calculation method applies only to new households moving into a building after the election is made.

### **D. Gross Rent Floor**

IRS Revenue Procedure 94-57 allows the owner to establish the effective date of initial maximum rents that serve as a floor against subsequent reductions in rent that can result from a decrease in county median income.

- i. For all projects receiving allocations of credit after October 6, 1994, the Procedure allows the owner/taxpayer to fix the date of the gross rent floor as either the placed-in-service date or the credit allocation (carryover) date, according to the following guidelines.
  - a. If the owner designates the building's placed-in-service date as the effective date of the gross rent floor, then the owner must inform WHEDA of the designation no later than the date on which the building is placed-in-service.
  - b. If the owner does not make a designation prior to the building's placed-in-service date, the effective date of the gross rent floor will be the allocation (carryover) date.
  - c. With the passage of HERA in 2008, the optional Gross Rent Floor election has become obsolete as the "Hold Harmless" provisions of HERA will insulate the project from reductions in rent should income/rents decrease. Projects are held harmless and may continue to use the highest income and rent limit the property has achieved since it was placed in service, including the higher of the Gross Rent Floor automatically established at allocation or held harmless at the placed-in-service date and subsequent years.
- ii. For projects receiving an initial allocation of credit prior to October 6, 1994, the effective date of the gross rent floor is any date that the owner and WHEDA determine is a reasonable interpretation of the statute. Either the date of allocation of credit or the building's placed-in-service date would be considered reasonable interpretations in establishing the gross rent floor.

- iii. For bond-financed projects, the effective date of the gross rent floor is determined in a manner similar to the post October 6, 1994 projects described above. However, the effective date is treated as the date WHEDA initially issues a determination letter to the building, rather than the allocation (carryover) date. Refer to IRS Revenue Ruling 94-57 for further explanation.

## E. Student Eligibility

Applicants are required to indicate whether or not they are full-time students on the tenant certification form.

- i. WHEDA requires that HTC Form 800, "Student Certification Form" (or an equivalent form) be completed for all full or part-time students.
- ii. A full-time student is any individual who is, has been, or will be attending classes at an educational institution or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization or of a state or political subdivision of a state during at least five months of the taxable year in which the individual occupies the unit. The five calendar months need not be consecutive.
- iii. In general, an educational organization (institution) is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupil 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. The determination of student status full or part-time is based on the criteria used by the educational institution the student is attending.
- iv. If a single applicant/occupant or all the applicants/occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless one of the following criteria is met:
  - a. A student is married and *entitled* to file a joint tax return;<sup>1</sup>
  - b. A student is receiving assistance under Title IV of the Social Security Act;

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<sup>1</sup> Revenue Ruling 2013-17: The exception under IRC §42(i)(3)(D)(ii)(II) for students who are married and entitled to file a joint return applies to married same-sex couples who are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex, even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. This exception does not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar form relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term "marriage" does not include such formal relationships.

- c. A student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws; or
- d. A student is a single parent with children and such parent and children are not dependents (as defined in IRC section 152) of another individual (other than a parent of such children).
- e. A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act.

An applicant claiming any of the exceptions must be able to provide documentation to prove that status.

- v. If a previously qualified low-income household changes due to any tenant becoming a full-time student, the household must meet one of the criteria described above in order to remain eligible under the Program rules. If none of the criteria are met, the unit will be considered a non-qualifying (market) household.

## **F. Household Size**

Knowing the actual number of persons in the household is necessary for determining the maximum allowable income of a household. It is also necessary for determining maximum rent limits in pre-1990 projects, where maximum rent limits are based on household size, not number of bedrooms.

The following must be noted in determining household size:

- i. In the case of a pregnant woman, the unborn child is included in the size of the household and for purposes of determining the maximum allowable income. A household in the process of adopting a child is treated the same as a pregnancy. (See Section 5.10 B. for additional requirements.)
- ii. A live-in care attendant is included for the purpose of determining the appropriate size unit for the household but is not included for the purpose of determining the maximum allowable income. (See Section 5.10 A. for additional requirements.)

- iii. Foster children and foster adults are included for the purpose of determining the appropriate size unit for the household but not for determining the maximum allowable income according to HOTMA guidance. Under HOTMA foster children and foster adults' income is excluded from the family's calculation of annual income. In addition, payments received for the care of foster children and foster adults are excluded as income

### **3.4 Rules Governing Units after Occupancy of Qualified Low-Income Tenants**

#### **A. Annual Recertification of Income**

Owners are required to recertify each low-income household at least annually. The recertification process is identical to the initial certification in terms of documenting household composition, income and student status. (See 5.8 of this manual for further information on recertification.)

Failure to recertify a household within 365 days of the last certification date is a reportable violation to the IRS. A late recertification will be corrected when a household vacates the unit, or can be corrected by performing a recertification of the household. There are two options when performing a late recertification.

- i. A recertification can be performed using current income and asset sources and current income limits. The unit could be out of compliance on the date the recertification was due and back in compliance on the date the tenant signs the recertification.
- ii. A retroactive recertification can be performed which completely and clearly documents the sources of income and assets *that were in place at the time the recertification should have been completed* and applies income limits that were in effect on that date. The unit would be out of compliance on the date the recertification was due, and back in compliance on the date the tenant signs the recertification. While the recertification has been performed retroactively, the recertification documents should be dated with the current date. All the adult members of the household must sign the recertification using the current date. The recertification documents must not be backdated. The advantage of the retroactive recertification is that the owner may avoid violating the Available Unit Rule.

When reporting recertifications on the Unit Status Reports (Procorem), enter the later of the effective date or date all adult members of the household signed the Tenant Income Certification.

With passage of HERA in 2008, annual recertifications are no longer required for projects that were allocated and established themselves as 100% low-income projects. IRS Form 8609 Line 8b and the 8609 attachment indicates which BINs are identified as separate projects. All other program rules remain in effect, including annual certification of student status and household composition.

Projects that are 100% low-income and select the Average Income Test (AIT) will follow the same recertification requirements of other 100% projects.

## B. Available Unit Rule<sup>2</sup>

When the income of a qualified household increases above 140% of the current maximum income amount (over-income unit) and a building is at or below its applicable fraction, the Available Unit Rule (AUR) goes into effect.

When the AUR is in effect, the next available unit of comparable or smaller size in that building must be rented to a qualified low-income household (IRC §42 (g)(2)(D)(ii)(1994). All comparable or smaller sized units must be rented to qualified tax credit households until the percentage of low-income units in the building equals the applicable fraction on which credit is based.

If the AUR is adhered to, the over-income units are still considered qualified units and are included in the calculation of the applicable fraction so long as the units remain rent restricted.

If the AUR is violated, **all comparably sized or larger over-income units to the market-rate move in would lose their status as low-income units** and are counted in the building's fraction as market-rate. All units causing an AUR violation will be reported to the IRS as being out of compliance.

### i. Key Concepts of the Available Unit Rule Include:

- a. In a project containing more than one low income building, the AUR applies separately to each building.
- b. A household whose income rises above 140% of the current income limit may still be considered a low-income household as long as the rent remains restricted and the next available unit(s) is rented to qualified low-income households.
- c. All comparable units that are available or that subsequently become available in the same building must be rented to qualified residents in order to continue treating the over 140%-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance.
- d. If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over 140%-income units within the same building for which the available unit is comparable or *smaller than the over-income unit(s)* lose their status as low-income units.
- e. Comparable or smaller unit is defined in §1.42-15 as “a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent determining whether a

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<sup>2</sup> The terms Next Available Unit Rule (NAUR) and Available Unit Rule (AUR) are synonymous and can be used interchangeably.

residential unit *is* comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.” Since a comparable unit may need to be identified before the end of the year when the qualified basis is determined, an owner may consider a residential unit with similar square footage and amenities to be a comparable unit.

- f. A unit is not available for purposes of the AUR when the unit is not available for rent due to a contractual arrangement or reservation that is binding under local law.
- g. When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit.
- h. It is the intent of the Available Unit Rule to replace all over 140%-income households with new qualified households as available units are rented.
- i. Annual Income Recertifications after July 30, 2008 are no longer required for 100% allocated projects. For purposes of applying the Available Unit Rule *only*, all households documented as initially income-qualified households are treated as initially income-qualified as long as the owner *demonstrates due diligence* when completing the initial income certification. The determination of whether a tenant qualifies for purposes of the low-income set-aside is made on a continuing basis, both with respect to the tenant’s income and the qualifying income for the location, rather than only on the date the tenant initially occupies the unit. Failure to rent the next available unit as a rent-restricted unit reduces the low-income building’s qualified basis to zero unless the owner can document which units are not over-income units.
- j. Once the Available Unit Rule has been triggered, the noncompliance can be corrected by renting any combination of market rate units, over-income units, and out of compliance low-income units as rent restricted units to income-qualified households until the applicable fraction upon which the credit amount is based is restored. The applicable fraction can also be restored if:
  - 1) The tenant’s income decreases to an amount below 140 percent of the income limit in place, or
  - 2) The AMGI increases to an amount, such that 140 percent of the income limit is more than the tenant’s income. (Note: a recertification of income may be necessary to determine current income).

## ii. Buildings with Special Set-Aside Units

As stated previously in Section 3.1 B., some projects receive additional points in the scoring of the tax credit application for targeting lower-income

households. Special set-aside units refer to those units with lower income and rent limits than those in the general set-aside (50% or 60% of CMI). It is necessary for on-site management agents or those responsible for income certifying households to be aware of any special income and rent requirements that exist for the properties they manage.

Regarding the Available Unit Rule, households in special set-aside units whose income increases above 140% of the income limit will no longer count towards the special set-aside. The unit will be counted toward the general set-aside requirement (50% or 60% of CMI). Reasonable attempts must be made to locate an existing household that qualifies for the special set-aside or rent the next available unit to a household that qualifies for the special set-aside. It is not necessary under the special set-aside requirements to consider the size of the unit.

It is in the owner's best interest that the lease agreement contains language allowing rent adjustments due to an increase of household income.

### **iii. Projects that select Average Income Test**

#### **a. The addition of the Average Income Test (AIT) made some changes to the application of the Available Unit Rule (AUR)** Over-income

- 1) For units designated with an imputed income of 20%-60% CMI, an over-income household is defined as a household whose income now exceeds 140% of 60% CMI.
- 2) For units designated with an imputed income of 70% or 80% CMI, an over-income household is defined as a household whose income now exceeds 140% of the 70% CMI or 80% CMI, respectively.

- b. If you have multiple units that are over-income with different imputed designations, the order in which you rent available units is not significant. Example: if you have over-income units with imputed designations at 30% and 70%, it does not matter if you rent the next available unit to a household with designated income at 70% prior to renting to a 30% household, and vice versa.

### **C. Unit Vacancy Rule**

The Unit Vacancy Rule is applied on a project basis, as defined on IRS Form 8609, Part II, Line 8b and the required attachment if the Line 8b election equals "Yes". (See additional information under Chapter 4.4 A). A building is considered in compliance when the current applicable fraction is at or above the first year's fraction. It is the intent of the Unit Vacancy Rule for management to actively market the project's low-income units and to rent to low income households prior to renting to market rate. If the owner fails to market vacant low-income units, the owner has violated the General Public Use Rule.

Under the Unit Vacancy Rule (UVR) if a building is at or below its applicable fraction and a tenant vacates a qualified unit, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualified low-income household before any units of comparable or smaller size in the project are rented to non-qualifying (market) tenants.

When a qualified low-income unit becomes vacant and reasonable attempts are being made to rent that unit, the unit will continue to be included as a qualified low-income unit for meeting the minimum set-aside and in calculating the applicable fraction of the building, so long as the requirements of the UVR are adhered to (26 CFR §1.42-5(c)(ix))

Reasonable attempts to rent a vacant unit are based on facts and circumstances, and may differ from property to property depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. (See IRS Revenue Ruling 2004-82, A-9). The IRS has provided limited guidance as to what constitutes "reasonable attempts" in regard to the UVR requirements. Owners and management agents must document all efforts to rent to a qualified low-income household.

If the UVR is violated, all vacant units of comparable or larger size to the new market move-in that were previously occupied by qualified households lose their status as low-income. A unit is not available for purposes of the UVR when the unit is not available for rent due to a contractual arrangement or reservation that is binding under local law. (See IRS Revenue Ruling 2004-82, A-9), §1.42-15(c) for further information.)

Vacant units that are not available for rent because the units are not prepared for immediate occupancy are reported as unsuitable for occupancy under Category 11c.

The noncompliance is corrected when a sufficient number of vacant units in the project are rented to qualified low-income households to restore the Applicable Fraction.

## D. Examples of Minimum Set-Aside, AUR and UVR Violations

Bluff Manor Apartments is a one-building tax credit project consisting of 10 units of equal size. Units 1 through 5 are rented to qualifying low-income tenants; Units 6 through 10 are rented to market-rate tenants. The owner chose the 40/60 set-aside election. At the end of the first year for which credit was claimed, the owner established an applicable fraction of 50% (5 of 10 units).

