



# LOW-INCOME HOUSING TAX CREDIT COMPLIANCE PLAN



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## **DISCLAIMER**

The New Mexico Mortgage Finance Authority (MFA) is the agency responsible for the administration and monitoring of low-income housing tax credits (Tax Credits) for the state of New Mexico. MFA has developed the New Mexico Mortgage Finance Authority Low-Income Housing Tax Credit Compliance Plan (formerly the Owner's Compliance Manual) as a guide to help developers, owners, and managers of properties with Tax Credits in understanding their responsibilities under the program. However, the information in this plan is presented only as guidance and is not a substitute for Section 42 of the U.S. Internal Revenue code and applicable regulations and revenue rulings. Owners of properties with Tax Credits hold final responsibility for compliance with LIHTC requirements established by existing federal laws and regulations, and the contents of this plan do not relieve owners of this obligation.

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## INTRODUCTION

### THE LOW-INCOME HOUSING TAX CREDIT PROGRAM

The Tax Reform Act of 1986 eliminated many of the broad federal tax incentives for investments in real estate and established the Low-Income Housing Tax Credit (LIHTC) program. The LIHTC program provides tax credits to developers and investors for the development of rental housing affordable to low-income families and individuals. In the state of New Mexico, tax credits are awarded to for-profit and nonprofit developers through a competitive application process administered by the New Mexico Mortgage Finance Authority (MFA.)

Tax credits provide an incentive for developers and investors—credits reduce their tax liability—to make an equity contribution to the development of rental units for low-income households. Tax credits can be used in the construction of new units or the rehabilitation of existing units. Also, tax credits can be used in the development of either single family or multifamily rental housing projects.

### PURPOSE OF THE PLAN

This plan is designed to help owner/agents of tax credit projects in the state of New Mexico meet their obligations under the LIHTC program. The plan covers the responsibilities of owner/agents and describes how to:

- ◆ Meet occupancy requirements.
- ◆ Appropriately evaluate tenant income and eligibility.
- ◆ Determine maximum allowable rents for tax credit units.
- ◆ Lease vacant tax credit units.
- ◆ Recertify tenant income eligibility.

The plan also contains sample forms and documents that may assist owner/agents in meeting their obligations.

This plan is intended to serve as a reference for owner/agents of LIHTC projects. It does **not** attempt to describe the day-to-day operating procedures for managing tax credit projects. Property owner/agents still need to develop the procedures that they will follow to fulfill their responsibilities under the program and train their staff to properly implement these procedures. MFA reserves the right to modify this plan including, but not limited to, the foregoing policy and procedure for compliance and monitoring, as needed.

MFA is committed to helping owners of tax credit projects understand and meet their responsibilities under the program. MFA will offer periodic training and technical assistance explaining key components of the program. However, MFA strongly emphasizes that a project's compliance with tax credit regulations and requirements, as well as state and local law, is solely a property owner's responsibility. Owner/agents need to remember that tax credit regulations require MFA to report **all** noncompliance, corrected and uncorrected, to the IRS.

### ORGANIZATION OF THIS PLAN

**Section 1: Establishing and Maintaining a Project's Low-Income Occupancy** describes what owner/agents need to do in order to reach and maintain the desired low-income occupancy for the project.

- ◆ Key stages
- ◆ Basic requirements for establishing tax credit units
- ◆ Establishing tax credit units
- ◆ Establishing a project/building's qualified basis
- ◆ The compliance period
- ◆ Maintaining sufficient tax credit units during extended use

**Section 2: Determining Tenant Eligibility** discusses the process of determining the eligibility of low-income households, including the determination of household size, the computation and verification of annual income and the requirements for annual recertification of tenant eligibility.

- ◆ Determining tenant eligibility
- ◆ Determining appropriate unit size
- ◆ Annual recertifications

**Section 3: Rent Restrictions and Lease Requirements** describe tax credit rent restrictions as well as the provisions owner/agents may **not** include in dwelling leases.

- ◆ Tax credit limits
- ◆ Utility allowances
- ◆ Maximum allowable rents for tax credit units
- ◆ Changes affecting allowable rents for tax credit units
- ◆ Rents for tax credit units with over-income tenants
- ◆ Dwelling lease requirements

**Section 4: Administrative Responsibilities and Program Compliance** provides procedures for keeping records, filing reports and complying with any other requirements established by the IRS and MFA as well as compliance with the LURA. Guidance is also provided regarding properties that fall out of compliance with tax credit requirements.

- ◆ Project records
- ◆ Violence Against Women Act
- ◆ Project owner certifications and reporting
- ◆ Compliance monitoring fees
- ◆ Notices of Noncompliance
- ◆ Obtaining assistance regarding the tax credit program
- ◆ Resale requirements
- ◆ Option to sell after compliance period
- ◆ Ongoing obligation to tenants of tax credit units

**Section 5: Multiple Funding Sources or Subsidies** provides comparisons between the tax credit program and HUD HOME, HUD Housing Trust Fund (HTF), Rural Development, NAHASDA, HUD Section 8 and Section 542(c) Risk Sharing program. Guidance is provided for owner/agents on how to manage compliance for properties with multiple funding sources.

- ◆ HUD HOME funding and program rules
- ◆ HUD Housing Trust Fund funding and program rules
- ◆ RS Section 515 funding and program rules
- ◆ HUD project-based Section 8 rental assistance
- ◆ Risk Sharing program Section 542(c)

- ◆ NAHASDA
- ◆ Physical Inspection Pilot Program
- ◆ Comparison of program requirements across funding sources

**Section 6: Monitoring Reviews** provides the requirements and expected procedure to the on-site MFA reviews.

- ◆ Prior to the monitoring
- ◆ The monitoring review
- ◆ Tenant files
- ◆ Physical inspection
- ◆ Exigent health and safety
- ◆ Follow-up to the monitoring review

**Section 7: Compliance and Monitoring during Extended Use** includes regulations for the extended use period

- ◆ Compliance period
- ◆ Extended use period
- ◆ Tenant eligibility criteria during the extended use period
- ◆ Monitoring compliance during the extended use period
- ◆ Consequences of noncompliance during the extended use period

This plan includes a set of appendices containing program documents, sample forms, as well as additional information that may be helpful to owner/agents of tax credit projects.

## MFA'S ROLE

MFA is the housing finance authority for the state of New Mexico. The structure of MFA's involvement is primarily with two departments: The Housing Development Department and The Asset Management Department.

The Housing Development Department is involved in the application process and allocation process.

The Asset Management Department is responsible for monitoring during the compliance and extended use period.

## SECTION 1: ESTABLISHING AND MAINTAINING A PROJECT'S LOW-INCOME OCCUPANCY

### 1.1 OVERVIEW

This chapter describes what owner/agents need to do to meet their project's low-income occupancy requirements and targets. It also explains the effects of tax credit requirements on the leasing practices of different types of projects. This chapter:

- ◆ Introduces the four key stages of a tax credit project and how leasing activities vary across these stages.
- ◆ Outlines the requirements that must be met before a unit can be counted as a tax credit unit.
- ◆ Describes the requirements needed to establish the qualified basis for a project.
- ◆ Reviews the steps owner/agents need to take to maintain a project's qualified basis throughout the compliance period and the remaining years of the extended use.

## 1.2 KEY STAGES

To help show how low-income occupancy procedures change over time, this chapter refers to four key stages in the life of a tax credit project:

- ◆ Development period.
- ◆ Lease up period.
- ◆ Federal compliance period.
- ◆ Extended use period.

These are not formally established stages. They have been created purely to help illustrate how an owner/agent's leasing responsibilities will vary as a project progresses.

### DEVELOPMENT PERIOD

The development period for a project begins when a commitment of tax credits is made by MFA and lasts until the owner places the project in service. In projects where renovation is underway and the owner already has possession of the property, the project may be placed in service within a few months. If there is a need for substantial rehabilitation and the owner is in the process of acquiring the project, it may take up to three years before the project is placed in service. During this period, owner/agents can often begin identifying eligible low-income tenants even though the lease up period has not formally started.

**Placed in service date for tax credit projects:** The rules for determining placed in service dates are different for new construction projects and projects receiving rehabilitation.

**New Construction Projects:** A building is placed in service when it receives a certificate of occupancy from the local building inspector and is available for lease up.

**Rehabilitation Projects:** Owners have flexibility in establishing the placed in-service date for buildings in these projects. A building's placed in service date is on the Form 8609 and can be set at any point during its rehabilitation as long as the applicable per low-income qualified basis amount under 42(e)(A)(ii)(ii)(i.e. tax credit minimum rehabilitation threshold per unit) has been satisfied. This amount is published annually by the IRS.

In rehabilitation projects, tenants often continue to occupy units during the development period. Owner/agents can lease units to qualified tenants while they are still under construction. For these projects, the placed in service date often does not reflect the actual point at which lease up activities begin.

It is important to note that while units can be leased to eligible tenants prior to the placed in service date, owners cannot begin counting these units as tax credit units until the placed in service date.

There are deadlines for placing a building in service. Owners must place the project in service before the end of the calendar year in which the project receives its tax credit commitment. However, an owner can extend the deadline for placing a project in service by filing with MFA for a carryover allocation, if the project meets certain requirements. A carryover allocation gives the owner two additional years to place the project in service. Information about the carryover allocation is described in the tax credit application packet and commitment letter provided by MFA.

### LEASE UP PERIOD

The lease up period starts once a project has been placed in service and lasts until the owner begins to claim the project's tax credits. Owners can start claiming a project's tax credits at the end of the taxable



year that the project was placed in service or, at their option, they can wait until the end of the following tax year to claim their credits.

During this period, owner/agents need to qualify the units they will count as tax credit units. Tax credits allow owner/agents flexibility in how they qualify tax credit units. They can identify units with existing tenants that are eligible, lease vacant units to qualified tenants or use a combination of the two methods.

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### FEDERAL COMPLIANCE PERIOD

The federal compliance period begins with the first tax year in which the owner claims tax credits for the project and lasts for 15 consecutive years. Because the project owner is allowed to claim tax credits for the last year of the lease up period, the first year of the compliance period overlaps with the last year of the lease up period.

Properly documenting a building's low-income occupancy at the time the owner decides to take credits is very important. This is the occupancy figure MFA is required to use in monitoring the project and reporting to the IRS.

Once an owner has begun claiming a building's tax credits, the owner/agent must maintain the low-income occupancy established for the building at the end of the first year of the compliance period (i.e., the time the credits were first claimed) throughout the remaining 14 years of the compliance period. If at any time during the compliance period the low-income occupancy of a building falls below the occupancy required by the LURA, the owner is subject to tax credit recapture provisions.

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### EXTENDED USE PERIOD

Once the 15-year compliance period ends, post-1989 projects enter the extended use period. Owner/agents of these projects are required to maintain the property's low-income occupancy for up to an additional 15-30 years beyond the end of the compliance period: the remaining life of the extended use for the project.

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## 1.3 BASIC REQUIREMENTS FOR ESTABLISHING TAX CREDIT UNITS

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### BASIC REQUIREMENTS

For a unit to be counted as a tax credit unit, the following five conditions must be met:

- ◆ The tenant's income may not exceed the applicable tax credit income limit. Owner/agents must verify the household's income and have the tenant certify its accuracy on a TIC;
- ◆ The rent paid by the tenant plus an allowance for tenant-paid utilities may not exceed the maximum tax credit gross rent by bedroom size;
- ◆ The physical condition of the unit must meet local health, safety and building codes;
- ◆ The owner/agent must execute a lease with the tenant; and
- ◆ The owner/agent must recertify the tenant's eligibility annually including household income, assets and student status.

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### ESTABLISHING TAX CREDIT UNITS

Owner/agents must qualify the units that they will count as tax credit units. There are three basic methods for establishing tax credit units.

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### QUALIFYING UNITS WITH ELIGIBLE IN-PLACE TENANTS

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Owner/agents can locate eligible households by surveying the income and household composition of all in-place tenants. Once eligible tenants have been identified, each of the five basic requirements must be met before the unit can be counted as a tax credit unit. This includes verifying and certifying the household's income and executing an acceptable lease.

During the lease up period, owner/agents of projects that are partially or fully occupied may find it advantageous to identify in-place tenants who are eligible and qualify their units. Depending on the project's occupancy and the number of tax credit units needed, this approach may provide a sufficient number of units. Even if this approach only provides a portion of the tax credit units needed, it is generally quicker and easier than working to attract eligible tenants as units become available.

This approach alone may not be sufficient because units may be occupied by tenants who do not qualify, some units may be vacant and existing tenants may refuse to provide the information necessary to determine their eligibility.

#### LEASING VACANT UNITS TO ELIGIBLE APPLICANTS

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Another method of establishing tax credit units is to lease vacant units to eligible applicants. When a qualified household is identified, owner/agents must document the tenant's eligibility and meet the five basic requirements before qualifying the unit as a tax credit unit. This method can also be used throughout the compliance period to lease new tax credit units, to count for over-income tax credit units or to fill vacated tax credit units.

#### APPLICANTS HOLDING SECTION 8 CERTIFICATES OR VOUCHERS

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Federal tax credit regulations include a specific requirement pertaining to households holding a Section 8 certificate or voucher. When leasing units that will be counted as tax credit units, owner/agents may not refuse to rent these units to applicants holding a HUD Section 8 certificate or voucher simply because they receive rental assistance through these programs. These applicants are still subject to all tenant selection criteria that the owner/agent applies to other applicants, as long as that criterion is permissible under federal, state and local law.

This tax credit requirement took effect on August 10, 1993 and applies to all tax credit units leased after this time. Failure to document that Section 8 certificate or voucher holders applying for tax credit units were rejected for acceptable reasons can result in a finding of noncompliance against the project.

### 1.4 ESTABLISHING A PROJECT/BUILDING'S QUALIFIED BASIS

The amount of tax credits that owners can claim for their projects is determined by multiplying the allowable tax credit percentage by the project's qualified basis. The number of units qualified as tax credit units during the lease up period will be used to establish the initial qualified basis for a project. A project's qualified basis is formally established when the owner submits a completed IRS Form 8609 to the Internal Revenue Service to begin claiming the project's credits. For projects receiving credits after 1990, an owner must start the credit period no later than the year following the year the project was placed in service.

#### ESTABLISHING QUALIFIED BASIS

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The qualified basis for a building reflects eligible costs attributable to eligible tax credit units. A project's qualified basis is determined by taking the amount of allowable project costs (eligible basis) and adjusting this amount by the share of units that are tax credit units (applicable fraction).

#### ELIGIBLE BASIS

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A project's eligible basis reflects the amount of project costs, such as acquisition and rehabilitation costs, allowable under the tax credit program.

### APPLICABLE FRACTION

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The applicable fraction is the portion of the project leased as qualified tax credit units. The fraction is determined at the end of the tax year and is the lesser of:

- ◆ The number of tax credit units as a percentage of all residential units; or
- ◆ The total floor space of tax credit units as a percentage of the total floor space of all residential units.

Units set-aside for Project employees i.e. property managers, maintenance staff, etc. Management Units are not considered residential Units, even if rent is collected on the Unit, but as facilities "reasonably required" for the Project and should not be included in the Applicable Fraction as low-income residential space. To retain the full tax benefits from a tax credit project, the low-income occupancy established at the time the owner began claiming the project's credits must be maintained throughout the compliance period. More specifically, owner/agents must ensure that the applicable fraction of tax credit units for the project does not drop below the fraction established in the first year of the credit period to avoid a drop in qualified basis, which triggers tax credit's recapture provisions.