**Example 1:** Units 1 and 2 are recertified; the income of the tenants in both of these units has increased above 140% of the county median income limit. At the same time, Unit 6 vacates and a new market-rate tenant moves in. Several violations have taken place.

- i. The **Available Unit Rule** went into effect when Units 1 and 2 were recertified and remained in effect when the vacancy in Unit 6 occurred. Since Unit 6 was rented to a market-rate household, the AUR has been violated.
- ii. As soon as the market-rate household moved into Unit 6, Units 1 and 2 changed to market-rate status. Therefore, seven units are now market-rate units and cause the applicable fraction to be 30%, thus violating the minimum set-aside rule.
- iii. Reportable violations include the Minimum Set-Aside, Qualified Basis, and Available Unit Rule.

**Example 2:** Qualified low-income Units 1, 4, and 5 vacate. Unit 2 was recertified with income that exceeded 140% of the qualifying income. Unit 4 is rented first, to a market-rate household.

- i. The **Unit Vacancy Rule** went into effect when low-income Units 1, 4 and 5 vacated. Since Unit 4 was rented to a market-rate household, the UVR has been violated.
- ii. As soon as the market-rate household moved into Unit 4, Units 1, 4, and 5 are changed to market-rate status. Therefore, eight units are now market-rate units and cause the applicable fraction of the building to decrease to 20%. The project has fallen below the minimum set-aside and its established applicable fraction of 50% and has violated the Unit Vacancy Rule requirements.
- iii. Reportable violations include the Minimum Set-Aside, Qualified Basis, Available Unit Rule, and Unit Vacancy Rule.
- iv. "Reasonable attempts" was not a consideration in this example since a vacant low-income unit was rented to a market-rate household and the building fell below the Applicable Fraction prior to application of the Unit Vacancy Rule.

**Example 3:** Qualified low-income Units 1, 4, and 5 vacate. Market-rate Unit 8 also vacates. The management firm has been actively marketing the low-income units by placing advertisements in local newspapers and rental

publications, placing a for-rent sign on their property, and other activities which are documented. Unit 8 is rented first to a market-rate household.

- i. No reportable violation occurred. Units 1, 4, and 5 were not cited in an 8823 because the management company had documentation to support they were employing reasonable attempts to rent the units to a qualified household.

**Example 4:** Market rate Unit 10 vacates on June 1. On June 28, the owner enters into a contractual arrangement or binding reservation with a market rate household for Unit 10. On July 1, qualified low-income Unit 2 becomes vacant. The market rate household moves into Unit 10 on July 15.

- i. No reportable violation occurred due to the contractual arrangement or binding reservation that was in place prior to the low-income unit being vacated.

## **E. Transfers of Existing Tenants to another Unit**

A household may move to another unit within a low-income project, as defined by IRS Form 8609 Part II, Line 8b and attachment.

### **i. Transfer within the Same Building**

Effective September 26, 1997, a qualified household may transfer to a different unit in the same building of the project. When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. (See 26 CFR §1.42-15)

### **ii. Transfer to A Different Building**

Should an existing qualified household wish to transfer to another unit in a different building of the project, the status of the household must be considered. If the household is over-income, (>140% CMI), the household may not transfer to a different building. Households certified as under 140% CMI - or in the case of a 100% development in which a recertification of income is not performed - may transfer. The newly occupied unit adopts the status of the vacated unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

## **F. Annual Rent Increases**

Beginning with projects awarded from the 2023 Qualified Allocation Plan (QAP) and future allocations, annual increases in rent for residents not covered by another program, such as Section 8 or Rural Development, cannot exceed 5% per year. WHEDA staff may grant exceptions to this limit as necessary to reflect actual cost increases. Exception requests, together with supporting cost and rent documentation, must be submitted at least ninety (90) days in advance of the desired effective date of any requested rent increase in excess of the limit.

## **G. Rent Adjustments during the Lease Term**

WHEDA will not allow rent increases mid-term of a lease, other than month to month agreements. Owners and agents that exercise rental increases mid-term may result in an adverse impact on future tax credit applications, WHEDA loans, and management agent certifications.

## 4. Compliance Monitoring Procedures

### 4.1 General

This section of the manual outlines WHEDA's procedures for monitoring all projects receiving credit. Monitoring is designed to determine if the owner is in compliance with federal and state regulations and with WHEDA policies. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit.

Monitoring each project is an ongoing activity that extends throughout the credit compliance period (15 years) and for an additional 15 years in the Extended Use Period (See Section 8 "Extended Use Period" for monitoring requirements). WHEDA is required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of the owner to certify to compliance, no later than 45 days after the period of time allowed for correction. WHEDA is required to notify the IRS whether the noncompliance has or has not been corrected (26 CFR §1.42-5 (1994)). (See Section 4.9 Noncompliance, for detailed procedures.)

The compliance monitoring process is made up of the following components:

- The Compliance Manual
- Compliance Training Workshops
- Initial Information
- The Unit Status Report (USR)
- Annual Owner's Certification of Continuing Program Compliance
- Utility Allowance Documentation
- Compliance Forms
- WHEDA Tenant File Reviews and On-Site Physical Property Inspections
- Tenant File Review Exemptions and Special Circumstances
- Record Keeping and Record Retention
- Noncompliance
- Monitoring Fees

### 4.2 The Compliance Manual

WHEDA will provide this compliance manual on WHEDA's Internet site ([www.wheda.com](http://www.wheda.com)). The manual may be printed or viewed on-line. The manual describes WHEDA's compliance monitoring procedures that the owner and

management agent must follow. Updates to the manual will be made as changes to the law and/or WHEDA's procedures occur.

The required reporting and certification forms that must be used and submitted to WHEDA, as well as sample tenant eligibility forms are also available on WHEDA's Internet site.

### **4.3 Compliance Training Workshops**

Although attendance is not mandatory, we recommend that personnel who are directly involved in the ownership or management of the project attend a workshop, preferably before a building is placed-in-service. Training is available through a number of outside companies who specialize in training on affordable housing programs. WHEDA may also offer a limited number of workshops.

The purpose of the training is to provide instruction on:

- A sampling of the basic IRS Code Compliance requirements
- IRS final regulations for compliance monitoring
- WHEDA policy and procedures for compliance reporting
- WHEDA policy and procedures for Tenant File Reviews and On-Site Physical Property Inspections
- Equal housing opportunity and fair housing regulations and policies
- Specific information on the following low-income tenant eligibility requirements:
  - Income and Rent Limits
  - Definitions of Income and Assets
  - Certification of Tenant Income and Assets
  - Verification of Tenant Income and Assets
  - Leases
  - Student Eligibility
- Reporting Violations of the Tax Credit Program
- Other owner responsibilities, including notifying WHEDA of any change in management or ownership of the project.

### **4.4 Initial Information**

When a final allocation (IRS Form 8609) is issued, the owner is required to begin submitting required documentation, as listed below, to WHEDA by no later than the specified date in the monitoring welcome letter. The one exception is the copy of the IRS Form 8609, as listed below. (See HTC Form 001, "Report Submission Instructions" for the reporting schedule.)

A late fee of \$10.00 per unit will be assessed for each document that is not received by the due date. Failure to supply the required documentation by the due date will be considered noncompliance. The owner will have 30 days from the date of notification in which to submit the required information and pay the assessed late fee. WHEDA may grant an extension to this time period if it is determined that there is good cause based on a written request with appropriate documentation sent by the owner and/or management agent by the date the report is due.

The following are due following the issuance of the final allocation, according to the schedule listed on HTC Form 001:

#### **A. IRS Form 8609**

A copy of the first year IRS Form 8609 filed for each building in the project must be submitted no later than May 15 of the year following the placed-in-service date. Please note that the form must be a copy of the form filed with the IRS; the "First-Year Certification" portion (Part II) must be completed, and the owner's signature included.

Each building is considered a separate project under section 42(g)(3)(D) unless, before the close of the first calendar year in the project period (defined in section 42(h) (1)(F)(ii)), each building that is (or will be) part of a multiple building project is identified by attaching the statement described below.

The statement must be attached to this Form 8609 and include:

- The name and address of the project and each building in the project,
- The BIN of each building in the project,
- The aggregate credit dollar amount for the project, and
- The credit allocated to each building in the project.

Notwithstanding a checked "Yes" box on line 8b, failure to attach a statement providing the above required information will result in each building being considered a separate project under section 42(g)(3)(D). (See IRS Form 8609 Instructions).

- i. Please exercise caution in this election as the election will affect the calculation of the minimum set-aside requirement (see Minimum Set-Aside Election – Chapter 3.1 A), which is a project-based test, as well as other project-based rules. These rules include the establishment of the Income Limit, Unit Vacancy Rule, Available Unit Rule, Recertification, AIT Qualified Grouping, and AIT Applicable Fraction Grouping. It is recommended that if owners will be defining a project as consisting of multiple buildings that all of the buildings will have elected to begin the credit in the same credit year. If the owner has elected to defer the credit until the year following the placed-in-service date, WHEDA must be notified in writing by May 15 of the year following the placed-in-service date. Additionally, the owner must submit a copy of the filed 8609 the following May.
- ii. If the applicable fraction/qualified basis is increased (and additional credit taken) in any year following the first year of the tax credit period, WHEDA

requires a copy of the IRS Form 8609-A to be submitted by May 15 of the year following the year for which the additional credit was taken.

- iii. If the allocated project has more than one building or BIN assigned and IRS Form 8609 Part II, Line 8b is checked “Yes”, then a separate statement identifying all of the building groupings must be attached. (See above for additional guidance).

## **B. Building and Unit Information – HTC Form 202 & Procorem**

The following information is required on Form 202:

- i. Project Number
- ii. Building address and Building Identification Number (BIN);
- iii. Assigned Unit numbers for each building including:
  - Square footage for each unit;
  - Number of bedrooms for each unit;
  - Handicap accessibility for each unit; and
- iv. The designated manager's unit, office, model unit or police substation.

HTC Form 202 is entered into Procorem at the time the first Unit Status Reports are due. Refer to the Procorem Guides on our website ([www.wheda.com](http://www.wheda.com)) for instructions on [using](#) Procorem.

Please submit Form 120 “Full-Time Resident Manager Unit Designation Certification” for any manager’s (employee) units designated on Form 202.

## **C. HTC Form 110**

HTC Form 110 “Compliance Monitoring Initial Information” is no longer a required form. The date(s) that each building met its minimum set-aside requirement is determined by the USR report and the contact information for the management agent and owner is included in the Delegated Administrators Agreement (DAA). If not submitted previously this information is due with the initial reports requested on the welcome letter.

## **D. Utility Allowance Documentation**

**Initial Compliance Documentation:** For new projects, as of March 1, 2004, WHEDA requires that documentation be submitted from placed-in-service date. The HTC Form 205 Parts A & B must be submitted along with any contemporary backup documentation from the appropriate utility allowance source to support the calculation as of the placed-in-service date. Building owners are not required to review or implement new utility allowances until the building has achieved 90 percent occupancy for a period of 90 consecutive days, OR the end of the first year of the credit period, *whichever is earlier*.

Following this initial period, a new utility allowance must be reviewed according to procedures identified in §1.42-10 and Chapter 4 of this compliance manual.

Allowances based on HUD, RD or the PHA must be in effect within 90 days. Allowances based on Utility Provider Models must be in effect within 150 days.

**Example 1: HUD, RD or PHA Allowance**

If the review is completed at the end of the first credit year, the HUD, RD or PHA rates in effect on December 31<sup>st</sup> of the first year of the credit period are used. Consequently, the new allowance must be in effect by April 1.

**Example 2: Utility Provider Model**

If the review is completed at the end of the first credit year, the consumption rates as of December 31<sup>st</sup> of the first year of the credit period are used. Consequently, the 90-day period will begin no later [than] March 1 of the year subsequent to the first year of the credit period. The new allowance must be in effect no later than June 1 following a 60 day documentation period and 90 day notification period according to the procedures outlined in Chapter 4.5 D of this manual..

HTC Form 205E is also required to identify the effective month for future utility allowances based on utility provider documentation. Owners or agents may determine the effective month. However, Utility Allowances based on documentation obtained from the PHA must be effective at the building within 90 days of the published or PHA effective date. Therefore the PHA schedule will determine the effective month. Note: a building using both a utility provider schedule and PHA allowance may have different effective months based on the source of the allowance.

See Section 4.5 D. of this manual for further information on utility allowances.

**E. Owner's Certificate of Continuing Program Compliance**

As required by the IRS, an Owner's Certificate of Continuing Program Compliance (HTC Form 100) must be submitted annually to WHEDA. The Certification covering the period from the Placed-in-Service date through the preceding year is due with the first report due date for the project. See Section 4.5 A. of this manual for further information on the Owner's Certification.