If the low-income occupancy of any project (i.e., the number of tax credit units) drops below the low-income occupancy reported for the preceding year, the owner may not be able to claim the full amount of the project's credits for that year and the IRS may recapture a portion of the project's tax credits claimed in previous years. If the low-income occupancy of the project drops below the applicable minimum set-aside, the owner cannot claim any of the project's credits claimed in previous years.

### QUALIFIED BASIS

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A project's qualified basis is determined by multiplying its applicable fraction of tax credit units by the eligible basis for the project. The original qualified basis for a building/project is the amount established at the close of the first year of the credit period—the time the owner begins claiming credits for the project. This is the amount the owner will enter on Part II of IRS Form 8609.

### PLACING A BUILDING/PROJECT IN SERVICE

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A building/project must be placed in service prior to the end of the second year following allocation and before owner/agents can begin formally qualifying tax credit units. TICs prepared more than 120 days prior to a project's placed in service date must have their income examined again and meet the income limits for initial eligibility.

Upon placing a building/project in service, owners must complete several steps. These steps include:

- ◆ Providing MFA written notification that the building/project is ready for occupancy;
- ◆ Returning to MFA an executed LURA for the project that has been properly recorded against the deed for the property;
- ◆ Returning a copy of the completed 8609 forms;
- ◆ Paying the first year compliance monitoring fee and any outstanding allocation fees due to MFA;
- ◆ Providing MFA with the required Placed in Service/Final Allocation Application items; including, but not limited to:
  - Final cost certification documents of the building/project's expenses and financing (cost certification)

- Documentation that the owner/agent has completed tax credit compliance training
- Architect Certification
- Project Owner's Attorney Opinion
- Copies of all Certificates of Occupancy (New Construction) or Certificate of Substantial Completion (Rehab)

Additional conditions of the project's allocation are described in MFA's Reservation award letter and Qualified Allocation Plan (QAP) from the year of allocation. Once an owner has properly submitted the necessary materials, as fully identified in the QAP and checklists, MFA will prepare an IRS 8609 form for each building. Submissions requiring action at year end by MFA must be made no later than November 15th.

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#### MEETING A PROJECT'S MINIMUM SET-ASIDE

To qualify for tax credits in New Mexico, a development must contain a minimum number of qualified tax credit units. This number is determined by the minimum set-aside selected for the project by the owner and is called the "federal set-aside." The income requirement that tax credit units must satisfy differs according to the minimum set-aside selected. An owner must choose one of the following low-income set-asides:

##### 20/50 PROJECTS

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The income eligibility requirement for tax credit projects with this set-aside is set at 20 percent of the units in the project at 50 percent of area median income, adjusted for household size. Only households with incomes equal to or less than this income limit qualify as low-income tenants in these projects.

##### 40/60 PROJECTS

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The income eligibility requirement for tax credit projects with this set-aside is set at 40 percent of the units in the project at 60 percent of area median income, adjusted for household size. Only households with incomes equal to or less than this income limit qualify as low-income tenants in these projects.

##### AVERAGE INCOME (AI) PROJECT

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This election under the Code was authorized by the Consolidated Appropriations Act of 2018. This election allows the Project to serve households up to 80% AMI as long as at least 40% of the total Units are rent and income restricted and the average income limit for all tax credit Units in the Project is at or below 60% AMI.

- ◆ The following applies for this election:
  - i. Income and rent limits **must be in ten percent increments**, and may include 20% AMI, 30% AMI, 40% AMI, 50% AMI, 60% AMI, 70% AMI, or 80% AMI.
  - ii. If the Project has an existing LIHTC Land Use Restriction Agreement (LURA) on the property, both initial election (20/50 or 40/60) and AI election must be met.
- ◆ The average of the imputed income limitations designated cannot exceed 60% AMI.
- ◆ Those Projects electing AI must include at least 5% of their Units above 60% AMI.
- ◆ All Units must be designated with a specific AMI percentage at the time of Application.
- ◆ Unit designations may float, but are subject to the Next Available Unit Rule and the original designations must be maintained throughout the Affordability Period. Average Income applies to rent and income limits. If a Unit has a designated limit of 80% AMI, the maximum rent that can

be charged to a household for that Unit is 30% of 80% of AMI. Similarly, if a Unit has a limit of 40% AMI, the maximum rent that may be charged is 30% of 40% of AMI.

- ◆ Skewing of Unit designations is not permitted. Project Owners must disperse unit types across chosen rent/income limits in a way that does not violate Fair Housing. MFA will require reasonable parity between different bedrooms sizes at each income band utilized on the Project.
- ◆ The market study must demonstrate sufficient need at each income level chosen.
- ◆ Project Owners of Projects with more than one building must elect to treat all of them as part of a multiple building project (checking “Yes” on line 8b of the 8609 form).
- ◆ AI Projects may be subject to an increased Compliance Monitoring fee.
- ◆ MFA shall only accept an Application that chooses the AI election if all Units in the Project are rent-restricted to and occupied by households whose income is at or below 80% of AMI. In other words, MFA will not accept an Application that chooses the AI election if the Project includes unrestricted, Market Rate Units.
- ◆ An Application for an AI Project must include within its equity and debt commitment letters confirmation of the utilization and approval of the AI election.

All tax credit projects must contain enough qualified tax credit units to satisfy the chosen set-aside by the end of the tax year following the year that the project was placed in service. If a project does not have enough tax credit units, the owner cannot claim the project’s tax credits.

When submitting a tax credit application to MFA, owners indicate which set-aside they will use in developing the property. The set-aside selected at this time and the low-income requirement established by the set-aside applying throughout the life of the project. The selected set-aside must be met before owners can begin to claim credits on a building/project.

Owners receiving tax credits since 1990 are allowed to meet the selected minimum set-aside on a project-wide basis, rather than building by building. If the owner claims the credits for all buildings in the project at the same time, there needs to be enough tax credit units among all the buildings to satisfy the minimum set-aside. Owner/agents of mixed-income projects need to make sure that the minimum set-aside is met at the time the tax credits are claimed for the project or buildings within the project.

If more than one building in a project is used to meet the minimum set-aside, the credit and compliance periods would be determined using the date on which the last of the buildings in the project was placed in service.

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## REACHING THE LOW-INCOME OCCUPANCY TARGET

The size of a project’s qualified basis determines the amount of tax credits that an owner can claim. Once a project reaches the lease up period, the primary factor affecting the size of its qualified basis is the share of all units that are leased and occupied as tax credit units. As the share of tax credit units increases, the qualified basis for a project also goes up. In addition to meeting the minimum set-aside for a project, owner/agents also determine the number of tax credit units needed to reach the desired qualified basis for a project: its low-income occupancy target.

## TARGET LOW-INCOME OCCUPANCY

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The low-income occupancy target for a tax credit project is the number of tax credit units needed to reach the owner’s desired qualified basis for the project. The owner/agents performance in establishing tax credit units will determine whether the project reaches this goal.

The target low-income occupancy is established in the tax credit application where the owner indicates the percentage of units in the project that will be leased as qualified tax credit units. If the owner expects that every unit will be a tax credit unit, the project has a target low-income occupancy of 100 percent.

If an owner/agent has established enough tax credit units to reach the low-income occupancy target by the end of the tax year for which the project's credits must be claimed, the owner will receive the full tax credit tax benefits from the project. If owner/agents fail to establish enough tax credit units to reach the target low-income occupancy the amount of credits that the owner can claim will be reduced.

#### IN-PLACE TENANTS

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In working to qualify enough tax credit units before the end of the lease up period, owner/agents must not improperly terminate the occupancy of in-place tenants. In-place tenants may not be removed without proper cause and notification as required under state and local tenant-landlord laws. As with all tenants, owner/agents may decide not to renew an expiring lease as long as adequate notice is given.

#### STARTING THE CREDIT PERIOD

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As discussed above, the credit period for a building/project starts with the tax year the owner first files IRS Form 8609 to begin claiming the allowable credits for the building/project. Owners have two options: Claim the credits at the end of the tax year that the project is placed in service or wait until the end of the following tax year to claim the credits.

#### KEY FACTORS

There are several factors owners should take into account when deciding when to start the credit period for a building/project:

#### COMPLIANCE WITH MINIMUM SET-ASIDE

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The project must meet the selected minimum set-aside before any credits can be claimed. If the project does not meet the minimum set-aside at the end of the year the building/project was placed in service, the owner must wait until next year to claim the credits.

#### SUFFICIENT TAX CREDIT UNITS TO MEET TARGET LOW-INCOME OCCUPANCY

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The applicable fraction of tax credit units at the end of the tax year in which the credits are claimed will determine the building/project's original qualified basis. If the building/project's tax credit units are insufficient to obtain the desired qualified basis at the end of the first year, the owner may wish to wait until the end of the following year rather than accept a lower original qualified basis.

#### OBLIGATION TO INVESTORS

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If a project's limited partners are expecting to begin receiving tax benefits at the end of the year the building/project was placed in service, this consideration will need to be balanced against the two factors above. In some cases, the owner may decide that it is more important to begin claiming the credit even though the original qualified basis is less than desired.

#### STARTING THE CREDIT PERIOD FOR BUILDINGS WITHIN A PROJECT

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When buildings within a project are placed in service over a period of time, owners do not have to start the credit period for the whole project in the same year. For example, an owner could start the credit period for half of the buildings in one year and the credit period for the remaining buildings in the following year.

However, if an owner opts to establish different credit periods, the project must meet its minimum set-aside at the time the owner claims the credits on the first building or set of buildings. In other words, the first buildings on which the owner claims credits must contain enough tax credit units to meet the minimum set-aside for the entire project.

#### CREDIT AMOUNT DURING FIRST YEAR OF CREDIT PERIOD

The credit amount that an owner is allowed to claim for the first year of the credit period is determined by the proportion of the year that the project contained tax credit units. The annual credit amount is prorated to reflect the number of months individual tax credit units were occupied as tax credit units during the tax year. The remaining amount of the first year's credits can be claimed by the owner at the end of the credit period.

The method of calculating the first year credit amount provides an incentive to owner/agents to lease tax credit units as quickly as possible once a project is placed in service. The earlier units are established as tax credit units, the greater the amount of the first year's credit the owner can claim for year one of the credit period.

#### REPORTING DURING LEASE UP PERIOD

At the end of the tax year the building/project was placed in service, owners must notify MFA if they plan to wait until the end of the following tax year to begin claiming the credits.

### 1.5 THE COMPLIANCE PERIOD

#### MAINTAINING EXISTING TAX CREDIT UNITS

Owner/agents can continue to count existing tax credit units as long as they remain occupied by an eligible tenant and continue to meet the requirements of a qualified tax credit unit. Owner/agents can make sure their existing tax credit units remain qualified by:

- ◆ Recertifying the tenant's income eligibility annually;
- ◆ Maintaining the tenant charged rent below the maximum amount allowed under tax credit for that unit;
- ◆ Maintaining the physical condition of the unit to meet state and local housing codes;
- ◆ Executing proper lease agreements with tenants of tax credit units; and
- ◆ Updating tenant information in HDS Next Gen.

#### SUBSTITUTING OTHER UNITS WHEN TENANTS OF TAX CREDIT UNITS ARE NO LONGER ELIGIBLE

Owner/agents must annually recertify the eligibility of tenants in tax credit units to assess whether they continue to be eligible tenants.

If a recertification reveals that a household's income now exceeds the applicable tax credit income limit, the unit can continue to be counted as a tax credit unit as long as available vacant units of comparable or smaller size in the same building are rented to eligible tenants and the rent for the unit with the over-income tenant remains rent restricted. This allows the owner/agent to substitute another unit that qualifies as a tax credit unit for the unit with the over-income tenant and maintain the building/project's qualified basis.

Owner/agents may not terminate the occupancy of an over-income tenant simply because that tenant is no longer income eligible.



### REPLACING VACATED TAX CREDIT UNITS

If the tenant of a tax credit unit moves out, owner/agents may continue to count the vacated tax credit unit as a qualified unit as long as the next available unit of comparable or smaller size is rented to an eligible tenant. Like the procedure for tax credit units with over-income tenants, this provision allows the owner/agent to replace the tenant without reducing the project's qualified basis.

When the tenant of a tax credit unit moves out, owner/agents must either lease the vacated unit to an eligible tenant (only option for 100 percent low-income projects) or replace the vacated tax credit unit with another qualified unit.

For mixed income projects, owner/agents may also lease a unit occupied by an eligible tenant but not previously qualified as a tax credit unit and then lease the vacated tax credit unit to a household that is not an eligible tenant. Before the vacated tax credit unit can be reoccupied, a new tax credit unit needs to be occupied by an eligible tenant and established as a tax credit unit.

### RECORDKEEPING AND REPORTING

Owner/agents must maintain documentation of a project's low-income occupancy and report annually to MFA throughout the compliance and extended use periods.

### DOCUMENTING CHANGES IN TAX CREDIT UNIT STATUS

Tax credit regulations require that when a change occurs in a project's tax credit units, owner/agents must document the change and maintain records to show that they followed tax credit procedures for maintaining the tax credit units needed to support the project's qualified basis. To meet this requirement, owner/agents need to prepare the monthly unit listing in a timely manner and maintain up-to-date documentation of tenant eligibility in individual tenant files. Owner/agents do not need to send the updated unit listing to MFA. Owner/agents must keep the updated listing in the project's files.

MFA staff will perform periodic on-site visits to check that properties meet tax credit requirements and that owner/agents are maintaining their projects' low-income occupancy. During these visits, monitoring staff will review the project's records to see that over-income and vacated tax credit units were properly replaced.

### HDS NEXT GEN/WCMS ANNUAL COMPLIANCE

Owner/agents also need to submit monthly tenant data and annual financial data to MFA via WCMS during this period. The report documents the project's occupancy as of the end of the monitoring year. The data must be entered in WCMS by March 31 of the following year. MFA reviews compliance data to determine if the owner is properly maintaining a project's low-income occupancy.

### TAX CREDIT RECAPTURE PROVISIONS

If a project's qualified basis for a given tax year has decreased from the required basis specified in the project's LURA, the IRS may recapture some or all of the accelerated portion of the project's credits claimed in previous years and add an interest charge. A drop in a project's applicable fraction reduces its qualified basis and triggers a recapture of tax credits. The accelerated portion refers to the additional amount of credits that the owner has been allowed to claim as a result of the program's use of a 10-year credit period rather than a 15-year credit period. Generally, the accelerated portion is equal to one-third of the amount claimed.



The determination of the amount to be recaptured is made exclusively by the IRS based on information reported by the owner and MFA, as well as data gathered by the IRS. IRS Form 8611 and its instructions explain how the recapture amount and any interest charge is determined.

## 1.6 MAINTAINING SUFFICIENT TAX CREDIT UNITS DURING EXTENDED USE

Once an owner has begun claiming a project's tax credits, owner/agents must maintain enough qualified tax credit units to keep the qualified basis for the project at the amount established for the initial year of the credit period. If the qualified basis for a project drops below this amount, the owner risks recapture of tax credits. A project's qualified basis will drop if the owner/agent fails to maintain enough tax credit units to keep the applicable fraction at the level that set the original qualified basis.

The length of time owner/agents must maintain a project's qualified basis depends on the year the project received its tax credit allocation:

### 1987 TO 1989 PROJECTS

Projects that received tax credits in 1987, 1988 or 1989 are required to maintain the qualified basis throughout the compliance period. The compliance period lasts for 15 consecutive tax years beginning with the first year of the credit period.