**F. Unit Status Reports (USR)**

An initial Unit Status Report must be submitted for each building in the project. The USR must be submitted to WHEDA by the due date indicated on the welcome letter. (See HTC Form 001 for the reporting schedule.)

All events for the project that occur on or after the placed-in-service date are reportable. The initial report must include all events for all units within the project. This includes move-in or move-out information for all low-income and all market households, as well as recertifications or adjustments for low-income households and unit transfers.

The Housing & Economic Recovery Act of 2008 (H.R. 3221 aka HERA) published July 30, 2008 now requires Housing Finance Agencies (HFAs) to collect specific data on residents of Housing Credit properties and submit reports to HUD. Owners/Agents are required to collect data for all household members, including name, relationship to household, date of birth, race,

ethnicity, last four digits of social security number and disability status for tax credit properties in the initial 15-year compliance period or in the extended use period. Owners/Agents will be required to submit this information with the Unit Status Reports (USRs). Household members have the right to decline to provide information on race, ethnicity, or disability status.

The Unit Status Reports may be submitted HTC electronically in an XML format developed by the National Affordable Housing Management Association (NAHMA) working group or manually on-line through Procorem.

## **G. Compliance Monitoring Fees**

As Wisconsin's housing credit agency, WHEDA is required by law to conduct compliance monitoring on all projects that have been placed-in-service for which the Credit is or has been allowable at any time since the inception of the Program in 1987. Fees are charged to cover staff, technology, and other associated costs necessary to conduct compliance monitoring.

Fees are charged annually on a per unit basis for **all** units within each project throughout the entire compliance period. Fees are charged on all units (including manager's units) because it is necessary for WHEDA to monitor the minimum set-aside requirement on a project basis, the applicable fraction of low-income units to total units, and rental of the next available unit to a qualifying household.

The initial compliance-monitoring fee includes each year from the placed-in-service date through the current year and may be prorated depending on the month that the project placed-in-service. For Acquisition/Rehabilitation projects Placed-In-Service after January 1, 2025, if the property is vacant at the time of acquisition, monitoring fees may be prorated as of the earliest Certificate of Occupancy (CO) date during the rehabilitation phase. Otherwise, proration may be from the earliest Placed-In-Service date of the Acquisition.

### **4.5 Ongoing Reporting Requirements**

A late fee of \$10.00 per unit will be assessed for each document or fee that is not received by the due date. Failure to supply the required documentation by the due date will be considered noncompliance. The owner will have 30 days from the date of notification in which to submit the required information and pay the assessed late fee. WHEDA may grant an extension to this time period if it is determined that there is good cause based on a written request sent by the owner and/or management agent by the date the report is due.

## A. Annual Owner Certification of Continuing Program Compliance

As required by the IRS, an Owner's Certificate of Continuing Program Compliance (HTC Form 100) must be submitted annually to WHEDA. The Certification is due no earlier than January 1 and no later than January 31 of each year. The report is also due if there is a change in the General Partnership. The period will cover from the first of the year to the date of sale.

The form must be completed in its entirety. Following is a partial list of items that the owner is required to certify has been in compliance **for the preceding year**:

- Low-income rent levels;
- Qualified low-income tenant incomes;
- Units being suitable for occupancy and in compliance with local health, safety, and building codes;
- Units being available for the general public on a non-transient basis;
- All tenant facilities which are included in eligible basis are and have been available to all tenants, without fees, on a comparable basis;
- No change in eligible basis and/or the applicable fraction;
- No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project;
- 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); and
- All other applicable federal and state laws and WHEDA regulations, policies, and procedures.

An owner's original signature and date of signature is required on the HTC Form 100. Only the owner must sign and date this form.

Failure to supply a legible and complete annual certification is considered by IRS regulations to be noncompliance. If the owner's certification discloses noncompliance with the requirements under IRC §42, the noncompliance must be reported to the IRS using Form 8823 and identifying the appropriate category of noncompliance. The noncompliance date is the first day of the reporting year for which the information was due. Example: Owner/agent does not submit HTC Form 100 for the calendar year 2009. The noncompliance date is January 1, 2009. .

## B. Unit Status Reports

After the initial Unit Status Reports have been sent to WHEDA, subsequent reports are to include **only the units where changes have occurred during the current reporting period**. This includes move-in or move-out information

for all low-income and all market households, as well as recertifications or adjustments for low-income households.

**i. Unit Status Reports**

Annual Unit Status Reports must be submitted for existing tax credit projects. At WHEDA's discretion, some properties will be required to submit more frequent reports. WHEDA will notify these properties if required.

Annual reports are due by January 31 of the compliance period. If this date falls on a week-end the due date will be on the next business day.

The Unit Status Reports may be submitted electronically through Procorem's Unit Status Report Portal in an XML format developed by the National Affordable Housing Management Association (NAHMA) working group or manually on-line through Procorem. (Several companies offer software programs with the ability to create electronic reports meeting WHEDA's requirements).

The Housing & Economic Recovery Act of 2008 (H.R. 3221 aka HERA) published July 30, 2008, now requires Housing Finance Agencies (HFAs) to collect specific data on residents of Housing Credit properties and submit reports to HUD. Owners/Agents are required to collect data for all household members, including name, relationship to household, date of birth, race, ethnicity, last four digits of social security number and disability status for tax credit properties in the initial 15-year compliance period or in the extended use period. Owners/Agents will be required to submit this information with the Unit Status Reports (USRs). Household members have the right to decline to provide information on race, ethnicity, or disability status.

**ii. Submitting Corrections for Past Reporting Periods**

When submitting corrected information from past reporting periods, contact the HMO assigned to the property. Depending on the status of the project, reporting period, timing of compliance reports and other factors, the HMO may require the information be submitted in writing via e-mail or upload to Procorem. If the corrections are in response to a compliance letter, you must first respond to the compliance letter and indicate in your letter necessary corrections for Procorem. Please note that email may not be a secure method of reporting confidential or sensitive information. Upon review, the HMO will enter corrections, as needed, or reopen the compliance period for you to enter the identified corrections.

**C. Utility Allowance Documentation**

Effective May 2, 1994, the IRS requires that utility allowances be set according to 26 CFR §1.42-10, as amended by T.D. 9420, 73 FR 43867, July 29, 2008. Please read this final ruling carefully for specific information regarding the appropriate documentation required.

When utilities are paid directly by the tenant, a utility allowance must be used to determine maximum eligible unit rents. If all utilities are paid by the owner, no utility allowance is required.

All utility allowance information must be updated at least annually, or when rates change, and kept as part of the development's records. These records will be reviewed by WHEDA in conjunction with the file reviews.

The review must take into account any changes to the building such as any energy conservation measures [that] affect energy consumption and changes in utility rates.

Owners may use different methods for computing the allowances for different utilities.

Owners are not prohibited from changing methods used for calculating a utility allowance in order to most accurately estimate the utility allowance.

However, once an owner chooses a method for determining the utility allowance for a particular period, that method cannot retroactively be changed to another method in order to avoid gross rent overcharges that may be discovered. Changes in methods can only occur during the procedures outlined for calculating the utility allowance

Rural Development (RD) projects must use RD utility allowances and HUD projects must use HUD utility allowances.

If any tenant/unit in the building receives a HUD Housing Assistance Voucher, use the applicable PHA utility allowance established for the Section 8 Program for those tenants/units.

If a building is not regulated by either HUD or RD, owners/agents have the choice of using the PHA utility allowance or an allowance based upon utility provider information; as listed below.

**HUD/RD:** Current projects that are utilizing HUD or RD utility schedules are no longer required to send a copy of HTC Form 205 Part A & B Utilities Information and/or any of the backup documentation to WHEDA. **However, it is important to note that HTC Form 205 Part A & B must still be completed annually and attached to the HUD/RD documentation, or when rates change, and kept as part of the development's records. These records will be reviewed by WHEDA in conjunction with the file reviews.**

**PHA:** Current projects that are utilizing PHA utility schedules are no longer required to send a copy of HTC Form 205 Part A & B Utilities Information and/or any of the backup documentation to WHEDA on an annual basis. **However, it is important to note that HTC Form 205 Part A & B must still be completed annually and attached to the PHA documentation, or when rates change, and be kept as part of the development's records. These records will be reviewed by WHEDA in conjunction with the file reviews.**

In addition, all PHA documentation must be received by the owner/agent and be effective within 90 days of the PHA effective date. If there has been no change in the PHA's utility allowance, this must be documented by the PHA.

**Utility Provider Models:** Current projects that are utilizing the Utility Company Estimate Model, HUD Utility Schedule Model or Energy Consumption Model must submit HTC Form 205 Parts A & B, documents provided by the local utility company supporting the calculations, documents generated from the HUD Utility Schedule Model or documents provided by an engineer to support the calculations. A copy of the 90-day notice to residents is required as well as a photocopy of the engineer's current license, if applicable.

Projects using any of the Utility Provider Models must notify WHEDA and all building residents in writing 90 calendar days prior to the utility allowance effective date. All supporting documentation for the utility allowance must be dated within 60 days of the submission to WHEDA.

Owner must pay for all costs incurred in obtaining these estimates and providing them to both WHEDA and building residents. WHEDA may require additional information from the owner during the 90-day period.

1. Utility Company Estimate Model: The estimate obtained from the local utility provider must provide the **estimated** cost of the utilities paid by the tenant. The estimated cost is based on units of similar size and construction for the geographic area in which the building containing the unit is located. Actual utility company usage data and rates may be used provided:
  - a. The data used to compute the estimate is limited to the building's consumption data for a 12-month period ending no earlier than 60 days prior to the date the utility allowance will change. For newly constructed or renovated buildings with less than 12 months of consumption data, consumption data for the 12-month period for similarly sized and constructed units in the geographical area in which the building is located will be used.
  - b. The utility rates used to compute the estimates must be the rates in place 60 days prior to the date the utility allowance will change.

*Owners submit to WHEDA:* HTC Form 205 Parts A & B, documents provided by the local utility company supporting the calculations, and the notification sent to building residents. Documentation is due to WHEDA 90 days prior to utility allowance effective date.

All utility documents are due to WHEDA 90 days prior to effective date.

**Example of acceptable documentation from a utility provider:**

**Your Local Utility Company**

**500 Public Avenue**

**Any City, WI 53701**

December 12, 2004

Dear Agent/Owner:

The estimated monthly utility usage for one and two -bedroom apartments in Any City, WI are as follows:

1-Bedroom	Gas Heat	\$34.00
	Electric	<u>\$15.00</u>
		\$49.00

2-Bedroom	Gas Heat	\$42.00
	Electric	<u>\$18.00</u>
		\$60.00

This is a normal estimate for units of similar size and construction for Any City's geographic area as serviced by Your Local Utility Company.

Sincerely,

Benjamin E. Franklin

Account Representative, Your Local Utility Co.

2. HUD Utility Schedule Model: Calculate utility estimates using the “HUD Utility Schedule Model” found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/portal/resources/utimodel.html> (or successor URL).

*Owners submit to WHEDA:* HTC Form 205 Part A & B, HUD Form 52667 “Allowances for Tenant-Furnished Utilities and Other Services”, “Location” and “Tariffs” generated from the HUD Utility Schedule Model (with supporting documentation), and the notification sent to building residents. In the event the new utility allowance is a \$5.00 or more change from the previous year’s calculation an explanation must be provided with the submission.

3. Energy Consumption Model: Utility consumption estimates must be calculated by a properly licensed engineer using an energy consumption model which 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 engineer and building owner must not be related (within the meaning of section 267(b) or 707(b)).

For newly-constructed or renovated buildings with less than 12 months of consumption data, the engineer may use consumption data for the 12-month period of units of similar size and construction within the geographic area in which the building containing the units is located.

*Owners submit to WHEDA:* HTC Form 205 Part A & B along with the utility calculation documentation, a copy of the engineer’s current license, and the notification sent to building residents. In the event the new utility allowance is a \$5.00 or more change from the previous year’s calculation an explanation must be provided with the submission.

**Example of a timeline for Utility Allowance with an effective date of August 1, 2011:**

- March 4, 2011 – May 2, 2011 (60 calendar days): Obtain utility data for the previous 12 months and calculate the utility allowance.
- No later than May 3, 2011 (90 calendar days): Owner notifies WHEDA and all building residents of utility allowance.
- May 3, 2011 – July 31, 2011: WHEDA reviews and approves utility allowances.

Updated utility allowances must be reported accurately through Procorem Unit Status Reports when any of the following events take place:

- When the gross rents in a building or project change due to a change in the utility allowance.
- When there is a change in who pays the utilities.
- When utility allowances have been updated by HUD, RD, the local Public Housing Authority (PHA), or the utility provider.

Changes in utility allowances are recorded as Adjustments or Updates on the Unit Status Report, as discussed in Section 5.9 of this manual.

**Cable Television and Internet Cost:** Are specifically excluded (in addition to telephone) from utility allowance calculations.

**Understated Utility Allowances:** If WHEDA determines an owner has understated the utility allowance for a building, and as a result the building's units are not rent-restricted units (under section 42(g)(2)), WHEDA is required to report the noncompliance to the IRS using IRS Form 8823.

**Record Retention:** The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records.

**Low-income housing \*units\* are considered out of compliance when gross rent exceeds the maximum gross rent limit.** The following examples are errors that may result in noncompliance.\*

1. The appropriate utility allowance is not used. \*For example, an owner uses a local utility company's estimate for a HUD-regulated building.\*
2. The utility allowance is not properly calculated. \*For example, an owner used a PHA schedule to determine the utility allowance for all-electric units, but failed to include the cost of electric heating. When the cost of electric heating is added to the utility allowance, gross rent exceeds the limit.
  1. The owner failed to update rents for a revised utility allowance after the 90-day period.

**Example 1: Increased Utility Allowance Causes Gross Rent to Exceed Limit**

The maximum gross rent limit is \$500, but the owner charged \$445 rent and a \$50 utility allowance for a total of \$495. The utility allowance increased to \$60 on April 1, 2010, but the owner did not adjust the rent. The owner is charging \$445 rent and a \$60 utility allowance for a total of \$505, which exceeds the gross rent limit of \$500. The owner is out of compliance beginning July 1, 2010; i.e., an owner has 90 days to implement new utility allowances.

Low-income buildings are also considered out of compliance if the owner cannot establish that the rent charged tenants does not exceed the gross rent limit. For the three fact patterns below, there is a presumption that the rent charged the tenant plus the utility allowance will exceed the gross rent limit until otherwise established.

1. Rents are not reduced for a utility allowance when utilities are paid directly by the tenant to the utility provider, even if the rent charged to the tenant is less than the maximum gross rent limit. For example, the gross rent limit is

\$700. The tenant's rent is \$575 and pays the utilities directly to the provider, but the owner cannot provide documentation of the utility allowance computation. The noncompliance date should be determined based on the facts and circumstances; i.e., when the owner ceased using a utility allowance.

2. The owner did not review the basis on which the utility allowance is established at least once during both the prior and current calendar year; i.e., the utility allowances are not current.

#### Example 2: Owner Failed to Review Utility Allowance Annually

An owner reviewed the utility allowance and determined that the allowance was \$100 effective May 1, 2009. The owner was still relying on the \$100 utility allowance when the state agency reviewed the owner's compliance in April of 2011.

The building is out of compliance because the owner failed to review the utility allowance at least once during calendar year 2010. The noncompliance date is December 31, 2010.

3. The owner failed to maintain adequate documentation regarding the computation of utility allowances; without sufficient proof of the amount of the allowance and how it was estimated, there is no way to correctly compute the rent.

#### Example 3: Insufficient Documentation of Computation

An owner reviewed the utility allowance and determines that the utility allowance was \$65 for 2009. The allowance was computed by a licensed professional approved by the state agency using an energy consumption model. Upon review by the state agency during a compliance review, the owner presented a one-page letter from the professional. While the utility allowance amount was disclosed in the letter, the letter was not signed or dated. Further, the letter did not describe the factors considered or the data used.

The state agency could not reasonably determine that the utility allowance was correct. The noncompliance date is December 31, 2009.

A unit is considered back in compliance when the appropriate utility allowance is used and/or the rent charged is reduced and correctly reflects the utility allowance. The date of correction is the date that the rents correctly reflect the utility allowance.

### Example 1: Noncompliance Corrected

The maximum gross rent is \$500. Beginning on March 1, 2003, the owner charged \$450 rent and a \$75 utility allowance; the total rent is \$525. The rent is \$25 over the ceiling. The error was discovered during a state agency's review on April 13, 2004.

The owner immediately reduces the rent charged to \$425 for rents due beginning on May 1, 2004. The effective date of the new rent, or May 1, 2004, is the date the units are back in compliance.

### No Utility Allowance

When an owner does not apply a utility allowance to reduce rent and account for utility costs paid directly by the tenant, the noncompliance can only be corrected by performing an annual review to determine a utility allowance using current information.

1. If the rent paid plus the new utility allowance does not exceed the current maximum gross rent, then the owner is in compliance with the utility allowance requirements and no further action is required.
2. If the rent paid plus the new utility allowance exceeds the current maximum gross rent, the back in compliance date is the date the rents are reduced to reflect the new utility allowances.

### No Annual Review

If the owner has applied a utility allowance, but failed to conduct an annual review, then the noncompliance can be corrected in one of three ways.

1. A retroactive annual review can be performed using information applicable to the last date the annual review should have been performed. Assuming the owner can document compliance with the utility allowance that would have been in place and that the rents were restricted, no further action is required. The owner has clarified the noncompliance and, therefore, Form 8823 should not be filed.
2. A new annual review can be performed using current information. Assuming the owner is in compliance with the new utility allowance requirement and the rents are restricted, the owner is currently in compliance. No further action is required. The owner has clarified the noncompliance and, therefore, Form 8823 should not be filed.
3. In the event that either the retroactive annual review under (1) above or the new annual review under (2) above indicates that the utility allowance needs to be increased, the back in compliance date is the date the rents are reduced to reflect the new utility allowances.

### Insufficient Documentation

When the owner reviewed the utility allowance, but the computation of the utility allowance was not sufficiently documented, the owner should be provided an opportunity to perfect the documentation to the state agency's satisfaction.

1. If the additional documentation is satisfactory and establishes that the owner is in compliance with the utility allowance requirements, then no further action is required since the owner has clarified the noncompliance; i.e., Form 8823 need not be filed.
2. If the owner cannot provide sufficient documentation, then the owner may repeat the annual review for the year in question using the same method and facts as used for the original annual review. If the results indicate that the owner is in compliance with the utility allowance requirement, then no further action is required since the owner has clarified the noncompliance; i.e., Form 8823 need not be filed.

### **Reporting Noncompliance**

Noncompliance will be reported whenever the rent paid by the tenant plus the correct utility allowance exceeds the maximum gross rent limit.

#### **Example 1: Increased Utility Allowance Causes Rent to Exceed Limit**

The maximum gross rent limit is \$500, but the owner charged \$415 rent and a \$50 utility allowance for a total of \$465. The utility allowance increases to \$95 the next year. The owner should reduce the rent at least \$10; i.e.,  $\$405 + \$95 = \$500$ .

However, the owner does not make the adjustment to the rent and is out of compliance; i.e., the low-income units are not rent restricted. The owner is charging \$415 rent and a \$95 utility allowance for a total of \$510, which is more than gross rent limit of \$500.

Noncompliance will not be reported if;

1. Regardless of the error, correcting the utility allowance does not cause the rent to exceed the gross rent limit, or
2. Noncompliance is corrected before the owner is notified of the state agency's review.

The utility allowance requirement is a building-based rule. If the owner is noncompliant, the noncompliance will likely affect all the low-income units in the building. In which case, consideration should be given to whether the owner met the minimum set-aside under IRC §42(g)(1). See Chapter 3.1A.

## **D. Annual Compliance Monitoring Fees**

As described in Sections 4.4 G. and 4.10 of this manual, fees are charged to cover staff, technology, and other associated costs necessary to conduct compliance monitoring. Compliance Monitoring Fees are due by March 15 of each year during the project's compliance period and extended use period.

### **4.6 Compliance Forms**

The following WHEDA forms must be used. No other forms will be considered acceptable.

- HTC Form 100, "Annual Owner's Certificate of Continuing Compliance" (the NCSHA form is equivalent to HTC Form 100)
- HTC Form 202, "Unit Information"
- HTC Form 205 Parts A and B, "Utilities Information"
- HTC Form 205 E, "Utility Allowance Period Election"

These forms may be generated by computer so long as the computer-generated reports duplicate the HTC Forms.

- Unit Status Reports submitted electronically must be in WHEDA's prescribed XML format or manually entered via Procorem.

Forms used for determining tenant eligibility and in meeting certain record keeping requirements listed in Section 4.8 of this manual may be in any format the owner and/or management agent decides to use as long as they incorporate all required information outlined in Section 5 of this manual and other information described in Section 4.8.

Sample forms, including the following, are provided on WHEDA's Internet site for optional use by owners and management agents:

- Tenant Income Certification (HTC Form 300)
- Tenant Income Questionnaire (HTC Form 305)
- Clarification Record (HTC Form 310)
- Employment Verification (HTC Forms 400)
- Social Security Verification (HTC Form 410)
- Self Employed Income Statement (HTC Form 500)
- Child Support Verification (HTC Form 510)
- Public Housing Authority Income Certification (HTC Form 520)
- Under \$5,000/Zero Asset Certification (HTC Form 600)
- Divestiture of Asset Verification (HTC Form 605)

- Asset Verification (HTC Form 700)
- Home/Real Estate Affidavit (HTC Form 705)
- Student Certification Form (HTC Form 800)
- Verification of Unemployment Benefits (HTC Form 900)
- Certification of Zero Income (HTC Form 905)

#### **4.7 File Reviews and On-Site Physical Inspections**

IRS regulations mandate that WHEDA conduct on-site property inspections and perform file reviews for each tax credit project. Additionally, at the time of inspection WHEDA must review any building code violation notices received since WHEDA's last inspection.

Projects may be required to upload documents to Procorem for portions of the on-site review, including tenant files and general property documents. Failure to upload requested documents by the deadline may adversely affect Management and Occupancy Review ratings and management agent certifications.

##### **A. Inspection Schedule**

The regulations mandate that at least once every 3 years, WHEDA must conduct on-site inspections of all buildings in the project and review at least 20 percent of the project's low-income units. We must inspect the units and review the certifications, supporting documentation and rent records for those units. For new projects placed-in-service after January 1, 2001, we must conduct the on-site physical inspection and unit reviews by the end of the second calendar year following the year the last building in the project placed-in-service.

As provided in the Code, WHEDA and Rural Development have entered into a "Memorandum of Understanding" whereby Tax Credit developments financed by RD will be inspected by Rural Development. WHEDA will be provided with the results of the RD reviews.

WHEDA reserves the right to conduct physical reviews at any time based on information received about the property through a phone call, letter, mail, etc.

##### **B. Notification of Review**

During the year a project is scheduled for review:

- i. WHEDA will schedule the inspection date with the owner or management agent.
  - a. The owner and agent will be sent a letter confirming the date and time of the inspection.
  - b. Residents will need to be provided with ample notice that WHEDA will be conducting unit inspections and that their unit may be selected for review.

- ii. When performing an electronic tenant file review, WHEDA will:
  - a. Notify the owner in writing which unit files have been selected for review.
  - b. Request that the owner upload copies of the selected files and documentation to WHEDA and give the date by which the files must be submitted.
  - c. Failure to upload requested documents in the manner requested or by the deadline may adversely affect Management and Occupancy Review ratings and management agent certifications.
- iii. WHEDA requires that records be available in hard copy form for state monitoring purposes during reviews and other monitoring activities; if requested.

### **C. Preparation for the On-Site Physical Inspection**

On the day of the inspection, management or site staff will need to be available to accompany WHEDA during the physical inspection portion of the review.

- i. Appropriate keys must be available to access individual apartments, boiler rooms, janitorial rooms, storage areas, etc.
- ii. Copies of any and all building code violation letters/notices received since WHEDA's last inspection, as well as records regarding those repairs, must be on-site and available at the time of the review.

### **D. Physical Inspection Results**

At the end of the review, WHEDA will leave a copy of the Notice of Critical Violations with the management agent if applicable. The management agent will be responsible to forward a copy to the owner.

WHEDA will send a copy of the Physical Inspection Report to the owner.

- i. For any item cited as a Critical Violation, you will be asked to repair the item within 72 hours and provide WHEDA with written documentation that it has been corrected.
- ii. For any item cited as a Major Violation or Pattern of Minor Violations, you will have 30 days to respond to the potential non-compliance item(s) found. You can choose one of the following ways in which to respond:
  - a. The item was repaired and indicates the date completed.
  - b. The item is not a violation of local code. If documented to WHEDA's satisfaction, then the item will not be considered a violation.
  - c. The item was built to local code when the property was initially constructed and current code allows it under a "grandfather" clause.

If documented to WHEDA's satisfaction, then the item will not be considered a violation.

- d. Extenuating Circumstance: The issue cited was very temporary and was in the process of being fixed at the time of inspection or other reasonable argument. WHEDA may choose to cite the violation as minor or to accept the documentation as satisfactory evidence that no violation occurred.
  - e. The owner agrees that the violation existed but requests that it be considered a minor violation. This might be based on an argument that the item originally should have been classified as minor or it might be based on the owner's ability to cure the item rapidly.
- iii. This letter will serve as the official notice of non-compliance and will begin the 30-day non-compliance cure period. If an item cannot be corrected within the 30-day cure period, the owner must request an extension in writing to WHEDA with an explanation and timeframe for items not cured, repaired or replaced.