### 1990 AND LATER PROJECTS

Projects that received tax credits in 1990 or later are required to maintain the qualified basis for the life of the extended use agreement in the LURA—the 15-year compliance period plus the agreed to extended use period in the LURA.

A project's qualified basis will drop if the owner/agent fails to maintain enough qualified tax credit units in the project. The three key actions owner/agents must take to avoid a drop in the number of tax credit units are:

- ◆ Maintain existing tax credit units as qualified units;
- ◆ Mixed use properties must follow the Next Available Unit Rule for tax credit units as the eligibility of tenants in existing tax credit units changes; and
- ◆ Replace vacated units.

## RECORDKEEPING AND REPORTING

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Owner/agents must maintain documentation of a project's low-income occupancy and report data via HDS Next Gen monthly to MFA throughout extended use periods.

### AVAILABILITY OF ADDITIONAL CREDITS IN SUBSEQUENT TAX YEARS

During the credit period, owners of mixed income projects may be eligible to claim additional credits if a project's qualified basis increases above the amount established for the first year of the credit period. If an owner cannot claim all allocated credits for the initial year of the period because the qualified basis for that year was less than the maximum amount allocated by MFA (Line 3A of IRS Form 8609), the owner may be eligible to claim additional credits, in subsequent years, up to the maximum amount allocated.

In any subsequent year of the credit period, eligible owners of these projects can claim additional credits if there is an increase in the qualified basis. Tax credits allow the owner to claim credits for the increase equal to two-thirds of the full credit amount attributable to the increase in qualified basis. In no case can an owner claim credits in excess of the maximum established for the building/project on IRS Form 8609.

Owners can continue to claim this additional credit during subsequent years of the compliance period as long as the building/project's low-income occupancy maintains the increased qualified basis.

## SECTION 2: DETERMINING TENANT ELIGIBILITY

### 2.1 OVERVIEW

This section outlines procedures for identifying eligible tenants and documenting their eligibility in accordance with tax credit requirements.

- ◆ Under the tax credit program, a specified percentage of all units must be available and affordable to qualified low-income households—households whose income qualifies under the project set aside income thresholds.
- ◆ Under the tax credit student restriction, most households that consist entirely of full-time students are not eligible households, regardless of their income.
- ◆ To determine eligibility, household income and size must be calculated. Income must be verified according to specific rules and definitions.
- ◆ Household income must be compared to tax credit income limits to determine if a tenant qualifies as an eligible household.
- ◆ Eligibility must be recertified at least annually.

### 2.2 DETERMINING TENANT ELIGIBILITY

The steps involved in determining whether a household is an eligible low-income tenant are provided below.

- ◆ Gather household information;
- ◆ Determine household size;
- ◆ Calculate “annual gross income”;
- ◆ Assess household eligibility by comparing “annual gross income” to the applicable tax credit income limits;
- ◆ Verify annual income information and assets as required;
- ◆ Determine student status of household; and
- ◆ Properly complete the TIC.

#### GATHERING HOUSEHOLD INFORMATION

To determine whether a household is an eligible tenant under the tax credit program, owner/agents must gather and verify information about the household's size and income. To obtain this information, two documents are needed: a suitable rental application and a Tenant Release and Consent Form (not needed if the verification itself has a “release of information clause” and a space for signature.)

#### RENTAL APPLICATION

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Because the tax credit program uses special definitions for income and households, standard property management application forms may not collect sufficient information to determine tenant eligibility. Owner/agents need to make sure that their applications collect all the necessary information.

The following items should be included in the application:

- ◆ Name and birth date of each person who will occupy the unit (legal name should be given as it will appear on the dwelling lease);

- ◆ Full-time student status, if applicable;
- ◆ All sources and amounts of current and anticipated income during the twelve-month certification period;
- ◆ Estimated value of all assets, including estimated income from these assets; and
- ◆ Signatures and date that the application was completed.

Owner/agents may develop their own application to assist in collecting all necessary information. The application form can also be used to gather information from in-place tenants whom the owner/agents would like to qualify.

### TENANT RELEASE AND CONSENT FORM

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To gather and verify information about household income and composition, owner/agents should have tenants complete a Tenant Release and Consent Form (see **Appendix C**) or a substantially similar form. This form authorizes key parties to furnish or release information necessary to evaluate the household's eligibility. When seeking tenants for tax credit units, owner/agents should ask all potentially eligible applicants to sign this form.

The consent form provided in this plan authorizes the following parties to provide information regarding the household:

- ◆ Depository institutions;
- ◆ Private sources of income; and
- ◆ Any federal, state or local agency.

Use or disclosure of information obtained from a household or from another source pursuant to the Tenant Release and Consent Form must be limited to purposes directly connected with determining a tenant's eligibility to occupy a tax credit unit.

### DETERMINE HOUSEHOLD SIZE

Because tax credit income limits are applied according to the number of persons in the household, owner/agents first need to determine the household's size. There are two considerations that affect the determination of household size.

### WHAT CONSTITUTES A "HOUSEHOLD"?

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The 8823 Guide defines a household in the following manner; "As a general rule, a household consists of all individuals (or tenants) residing in a unit." Owner/agents may classify any group of persons who choose to live together as a household. A group of full-time students living together in a unit does not constitute a qualified household under tax credit requirements unless one of the exceptions is met. Student households that fail to meet at least one of the exceptions cannot be considered an eligible tenant in a tax credit project, regardless of their income.

### WHO COUNTS AS A HOUSEHOLD MEMBER?

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When determining household size for income limits, the owner/agent must include the following individuals who are not living in the unit:

- ◆ Year-round occupants;
- ◆ Children temporarily absent due to placement in a foster home;
- ◆ Children in joint custody arrangements who are present in the household 50 percent or more of the time;

- ◆ Children who are away at school but who live with the family during school recesses;
- ◆ Unborn children of pregnant women;
- ◆ Children who are in the process of being adopted;
- ◆ Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent;
- ◆ Family members in the hospital or rehabilitation facility for periods of limited or fixed duration; or
- ◆ It is a family to decision to include persons permanently confined to a hospital or nursing home when determining household size for income limits.

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

- ◆ Live-in aides, nurses or attendants; or
- ◆ Guests.

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### CALCULATE ANNUAL INCOME

Tax credit uses HUD's definition of "annual income" as contained in the U.S. Housing Act of 1937 as amended. This is the same definition used by HUD to determine the gross annual income of families and individuals receiving housing assistance through the Section 8 program. The eligible income of **all members** of the household must be counted when determining a household's annual income.

Annual income is the amount of gross known income anticipated to be received during the 12-month period following certification of eligibility (or following recertification of eligibility). If a household's circumstances change over time, the computations of anticipated income may be higher or lower than those for the previous year.

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### COMPONENTS OF ANNUAL INCOME

Annual income has two components: Regular earned and unearned income and asset income. Both of these topics are covered in more detail below.

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#### REGULAR INCOME

This component consists of traditional sources of income. Regular income includes the following sources:

- ◆ Gross wages and salaries including tips and overtime;
- ◆ Gross income from social security or welfare; and
- ◆ Payments in lieu of earnings (e.g., unemployment compensation, workers' compensation).

There are certain mandated inclusions and exclusions that apply when determining regular income. (see **Appendix A**)

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#### ASSET INCOME

Income that is generated by savings accounts, real estate and other investments is asset income. The market value is the current value of the asset and is used for calculating the annual asset income. The cash value is the market value less reasonable expenses incurred in selling or converting the asset to cash. Such as:

- ◆ Penalties for early withdrawals;

- ◆ Broker and legal fees; or
- ◆ Settlement costs for real estate.

If the total cash value of all assets is \$5,000 or less, owner/agents include the actual income to be derived from these assets. As per IRS Revenue Procedure 94-65, an Under \$5000 Affidavit may be used as verification of assets under \$5000 (see **Appendix E**).

Or, if the total cash value of all assets is greater than \$5,000, owner/agents include in annual income the greater of the following:

- ◆ The actual income to be derived from these assets
- ◆ Imputed asset income is derived by taking the total of market value from all assets and multiplying by the HUD-approved passbook rate (currently .06 percent)

As in the case of regular income, there are a number of inclusions and exclusions that owner/agents must follow when determining asset income (see **Appendix A**).

The tax credit income determination requires owner/agents to look at the household's present circumstances to determine the household's eligibility. To do so, a "snapshot" of the household's current circumstances is used to project future income.

#### ANTICIPATING HOUSEHOLD INCOME

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Owner/agents can assume that today's circumstances will exist for the next 12 months unless there is verifiable evidence to the contrary (income must be known and verifiable). If it is unclear that the current type of income may continue for the coming year, owner/agents should continue to calculate income based on "today's" earnings. If documentation is provided that current circumstances are about to change, the owner must adjust income calculations accordingly.

#### WHOSE INCOME TO COUNT?

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The unearned income including income from assets of every person counted as a household member should be included in the tax credit income calculation. In addition, the gross amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services of all members of the household, ages 18 and over or an emancipated minor.

Note: Only the first \$480 of earnings for full-time students, 18 years of age and older, is counted provided the student is not the head of household, co-head or spouse. If the student is the head, co-head or spouse, all income is counted.

#### TAX CREDIT INCOME LIMITS

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The tax credit program establishes specific income requirements (income limits) for determining who qualifies as a low-income tenant. The minimum set-aside selected by the owner determines the income requirement that must be used in determining whether a household qualifies as a low-income tenant.

The limits are based on HUD's annual determination of area median income. There are sets of income limits for various median income requirements, [i.e., 30 percent, 40 percent, 50 percent, 60 percent and so on] and the limits vary by household size and either county or Metropolitan Statistical Areas (MSA.) Owner/agents must use the set of income limits that correspond to the minimum set-aside for their project.

Tax credit income limits are published, as they become available, on MFA's website: [www.housingnm.org](http://www.housingnm.org). Because the limits rely on HUD figures for area median income and involve adjustments made using a specific methodology, owner/agents are welcome to use the limits provided by MFA; however, as an added measure owner/agents should recalculate to ensure our calculations are correct. New limits must be implemented within 45 days of their effective date. When determining eligibility, owner/agents must use the income limits in effect on the date the tenant is certified as income eligible. Limits are usually published during the first quarter of each calendar year and are based on the release of the new limits by HUD. MFA staff does not know when the limits will be published.

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#### VERIFY ANNUAL INCOME INFORMATION

In order to ensure eligibility determinations are made accurately, owner/agents must verify both the household's regular income and also assets greater than \$5,000. If a household has assets that total less than \$5,000, verification of assets is not required if the owner/agent obtains a signed sworn statement from the applicant/tenant indicating the household's assets do not exceed \$5,000 and list the annual income from these assets. A sample form is included in **Appendix E**. Under tax credit regulations, MFA may require an owner/agent to obtain additional documentation of the household's income from assets if a reasonable person would conclude that the tenant's income is higher than the amount shown on the tenant's sworn statement.

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#### ACCEPTABLE METHODS OF VERIFYING INCOME AND ASSETS

The three methods for verifying income and assets are:

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##### THIRD-PARTY WRITTEN VERIFICATIONS

- ◆ Correspondence directly between the third party and the owner/agent. The prospective tenant should not deliver the verification form. It is acceptable for third parties to fax or e-mail verifications to owner/agents.
- ◆ Sample verification forms are included in Appendix E.
- ◆ Four – six consecutive paycheck stubs;
- ◆ Benefit letter for unearned income;
- ◆ Bank statements; and
- ◆ Copies of legal documents (e.g., court awarded childcare payments, etc.).

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##### SECOND-PARTY VERIFICATIONS

**Second-party verification** is another acceptable source of verification. Forms of verification include:

- ◆ Self-affidavits or certifications

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##### ORAL VERIFICATIONS

**Oral (telephone) verifications** may be used only as a last resort. The owner should complete, sign and date a form identifying the oral source. A sample form is included in **Appendix E**. The applicant/tenant should also sign a notarized statement confirming the information.

- ◆ **Appendix D** summarizes the acceptable methods of verifying various sources of household income and a household's assets.

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##### ADDITIONAL METHODS FOR TENANTS RECEIVING HUD OR RD ASSISTANCE

There are additional forms of verification that may be used for tenants who receive assistance through the following sources:

- ◆ USDA/RD Section 515 or 515/8;
- ◆ HUD Section 8 certificate;
- ◆ HUD Section 8 voucher;
- ◆ HUD Section 8 new construction contract; or
- ◆ HUD Section 8 moderate rehabilitation contract.

For these tenants only, acceptable forms of verification include a copy of the appropriate HUD or RD certification form (HUD form 50058 or 50059 or RD form tax credit 1944-8) or a letter from the HUD contract administrator (e.g., local PHA) stating that the tenant's annual gross income is less than the applicable tax credit income limit on the date of initial occupancy.

**NOTE:** USDA/RD uses **adjusted income** to determine eligibility. For tax credit eligibility, these figures must be modified to show annual gross income.

### DOCUMENTING INCOME VERIFICATIONS

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All attempts to verify tenant information should be documented. Owner/agents should:

- ◆ Keep copies of all form letters sent to third-party sources.
- ◆ Keep copies of all correspondence from third-party sources.
- ◆ Maintain telephone log sheets for oral inquiries.
- ◆ Make appropriate notations in the tenant file.

### TIMING OF VERIFICATIONS

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Verifications must be valid at the time the tenant signs the TIC. When verifying a Tenant's income, owner/agents need to remember:

- ◆ Verified information is acceptable and valid for 120 days.
- ◆ Once the tenant has executed the TIC, owner/agents do not need to verify the tenant's income until recertification.

### ELIGIBILITY OF STUDENT HOUSEHOLDS

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Under tax credit requirements established by the IRS, most households where all of the members are full-time students are not eligible Tenants and units occupied by these households may not be counted as tax credit units. Even if the household has an income that would qualify under tax credit income limits, it is still an ineligible household. The owner/agent must verify with the school of the potential Tenant to obtain their definition of full-time status and verify their current status and status for the prior calendar year.

There are five exceptions to the full-time student restriction. Full-time student households that are income eligible and satisfy one or more of the following conditions can be considered an eligible household.

- ◆ At least one student receiving assistance under Title IV of the Social Security Act;
- ◆ At least one student was previously under the care and placement responsibility of the state agency responsible for foster care (documentation of participation required);
- ◆ At least one student participates in a program receiving assistance under the Job Training Partnership Act, Workforce Investment Act or under other similar, federal, state or local laws (documentation of participation required);
- ◆ At least one student is a single parent with child(ren) and this parent is not a dependent of another individual and the child(ren) is/are not dependent(s) of someone other than a parent; or
- ◆ The students are married and entitled to file a joint tax return.

If a household where all members are full-time students meets at least one of the five exceptions above and is income-eligible, the household is eligible to occupy a tax credit unit. Before leasing a tax credit unit to a household of full-time students, owner/agents must have the tenant complete the Student Affidavit establishing that one of the exceptions applies (see **Appendix F**) and obtain any necessary supporting documentation. MFA requires that ALL households must complete a Student Affidavit that must be kept in each tenant's file.

If the file for a household of full-time students does not contain documentation that the household meets one of the exceptions to the tax credit full-time student restriction, the tenant is not eligible and the unit may not be counted as a tax credit unit and may be subject to recapture by the IRS.

Owner/agents need to remember that if a student household ceases to meet at least one of the above exceptions, at any time, the unit no longer qualifies as a tax credit unit. Under current legal interpretations of federal tax credit regulations and requirements, the "next available unit" rule that applies to tax credit units with tenants that are no longer income eligible does not apply to student households that qualify under one of the exceptions above and later cease to qualify. Unlike changes in income, a unit occupied by a student household that no longer meets one of the above exceptions immediately ceases to count as a tax credit unit.

As of January 1, 2008, after issuance of the 8823 Guide by the IRS, New Mexico now considers K-12 as full time students. Existing tenants will continue to qualify. This rule will only affect new move-ins and tenants who change student status after January 1, 2008.

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#### TENANT INCOME CERTIFICATION

Owners must have tenants of tax credit units sign a written certification that the information they provided regarding their income and household composition is complete and accurate. This certification must be completed before a unit can be counted as a tax credit unit. For new tenants, the certification should be signed at the time the tenant signs the lease. TIC requirements include:

- ◆ Owner/agents must use either a MFA TIC or a form acceptable to MFA to formally document tenant income and eligibility.
- ◆ The TIC must be signed by all adult occupants of the unit and the property owner (or authorized designee).
- ◆ The certification must be effective on the date the unit is designated as a tax credit unit, when the tenant takes occupancy of the unit or within 12 months of the last certification.
- ◆ The form provides a place to record all necessary information including certification effective date, household composition, tenant income, unit rent and if applicable unit utility allowance. The owner/agent should fill out the sections on household income and the verified income figures for the tenant.
- ◆ The owner/agent then completes the remainder indicating that the tenant's income shown on the certification does not exceed the applicable income limit for the project and size of household.
- ◆ Owner/agents must also sign and date the form, indicating that it was properly prepared and the information is true to the best of their knowledge.
- ◆ The TIC must be executed no later than the recertification date for the unit. The anniversary of the effective date of the tenant's most recent certification will serve as the standard recertification date.

Upon publication of this plan, MFA suggests owner/agents use the enclosed procedures and documentation for verifying and certifying the eligibility of tenants in tax credit properties. MFA



recognizes that the procedures and documentation used by owner/agents prior to the issuance of this plan may differ from those presented above. While previous procedures and documentation may differ, owner/agents need to maintain materials in tenant files for tax credit units showing their efforts to establish the tenant's initial eligibility, as well as actions to recertify tenants.

During on-site reviews of tenant files, MFA monitoring staff will not only check to see that current eligibility determinations comply with regulations, but also examine initial eligibility determinations. If initial eligibility determinations were performed prior to the release of this plan, MFA will still expect to see evidence in Tenant files that owner/agents gathered information about Tenant income and attempted to verify the accuracy of the information.

### 2.3 DETERMINING APPROPRIATE UNIT SIZE

Once an owner/agent has completed the steps in determining tenant eligibility, the owner/agent must place the household in the appropriate size apartment. Owner/agents should examine the make-up of the household and discuss preferences with the head of household.

Tax credit does not establish unit density standards—the number of persons allowed to occupy each unit size (i.e., efficiency, one bedroom, two bedroom.) However, it is important to be consistent when placing tenants in units. To avoid any inconsistencies, MFA recommends that the owner/agent determine the maximum number of people that will occupy each size unit and include this information as part of a written management or Tenant Selection Plan. This process must be in compliance with all federal fair housing laws and regulations governing unit density standards. Some areas have local laws establishing unit density standards. Tax credit projects must comply with these laws where they exist.

### 2.4 ANNUAL RECERTIFICATIONS

Under the tax credit program, the eligibility of every Tenant in a tax credit unit must be recertified at least annually.

During this process, owner/agents must gather current information on household members and annual income, verify the accuracy of this information, assess the tenant's continued eligibility and execute a recertification TIC.

Recertifications ensure that as household income changes over time, households occupying tax credit units continue to be eligible under tax credit rules. Changes in tenant income, household size or student status can affect Tenant eligibility at recertification.

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## TENANT ELIGIBILITY AT RECERTIFICATION

### CHANGES IN TENANT INCOME

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Previously qualified tenants remain eligible at recertification as long as their income does not exceed 140 percent of the applicable tax credit income limit for admission and their student status has not changed.

If a Tenant's income exceeds 140 percent of the applicable limit:

- ◆ The unit must be re-designated as an over-income tax credit unit;
- ◆ The next available unit of comparable or smaller size must be designated to replace the unit; or
- ◆ If an over-income tax credit unit is not needed to maintain a building/project's low-income occupancy, the rent for that unit is no longer restricted by tax credit rent limits. Rent increases, if any, should comply with lease provisions and local landlord-tenant laws.

The income limit at recertification is calculated by multiplying the current applicable income limit for the household by 1.4 (or 140 percent).

#### CHANGES IN HOUSEHOLD COMPOSITION

The addition of new member(s) to an existing low-income household requires the income certification for the new member of the household, including third party verification. The new tenant's income is added to the income disclosed on the existing household's TIC. The household continues to be income-qualified and the income of the new member is taken into consideration with the income of the existing household for purposes of the Available Unit Rule under IRC §42(g)(2)(D).

#### CHANGES IN STUDENT STATUS

If the members of the household are now all full-time students and do not meet one of the exceptions to the tax credit student restriction, the unit no longer qualifies as a tax credit unit.

#### TIMING OF RECERTIFICATIONS

Tax credit regulations specify the timing of tenant recertifications.

- ◆ Recertifications of tenant eligibility are required at least annually. Owner/agents may conduct them more frequently in order to correspond to lease periods of less than one year's duration or requirements of other programs such as RD. However, this is not required by tax credit regulation.
- ◆ Owner/agents must complete a tenant's recertification by the established recertification date. Owner/agents may set the recertification date at a time of their choice as long as the date falls within 12 months of the time of the most recent tenant certification. If the lease for a unit took effect during the middle of the month an owner/agent may set the recertification date on the first of the same month in the succeeding year.

#### SELF-CERTIFICATIONS

If a project is a 100 percent tax credit property with no additional layering of funding including but not limited to tax exempt bonds, HUD HOME, HUD Housing Trust Fund, HUD Risk-Sharing Section 542c, NHTF, owner/agents may complete a self-certification with tenants. A full initial move-in certification is still required, as well as a full certification for year one. After two full certifications have been completed, owner/agents may create a recertification form. This form must ask all required information such as annual income, assets and household composition. Even if no changes have taken place, tenants must still provide information showing that their status remains the same. Verification of this information is not required; however, owner/agents must have tenants sign the recertification form attesting to the accuracy of the information provided. In addition to the recertification form, owner/agents must obtain verification of student status annually.

### SECTION 3: RENT RESTRICTIONS AND LEASE REQUIREMENTS

#### 3.1 OVERVIEW

There are three key points to remember regarding the rents for tax credit units:

- ◆ There are various sets of rent limits. The most common are for projects using the 20/50 minimum set-aside or for projects using the 40/60 minimum set-aside. The method of applying rent limits for early projects (1987 through 1989) differs slightly from the method used for more recent projects.

- ◆ Tax credit rent limits apply to gross rent (tenant-paid rent plus an allowance for tenant-paid utilities).
- ◆ Tax credit rent restrictions act as rent ceilings. Actual rents charged may be less, depending on market conditions and requirements of other programs.

There are two key points to remember regarding the tax credit lease requirements:

- ◆ Once owner/agents have determined tenant eligibility and established the rent for a tax credit unit, they must execute a dwelling lease with each eligible household. All household members over the age of 18 must sign all tax credit documents as well as the lease.
- ◆ The lease must conform with local, state and federal laws pertaining to dwelling leases.

This chapter instructs owner/agents in applying tax credit rent restrictions and discusses laws pertaining to dwelling leases.

### 3.2 TAX CREDIT RENT LIMITS

To ensure that tax credit units are affordable to low-income tenants, MFA uses tax credit formulas to establish the maximum rents that owner/agents can charge for these units. The rent limits for the program are set at levels affordable to eligible households based on the median income for the area in which the property is located.

MFA publishes the tax credit rent limits on the same schedule as the income limits after they are published by HUD. The schedules are available on MFA's website: [www.housingnm.org](http://www.housingnm.org). The agency updates the rent limits each year based on changes in area income figures provided by HUD. Owner/agents should use the tax credit rent limits provided by MFA. However, the owner is ultimately responsible in making sure that calculations are correct.

#### RENT LIMITS BASED ON UNIT SIZE

This method of setting rent limits applies to all projects that received tax credits in **1990 or later**. For these projects, the rent limits are established according to unit size. Under this method, the size of the household occupying a tax credit unit does not affect the rent that can be charged for the unit.

Owners of projects that received tax credits in 1987 through 1989 were given the option of selecting this method of applying rent limits. Owners taking this option were required to notify the IRS and the Housing Credit Agency before February 7, 1994. All projects where this option was taken will use this method of applying tax credit rent limits. The new rent calculations pertain only to new tenants and do not apply to existing tenants renewing their leases.

#### RENT LIMITS BASED ON HOUSEHOLD SIZE

All tax credit projects that received an allocation of tax credits in 1987, 1988 or 1989 and did not elect to change to the method described in Section A above use rent limits that are determined based on the **number of people** in the household, not by unit size.

**Caution:** Because the number of household members determines the maximum rent for a tax credit unit in these projects, there is no incentive to overcrowd tax credit units to obtain higher rents. Owner/agents need to establish unit occupancy standards and follow them consistently when leasing tax credit units.

### 3.3 UTILITY ALLOWANCES

Tax credit rent limits include an allowance for the cost of utilities (i.e., electric, water, sewer, oil or gas and trash service). In projects where the owner pays all utilities, no adjustment in the tax credit rent limits is needed to determine the maximum rent that can be charged for a tax credit unit. In projects where tenants pay some or all of their own utilities, the rent established for a tax credit unit plus an allowance for tenant-paid utilities must not exceed the applicable tax credit rent limit for that unit.

**unit rent = tax credit rent limit - utility allowance**

The method of determining utility allowances depends on the type of project assisted by tax credits.

If the property is using the local public housing authority utility limits new limits are published periodically. When new limits are published the property has 90 days from release date on the limits to implement the new utility limits.

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**USDA/RD-ASSISTED BUILDINGS**

If a building receives assistance from RD, the applicable utility allowance for rent-restricted units in the building is the utility allowance determined under the method prescribed by the RD for the building.

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**HUD-ASSISTED BUILDINGS (PROJECT-BASED)**

If a building receives assistance from any HUD program that requires an annual review of rents and utility allowances, HUD Multifamily Housing Utility Analysis Method must be used for all rent-restricted units in the building.

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**OTHER BUILDINGS (CONVENTIONAL)**

If a building is neither an USDA/RD-assisted nor a HUD-regulated building, the utility allowance that applies to rent restricted units is determined by the following methods.

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**PUBLIC HOUSING AUTHORITY (PHA) UTILITY ALLOWANCE**

The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 existing housing program. This method is not restricted to tenants receiving PHA assistance and can be used by the entire property if there is not another program restricting the use of this method.

**Note:** IRS Reg. Section 1.42-10, effective 5/2/94, changed this rule. Prior to this time, if HUD assistance was received for any household, the entire building had to use the PHA utility allowance. \*This rule was not made retroactive.

**Note:** Projects using HUD HOME and HUD Housing Trust Fund funding after 2013 are not eligible to use this utility allowance method.

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**HUD UTILITY SCHEDULE MODEL (HUSM)**

The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D). The HUSM and use instructions can be accessed on HUD User at <https://www.huduser.gov/portal/resources/utilallowance.html>. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model.

Required documentation for this method:

- ◆ An excel spreadsheet of the HUD utility model including the HUD-52667 form;
- ◆ A copy of the gross receipts tax rate schedule;
- ◆ a copy of the most recent rate book (tariff) for each utility; and
- ◆ A copy of a recent bill for each utility.

#### MULTIFAMILY HOUSING UTILITY ANALYSIS OR ACTUAL CONSUMPTION ESTIMATE

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Multifamily Notice H-2015-4 to provide instructions to owners and management agents of Section 8 properties guidance for completing the Multifamily Housing Utility Analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3).

Projects without Section 8 or additionally layering requiring a Multifamily Housing Utility Analysis may provide an analysis based off actual consumption for utilities paid by the tenants. The analysis is acceptable from the owner/agent or from a third party source.

#### UTILITY COMPANY ESTIMATE (26 CFR 1.42-10(B)(4)(B))

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An estimate obtained from a local utility company for each of the utilities used in the project can be used. IRS regulations state that the estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located.

#### ENERGY CONSUMPTION MODEL (ENGINEER MODEL) (26 CFR 1.42-10(B)(4)(E)) –

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The Energy Consumption Model is an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

Required documentation for this method:

- ◆ a copy of the license confirming the analysis was prepared by a properly licensed engineer;
- ◆ a copy of the estimates derived from the energy consumption model to the Agency and make copies of the estimates available to all tenants in the building; and
- ◆ a copy of the most recent rate book (tariff) for each utility.

The building owner must pay for all costs incurred in obtaining the utility estimates from the qualified professional and providing the estimates to the Agency and tenants.

### 3.4 MAXIMUM ALLOWABLE RENTS FOR TAX CREDIT UNITS

#### DETERMINING THE MAXIMUM ALLOWABLE TAX CREDIT UNIT RENT

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To determine the maximum allowable rent for a tax credit unit, owner/agents must:

- ◆ Use the corresponding set of rent limits for the project income limits;
- ◆ Refer to the appropriate tax credit rent limit chart provided by MFA;
- ◆ Choose rent limits that apply to the area where the project is located; and
- ◆ If the Tenant pays his or her own utilities, subtract the appropriate utility allowance.

This amount represents the maximum allowable rent the owner can charge the Tenant of a tax credit unit.

### 3.5 OPTIONAL SERVICES AVAILABLE TO TENANTS

Owner/agents may charge fees for optional services provided to tenants (meals, transportation, etc.) As long as they are optional, these fees are not included in the rent amount restricted by tax credit rent limits but must be reasonable and customary for the local area.

If the tenant refuses to sign a long-term lease after the expiration of the initial lease and the owner/agent wants to implement an additional month to month fee, the IRS has determined that properties may not charge a month to month fee if that fee goes over the maximum rent amount.

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### CHARGES FOR PROJECT FACILITIES

If project facilities, such as garages or a swimming pool, were included in the eligible basis for the project, tenants of tax credit units may not be charged fees for the use of these facilities.

Owner/agents **may charge fees** for the use of optional project facilities as long as the facilities were not included in the eligible basis for the project. The fees for optional facilities would not be included in the rent amount restricted by tax credit rent limits. If the facilities are not optional, any fees charged to tenants of tax credit units for use of these facilities are considered part of the unit rent that is restricted by the maximum allowable rent for that unit.

### 3.6 CHANGES AFFECTING ALLOWABLE RENTS FOR TAX CREDIT UNITS

The tax credit rent limits and utility allowances that apply to tax credit units will change periodically. When this happens, the maximum allowable rents for tax credit units also change. This section describes the circumstances when these changes occur and how to properly adjust unit rents.

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### ANNUAL REVISIONS TO TAX CREDIT RENT LIMITS

Each year, MFA will revise the tax credit rent limits applicable to projects in New Mexico based on changes in area median incomes. The revisions will be made when HUD publishes its updated figures for area median incomes. HUD generally issues these figures during the first quarter of the calendar year. The revised limits will be sent to all owner/agents as well as being posted on MFA's web site at [www.housingnm.org](http://www.housingnm.org).