#### **E. Tenant File Review Results**

An exit interview will be performed and items of concern will be addressed with the site representative. Results from the tenant file review will be sent to the owner within 30 days of the review. When there are findings of potential non-compliance, this letter will serve as the official notice of non-compliance and will begin the 30-day non-compliance cure period.

### **4.8 Record Keeping and Record Retention**

Owners are required to keep records for each qualified low-income building in the project.

The owner is required to retain the records for each building in the project for at least six years after the due date (with extensions) for filing their federal income tax return for that year. Records for the first year of the credit period must be retained for a minimum of six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of each building.

Rev. Proc. 97-22, 1997-1 C.B. 652, provides guidance on maintaining books and records by using an electronic storage systems. However, records must be made available in hard copy form for state monitoring purposes during reviews and other monitoring activities. (IRS Revenue Ruling 2004-82, A-11); if requested.

A partial listing of the record keeping requirements is provided below. (See §1.42-5 for the complete requirements.)

- Total number of residential units in each building including the number of bedrooms and the size in square feet of each residential unit;
- percentage of residential low-income units in each building;
- the rent charged on each residential rental unit in the building, including any utility allowance;

- the low-income vacancies in each building and information showing when, and to whom, the next available units were rented;
- the annual certification of each low-income tenant per unit;
- documentation to support each low-income tenant's income certification;
- character and use of any non-residential portion of the building included in the building's eligible basis under IRS §42(d)(1994); and
- the eligible basis and qualified basis of each building at the close of the first year of the credit period.

## 4.9 Noncompliance

WHEDA is required by law to provide written notice of noncompliance to the owner. Additionally, WHEDA is required to use IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" to notify the IRS of noncompliance with the low-income housing tax credit provisions or any building disposition. The Code requires Form 8823 to be filed regardless of whether the noncompliance has or has not been corrected.

If an owner discovers that a tenant has deliberately misrepresented their income level, student status, household size, or any other item used to determine eligibility, the owner must consult state or local landlord-tenant laws to determine whether the tenant can be asked to vacate the HTC unit or the rent is raised to the market rate. The owner is not expected to complete the annual recertification if a tenant is asked to leave or an eviction proceeding is in process.

Report any suspected or known deliberate misrepresentation of income to the Internal Revenue Service's Whistleblower Office.

The Low-Income Housing Program will not consider there to have been reportable noncompliance if tenant fraud is discovered and addressed by the owner prior to notification of a WHEDA review or an IRS audit, and the owner satisfies to WHEDA that: (1) the tenant provided false information; (2) the owner did everything a prudent person would do to avoid fraudulent tenants (due diligence) and has implemented any needed changes to avoid future problems; (3) the tenant has vacated the unit (if possible); and (4) there is no pattern of accepting fraudulent tenants. In such cases, the owner need not reduce the applicable fraction for determining the credit amount and WHEDA need not report the noncompliance arising because of the tenant's fraud on Form 8823. (See also Chapter 4.9 H.)

### A. Notification to Owner

WHEDA is required by law to provide written notice of noncompliance to the owner if:

- i. Any required submissions are not received by the due date.
- ii. Tenant Income Certifications, supporting documentation, and rent records are not available or submitted when requested by WHEDA.

- iii. The project is found to be out of compliance with the provisions of section 42 of the Code through inspection, review, or other means.

## **B. Correction Periods**

### **i. Required Submissions**

The owner will have no more have **30 days** from the date of written notification by WHEDA in which to submit any missing report(s), information, or documentation. This includes, but is not limited to: Unit Status Report, annual Owner's Certificate of Continuing Compliance, utility allowance documentation, initial information, and fees.

### **ii. Other Noncompliance**

The owner will have no more than **90 days** from the date of written notification by WHEDA to bring the project back into compliance with any Code provisions which have been violated.

The law allows WHEDA to set correction periods up to 90 days and to extend a correction period for up to six months. Requests for extensions must be submitted to WHEDA in writing and will only be granted for good cause as determined by WHEDA.

## **C. Correction Information**

It is in the owner's best interest to respond in writing within the allowed time period to all violation letters sent by WHEDA.

When the owner receives a notification of noncompliance (violation letter) from WHEDA, the owner has an opportunity to respond in writing to the letter within the prescribed correction period. Because of the complexity of the tax credit regulations and the necessity to consider their applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues.

**Note:** The owner's response to a violation letter may be forwarded to the IRS should a notice of noncompliance be required. Therefore, the owner must send data or a response to correct the noncompliance that the IRS would deem a reasonable cure. WHEDA makes no assumptions from the data and does not interpret the information for the IRS.

The IRS has provided limited guidance or rulings at this time regarding what constitutes a cure of noncompliance. Therefore, WHEDA may not indicate to the IRS if the violation was cured. Consequently, any cure information submitted may not clear the indicated violations with the IRS. It is the sole province of the IRS to determine what constitutes a cure and whether recapture of full or partial credit will occur.

### **i. Correction of Noncompliance**

Since there is limited published information or IRS rulings on cures for specific violations, WHEDA's advice or suggestions regarding actions that may correct violations is not binding on the IRS and should not be relied on by owners. WHEDA may share examples of actions other owners have

taken under similar circumstances. In addition, WHEDA may treat past period violations as corrected for the purpose of analyzing future periods.

Compliance violations incurred by a project in the Tax Credit Program may be taken into consideration if an owner, developer, agent, or any related individual or entity applies for tax credit allocations in future years. This is true whether or not WHEDA determines the violation to be corrected.

## ii. Reporting Error

When responding to a violation letter that involved a reporting error on the part of the owner or agent, the response must include all of the information that would be reported if the information was originally submitted correctly.

For example, if a recertification violation was indicated for a specific household, an owner may respond by indicating that the recertification had taken place, but the entry was missed on the Unit Status Report. In that case, the owner must submit the recertification information in the response. The tenant income certification (TIC) supporting the recertification must also be sent.

If an owner simply responds by indicating that the recertification took place but neglects to forward the updated household information and a copy of the executed Tenant Income Certification, WHEDA will not consider the violation corrected.

All responses to compliance letters must be submitted to Procorem. Upon review, the HMO will enter corrections, as needed, or reopen the compliance period for you to enter the identified corrections.

## D. Notification to the IRS

WHEDA is required to file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the Service no later than 45 days after the end of the correction period (including any extensions).

When WHEDA receives documentation to support a cure for violation(s), the information will be attached and submitted to the Service with the Form 8823. The Owner is responsible for maintaining a copy of all items sent as cure documentation.

As of January 2001, WHEDA will send the owner a copy of the filed Form 8823 and WHEDA's attachment page(s) if any. Such copy will not include the supporting documentation, if any, submitted by the owner to WHEDA.

Following is a list of noncompliance types included on IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition:

- Household income above income limit upon initial occupancy;
- Owner failed to maintain or provide tenant income certification and documentation;
- Major violations of health, safety, and building codes;

- Pattern of minor violations of health, safety, and building codes;
- Owner failed to submit annual certification (HTC Form 100) ;
- Changes in eligible basis;
- Project failed to meet minimum set-aside requirement (20/50, 40/60);
- Gross rent(s) exceed tax credit limits;
- Project not available to the general public;
- Household income increased above income limit and an available unit was rented to market rate tenant;
- Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J) ;
- Low-income units occupied by nonqualified full-time students;
- Owner did not properly calculate utility allowance;
- Owner has failed to respond to agency requests for monitoring reviews;
- Low-income units used on a transient basis;
- Project is no longer in compliance and is no longer participating in the low-income housing tax credit program; and
- Other noncompliance issues
  - This category includes, but is not limited to:
    - Unit Vacancy Rule violation;
    - Vacant units not ready for occupancy
    - Nonperformance of non-profit participation agreement; and
    - Violations occurring prior to issuance of 8609.

All instances of noncompliance for a specific category must be remedied before the building is considered back in compliance for that category. All categories of noncompliance must be resolved before filing a back in compliance Form 8823.

An amended 8823 will be filed with the IRS if it is necessary to correct an error on a Form 8823.

## **E. De Minimis Errors**

On August 10, 1993 Congress passed the Omnibus Reconciliation Act of 1993 which included a provision for de minimis errors. Owners can request the IRS to waive any recapture penalty due to the IRS because of de minimis (small) errors in maintaining the applicable fraction or qualified basis from the end of one year to the end of the subsequent year.

## **F. Chronic Noncompliance**

Chronic noncompliance may result in the owner or related entities being denied participation in the Tax Credit Program in the future. Examples of chronic noncompliance include, but are not limited to:

- i. Nonpayment of annual compliance monitoring fees;
- ii. Chronic non-submission of required monitoring reports; and
- iii. Repeated material violations of section 42 of the Code.

## **G. Corrections to Documents**

At times it is necessary to make corrections or changes to documents. A document with correction fluid ("white-out") will not be accepted by WHEDA. WHEDA recommends that when a change is needed on a document used for the Tax Credit Program, draw a line through the incorrect verbiage, write or type the correct verbiage, and have the person making the change sign their initials.

Examples of Program documents include, but are not limited to:

- Owner's Certificate of Continuing Compliance
- Unit Status Reports
- Utility Allowance Documentation
- Tenant Leases
- Tenant Certifications
- Third-Party Verifications
- Any required forms for the HTC Program

## **H. Correction of Noncompliance Issues Prior to Notification by WHEDA**

The 8823 guide in several locations has introduced the concept of a "bright line". Noncompliance issues identified and corrected by the owner/agent prior to notification of the upcoming compliance review or inspection by WHEDA may not be reported to the IRS on form 8823, provided the owner/agent has notified WHEDA of the noncompliance and correction, is in compliance at the time of WHEDA's compliance review or tenant file inspection and has not established a pattern of noncompliance. In the case of management reviews, the date of the review confirmation letter is the date of notification. In all other cases, the date of notification is the date of the noncompliance letter. In general, late recertifications will not be considered under "bright line".

## 4.10 Monitoring Fees

As Wisconsin's housing credit agency, WHEDA is required by law to conduct compliance monitoring on all projects that have been placed-in-service for which the Credit is or has been allowable at any time since the inception of the Program in 1987. Fees are charged to cover staff, technology, and other associated costs necessary to conduct compliance monitoring.

### A. Method of Payment

- i. Compliance fees will be drawn via Automated Clearing House (ACH) Transfer agreement. Payment via ACH is required for all projects.. Initial Compliance Fee

An initial compliance fee will be charged for all buildings placed-in-service after January 1, 2001. The initial compliance fee for developments of 15 units or fewer is \$800. For developments of 16 or more units, the fee is \$55 per unit with a maximum of \$5,000. This fee is payable according to the schedule set in the Initial Monitoring Welcome letter.

### B. Annual Monitoring Fee

Fees are charged annually on a per unit basis for all units within each project throughout the entire compliance period. Fees are charged on all units (including manager's units) because it is necessary for WHEDA to monitor the minimum set-aside requirement on a project basis, the applicable fraction of low-income units to total units, and rental of the next available unit to a qualifying household.

The Annual Monitoring Fee is due by March 15 of each year during the project's compliance period. WHEDA reserves the right to adjust fees on an annual basis.

Fees are charged based on the reporting medium used. The fee schedule can be found in the current QAP located on the Allocation web page at <https://www.wheda.com/developers-and-property-managers/tax-credits/htc/allocating> is listed in the current QAP:

### C. Late Fee

Failure to comply with any monitoring requirement, including payment of fees, may result in one or more of the following actions:

- i. A late charge will be assessed for documentation or fees that are not received by the due date. Late fees will be charged as follows:

- a. **Annual Monitoring Fee**

- \$10 per unit late charge for each missing report or documentation

- b. **Required documentation, reports or fees**

- \$10 per unit late charge for each missing report or documentation

- ii. Future allocations of Credit to the owner and affiliated entities may be jeopardized.
- iii. Future participation in other WHEDA programs by the owner and affiliated entities may be jeopardized.
- iv. Any legal enforcement available to WHEDA
- v. Notification to IRS

## 5. Qualifying Tenants

Potential tenants for rent-restricted units must be advised early in the application process that there are maximum income limits that apply to these units. Management must explain to potential tenants that the anticipated gross income of the family/household expecting to occupy the unit must be included and verified on a Tenant Income Certification (HTC Form 300) prior to occupancy and annually recertified for continued eligibility in mixed-rate developments.

It is imperative that all sensitive tenant information (bank accounts, social security number, etc.) be treated in a secure and confidential manner. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly.

At the present time, IRS Revenue Notice 88-80 provides the only official guidance for section 42 tenant income compliance. The Notice states that determination of annual income of individuals and area median gross income adjusted for household size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs is a good reference guide. The HUD Handbook 4350.3 and HUD notices can be obtained by calling 1-800-767-7468. They are also available on HUD's Internet sites (<http://www.hud.gov>).