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### CHANGES IN LOCAL UTILITY ALLOWANCES

All utility allowances need to be updated annually. Any changes in applicable utility allowances will impact the maximum allowable rents for tax credit units.

- ◆ Periodically, local PHAs revise their standard utility allowances. Owner/agents who rely on PHA figures must adopt these new allowances when they take effect.
- ◆ For buildings receiving other federal assistance, the administering agency will provide annual utility allowance updates.
- ◆ When local utility company estimates, actual consumption, energy consumption model or HUD Utility Schedule Model is used, updates of the estimates should be obtained at least annually.

When the applicable utility allowance for a tax credit unit increases, the owner/agent must reduce the rent for the unit, if needed, to make it consistent with the maximum allowable rent under the new utility allowance within 90 days after the date of the change.

Utility allowance adjustments that increase the maximum allowable rents for tax credit units are effective for all move-ins and recertified tenants (subject to lease provisions).

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### ADJUSTING UNIT RENTS

If a decrease in tax credit rent limits results in lower maximum allowable rents for tax credit units, owner/agents are required to bring the rents for tax credit units into compliance with the new rent limits at the time they become effective.

When tax credit rent limits increase, owner/agents can raise the rents for tax credit units up to the amount of the new limit after taking into account the necessary allowance for tenant-paid utilities.

However, any adjustments in a unit's rent must be consistent with the dwelling lease for the unit. Unless specifically stated in the dwelling lease, owner/agents may not raise unit rents until a new lease term begins.

## RENT FLOORS

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When annual adjustments are made in tax credit rent limits, it is possible that rents can go down. However, tax credit regulations have established a floor to protect owners from decreasing rents.

Tax credit regulations protect owners who received allocations in 1990 or later years by establishing a rent floor that keeps the applicable tax credit rent limits for the project from dropping below the rent limits that were in effect on the date the initial tax credit allocation was made to the building/project. For buildings/projects that have not yet been placed in service, the owner may elect to use the tax credit rent limits in effect on the building placed in service date as the rent floor. Owners must notify MFA in writing of this election prior to placed-in-service date for the building/project. Tax credit regulations are silent regarding rent floors for projects receiving credits prior to 1990.

In determining the maximum allowable rent for a tax credit unit, present utility allowances are always subtracted from the rent limit—regardless of whether the rent floor of the current rent limit is used.

### 3.7 RENTS FOR TAX CREDIT UNITS WITH OVER-INCOME TENANTS

#### MIXED INCOME PROJECTS

In September of 1997, the IRS published a final rule regarding the next available unit rule. These new regulations provide that:

- ◆ The rule applies separately to each building in a project containing more than one low-income building;
- ◆ A current tenant whose income exceeds the applicable limitation may move to a different unit within the same building; the new unit occupied by this tenant will assume the over-income tax credit unit status, but this move will not in itself cause any other over-income tax credit units in the same building to lose their status as tax credit units;
- ◆ If the rule is violated through rental of any comparable unit to a nonqualified tenant, all over-income tax credit units within the same building lose their status as tax credit units; and
- ◆ Despite the term “next available unit” used in the Code, the rule actually applies to any available unit—even if it were already available at the time the over-income tax credit unit became over-income—until such time as the building has the requisite number of tax credit units.

#### 100 PERCENT LOW-INCOME PROJECTS

In buildings that consist of 100 percent tax credit units, unit rents may never exceed the maximum allowable rent for tax credit units, even if tenant incomes increase.

## 3.8 DWELLING LEASE REQUIREMENTS

### LEASE FOR TAX CREDIT UNITS

Before a unit can be designated a tax credit unit, the owner/agent must execute an acceptable lease with the tenant. Unless MFA's prior approval has been given, we require that the Apartment Association of New Mexico Residential Rental Agreement and its Affordable Housing Addendum be used on all housing credit properties without federal subsidy (RD and Section 8 project-based assistance.) If you wish to request approval of a different form, you must use lease agreements that conform to the New Mexico Uniform Owner Resident Relations Act, as well as local laws. If you wish to use a different lease it must be reviewed by an attorney at the expense of the owner and certified on form Owner Certification for Legal Review of Property Lease and Addenda (see **Appendix B**). The lease agreements must also include the two provisions described in **paragraph C** below.

### TERM OF LEASE

The IRS requires that tax credit units be used on a non-transient basis and the first lease must be at a minimum six months. Subsequent month-to-month renewals are acceptable. If a property receives rehabilitation credits and the tenant has been living in his unit for a period of more than six months the non-transient rule is satisfied.

The restriction against the use of tax credit units for transient housing does not apply to units providing transitional housing for the homeless and single room occupancy units. Tax credit units can be used for short-term occupancy if a tax credit building meets the following requirements:

- ◆ The unit contains sleeping accommodations and kitchen and bathroom facilities;
- ◆ The building is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and
- ◆ The building is operated by a government entity or qualified nonprofit organization that provides temporary housing and support services.

Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental disabilities and homeless families with children.

### REQUIRED LEASE PROVISIONS

To ensure that the information necessary to establish tenant eligibility can be reliably obtained, owner/agents must execute a lease agreement or lease addendum with tenants occupying tax credit units that combine the following two provisions establishing the obligations of their tenancy:

- ◆ The lessee certifies the accuracy of the information provided in connection with the certification or recertification of the eligibility of the lessee's household; and
- ◆ The lessee agrees that the annual income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy and that he or she will comply promptly with all requests for information from the lessor or MFA. The lessee's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information thereto shall be deemed a violation of substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.



## FEDERAL STATE AND LOCAL LAW

In addition to keeping up-to-date with tax credit regulations and requirements, MFA expects owner/agents to stay abreast of regulation changes concerning the management and operation of rental properties, Fair Housing and Equal Opportunity, ADA regulations and state and local law.

### 3.9 GENERAL PUBLIC USE

Under Treasury Regulation Section 1.42-9(b), if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for tax credits under Section 42 of the Code. However, as clarified in Section 42(g)(9) of the Code, a qualified low-income project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor:

- ◆ Tenants with special needs;
- ◆ Tenants who are members of a specified group under the federal program or state program or policy that supports housing for such a specified group; or
- ◆ Tenants who are involved in artistic or literary activities.

Any unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing is not for use by the general public.

Units set-aside for Project employees i.e. property managers, maintenance staff, etc. Management Units are not considered residential Units, even if rent is collected on the Unit, but as facilities "reasonably required" for the Project, and should not be included in the Applicable Fraction as low-income residential space. These Units must be approved as such by MFA in order to be considered exempt.

Projects may set-aside or otherwise have a preference for military veterans that have served in the armed force of the United States and MFA encourages all Projects to develop marketing plans that involve outreach and marketing of units to veterans.

## SECTION 4: COORDINATED, SERVICES ENRICHMENT SERVICES & HOUSING PRIORITIES

### 4.1 OVERVIEW

Housing priority requirements and any additional enrichment services committed to will be enforced through a provision in the LURA. Services must be provided throughout the affordability period and must not allow for more than a 30-day gap in service. The owner/agent must notify MFA within seven days of the termination of service agreements/contracts. The project will be determined out of compliance if the requirements of the LURA are not met (e.g. if a new service contract is not timely executed or services are altered without MFA's advance approval.) The owner/agent will be required to maintain a file containing contracts with service providers, documentation of when and where services were provided and documentation of time spent on-site by the service coordinator.

All projects shall comply with Federal Fair Housing requirements. Any limitation or preference must not violate nondiscrimination requirements. A limitation does not violate nondiscrimination requirements if the project also receives funding from a federal program that limits eligibility to a particular segment of the population (e.g. the Section 202, Section 811 programs or the Housing for Older Persons Act).

Projects must include appropriate space reserved for the delivery of any third-party services, such as a private office with secure file storage space (if client files are to be stored on-site), in order to be eligible for points under this criterion.

For the property-provided services, the owner/agent must provide sufficient documentation, in MFA's sole discretion, of owner/agent's experience and ability to provide the services, including any past experience in providing said services.

## 4.2 COORDINATED SERVICES AND ENRICHMENT SERVICES

### SERVICE COORDINATION

A minimum of four hours per week of onsite service coordination provided by the service coordinator for properties up to 20 units, with an additional one hour per week for every five units over 20. Service Coordinator must be in addition to the property manager and property management site staff. Duties of the service coordinator include, but are not limited to:

- ◆ Providing residents with information about available onsite and community services;
- ◆ Assisting residents in accessing available services through referral and advocacy;
- ◆ Arranging for access to transportation; and
- ◆ Organizing community-building and/or other enrichment events for residents (i.e. holiday events, resident counsel, etc.)
- ◆ Adequate space to meet with residents that provides for confidential conversations and maintenance of secure records.
- ◆ Access to telephone and internet services when meeting with residents for the purpose of coordinating services. Use of a smart phone and tablet is acceptable.
- ◆ Meeting with residents requiring services within 60 days of move-in and semi-annually thereafter.
- ◆ Provide follow up as needed to address resident's needs.

### SERVICE COORDINATION PLAN AND BUDGET

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The proposed project annual operating budget must include sufficient costs to cover the selected services and be detailed out in the submitted budget for serving this Housing Priority.

### REPORTING REQUIREMENTS

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The owner must submit an annual certification of:

- ◆ The number of hours of onsite Service Coordination and coordinated services provided,
- ◆ The number of residents served by each, and
- ◆ The results of the annual survey.

### COORDINATED SERVICES AND SERVICE ENRICHMENTS

- ◆ Generally, each site of a scattered-site project must have a community space adequate for the provision of services and services must be delivered at each site.
- ◆ Coordination of at least two services/programs to be offered on a monthly or quarterly basis, onsite, online, or in close proximity to the project (within ½ mile accessible walking distance or with free transportation provided.)
- ◆ Services must be provided to residents at little or no cost. Services may not be provided by property management staff. While in limited circumstances some services may be provided by the service coordinator, the service coordinator's resume and a description of the experience the service coordinator has in providing the services must be provided with the application. Appropriate services will do one or more of the following:

- Increase resident knowledge of and access to available services.
  - Help residents maintain stability and avoid eviction.
  - Build life skills.
  - Increase household income and assets.
  - Increase health and wellbeing.
  - Improve educational success of children and youth.
- ◆ Conduct an annual survey regarding need for and satisfaction or dissatisfaction with the service coordination, including coordinated services.
  - ◆ For services provided by a qualified service provider, application must include an MOU between the owner/agent and the service provider(s) describing their expertise with providing services, the planned description and delivery of services, and the staff capacity for providing ongoing case management. qualified service providers shall have a minimum of three years of experience providing a service or assistance to persons with special housing needs.
  - ◆ Recognizing that circumstances change over time, the Service Coordination Plan may evolve as needs of residents and market conditions change. The owner/agent must obtain MFA approval prior to instituting changes to the Service Coordination Plan, and the new services must provide a similar level of service to the residents.
  - ◆ Services must be optional for residents residing in reserved units. Any cost for services must be accounted for separately from rent.

## REPORTING REQUIREMENTS

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The owner/agent must maintain:

- ◆ Agreement for services on file, if any,
- ◆ Evidence that the services are being provided (i.e. sign-in sheets, letters/memos to residents advertising the event/service, service logbook and/or activity reports, etc.).

For services provided by a qualified service provider, application must include an MOU between the owner/agent and the service provider(s) describing their expertise with providing services, the planned description and delivery of services, and the staff capacity for providing ongoing case management. qualified service providers shall have a minimum of three years of experience providing a service or assistance to persons with special housing needs.

Recognizing that circumstances change over time, the Service Coordination Plan may evolve as needs of residents and market conditions change. The owner/agent must obtain MFA approval prior to instituting changes to the Service Coordination Plan, and the new services must provide a similar level of service to the residents.

Services must be optional for residents residing in reserved units. Any cost for services must be accounted for separately from rent.

## 4.2 HOUSEHOLDS WITH SPECIAL HOUSING NEEDS HOUSING PRIORITY

### MARKETING PLANS

The owner/agent must have a plan or policy explaining how units will be marketed and made available to Households with Special Housing Needs. This plan shall describe the following:

- ◆ The manner in which all proposed marketing and outreach will be performed and encouraged in connection with locating and confirming Special Housing Needs applicants, including any

assistance to be provided in connection with the application process, move-in process and resident's rights education.

- ◆ The process for maintaining and updating a waiting list of Special Housing Needs applicants eligible to reside in a Special Housing Needs unit.
- ◆ How the project will liaison with a Special Housing Needs applicant/resident in order to facilitate communication to help residents maintain stability and avoid eviction.

To confirm compliance with the housing priority, owner/agents must ensure that Special Housing Needs units shall not be rented to other non-Special Housing Needs households unless the unit has been marketed by the owner/agent for 30 days.

## REPORTING REQUIREMENTS

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The owner/agent must maintain:

- ◆ Evidence of efforts taken to market and attract Special Housing Needs applicants as promised in the Households with Special Housing Needs Plan (i.e. proof/copies of advertisements, evidence of outreach)

### 4.3 PROJECTS RESERVED FOR SENIORS HOUSING PRIORITY

Senior Housing Priority is a project that qualifies for an exemption from familial status discrimination under the Fair Housing Act. To qualify for this exemption, projects must be:

- ◆ Provided under any state or federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the state or federal program); or
- ◆ Intended for, and solely occupied by persons 62 years of age or older; or
- ◆ Intended and operated for occupancy by persons 55 years of age or older in compliance with the Housing for Older Persons Act (HOPA), 24 CFR Part 100 Final Rule.

### 4.4 HOUSEHOLDS WITH CHILDREN HOUSING PRIORITY

Projects with the Households with Children Housing Priority must have 25% of all units are reserved for Households with Children.

### 4.5 PERMANENT SUPPORTIVE HOUSING

All Projects will be required to submit annual certification of PSH Commitment to Quality to meet compliance requirements for this housing priority.

## SECTION 5: ADMINISTRATIVE RESPONSIBILITIES AND PROGRAM COMPLIANCE

### 5.1 OVERVIEW

Under the tax credit program, owner/agents have several administrative responsibilities:

- ◆ Maintain project records in accordance with program requirements;
- ◆ Report electronic data regularly to MFA via HDS Next Gen;
- ◆ Some of the circumstances that can affect an owner's ability to claim tax credits or result in findings of noncompliance; and
- ◆ Resale requirements.

The procedures presented in this plan will help owner/agents comply with tax credit requirements. If owner/agents have questions about how to comply with program requirements, they should contact MFA.

## 5.2 PROJECT RECORDS

An owner/agent's record-keeping responsibilities include three types of records:

- ◆ Tenant files;
- ◆ Unit listings; and
- ◆ Project files.

Owner/agents must keep copies of project records for at least six years beyond the due date for filing the owner's tax return plus extensions for that year. Project records for the first year of the credit period must be kept even longer.

### TENANT FILES

Tenant files must contain the originals of the items listed below including signatures of the head of household, all adults over the age of 18 and an authorized property management representative.

- ◆ **TIC;**
- ◆ **Verifications:** The appropriate documents verifying the income information provided by the tenant for each certification and recertification and other Self Affidavits as needed for qualification, (Zero Income, child support, Unemployed affidavit, etc.) See sample forms included in Appendix E;
- ◆ **Assets:** Under \$5000 affidavit or Verification of all household assets in excess of \$5000;
- ◆ **Student certification;**
- ◆ **Dwelling lease;**
- ◆ **Affordable Housing Addendum;**
- ◆ **Initial inspection;** and
- ◆ **Rental application:** The rental application or income survey form used to gather information about household income and composition.