### 5.1 The Tenant Application

A fully completed application is critical to an accurate determination of tenant eligibility. The information furnished on the application must be used as a tool to determine all sources of income, including total assets and assets disposed of for less than fair market value during the previous two years and actual and/or imputed income from assets. In the event the management agent's application does not include a section for use in collecting asset and asset income information, HTC Form 305, "Tenant Income Questionnaire" may be used.

At the time of application, it is the management agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application. To facilitate this process, WHEDA recommends that roommates complete separate applications.

#### **The application must include:**

- The name, birth date, age, social security number and gender (sex) of each person that will occupy the unit. The applicant's legal name must be given just as it will appear on the lease and tenant income certification.
- All sources and amounts of current and anticipated annual income expected to be derived during the twelve-month certification period. This includes assets now owned and the income from those assets as well as any assets disposed of for less than fair market value during the previous two years.

- The past, current and anticipated student status of each applicant for the twelve-month certification period.
- The signature of the applicant and the date the application was completed.

## 5.2 Tenant Income Verification

All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent **prior to** the execution of the Tenant Income Certification and actual move-in. Verifications must contain complete and detailed information and include, at a minimum, written verification from all sources of regular income and income from assets.

Enterprise Income Verification (EIV) may not be used for certifying tax credit units.

See most recent version of HUD Handbook 4350.3 for further information concerning Effective Term of Verification, Methods of Verification, Third-Party Verification and Acceptable Forms of Income Verification.

### A. Differences in Reported Income

The management agent must give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on verifications in order to determine actual income. The explanation of the difference must be documented in the tenant file.

## 5.3 Annual Income

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income.

There will be situations where it will be difficult to estimate income. For example, the tenant may work sporadically or seasonally. If the household's income cannot be determined based on current information because the household reports little to zero income, or income fluctuates, income may be determined based on actual income received or earned within the last twelve months before the certification of annual income. In such cases, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive in the coming year. Owners must use due diligence by asking follow-up questions when the income certification process reveals unusual circumstances suggesting additional sources of income."

See most recent version of HUD Handbook 4350.3 for further information concerning whose income is counted and what income is included or excluded, and calculation methodologies.

#### i. Educational Scholarships or Grants

Student Financial Aid is counted as income depending on its source and type, and can be offset by the cost of attending school. All financial assistance covered in 479B of the Higher Education Act (HEA) and the Bureau of Indian Education will be excluded from income, regardless of any excesses calculated, except in 2 circumstances. Financial assistance

from other sources will always be counted but can be offset for any excess costs left over after applying costs to HEA funds.

The two exceptions to never counting HEA funds apply to students that are the head, spouse, or co-head and are either under 24, or 24 or older without dependent children. For these students you count all excess aid as income, including HEA sources.

Loans are never counted as income.

- ii. If a household indicates that income might not be received for the full 12 months (e.g. unemployment insurance benefit is expected to terminate), the income must still be annualized.
- iii. When an employer gives a range of hours as the number of hours worked, use the average of the range of hours.

**Example:** John works 25 - 30 hours per week and makes \$8.25 per hour. To annualize his hours use:

- $27.5 \text{ hours} \times 52 \text{ weeks} = 1,430 \text{ hours per year}$
  - $1,430 \text{ hours} \times 8.25 = \$11,797.50 \text{ annual income}$
- iv. Year-To-Date income is annualized by dividing the YTD amount by the number of weeks included in the figure multiplied by 52 weeks. Compare the “hourly rate” calculation with the YTD calculation to determine the best method to calculate annual income given the circumstances of this household. It is no longer required to use the highest calculation simply because it is the highest. Include any anticipated raises and additional compensation that was excluded from the YTD figure (bonus, tips, etc.) in the YTD calculation and/or the “hourly rate” calculation.

## 5.4 Assets

Assets are items of value, other than necessary personal items. Income from assets is taken into consideration when determining the eligibility of a household.

Asset information (asset value and income from the asset) must be obtained at the time of application. The applicant will affirm that this information is correct by executing the Tenant Income Certification (HTC Form 300).

Third party verification of assets is required when the household's combined value of Net Family Assets exceeds \$50,000, adjusted annually for inflation. Owners of tax credit projects will not have to obtain third-party verification of income from assets if the tenant(s) submit to the owner a signed, sworn statement (under penalty of perjury) that the value of their combined assets are less than \$50,000.<sup>3</sup>

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<sup>3</sup> Per IRS Revenue Procedure 94-65, an owner or agent is not permitted to rely on a low-income tenant's signed, sworn statement of assets of less than \$5,000 if a reasonable person in the owner's/agent's position would conclude that the tenant's actual income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of

The tenant's income from net household assets that are less than \$50,000 must still be included in the calculation of the annual income amount when initially qualifying a household and upon recertification. (See HTC Form 600 A and 600 B).

See most recent version of HUD Handbook 4350.3 for further information concerning what net household assets are included or excluded, determining the value of assets and imputed income from assets.

## 5.5 Computing the Total Household Income

After all income and asset information has been obtained and computed for a household, all qualified sources of income are added together to derive the total household income. **WHEDA recommends rounding up to the next dollar amount to provide the most conservative estimate of annual income.** In order for the household to qualify for a tax credit unit, the total household income must be less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification. If the total household income is greater than the maximum allowable qualifying income, the household cannot be certified for a tax credit unit.

Owners must use due diligence by asking follow-up questions when the income certification process reveals unusual circumstances suggesting additional sources of income.

If the tenant manipulated the income limitation requirements, then the unit cannot be treated as a low-income unit as of the date the household initially occupied the unit.

## 5.6 Full-Time Student Verification

WHEDA requires that management agents use HTC Form 800, "Student Certification Form" or an equivalent form that addresses all of the student issues, to assist in the verification and qualification of each student applying for residency in a low-income tax credit unit.

Specific information must be obtained regarding student applicants/tenants. Agents may develop their own forms, but each student listed as a qualified tax credit applicant must have a third-party verification located in the tenant file to prove qualification status.

**Note:** WHEDA does not require third-party verification for children attending primary school.

## 5.7 Initial Tenant Income Certification Guidelines

Once all the income and asset information has been obtained and computed, management personnel must prepare a Tenant Income Certification (HTC Form

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the low-income tenant's annual income from assets to satisfy the documentation requirement of third party asset verification. HOTMA does not appear to retain this provision and the IRS has not yet commented. However, it is prudent to verify assets less than \$50,000, adjusted for inflation, if the above statement applies.

300 or the NCSHA document) for each tenant. The form is a legal document which, when fully executed, qualifies applicants to live in the tax credit set-aside units in the project. The Tenant Income Certification (TIC) must be executed along with the lease prior to move-in.

The following guidelines apply:

- No one may live in a low-income set-aside unit in the project unless he or she is certified and under lease.
- Upon receipt of all verifications, owners or managers must review all documentation and calculations, as necessary. If all requirements for eligibility are met, the applicant is qualified.
- Management must instruct the prospective tenant(s) to sign the TIC exactly as their name appears on the form.
- It is preferred that the TIC be executed on the date of move-in.

## **5.8 Annual and Interim Income Recertification Requirements**

The IRS states that at least on an annual basis, an income certification must be completed for each low-income tenant<sup>4</sup> and documentation to support that certification must be obtained (26 CFR §1.42-5, April 1, 1994). With the passage of HERA in 2008, annual recertifications are no longer required for projects that were allocated and established themselves as 100% low-income projects. All other program rules remain in effect, including student status and household composition. Upon receipt of all verifications, owners or managers must determine if the household is below 140% of the current qualifying income limit (see Section 3.4 B. on the Available Unit Rule).

The certification process is not complete until all supporting documentation is obtained and the tenant signs and dates the Tenant Income Certification

### **A. Recertification of Income**

WHEDA monitors recertification of income 365 days from the later of:

- i. The move-in date; or
- ii. The one-year anniversary of the previous certification.

### **B. Adding a New Member to an Existing Household**

In the event a new member is added to a qualifying household, the following steps must be taken:

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<sup>4</sup> WHEDA believes it is important to note that the regulations refer to "tenant" income rather than "household" income. The recordkeeping and record retention provisions of the regulations state the owner must keep records that show "...the annual income certification of each low-income tenant per unit..." For this reason, WHEDA's policy is that in the event a new member is being added to an existing, qualified household, the new member must complete an application for residency and verifications of income and assets, as applicable, must be completed.

- i. The prospective tenant must complete an application for residency and verifications of income and assets must be completed;
- ii. The prospective tenant's income must be added to the current household's income.
  - a. For 100% low-income projects under the recertification exemption rule, add the prospective tenant's income to the original income certification.
  - b. For Mixed-Use projects, add the prospective tenant's income to the most recent tenant income certification.

The combined household income must be compared to the maximum allowable income limit in effect at the time, based on actual (projected) household size; and

- iii. If the combined household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or project will be in violation of section 42 requirements by adding the new household member. For 100% low-income projects, as long as the owner rents the next available unit to an income-qualified household, the Available Unit Rule will not be violated if the household's income exceeds 140% of the income limit.

**Example:**

- 1 person household income limit = \$15,000
- 2 person household income limit = \$17,000
- 140% of the 2 person income limit = \$23,800

Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification was \$10,500. Eight months after tenant A moved into the project, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit in two months. Before moving in, Tenant B is certified as earning \$12,900. The household's combined income will be \$23,400. The household will still qualify, since it is below the 140% limit (\$23,800).

In this example, if the combined income had been over \$23,800 the Available Unit Rule (Section 3.4 B.) may go into effect.

**Note:** If at any time the household composition changes and none of the original household members live in the unit, then the household is considered a **new** household. The new household must meet all initial qualifying income limitations and requirements to be eligible for a tax credit unit unless:

1. For mixed-used projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.
2. For 100% IHTC buildings, the remaining tenants were independently income qualified at the time they moved into the unit.

**Example:**

Michael moved into a two bedroom unit in May. Jason moves into the unit in October. At that time, Michael and Jason's combined income was below the limit for a two person household. In January, Michael moves out. It is not necessary for Jason to be certified as a new tenant.

However, if Michael and Jason's combined income exceeded the income limit for a two-bedroom in October, then Jason must be certified as an income-qualified tenant when Michael moves out.

**C. Subtracting a Member from the Existing Household**

Decrease in family size does not trigger the immediate income certification of a new household. Subsequent annual income recertifications will be based on the income of the remaining members of the household. If the remaining household's income is more than 140% of the income limit at the time of the annual recertification, then the Available Unit Rule is applicable.

**D. Changes in Student Status**

If all tenants in a previously qualified household become full-time students, recertification must be done and the household can only be considered as a qualified tax credit household if at least one of the student criteria is met. (See Section 3.3 E. of this manual for further information.)

**E. Effect of Move-in Prior to Placed-in-Service Date**

In the event that a tenant moves into a building prior to the placed-in-service date of the building (as shown on the project's IRS Form(s) 8609), and the verification of the tenant's income was performed more than 120 days prior to the placed-in-service date, the tenant must be recertified on the placed-in-service date.

**F. Timely Notice**

If the owner gives timely notice then initiates an eviction proceeding and the household vacates the unit, no recertification is necessary. However, should the eviction proceedings be terminated, or result in the household remaining, a recertification will be due 120 days from the determination.

**5.9 Adjustments to Rent, Utility Allowance, Subsidy, Household or Student Status**

Any changes to rent, utility allowance, rent subsidies, household composition or student status occurring between recertification dates must be reported to WHEDA on the due date of the next Unit Status Reports. The changes to gross rent were previously recorded as an **adjustment** (A) on the report. Household composition and student status were reported as Recertification events. Under Procorem and ProLink, these events are now reported as Rent Update, Household Update and/or Student Update, respectively.

## **5.10 Miscellaneous Rules Governing Low-Income Eligibility of Units**

### **A. Live-in Care Attendant**

If a tenant in a tax credit unit requires a live-in care attendant, the attendant is not included as a household member for purposes of determining the eligible income and rent limits. (The attendant is considered for purposes of determining the appropriate unit size.)

The need for a live-in care attendant must be certified. The live-in care attendant must abide by the lease agreement, but has no survivorship rights to the apartment. If the tenant who requires assistance moves (or no longer requires assistance), the attendant must vacate as well.

### **B. Pregnant Woman or Household in the Process of Adoption**

A pregnant woman or a household in the process of adopting a child must include the additional person(s) for the purpose of determining the maximum allowable income. Applicant/tenant self-certifies to pregnancy. Owner may not verify further than self-certification.

### **C. Section 8 Rental Voucher or Certificate**

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. Additionally, language prohibiting discrimination based on Section 8 status is included in the extended use agreement (Land Use Restriction Agreement) entered into by the owner and WHEDA.

## **5.11 Leases and Rent Limits**

Rents on the set-aside (tax credit) units may not exceed the amounts allowed by section 42 of the code. All residents occupying set-aside units must be certified and under lease.