## 5.3 RECORDKEEPING AND RECORD RETENTION

Under the provisions of the tax credits, the Project Owner will be required to keep records as defined below for each building within a particular Project. These records must be retained by the Project Owner for a minimum of six years beyond the Project Owner's income tax filing date for that year. However, first-year Project records must be maintained for six (6) years beyond the tax filing date of the final year of the Project's eligibility for tax credits. The Project Owner must report to MFA, through MFA's WCMS online system, annual audited property financial statements within 120 days of the close of the Project's fiscal year, as well as annual operating budgets. On a monthly basis, the Project Owner must provide tenant income certifications and property vacancy data using the WCMS online system. In addition, the Project Owner must maintain records for each qualified low-income building in the Project showing:

- ◆ The total number of residential units in the building (including the number of bedrooms and size in square feet of each residential unit)
- ◆ The percentage of residential units in the building that are set-aside units
- ◆ The rent charged on each residential unit in the building (including utility allowances)
- ◆ The number of occupants in each residential unit in the building

- ◆ The low-income unit vacancies in the building and documentation of when and to whom the “next available units” were rented
- ◆ The income certification of each low-income tenant
- ◆ The documentation to support each low-income tenant’s income certification
- ◆ The eligible basis and Qualified Basis for each building
- ◆ The character and use of any nonresidential portion of the building included in the building’s eligible basis (this includes separate facilities such as clubhouses or swimming pools whose eligible basis is allocated to each building)
- ◆ Additional documentation and reporting as required by federal regulation
- ◆ Additional documentation and reporting as required by MFA

Failure to annually report is deemed as noncompliance and is reportable to the IRS.

#### 5.4 VIOLENCE AGAINST WOMEN ACT

“VAWA” is a federal law passed in 1994 to protect victims of domestic violence, dating violence, sexual assault, and stalking. The Act provides funding toward investigation and prosecution of crimes, enhances judicial and law enforcement tools to combat such violence, and improves services for victims. The 2005 VAWA reauthorization included provisions that apply specifically to the Section 8 and public housing programs administered by HUD. The 2013 reauthorization expanded the housing programs covered by the Act to include the housing credit, USDA rural housing programs, and additional HUD programs, including HUD HOME, HUD Housing Trust Fund and HUD Risk-Sharing Program Section 542c.

While the IRS has not issued specific guidance that applies to the Tax Credit program, MFA suggests that owner/agents implement the following practices to ensure future VAWA compliance.

- ◆ Prohibiting denial of assistance and/or eviction from housing (consistent with state eviction laws) on the basis that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission;
- ◆ Providing notices similar to HUD-5380 (Notice of Occupancy Rights Under VAWA) and HUD-5382 (Certification of Domestic Violence) to all tenants in existing developments;
- ◆ Utilizing a lease addendum to inform tenants they are in a Housing Credit unit and that they are protected by VAWA;
- ◆ Allowing bifurcation of tenant leases in order to evict or terminate assistance of the perpetrator and continue housing assistance for the victim;
- ◆ Developing policies on acceptable unit transfers, referencing guidance from HUD-5381 (Model Emergency Transfer Plan) and HUD-5383 (Emergency Transfer Request); and
- ◆ Training property management staff that interacts with applicants and tenants on VAWA requirements.

#### 5.5 PROJECT OWNER CERTIFICATIONS AND REPORTING

The reporting requirements that owner/agents must regularly submit to MFA regarding the project’s status:

##### IRS FORM 8609

Within 90 days of the end of the first year of the credit period, the project owner shall provide MFA a copy of the First Year Certification Part II of IRS Form 8609, as filed or prepared for filing with the Internal Revenue Service and executed by or on behalf of the project owner.

#### OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The project owner shall annually provide to the secretary of the U.S. Department of the Treasury (the secretary) or to his or her designee, at such time and in such manner as the secretary shall prescribe, a certification as to the continuing compliance of the project with requirements of Section 42 of the code. A copy of such annual certification shall be provided to MFA by March 31, a Certification of Continuing Program Compliance and a copy, for each building, of the most recently filed Schedule A: Annual Statement. Note: MFA may require a mid-year Owner Certificate of Continuing Program Compliance as a required document for Ownership changes.

#### ANNUAL VACANCY REPORTING

The project owner must annually submit to MFA by March 31, a vacancy report by month for previous year.

#### UTILITY ALLOWANCE SCHEDULES

The project owner shall certify to MFA annually, that current utility allowances are used in the calculation of rents for the project.

#### AUDITED FINANCIALS AND ANNUAL OPERATING BUDGETS

The project owner must submit annually to MFA, within 120 days of fiscal year end, through MFA's compliance online system, WCMS, annual audited property financial statements and annual operating budgets.

#### ELECTRONIC DATA VIA HDS NEXT GEN

On a monthly basis, the project owner must provide TICs and property vacancy data using the HDS Next Gen online system.

#### OTHER DOCUMENTATION

In addition to the information provided above, the project owner shall provide any other information, documents or certifications requested, from time to time, by MFA with respect to the project's physical, operational and financial condition and tenants which MFA reasonably deems necessary to substantiate the project owner's continuing compliance with Section 42 of the code.

### 5.6 COMPLIANCE MONITORING FEES

To help offset the cost of monitoring compliance, MFA charges owners of tax credit developments a compliance monitoring fee. The monitoring fee amount is stated in the annual tax credit allocation plan, and established in the project's LURA. In New Mexico, the fees are evaluated annually to determine reasonableness and its ability to cover costs of monitoring. Each owner/agent receives an annual reminder notice of the due date of both compliance fees and the annual certification. At the time of publication of this plan, the compliance fees are set at \$50 per qualifying tax credit unit.

Compliance fees are due in MFA's office by January 31 of each year. Owners will be notified once, or one time, of past due compliance fees. They will then have 30 days to submit payment. If payment is not submitted, MFA will send a Notice of Noncompliance (IRS Form 8823) to the Internal Revenue Service.

## 5.7 COMPLIANCE VIOLATIONS

The procedures presented in this plan are designed to help owner/agents understand how to comply with tax credit requirements. In addition, MFA staff is always willing to assist owner/agents by answering their questions about the program either in writing or by telephone.

Under Treas. Reg. §1.42-5(a), state agencies are required to report any noncompliance of which the agency becomes aware. Agencies should report all noncompliance, without regard to whether the identified outstanding noncompliance is subsequently corrected.

If MFA discovers that an owner/agent has failed to abide by tax credit requirements, the agency will notify the owner/agent that the property is potentially out of compliance and will be given a period of time not to exceed 45 days in which to correct the noncompliance issue(s) (if extenuating circumstances exist an extension may be granted if requested in writing, however, said extension cannot exceed 180 days as per §42). Should the issue(s) not be corrected within 45 days and/or the corrections are not satisfactory, MFA will issue an 8823 of noncompliance to the IRS. When the noncompliance issue(s) is/are corrected MFA will issue a corrected 8823 to the IRS with a copy going to the owner of the property.

The correction period is the period of time during which the owner of an LIHTC property must correct any noncompliance identified by the state agency. The correction period begins with the date the state agency provides written notification to the owner that the building is not in compliance. Under Treas. Reg. §1.42-5©(2), state agencies must provide prompt written notice to the owner.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the state agency need not be reported (i.e., the owner is in compliance at the time of the state agency's inspection and/or tenant file review.)

State agencies may allow owner/agents to reconstruct records when the situation warrants, consider incomplete or imperfect documentation, and accept credible oral testimony to determine the owner/taxpayer's overall compliance with the requirements of IRC §42.

Owner/agents should thoroughly review their management practices to ensure that they will maintain the project's low-income occupancy and keep in compliance with program requirements.

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### IMPROPER TAX CREDIT UNITS

Units that do not satisfy each of the five requirements of a qualified tax credit unit cannot be counted as a tax credit unit. When reviewing a project's low-income occupancy, MFA will disqualify any unit listed as a tax credit unit if the owner/agent cannot properly document that the unit meets each of these conditions. Findings of ineligible units can lower a project's applicable fraction and cause a reduction in the project's qualified basis. A reduction in a project's qualified basis will result in the recapture of some or all of the project's credits.

In reviewing a project's low-income occupancy, MFA will review units listed as tax credit units to see that:

- ◆ The tenant is an eligible low-income household;
- ◆ The tenant's income, assets and student status has been properly verified and certified at move-in and at annual recertification;
- ◆ The rent paid by the tenant does not exceed the maximum allowable rent for that unit;
- ◆ A proper lease has been executed; and
- ◆ The unit is being adequately maintained as per the Uniform Physical Condition Standards.



To avoid a potential loss of tax credits, owner/agents need to properly establish each tax credit unit. Maintaining tenant files will help ensure that a unit meets the conditions to qualify as a tax credit unit.

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#### OTHER NONCOMPLIANCE FINDINGS

Owner/agents also have other responsibilities under tax credit requirements and the project's extended use agreement. Failure to fulfill these responsibilities will result in findings of noncompliance and can lead to administrative or judicial action. To avoid findings of noncompliance, owner/agents must:

- ◆ Maintain proper project records;
- ◆ Submit timely and accurate annual compliance reports for their projects;
- ◆ Furnish proper owner's Certificate of Continuing Program Compliance; and
- ◆ Maintain low-income occupancy throughout the term of the project's extended use agreement.

MFA will notify owner/agents prior to reporting findings of noncompliance to the IRS and will specify the correction period for restoring compliance. MFA will help owner/agents correct problems by providing training and technical assistance if needed.

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#### COMPLIANCE ENFORCEMENT

Failure to take steps to restore compliance can lead to additional actions by MFA, as well as the IRS, to compel an owner to bring the project back into compliance. Possible actions include:

- ◆ Administrative remedies;
- ◆ Judicial sanctions; or
- ◆ IRS action.

Also, because projects that are out of compliance require additional monitoring, MFA reserves the right to charge owners additional administrative fees for noncompliance.

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#### ADMINISTRATIVE REMEDIES

There are several steps MFA may take short of initiating legal action. These steps include:

- ◆ Advising agencies or divisions administering other forms of housing assistance of the owner's continued noncompliance;
- ◆ Notifying the limited partners of noncompliance by the general partner; or
- ◆ Informing the board of trustees, the parent organization or sponsoring entity of a nonprofit owner that is out of compliance.

MFA can also demand abatement of excess rents in cases where unit rents exceed the maximum allowable rent for a tax credit unit. If owner/agents fail to comply with abatement or other agency demands, MFA may also pursue judicial action to restore compliance.

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#### JUDICIAL SANCTIONS

A project's extended use agreement authorizes MFA to take legal action to compel owner/agents to restore compliance. These actions include filing suit to:

- ◆ Force an owner to take necessary corrective actions;
- ◆ Appoint a receiver for the property; or
- ◆ Collect outstanding administrative fees owed to MFA.

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#### IRS ACTIONS

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Failure to correct noncompliance that lower the number of qualified tax credit units in a project will result in a reduction in its qualified basis. A drop in qualified basis reduces the amount of tax credits that the IRS will allow the owner to claim for the project and triggers the program's recapture provisions.

## 5.8 OBTAINING ASSISTANCE REGARDING THE TAX CREDIT PROGRAM

The tax credit program represents an important resource for expanding the supply of affordable rental housing in New Mexico. MFA is committed to working in partnership with property owner/agents to make the program a success in our state.

As part of this commitment, MFA offers assistance to owner/agents in meeting the requirements for tax credit projects that have been established by the IRS.

Three principal forms of assistance are available from MFA:

- ◆ **Tax Credit Owner's Compliance Plan.** The plan you are reading is designed to serve as the primary resource for owner/agents;
- ◆ **Tax Credit Compliance Training.** MFA also offers periodic training sessions for owner/agents on how to comply with program requirements; and
- ◆ **Direct Technical Assistance.** If owner/agents encounter an issue or question regarding tax credit requirements, MFA compliance staff is available to answer questions. Owner/agents should review this plan and the property's LURA prior to seeking guidance from agency staff. If MFA cannot answer a question, agency staff will suggest additional contacts that can provide guidance.

## 5.9 RESALE REQUIREMENTS

Tax credit buildings/projects may be sold to purchasers who agree to maintain the low-income occupancy until the end of the compliance period for pre-1990 projects and the remainder of the extended use period for post-1989 projects. Purchasers may be eligible to claim tax credits for any remaining portion of the project's credit period.

However, owners who sell tax credit buildings/projects or an interest in a building/project, are subject to tax credit recapture provisions. The amount that is subject to recapture is the accelerated portion of the project's credits that have been claimed up to the time of sale and are attributable to ownership interest sold. The accelerated portion refers to the additional amount of tax credits that the owner has been allowed to claim as a result of the program's use of a 10-year credit period rather than a 15-year credit period. Generally, the accelerated portion is equal to one-third of the amount claimed.

Owners disposing of a tax credit building/project can defer or avoid recapture by furnishing a suitable surety bond to the IRS covering their credit recapture liability on the interest sold. Initial guidance regarding the terms and amount of the surety bond that must be furnished is provided in IRS Revenue Ruling 90-60 (see **Appendix H.**)

## 5.10 OPTION TO SELL AFTER COMPLIANCE PERIOD

LURA's executed for projects between 1990 and 2004 allowed owners the option to offer the low-income portion of a tax credit project for sale to a qualified buyer once the federal compliance period has expired. Those owners can exercise this option by notifying MFA in writing at any time after the fourteenth year of the compliance period. The notice states that the owner is willing to accept a qualified contract for the purchase of the project. If MFA is unable to obtain a qualified offer to purchase the project and maintain its low-income occupancy within 12 months of the date the owner provided proper notice to the agency, the LURA will terminate.

For projects with LURA's executed after 2004, project owners waive the right to submit a written request to MFA to find a person to acquire the project owner's interest in the low-income portion of the buildings and to terminate the agreement if MFA is unable to present a "qualified contract".

To date, the IRS has not issued specific guidance regarding the contract provisions that would be necessary for an offer to be considered a "qualified contract." MFA will advise owners as the IRS publishes additional guidance on resale requirements.

### 5.11 ONGOING OBLIGATION TO TENANTS OF THE TAX CREDIT UNITS

When the LURA for a project terminates early (i.e., prior to the original expiration date), tax credit requirements state that owners must allow tenants of tax credit units to continue to occupy the units at restricted rents for an additional three years. Owners may not terminate the occupancy of these tenants without proper cause and adequate notice.

## SECTION 6: MULTIPLE FUNDING SOURCE COMPLIANCE [HOME, RD, NAHASDA, SECTION 8, 542(C)]

### 6.1 OVERVIEW

Tax credit projects may be receiving assistance from other federal or state housing programs.

Programs covered in this section:

- ◆ HOME program (HUD);
- ◆ RECD/FmHA 515 program (USDA);
- ◆ Project-based Section 8 (HUD);
- ◆ HUD Risk-Sharing Section 542(c) (HUD-MFA); and
- ◆ NAHASDA (HUD).

Other programs that are not covered in this section include:

- ◆ Affordable Housing Disposition Program (FDIC);
- ◆ Affordable Housing Program (Federal Home Loan Bank);
- ◆ MFA Housing Trust Fund;
- ◆ Section 236 Program (HUD); and
- ◆ Local Government Financing (Bond, etc.).

### ADDRESSING OVERLAPPING REQUIREMENTS

In cases where tax credit requirements differ from those of other programs, owner/agents should follow the most restrictive requirement. Taking this approach will ensure those owner/agents meet tax credit requirements and their responsibilities under other applicable programs. For example, the Resolution Trust Corporation's Affordable Housing Disposition Program (AHDP) requires that the dwelling lease for designated qualifying units include specific provisions. If a tax credit project was purchased through AHDP, the leases for tax credit units that are also counted as qualifying units under AHDP must contain the required provisions.

### 6.2 HUD HOME AND HOUSING TRUST FUND FUNDING AND PROGRAM RULES

Tax credit developments are often joined with other affordable housing programs as a means for providing funding. HUD's HOME Investment Partnerships Program and HUD Housing Trust Fund are

alternative funding sources often used. When combining HOME/HTF and tax credit programs, owner/agents must possess knowledge of both sets of requirements to ensure that compliance is maintained.

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## RENTS

When combining the two types of funding, two sets of rules apply:

Qualified tax credit units must not exceed tax credit rent limits, while HOME/HTF-assisted units must meet HOME/HTF rent requirements. If a unit is being counted under both programs, the stricter rent limit applies.

When tenants receive additional subsidies through rental assistance such as Section 8, additional requirements apply:

- ◆ Under tax credit rules, if the rental assistance program rent limit exceeds the tax credit maximum rent, the unit rent may be raised to the higher limit as long as tenants pay no more than 30 percent of their adjusted monthly income for housing costs.
- ◆ HOME allows the rent to be raised to the rental assistance program limit only if the tenant pays no more than 30 percent of adjusted income, the subsidy is project-based, and the tenant's income is less than 50 percent of the area median income.
- ◆ In a joint tax credit HOME/HTF-assisted unit, the stricter requirements would apply.

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## ESTABLISHING TENANT ELIGIBILITY

Both the HOME/HTF and tax credit programs require project owner/agents to certify tenant incomes in order to ensure they are income-eligible and that the project is in compliance with initial occupancy requirements.

To demonstrate eligibility under both programs, owner/agents must have tenants certify their income and obtain supporting documentation. This documentation must be kept in project unit files for review by MFA.

In New Mexico, MFA has chosen to use the Section 8 definition of Income for all tax credit and HOME/HTF activities.

HOME/HTF requires verification of all asset income, whereas the tax credit program allows tenants to provide a signed statement of household assets and asset income when assets do not exceed \$5000. A tenant in a unit subsidized by both sources of funds would have to comply with the stricter HOME/HTF requirements.

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## RECERTIFICATIONS OF TENANT ELIGIBILITY

The tax credit program does not allow the alternative methods of tenant recertification allowed under the HOME/HTF program. Although HOME program literature from other sources discusses the "waiver" of recertification documentation, MFA does not offer or provide the recertification waiver. This means that the more stringent tax credit rules must always be followed at a project that combines HOME and tax credits.

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## OVER-INCOME TENANTS

The HOME and tax credit programs have somewhat different approaches to over-income tenants.

The definition of an over-income tenant differs under the two programs. Tax credit rules define “over-income” as income above 140 percent of the project income limit. Under HOME, the tenants are considered over-income if their income rises above 80 percent of area median income.

Unlike under HOME, the rent remains restricted under the tax credit program. HOME rules resolve this situation by stating that when funds from both programs are used on the same unit, the tax credit rules should be followed.

## MONITORING

During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME/HTF-assisted rental housing to determine compliance with the property standards and to verify the information submitted by the owners in accordance with the requirements. Projects combining HOME/HTF funds and tax credits are subject to two sets of affordability periods. These periods may be set to be equal in length or the project may be subject to one set of requirements for a shorter time period than the other. MFA monitors both programs together whenever possible. Under the tax credit program, the affordability period is generally 45 years, unless the allocating agency establishes a longer one.

The on-site inspections must occur within 12 months after project completion and at least once every 3 years thereafter during the period of affordability. The participating jurisdiction may adopt a more frequent inspection schedule for noncompliant properties. HOME regulations may be found at 24 CFR Part 92 (the “HOME Final Rule”) and in the Compliance portion in HOME Rental Projects.

## 6.3 RD SECTION 515 FUNDING AND PROGRAM RULES

### INCOME DETERMINATIONS

Owners may receive a below market rate loan or RD Section 515 to finance a rural housing credit property. If this is the case, tenant household’s adjusted income must be at or below 80 percent of median income. The adjusted incomes for Section 515 are calculated to be the annual gross income minus certain allowed deductions such as medical expenses or childcare. (A complete listing of allowed deductions is listed in RD’s Handbook 1930-C.) Rent is then based on 30 percent of the adjusted income minus a utility allowance. Owner/agents must be careful to ensure that the household’s income meets both the tax credit and RD Section 515 requirements. The tax credit program, remember, requires total household income without any allowances or deductions be compared to the applicable income limit. Owner/agents then must be careful to NOT compare the Section 515 adjusted income to the applicable tax credit income limit.

### RENT RESTRICTIONS

Most households in Section 515 properties will meet the tax credit maximum allowable rent restriction because their portion of the rent is only 30 percent of their adjusted income. However, in some cases the household’s income increases enough to make the rental assistance portion decrease and the tenant paid rental portion increase beyond the maximum allowable rent. If this occurs, the owner will have to pay the overage to RD out of his pocket. Overage is defined as the difference between the tax credit maximum allowable rent and the Section 515 calculated rent. However, if the household who initially qualified for the tax credit program paid an initial rent equal to or less than the housing credit maximum allowable rent, the owner will not be subject to overage payments. This means that the owner can collect the full amount of Section 515 calculated rent and pay the overage out of the collected amount, rather than out of his own pocket. To restate, the tenant had to initially qualify for the tax credit program and initially pay

a rent amount less than the maximum allowable rent. The program requirements also stipulate that this ruling can only be used on buildings in receipt of allocation of credits after December 31, 1989.

#### TENANT INCOME CERTIFICATIONS AND ANNUAL RECERTIFICATIONS

In RD projects, owner/agents are required to complete form TC 1944-8, which is a form of the TIC. Because the annual recertification date can change under Section 515, MFA recognizes and will accept the change as long the tenant is fully certified at least once every year.

### 6.4 HUD PROJECT-BASED SECTION 8 RENTAL ASSISTANCE

#### ACQUISITION/REHAB

Within the last few years, there have been a number of cases where properties with Section 8 project-based assistance have received tax credits. In an effort to assist owner/agents, MFA issued an explanation of requirements for projects that received 4 percent credits or acquisition/rehab credits, with the further complication of project-based Section 8. For acquisition/rehab, projects only have to certify existing tenants once, at acquisition, using the following guidelines.

- ◆ The housing credit TIC is not required. The HUD-50059 form is the approved substitute.
- ◆ ALL assets must be verified, in the manner described in the HUD Handbook 4350.3.
- ◆ All initial qualifying files should be identified in some manner, even if the tenant has been there for 10 years.
- ◆ AANM Supplemental Application can be used as a “current” application as the original application may be several years old.
- ◆ The AANM Affordable Housing Addendum (tax credit addendum) must be used in conjunction with the existing lease. The date the tenant signs the addendum should match with the HUD-50059 described in the next step.
- ◆ A signed and dated copy of the most recent 50059 should be used. The date must match the credit addendum.
- ◆ Because there are tenants who have lived at the project for a number of years, it is possible that some tenants income is above 60 percent of median. If that is the case, they have to move. The most likely circumstance is that their most recently verified income is above 50 percent, but at or below 60 percent. If that is the case, then the 50-60 attachment is required to indicate that the tenant is still housing credit eligible and their household income does not exceed 60 percent of median.
- ◆ Income and asset verifications that should not be more than 120 days old.
- ◆ The checklist for what the “new” or first year file should contain is:
  - Supplemental application;
  - 50059 certification serving as an initial tax credit income certification;
  - Tax Credit student certification;
  - 50-60 attachment, if necessary;
  - Verifications of income and assets;
  - Calculation page;
  - Tax Credit addendum to lease; and
- ◆ Copy of Lease with all addenda

#### AFTER ACQUISITION/REHAB

- ◆ The housing credit TIC is not required. The HUD-50059 form is the approved substitute;
- ◆ ALL assets must be verified, in the manner described in the HUD Handbook 4350.3;
- ◆ Use the AANM Affordable Housing Addendum in conjunction with the existing lease. The date the tenant signs the addendum should match with the HUD-50059 described in the next step; and
- ◆ Annual recertifications are required for both housing credit and Section 8 should the annual recertification date change under the Section 8, MFA recognizes and will accept the change as long the tenant is fully certified at least once every year.

#### 6.5 HUD RISK-SHARING PROGRAM SECTION 542(C)

The HUD Risk-Sharing program was created under Section 542 of the Housing and Community Development Act of 1992 to provide new forms of credit enhancement for multifamily housing loans. The extent to which HUD directs MFA regarding underwriting standards and loan terms and conditions is related to the portion of risk taken by MFA. In most cases, MFA assumes 10 percent of the risk for its Risk-Sharing portfolio with some variability in the percentage of risk based upon the loan to value ratio. As a result of assuming the risk, MFA is responsible for operating the Risk-Sharing program based upon our agreement with HUD. Therefore, it is of the utmost importance that MFA ensures that owner/agents comply with the terms of that agreement, with their regulatory agreement, and with other HUD requirements.

#### INCOME DETERMINATIONS

Under the Risk-Sharing program, owner/agents must meet one of two minimum set-aside requirements that include both income and rent restrictions. For income, there are two options:

- ◆ Forty percent of the units must be rented to households whose annual income does not exceed 60 percent of area median income; and an additional 20 percent of the units must be rented to households whose income does not exceed 120 percent of area median income, adjusted for household size as determined by HUD.
- ◆ Twenty percent of the units must be rented to households whose annual income does not exceed 50 percent of area median income; an additional 5 percent of the units must be rented to households whose income does not exceed 80 percent of area median income; and an additional 35 percent of the units must be rented to households whose income does not exceed 120 percent of area median income, adjusted for household size, as determined by HUD.

#### RENT RESTRICTIONS

Rents must not exceed 30 percent of the median income levels specified for the unit's set-aside for households earning no more than 60 percent of median income. MFA has chosen to implement the same maximum rents for the Risk-Sharing program as for the LIHTC program. Gross rent is defined as tenant-paid rent (excluding any Section 8 subsidy or other rent subsidy) plus the utility allowance.

#### TENANT INCOME CERTIFICATIONS AND OTHER DOCUMENTATION

The definitions of income and assets for the Risk-Sharing program are the same as those for LIHTC and HOME (i.e., those contained in the HUD Handbook 4350.3, Chapter 5.) The processes used for verifying and certifying income are the same as those described in other sections of this plan, so will not be repeated here. In addition, the forms used are the same.

### OCCUPANCY AND LEASES

Tenants occupying income-restricted units must be income eligible. Therefore, households must have their income and assets certified at move-in and annually thereafter. The requirements for recertification are the same as those provided previously for the LIHTC program. All Risk-Sharing projects must use the Residential Rental Agreement Addendum - MFA's 542(c) Program (**Appendix J.**)

### ANNUAL MANAGEMENT REVIEW AND PHYSICAL INSPECTION

As required by MFA's agreement with HUD, the owner/agent will be responsible for completing an annual management review and physical inspection of each HUD Risk-Sharing Section 542c property to ensure that it is being operated in compliance with the regulatory agreement, as well as providing safe, decent and sanitary housing.

### REAC INSPECTIONS

In addition, all Risk-Sharing properties are subject to HUD's Uniform Physical Condition Standards and Physical Inspection Requirements, through the REAC. MFA orders (and pays for) the REAC inspections through HUD's online systems. MFA staff makes the arrangements for the REAC inspection, but have no control over what units are selected or the result of the inspection. As soon as MFA receives a copy of the REAC report, the owner will be notified. If the score is high enough, the next REAC inspection will not be due for three years. Whenever possible, MFA will attempt to schedule the REAC inspection at the same time as the annual monitoring review.

REAC inspections are scored using a scale of 1 to 100. Frequency of REAC inspections is score-based.

Score	Frequency of Inspection
90-100	Every 3 years
80-89	Every 2 years
79 and below	Every year

In addition to the numerical score, there are three letters (a-c) and an \* may follow. Indicating the following:

a	No health and safety deficiencies noted
b	Non-life Threatening health and safety deficiencies noted
c	At least one Life Threatening health and safety deficiency noted
*	At least one inoperable smoke detector noted

### ANNUAL REPORTING

Reporting tenant data via HDS Next Gen is due to MFA on a monthly basis. Reporting financial data via WCMS is due to MFA on an annual basis. A Certificate of Continuing Program Compliance must also be submitted annually. A sample of that form is provided at the end of **Section 7** of this document.



**6.6 NATIVE AMERICAN HOUSING ASSISTANCE AND SELF DETERMINATION ACT (NAHASDA)**

The Native American Housing Assistance and Self Determination Act of 1996 reorganized the system of housing assistance provided to Native Americans through HUD by eliminating several separate programs of assistance and replacing them with a block grant program. The regulations are published at 24 CFR Part 1000. NAHASDA uses the same definitions as Section 8, with the exception being NAHASDA requires units be rented to households whose annual income is the greater of 80 percent of area median income limits for the counties or their equivalent in which the Indian area is located or the median income for the United States.

Section 8 definitions are used for income and assets verification and calculations. Rents must not exceed 30 percent of the adjusted annual income for the household. While MFA does not monitor this program, NAHASDA funding is often layered with Low Income Housing Tax Credit funding on Tribal Lands. Monitoring reviews and reports is handled by HUD Office of Native American Programs and NOT by MFA.

**PLEASE NOTE:** All of the definitions listed below are subject to the Indian Housing Plan set forth by the pertinent Indian tribe.

**6.7 COMPARISON OF PROGRAM REQUIREMENTS ACROSS FUNDING SOURCES**

MFA has prepared the chart, on the following page, for quick access for owner/agents.