### **A. At minimum, the lease must include:**

- i. The legal name of parties to the agreement and all other occupants;
- ii. A description of the unit to be rented;
- iii. The date the lease becomes effective;
- iv. The term of the lease;
- v. The rental amount plus any other amounts paid by the tenant for parking, pets, air conditioning, etc.;
- vi. The use of the premises;
- vii. The rights and obligations of the parties, including the obligation of the tenant to certify annually to income as defined herein; and

viii. The correct date of move-in or date tenant takes possession of the unit.

## **B. Initial Lease Term**

There must be an initial lease term of at least 6 months on all tax credit units. (See C. below for exceptions for housing for the homeless and single room occupancy.) The six-month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period; however a lease must be in effect. Noncompliance is corrected on the effective date of a newly executed lease with a term of at least 6 months.

## **C. Single Room Occupancy**

Single room occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have tenants 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:

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

## **D. Evictions**

The owner must not evict, non-renew the lease for, or otherwise terminate the tenancy, of an existing tenant of any low-income unit for other than good cause.

## **E. Violence Against Women Reauthorization Act of 2013 (VAWA 2013)**

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was signed into law on March 7, 2013. This Act extended protection to additional classes of victims and continues many of the housing protections that had been provided by the VAWA Act of 2005. In addition, VAWA 2013 now applies to HTC and HOME developments.

H.R.2471 – consolidated Appropriations Act, 2022 was signed into law on May 15, 2022. This Act strengthens protections and reauthorized all current VAWA grant programs until 2027.

Owners must comply with the lease requirements found in Section 601 of VAWA 2013. WHEDA highly encourages owners to use the VAWA Lease Addendum, form HUD-91067 or its successor VAWA Lease Addendum form. VAWA 2013 requires that the Tenant Selection Plan and House Rules must include policies to support or assist victims of domestic violence, dating violence or stalking, and protect victims and their families from being denied housing or from losing housing as a consequence of domestic violence, dating

violence or stalking. However, in accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in the VAWA 2013.

Although owners of HOME and HTC projects must now comply with VAWA 2013, the Internal Revenue Service (IRS) has indicated that violations falling under VAWA 2013 are not currently reportable events in themselves on IRS Form 8823, unless it is determined that a violation is also a violation of a resident's rights under Fair Housing law. The incident could trigger a loss or recapture of HTC.

Owner/agent should include a copy of HUD form 91066 or its successor form with each tenancy termination or eviction notice to allow an individual to certify that he or she is a victim of domestic violence, dating violence or stalking. The form is to be completed and submitted to owner/agent within 14 business days or an agreed-upon extension date, for the individual to receive protection under the VAWA.

## **5.12 Additional Requirements**

### **A. Supportive Services**

Developments that received additional points or were allocated from a Supportive Services Set-aside and completed Appendix S as part of the allocation application have additional reporting requirements. Appendix S acknowledges the intent to create units appropriate for persons requiring supportive housing. The Applicant/Developer, Property Management Agent and Wisconsin Department of Health Services (WI DHS) must together review the stated housing proposal. Property staff should be familiar with the requirements and agreements made with community agencies, partners and DHS. Any documents reviewed, approved, or developed in consultation with DHS should be made available upon request by WHEDA

Below are the primary requirements from Appendix S but are not all inclusive. The parties agree:

- i. To establish a procedure for filling vacant supported housing units with eligible tenants during lease-up and thru the initial 15-year compliance period. WI DHS shall assist in contacting appropriate local collaborative long term support partners to help find qualifying persons in the event the developer requests additional support. Those persons and/or their representative shall be referred to the management agent.
- ii. To establish and maintain collaborative relationships between developers and any identified case workers/service providers in housing qualified persons, ensuring they maintain tenancy, and making reasonable accommodations for persons or their service plans.

- iii. That tenants must have choice of service provider, regardless of supportive housing management plan in place.
- iv. **Projects Allocated prior to the 2025-2026 QAP**  
To hold open a vacant supportive housing unit for a minimum of 30 days or until WI DHS or local collaborative long term support partners, in conjunction with the management agent, finds a person meeting the target definition and requisite income qualifications to lease the unit. After the 30 days, the unit may be leased to any otherwise income qualifying family or individual.

**Projects Allocated during or following the 2025-2026 QAP**

All units committed in the Supportive Housing scoring category will be required to be permanently Set-Aside for eligible tenants.

- v. The Supportive/Veteran Housing Unit Vacancy Marketing Certification , Form 315 ([Supportive Housing Unit Vacancy Certification Form](#)) must be completed for each Supportive Housing Unit rented, or for all units rented when there are supportive housing units not occupied by a household member meeting the target definition.
- vi. The units will be designed with universal design features making them appropriate or readily adaptable to those with disabilities. 2022 HTC Appendix S Persons Needing Supportive Services Page 2 of 3
- vii. The units will be set aside for those persons having incomes not exceeding 30% of the County Median Income, or the unit or resident will receive a rental subsidy from a government entity.
- viii. To affirmatively market these units to persons with disabilities by establishing an affirmative marketing and fair housing plan, approved by DHS, specifically for the target population in these units. A waiting list policy specifically designed for this target population should also be reviewed by DHS.
- ix. Vacant units will be listed on WIHOUSINGSEARCH.ORG and updated regularly.

**B. Veterans**

Developments that received points intending to provide services designed to address the needs of Veterans have additional reporting requirements. The development must have a signed MOU with a County or Tribal Veterans Service Office or a Veteran-specific Service Provider. The MOU must describe a referral and outreach system to connect potential Veteran residents with local of State Veteran-specific services and resources. Property staff should be familiar with the requirements and agreements made with community agencies and partners. Any documents reviewed, approved, or developed in consultation with Veteran organizations should be made available upon request by WHEDA.

The project is required to hold open a vacant veterans housing unit for a minimum of 30 days or until local collaborative long term veterans service partners, in conjunction with the management agent, finds a person meeting the target veteran definition and requisite income qualifications to lease the unit. After the 30 days, the unit may be leased to any otherwise income qualifying family or individual.

WHEDA requires that the Supportive/Veterans Housing affidavit be executed and filed by the property manager in a separate property file attesting that the veteran unit was marketed in accordance with the 30-day marketing period requirement.

The veterans housing units must be 60% CMI or below. Rental subsidies are allowable if supported by firm commitments.

### **C. National Housing Trust Fund**

The following is a brief summary of the requirements of the NHTF program. It is not intended to be detailed or comprehensive. The regulations for the National Housing Trust Fund program can be found in 24 CFR Parts 91 and 93 unless otherwise noted.

The Housing Trust Fund (HTF) provides grants to states to produce and preserve affordable housing for extremely low- and very low-income households. States and state-designated entities are eligible grantees for the HTF. HUD allocates HTF funds by formula annually. HTF funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities. The HTF was established under Title I of the Housing and Economic Recovery Act of 2008, Section 1338 of the Federal Housing

Enterprises Financial Safety and Soundness Act of 1992. ([Public Law 110-289](#))

#### **Annual Certification**

As required, an Owner's Certificate of Continuing Program Compliance (HTF Form 100) must be submitted annually to WHEDA. The Certification covering the period from the Placed-in-Service date through the preceding year is due with the first report due date for the project. Subsequent Certifications are due no earlier than January 1 and no later than January 31 of each year. The form must be completed in its entirety. Following is a partial list of items that the owner is required to certify has been in compliance for the preceding year:

- Low-income rent levels;
- Qualified low-income tenant incomes;
- Units being suitable for occupancy and in compliance with local health, safety, and building codes;

- Units being available for the general public on a non-transient basis;
- No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project;
- 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); and
- All other applicable federal and state laws and WHEDA regulations, policies, and procedures.

An owner's original signature and date of signature is required on HTF Form 100. Only the owner must sign and date this form. Failure to supply a legible and complete annual certification is considered under the regulations to be noncompliance

### **Income Limits**

All NHTF-assisted units are subject to a 30-year affordability period. Rent and income requirements must be maintained during the entire period of affordability. All NHTF-assisted units must be affordable to extremely low-income (ELI) renter households. Income and rent limits are updated and published by HUD on an annual basis. In the event rent limits decrease for an area, or utility allowances increase, an owner may be required to reduce the rent charged but will not be required to lower rents below those in effect at the time of project commitment. Information on income limits can be found here: <https://www.hudexchange.info/programs/htf/htf-income-limits/>. Rent limits can be located here: <https://www.hudexchange.info/programs/htf/htf-rent-limits/>.

### **Fixed or Floating Units**

Assisted units may be “fixed” or “floating” and are designated on a property-by-property basis. Fixed or floating units are designed at the time of project commitment in the written agreement, and the actual units must be identified no later than the time of project completion.

### **Rent Increases**

The owner must submit a written request to WHEDA using HTF Form 210 – Rent Increase Request, including an updated utility cost analysis of tenant paid utilities. Tenants must be given written notice in accordance with lease provisions before implementation of any increase. At no time may the rent plus the utility allowance cost exceed the posted rent guidelines as determined by HUD.

- Rent Increases on Existing Tenants Limited to \$50, unless otherwise justified in the request or subject to Section 8 rental subsidy rules.

- Rent increases for new tenants are not subject to a limit beyond programmatic restrictions.

### **Utility Allowances**

Owners are required to establish maximum monthly allowances for utilities and services (excluding telephone) and to update the UA annually.

### **Minimum Lease Requirements**

Tenant leases must be on file and must specify a term of at least one year, unless by mutual consent the owner and the tenant agree to a lesser term. Leases must not contain any of the prohibited lease terms as stated in Section 93.303 of the Interim NHTF Rule. Any non-renewal or termination of leases must be in accordance with the lease and/or lease addendum. For all NHTF projects, the lease must also incorporate the Violence Against Women Act (VAWA) lease term/addendum required under §93.356(d).

The following lease terms are prohibited:

- (1) Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- (2) Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
- (3) Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- (4) Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
- (5) Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- (6) Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- (7) Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
- (8) Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.

The tenant, however, may be obligated to pay costs if the tenant loses;  
and

- (9) Mandatory supportive services. Agreement by the tenant to accept supportive services that are offered. §93.303 (b)

NHTF rules state that owners must serve a written notice upon the tenant specifying the grounds for the action and provide a specific period for vacating that is consistent with state or local law.

Under the NHTF Programs, tenancy may be terminated only for:

- Serious or repeated violation of the terms and conditions of the lease;
- Violation of applicable federal, state, or local law;
- Other good cause (good cause does not include an increase in the tenant's income).

Owners must comply with the requirements found in Section 601 of VAWA 2013.

### **Tenant Selection Plan**

Owners must develop a formal written policy that states the procedures and criteria the owner will apply in selecting applicants from the waiting list, screening for suitability for tenancy, and implementing income targeting requirements. The Tenant Selection Plan must state whether or not there are any restrictions or preferences in the admission of tenants.

The owner must adopt and follow written tenant selection policies and criteria that:

1. Limit the housing to income-eligible families;
2. Are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);
3. Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if the limitation or preference is described in the grantee's consolidated plan).
4. Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program (24 CFR part 92) because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.
5. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable;

6. Give prompt written notification to any rejected applicant of the grounds for any rejection; and
7. Comply with the VAWA requirements prescribed in § 93.356.

### **Annual Income Recertification**

All households occupying an NHTF-assisted unit must be recertified at least annually from the date of occupancy. Annual income recertifications must be effective on or before the anniversary date of the previous certification. A period of 12 months must not pass without a recertification being completed or the unit is considered out of compliance.

Income and assets must be re-verified every sixth year of the affordability period. A self-certification of income and income from assets is acceptable in intervening years. Third party income verifications or other forms of supporting documentation must be obtained by the owner and kept on file. Tenant files will be reviewed as part of the inspection process.

### **Tenant Files**

Owners must maintain a tenant file for each assisted unit. All permanent documents must be kept together so they are accessible at each compliance review (income certification and supporting documentation, lease/addendum, etc.) Tenant records, including income verifications, development rents, and unit inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

### **Property Standards**

The owner must keep all units in compliance with HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) and other pertinent state and local building codes to ensure the units are decent, safe and sanitary and in good repair at all times. [CFR 24 §5.703 National standards for the condition of HUD housing provides detailed standards for HTF funds..](#)

There are additional ongoing inspection requirements for HTF funds in §93.301(e)(1).

- (i) **Minimum Property Standards.** At a minimum, the ongoing property standards must provide that the property does not contain the specific deficiencies established by HUD based on the applicable standards in 24 CFR 5.703 and published in the Federal Register for rental housing (including manufactured housing). The requirements in 24 CFR 5.705 through 5.713 do not apply to the ongoing property standards.
- (ii) **Health and safety.** The standards must require the housing to be free of all health and safety defects. The standards must identify

life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

- (iii) Lead-based paint. The standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.

Areas of inspection include Inside, Outside and Units.

### **Inspection Schedule**

Onsite inspections will be conducted using the following schedule:

Twelve months after project completion.

At least once every 3 years thereafter during the period of affordability.

Life-threatening health and safety deficiencies must be corrected immediately, in accordance with §93.301.

Follow-up of observed deficiencies in accordance with the inspection requirements of §93.301 must occur within 12 months, or within a reasonable time frame depending on the severity of the deficiency, to verify that all observed deficiencies have been corrected. Properties with health and safety deficiencies will be seen every 12 or 24 months, depending on the condition of the property.

Non-hazardous deficiencies as defined by NSPIRE may be verified by third party documentation rather than reinspection.

Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project, as set forth by HUD through notification published in the Federal Register. For projects with one to four HTF-assisted units, the HTF grantee must inspect all of the HTF-assisted units and all inspectable areas for each building housing HTF-assisted units. §93.404(d)(2)(iii).

### **Fair Housing Policy and Affirmative Marketing**

It is WHEDA's policy to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to WHEDA programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

## 6. Program Glossary

**Applicable Fraction:** The percentage of low-income units or low-income square footage in a tax credit building. It is calculated as the lesser of:

Low-income units divided by total units (whether or not occupied) in a building; or

Total square footage of low-income units divided by total square footage of all units (whether or not occupied) in a building, with the exception of the manager's unit, which may or may not be included, depending on the circumstances.

**Available Unit Rule (AUR):** This rule is also known as the Next Available Unit Rule (NAUR). Following initial certification, if the household income of tenants in a low-income unit increases above 140% of the current income limit and the building is at or below its applicable fraction, the NAUR goes into effect.

To satisfy the NAUR requirements, the available unit(s) of comparable or smaller size in the same building must be rented to a qualified low-income household. This rule is implemented on a building-by-building basis.

When the household income increases above 140% of the current qualifying amount, the unit will continue to be treated as a qualified unit as long as the unit remains rent-restricted and the next available unit(s) of comparable or smaller size is rented to a qualified low-income household.

**Compliance Period:** Generally the 15-year period during which a Tax Credit project must comply with the requirements of section 42 of the Internal Revenue Code.

**County Median Income (CMI):** the average household income in a given county, as estimated by the Department of Housing and Urban Development (HUD).

**Eligible Basis:** Cost elements of a building that are eligible for obtaining tax credits. The eligible basis is always determined separately for each building in the project.

**Extended Use Period:** The 15-year period following the compliance period in which developments receiving credit allocations after December 31, 1989 must comply with eligibility requirements.

**Final Allocation:** A building's approval for tax credits by WHEDA's issuance of an IRS Form 8609 for the building.

**Household:** An individual or group of individuals occupying a single housing unit.

**Initial Credit Period:** The year or portion of a year that an owner first claims credit for a project.

**Land Use Restriction Agreement (LURA):** A contractual agreement between WHEDA and the ownership entity of a tax credit project extending the use of a tax credit property as low-income beyond the 15-year compliance period. The agreement is a restricted covenant recorded against the property.

**Noncompliance:** A period of time in which a project, a building, or a unit(s) is ineligible for tax credits because of a failure to adhere to section 42 requirements.

**Non-Qualified Household:** A household that does not meet the eligibility requirements of the Tax Credit Program. This is also referred to as an ineligible household.

**Over-Income Household:** A qualified household whose income later exceeds 140% of county median income.

**Placed-in-Service Date:** The date a building is certified as ready for occupancy. It marks the beginning of the reporting period for tax credit monitoring purposes. All events in a building must be reported to WHEDA dating back to the placed-in-service date.

**Project Minimum Set-Aside:** In order to earn tax credits, a development must meet the project minimum set-aside test. The owner must choose and maintain one of the following minimum percentages of low-income units in order to qualify for the tax credits.

**20/50:** 20% of the units in the project must be occupied by households whose incomes are 50% or less of the county median income, as adjusted for household size; **or**

**40/60:** 40% of the units in the project must be occupied by households whose incomes are 60% or less of the county median income, as adjusted for household size.

**Qualified Basis:** Eligible basis is multiplied by the applicable fraction. The qualified basis of a building is the portion of the eligible basis attributable to low-income rental units. When all of the units are low-income units, the qualified basis will equal the eligible basis. The amount of qualified basis is determined annually. Multiplying the qualified basis by the credit rate (4% or 9%) determines the maximum amount of tax credit that the building/project can generate for that year.

**Qualified Household:** A household that meets all eligibility requirements of the Tax Credit Program.

**Recapture:** The loss of tax credits, as determined by the IRS, due to noncompliance with section 42 requirements.

**Section 42:** Congress enacted section 42 of the Internal Revenue Code as part of the Tax Reform Act of 1986 to replace traditional tax benefits on multifamily real estate that had been eliminated. The purpose was to encourage production of affordable multifamily rental housing for persons with low to moderate income. Tax credits increase the owner's/investor's down payment in a housing project, which lowers the mortgage and financing costs and results in lower rents. Without the tax credits, cash flow from rents are often not adequate to support housing development.

**Unit Vacancy Rule (UVR):** The Unit Vacancy Rule is applied on a project basis. A building is considered in compliance when the current applicable fraction is at or above the first year's fraction. When a low-income unit becomes vacant during the year and the building is at or below its applicable fraction, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units of comparable or smaller size in the project is rented to non-qualifying tenants. It is the intent of the Unit Vacancy Rule for management to actively market the project's low-income units and to rent to low income households prior to renting to market rate.

## **7. Contact and Address Information**

### **7.1 Mailing Addresses and Fax Number**

#### **A. Mailing Address**

HTC MONITORING  
WHEDA  
PO BOX 1728  
MADISON WI 53701-1728

WHEDA  
908 E Main Street Suite 501  
Madison WI 53703

#### **B. Fax Number**

WHEDA's general fax number is: 608-819-4737

#### **C. Tenant Concerns**

800 943-9430 or [TenantConcerns@wheda.com](mailto:TenantConcerns@wheda.com)

## 8. Extended Use Period

Credits are claimed each year for the first ten years of the credit period. Some of those credits are considered accelerated and are not deemed to be fully earned until the end of year '15. Credits are subject to recapture if noncompliance is detected at any time until the end of year '15. At the end of the 15-year initial compliance period, there is no longer a threat of recapture and the IRS is no longer involved in enforcing compliance. It is left up to the states to set a policy for monitoring and to enforce compliance through state courts or other internal measures such as debarment from participating with the agency in any new programs, etc.

The following guidelines will be in place for compliance activities during the extended use compliance period. This will apply to those properties that have completed the initial 15-year compliance period and are unable to opt-out of the program; or that are able to opt-out but choose to remain in the program.

### 8.1 Annual Recertification of Households

#### **Initial 15 Year Compliance Period:**

IRS Code requires that a certification of household income, including third-party verification, be completed prior to initial occupancy and an annual recertification at least once every 12 months thereafter in mixed-use projects.

#### **Extended Use Compliance Period:**

An initial certification, including third party verification consistent with HUD Section 8 guidelines will continue to be required for initial occupancy. Annual recertification requirements will be relaxed. For mixed-rate developments, (any property with less than 100% applicable fraction), the annual recertification will consist of a self-certification (HTC Extended Use Period Form 300) from the tenant. For 100% low-income properties, annual recertification of income will not be required. However, annual household composition and student status verification will continue to be required.

### 8.2 Available Unit Rule (aka Next Available Unit Rule)

#### **Initial 15 Year Compliance Period:**

IRS regulations state that, upon annual recertification, if it is determined that a household's income has exceeded 140% of the allowable income limit and the building is at or below its applicable fraction, that unit can continue to be counted as a qualifying unit as long as the unit remains rent restricted and the next available unit(s) of comparable or smaller size are rented to a qualified low-income household.

**Extended Use Compliance Period:**

The Available Unit Rule will be applied in the same manner as during the initial 15-year compliance period.

**8.3 Unit Vacancy Rule**

**Initial 15 Year Compliance Period:**

IRS regulations state that when a low-income unit becomes vacant during the year and the building is at or below its applicable fraction, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to tenants having qualifying income before any units of comparable or smaller size in the project are rented to non-qualifying tenants.

**Extended Use Compliance Period:**

The Unit Vacancy Rule will be applied in the same manner as during the initial 15-year compliance period.

**8.4 Applicable Fraction**

**Initial 15 Year Compliance Period:**

The Applicable Fraction is the percentage of low-income units or low-income square footage in a tax credit building. It is calculated as the lesser of:

Low-income units divided by total units in a building; or

Total square footage of low-income units divided by total square footage of all units in a building, with the exception of the manager's unit, which may or may not be included, depending on the circumstances.

**Extended Use Compliance Period:**

The Applicable Fraction will be calculated in the same manner as during the Initial 15 Year Compliance Period.

**8.5 Owner's Certification of Continuing Program Compliance**

**Initial 15 Year Compliance Period:**

An annual certification of compliance with program requirements is required annually, according to IRS regulations.

**Extended Use Compliance Period:**

A modified version of the Owner's Certification (HTC Extended Use Period Form 100) will be required annually.

## **8.6 Physical Inspection and File Audit**

### **Initial 15 Year Compliance Period:**

IRS regulations require that WHEDA perform an inspection of the physical property and tenant records at least once every three years. The inspection is done on 20% of the units and corresponding tenant records (files). In addition, all common areas must be inspected.

### **Extended Use Compliance Period:**

The physical property and tenant records will be inspected every five years. Ten percent (10%) of the low-income units and files will be inspected, with a minimum of three units and maximum of fifteen. Properties participating in another federally regulated affordable housing program, (i.e. HUD, Rural Development), that requires physical and file inspections will be exempt from this inspection requirement.

## **8.7 Utility Allowance**

### **Extended Use Compliance Period:**

An HTC Form 205 Parts A and B, "Utilities Information" along with documentation for the utility allowance(s) 90 days prior to effective date for the properties that utilized the following calculation methods:

Local Utility Company estimate

HUD Schedule Model

Energy Consumption Model

If a property is utilizing the local PHA utility allowance only an HTC Form 205 A will need to be submitted to WHEDA 90 days prior to effective date. (Sites are required to keep complete copies of HTC Form 205 A&B, including the back-up documentation, for review during management inspections).

## **8.8 Compliance Reporting and Monitoring**

Owners will be required to complete and submit annual reports (Unit Status Reports) of unit activity similar to those required for the initial 15-year compliance period. WHEDA will continue to do annual desk audits of information submitted. Compliance monitoring fees will continue to be charged during the extended use period.

At the conclusion of the extended use period, owners will be required to submit an annual Owner's Certification of Continuing Program Compliance under the 3 year tenant protection period. The form will detail the status of any low-income residents that are

covered under the three-year protection period to show that no residents have been displaced or evicted for other than good cause and the rents have not been raised above the housing credit ceiling rents.

If an owner fails to comply with the monitoring requirements during the extended compliance period, a notice of noncompliance will be issued. When the owner receives a notification of noncompliance (violation letter) from WHEDA, the owner has an opportunity to respond in writing to the letter within the prescribed correction period. The owner will have 90 days from the date of written notification by WHEDA in which to respond. In the case of non-submission of required reports, information, or fees, the owner will have no more than 30 days in which to submit the missing item. A late charge will be assessed for documentation or fees that are not received by the due date. Annual monitoring and late fees can be found in Chapter 4.10 in the HTC Compliance Manual and current QAP.

If the noncompliance is not corrected within this time, or a plan for correction has not been agreed upon, the owner will be considered to be “not in good standing” with the Authority. Once the noncompliance is corrected, this designation will be removed. While the owner is “not in good standing”, they are ineligible to be part of the development team for any new tax credit awards. WHEDA also has the right to enforce specific performance in a state court of competent jurisdiction.

## **8.9 Set Aside and Special Set-aside Provisions**

All set-aside (40/60, 20/50 or Average Income) and special set-aside provisions (30%, 40%, 50%) that were in place at the end of the initial compliance period remain in effect for the extended use period.

## **8.10 Qualified Allocation Plan Scoring (QAP)**

All provisions of the QAP that were in place at the end of the initial compliance period remain in effect for the extended use period.

## **8.11 Monitoring Fees**

Fees are charged annually on a per unit basis for all units within each project throughout the entire compliance period, including the Extended Use Period. Information concerning monitoring fees in the Extended Use Period is found in Chapter 4.10 of this manual and the current QAP.

## **8.12 Additional Provisions**

This policy will be reviewed periodically and may be modified to facilitate better administration of the Affordable Housing Tax Credit program. Furthermore, WHEDA may waive or adjust any items contained within, on a case-by-case basis, for good cause shown to address unforeseen circumstances. As stated within the Land Use Restriction Agreement, individuals who meet the income limitations applicable to qualifying households, whether prospective, present or former occupants of the project, shall have the right to enforce such Agreement.