	<b>LIHTC</b>	<b>HOME/HTF</b>	<b>542(C)</b>	<b>SECTION 8 / SECTION 811</b>
<b>Occupancy requirements</b>	20% of units at 50% OR 40% of units at 60%	Low HOME at 50% High HOME at 60%  HTF at 30%	40% at 60%, w/additional 20% at 120%; OR 20% at 50%, w/additional 5% at 80% and 35% at 120%	50%, but must rent to 40% of new applicants at 30%, then 50%
<b>Rent requirements</b>	Cannot exceed rent limit set for program. Set by bedroom size based on incomes of imputed household size of 1.5 per bedroom, less utility allowance for tenant paid utilities	Low HOME rents subject to LOW HOME and tax credit, high HOME rents subject to HIGH HOME and Tax Credits  HTF	Same as LIHTC	30% of adjusted gross income
<b>Utility allowance</b>	One of the five acceptable methods:  1) HUD Utility Schedule Model 2) Multifamily Housing Utility Analysis or Actual Consumption Analysis	One of the five acceptable methods:  1) HUD Utility Schedule Model 2) Multifamily Housing Utility Analysis or Actual Consumption Analysis	One of the five acceptable methods:  1) HUD Utility Schedule Model 2) Multifamily Housing Utility Analysis or Actual	Multifamily Housing Utility Allowance

LIHTC Compliance Plan

	3) Utility Company Estimate 4) Energy Consumption Model 5) PHA	3) Utility Company Estimate 4) Energy Consumption Model 5) PHA* <i>*only if PIS prior to 2013</i>	Consumption Analysis 3) Utility Company Estimate 4) Energy Consumption Model 5) PHA	
<b>Income eligibility</b>	Sec. 8 rules (gross income) and exclusions	Sec. 8 rules (gross income) and exclusions	Sec. 8 rules (gross income) and exclusions	Sec. 8 rules (gross income) and exclusions
<b>Initial documentation of income</b>	All sources of income are verified. <i>Employment: use max; assets: checking use 6-month average; \$5,000 or less: tenants certify asset amount and income, use actual income; over \$5,000: verify amount and income, use larger of actual income from assets or imputed income. VERIFICATIONS cannot be older than 120 days.</i>	All sources of income are verified. <i>Employment: use max; assets: all assets must be verified. VERIFICATIONS cannot be older than 120 days.</i>	All sources of income are verified. <i>Employment: use max; assets: checking use 6-month average; \$5,000 or less: tenants certify asset amount and income use actual income; over \$5,000: verify amount and income, use larger of actual income from assets or imputed income. VERIFICATIONS cannot be older than 120 days.</i>	All sources of income are verified. <i>Employment: use max; assets: all assets must be verified; If cash value of assets is more than \$5,000, impute income and use higher of actual or imputed. VERIFICATIONS cannot be older than 120 days.</i>
<b>Recertification</b>	At least annually, verified same as at initial. Effective date of certification is date of signature.	Annually recertified, verified with source documents every six years.	At least annually, verified same as at initial. Effective date of certification is date of signature.	Annual due date is 12 months from move-in, verified same as at initial. Interim must be completed when household income or composition changes.
<b>Self-certification</b>	May self-certify after two (2) years of full recertification (move-in and year 1 annual)	Not eligible for self-certifications.	Not eligible for self-certifications.	May utilized the HUD Streamline method of recertification; as long as a full recertification has been completed every three years

LIHTC Compliance Plan

				and the household income is 90% or more Fixed Income.
<b>Over income Tenants</b>	Rent for over-income (140% of highest limit) tenants remains restricted. NEXT AVAILABLE UNIT RULE  Next available unit of equal or lesser size must be rented to income-eligible tenant.	Rent remains restricted. Units must be rented to eligible applicants at move in.	Rent remains restricted. Units must be rented to eligible applicants at move in.	Tenants can exceed income limitations and not be required to move. Rent cannot exceed market rent. All units must be rented to eligible applicants at move in.
<b>Unit transfer</b>	Within building, allowed. To another building, same as if move out and move in.	Allowable to any unit.	Allowable to any unit.	Allowable to any unit, with initial move-in date in new unit the same as initial move in date in property.
<b>Lease</b>	Minimum initial term six months. Program required language to be included: In NM, use AANM lease and affordable housing addendum unless approved by MFA.	Minimum initial term 12 months. Program required language is included in AANM Affordable Housing Addendum, which has been approved by HUD.	Minimum initial term six months. Program required language to be included. In NM, use AANM lease and Affordable Housing Addendum unless approved by MFA.	Minimum initial term 12 months. Model lease.
<b>Monitoring</b>	ON SITE: within one year of date of last building placed in service, then once every three years.  ANNUAL OWNER'S CERT: due by January 31 of each year.  ANNUAL COMPLIANCE	ON SITE: The on-site inspections must occur within 12 months after project completion and at least once every 3 years thereafter during the period of affordability. The participating	ON SITE: Annually.  REAC: frequency of re-inspection based upon score. From every three years to annually.	IN NM: if project-based Section 8, with MFA as the CA, will be inspected annually.

*LIHTC Compliance Plan*

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	REPORT: being replaced by online certifications.	jurisdiction may adopt a more frequent inspection schedule for noncompliant properties.		ON SITE: Annually.
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## SECTION 7: MONITORING REVIEWS

### 7.1 COOPERATION DURING AGENCY ON-SITE REVIEWS

MFA representatives will conduct on-site reviews, at least once every three years, of tax credit properties and their records to evaluate owner compliance with program requirements. The first inspection for a new project will occur no later than the end of the second year of the credit period.

During a review, owner/agents must provide monitoring representatives with access to all documents regarding an owner's continued compliance with the tax credit requirements specified in the Owner's Certification of Program Compliance.

MFA will give owners at least two weeks advance notice prior to conducting an on-site visit. The managing agent and key on-site staff should be present during the review whenever possible.

Noncompliance issues identified and corrected by the owner/agent prior to notification of an upcoming compliance review or inspection by the state agency need not be reported (i.e., the owner is in compliance at the time of the state agency's inspection and/or tenant file review.)

#### PRIOR TO THE MONITORING REVIEW

At least two weeks prior to a scheduled visit, the owner will receive the visit letter from MFA. Requested documentation will include, but not be limited to:

- ◆ If applicable, a copy of the current and prior year utility allowance schedule, including supporting documentation;
- ◆ A copy of the most recent audited financial statements and operating budget;
- ◆ A copy of the rent roll with the set asides designated;
- ◆ If applicable, documentation demonstrating compliance with specials needs and/or social service requirements stipulated in the LURA; and
- ◆ A copy of the complete 8609 for each BIN.

Upon receipt of the notice, owner/agents must review and confirm compliance in HDS Next Gen:

- ◆ Entry of all tenant data;
- ◆ Entry of the most recent audited financials; and
- ◆ Entry of the most recent operating budget.

At least twenty-four hours prior to the inspection, owner/agents must notify tenants, in accordance with state and owner's lease requirements, of the physical inspection of their unit by MFA.

MFA will need space review tenant files, preferably in a secure location, in an effort to protect the sensitive information being reviewed. More than one analyst may be attending each review depending on the size of the property. The physical review of the property and units will require site staff to accompany and escort each analyst to open doors and assist with the inspection.

#### THE MONITORING REVIEW

The monitoring review will cover:

- ◆ A review of the property's audited financial statements and operating budget;

- ◆ A review of documentation demonstrating compliance with special needs and/or social service requirements stipulated in the LURA; and
- ◆ Current and complete entry of all tenant and financial data in HDS Next Gen and WCMS.

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### TENANT FILE REVIEW

At least 20 percent of the tenant files will be selected by MFA at random. The tenant file review will cover an evaluation of utility allowance schedules and respective implementation deadlines; comparison of rents charged and allowable set aside maximums; and evaluation of household income and the applicable set aside income limit. Documents reviewed will include but not be limited to:

- ◆ Tenant Income Certification;
- ◆ Third party verification of income;
- ◆ Student affidavit;
- ◆ Assets under \$5000 affidavit or Verification of all household assets in excess of \$5000;
- ◆ Lease;
- ◆ Affordable addenda;
- ◆ Original move-in application;
- ◆ Initial Inspection; and
- ◆ All supporting documentation.

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### PHYSICAL INSPECTION

At least 20 percent of the units will be selected by MFA at random. Compliance monitoring regulations published January 14, 2000, require housing credit agencies to conduct physical inspections consistent with standards governed by HUD's Uniform Physical Conditions Standards.

Notwithstanding inspection areas included below a low-income housing project under Section 42 must continue to satisfy local health, safety and building codes. UPCS requires properties to be in "decent, safe and sanitary condition and in good repair" and requires inspection of the following five major areas:

### SITE

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The site must be free of health and safety hazards and be in good repair. Areas to be inspected include:

- ◆ Fencing and retaining walls;
- ◆ Grounds;
- ◆ Exterior lighting;
- ◆ Mailboxes;
- ◆ Signs (such as those identifying the development or areas of the development);
- ◆ Parking lots/driveways;
- ◆ Play areas and equipment;
- ◆ Refuse disposal;
- ◆ Roads;
- ◆ Storm drainage; and
- ◆ Walkways.

## BUILDING EXTERIOR

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Each building on the site must be structurally sound, secure, habitable and must be free of health and safety hazards, operable and in good repair. Areas to be inspected include:

- ◆ Doors;
- ◆ Fire escapes;
- ◆ Foundations;
- ◆ Lighting;
- ◆ Roofs;
- ◆ Walls; and
- ◆ Windows.

## BUILDING SYSTEMS

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Each building's systems must be free of health and safety hazards, functionally adequate, operable and in good repair. Areas to be inspected include:

- ◆ Domestic water;
- ◆ Electrical system;
- ◆ Elevators;
- ◆ Emergency power;
- ◆ Fire protection;
- ◆ HVAC; and
- ◆ Sanitary system.

## UNITS

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Each dwelling unit within a building must be structurally sound, habitable and must be free of health and safety hazards, functionally adequate, operable and in good repair. Areas and aspects of the dwelling unit include:

- ◆ Bathroom items;
- ◆ Call-for-aid;
- ◆ Ceilings/doors;
- ◆ Electrical systems;
- ◆ Floors;
- ◆ Hot water heater;
- ◆ HVAC (where individual units are provided);
- ◆ Kitchen items;
- ◆ Lighting;
- ◆ Outlets/switches;
- ◆ Patio/porch/balcony;
- ◆ Smoke detectors;
- ◆ Stairs;
- ◆ Walls;
- ◆ Windows;
- ◆ Hot and cold running water; and
- ◆ At least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

## COMMON AREAS

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The common areas must be structurally sound, secure and functionally adequate for the purposes intended. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls and windows, to the extent applicable, must be free of health and safety hazards, operable and in good repair. Common areas to be inspected include:

- ◆ Basement/garage/carport;
- ◆ Restrooms;
- ◆ Closets;
- ◆ Utility rooms;
- ◆ Mechanical rooms;
- ◆ Community rooms;
- ◆ Day care;
- ◆ Halls/corridors;
- ◆ Stairs;
- ◆ Kitchens;
- ◆ Laundry rooms;
- ◆ Office;
- ◆ Porch;
- ◆ Patio;
- ◆ Balcony; and
- ◆ Trash collection areas.

## EXIGENT HEALTH AND SAFETY

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All areas and components of the housing must be free of health and safety hazards. Exigent health and safety issues include:

- ◆ Air quality;
- ◆ Electrical hazards;
- ◆ Elevators;
- ◆ Emergency/fire exits;
- ◆ Flammable materials;
- ◆ Garbage and debris;
- ◆ Handrail hazards; and
- ◆ Infestation.

## FOLLOW-UP TO THE MONITORING REVIEW

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Once the monitoring review is completed, MFA will provide a report to the owner within 30 days of the inspection that details the scope and results of the review as well as any noncompliance items. Any items found in noncompliance, as per Section 42 of the IRS code, must be reported to the IRS on a Form 8823.

When responding to the report and the noncompliance items, the owner/agent's response should be addressed in writing along with backup documentation (copy of work order or necessary document) and provided to MFA within 30 days of the date of the report. Any items corrected without backup documentation will not be considered corrected and will remain in noncompliance until proper documentation is received by MFA. If noncompliance items are corrected within the required time frames they will be reported to the IRS on a form 8823 as corrected and property will be back in compliance.



However, if items are not corrected, a form 8823 will be filed with the IRS listing the noncompliance items and property will be considered out of compliance.

Comments made on the tenant file review worksheet and comments or findings made in the physical report will need to be addressed in the owner/agent's response include.

## SECTION 8: COMPLIANCE AND MONITORING DURING EXTENDED USE

### 8.1 OVERVIEW

IRC Section 1.42-5 contains the regulations for agency compliance monitoring during the compliance period, however, the regulations do not require agencies to monitor according to these regulations in the extended use period. IRS officials and other experts have indicated verbally that agencies may not report noncompliance to IRS after the compliance period is over. The tax benefit to the owner is exhausted and IRS can no longer recapture or disallow credits. Therefore, MFA must establish policy regarding how properties are to be monitored and consequences for noncompliance during the extended use period.

In addition, based on the requirements of the extended use period specified in IRC Section 42 regulations and in the LURA referenced below, the agency has the authority to establish different criteria for eligible/ineligible student households, available unit rule, unit transfers and the process for performing annual recertifications during the extended use period, as long as income and rent restrictions, general use requirements (fair housing), Section 8 acceptance, minimum set-aside, applicable fraction, other commitments made to obtain the tax credit allocation and initial and annual recertifications are required.

### 8.2 COMPLIANCE PERIOD

Under Internal Revenue Code (IRC) Section 42(j)(1) the compliance period means, with respect to any building the period of 15 taxable years, beginning with the first taxable year of the credit period.

The first year of the compliance period is the first year in which the owner claimed credits. The first year must be either the year the building(s) are placed in service, or at the owner's election the year following placed in service. All requirements of IRC Section 42 including the 1.42-5 monitoring regulations are in effect during the 15-year compliance period.

### 8.3 EXTENDED USE PERIOD

IRC Section 42(h)(6) establishes that buildings are eligible for the credit only if there is a minimum long-term commitment to low-income housing. Specifically, in order to receive a credit allocation in 1990 and later, the owner must record an extended low-income housing commitment. The document that evidences this commitment is called the LURA for housing tax credits. The LURA is recorded with the respective county recorder, registrar of titles, Tribal government, and/or Bureau of Indian Affairs and "runs with the land," regardless of subsequent changes in ownership.

For purposes of this section, the term "extended use period" means the period:

- ◆ Beginning on the last day in the compliance period on which such building is part of a qualified low-income housing project
- ◆ Ending on the later of:
  - The date specified by the agency in the LURA; or
  - The date which is 15 years after the close of the compliance period.

IRC Section 42(h)(6)(E) provides exceptions to the extended use period in the case of a legitimate foreclosure or deed in lieu or, for projects that have not waived this right, if the agency is unable to present a qualified contract pursuant to IRC Section 42(h)(6)(F). This document does not contain guidance for the provisions of IRC 42(h)(6)(F) regarding the qualified contract referenced in IRC Section 42(h)(6)(E)(i)(II).

Under IRC Section 42(h)(6)(E)(ii), the termination of an extended use period due to foreclosure or deed in lieu or for failure to present a qualified contract shall not be construed to permit before the close of the three-year period following such termination:

- ◆ The eviction or the termination of tenancy (other than for good cause) of an existing tenant of any tax credit unit
- ◆ Any increase in the gross rent with respect to such unit not otherwise permitted by the applicable rent limits.

Under MFA's LURA, the owner agrees to comply with the following for the term of the agreement:

- ◆ It will maintain the applicable fraction by leasing units to households whose incomes are those as prescribed by the LURA, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income (including adjustments for household size) as determined in accordance with IRC Section 42.
- ◆ It will maintain the Section 42 rent and income restrictions.
- ◆ All units subject to the credit shall be leased and rented or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the tax credit units) under the applicable election specified in IRC Section 42(g) pertains to the minimum set-aside election.
- ◆ The owner agrees to comply fully with the requirements of the Fair Housing Act as it may be amended.
- ◆ The owner will not refuse to lease a unit because of the status of the prospective tenant as such a Section 8 voucher holder.
- ◆ Each tax credit unit will remain suitable for occupancy.
- ◆ The determination of whether a tenant meets the low-income requirement shall be made by the owner at least annually on the basis of the current income of such low-income tenant.
- ◆ Other restrictions as required under the specific year's QAP and related points the owner received in order to obtain a credit allocation. These restrictions are property-specific within the respective LURA and to the extent they are not otherwise time-limited, the additional restrictions remain in effect during the extended use period.

Note: that the LURA may have changed from year-to-year according to the respective QAP. However, the basic language pertaining to the extended use period required by IRC has not materially changed.

#### 8.4 TENANT ELIGIBILITY CRITERIA DURING THE EXTENDED USE PERIOD

During the extended use period, MFA requires tenant eligibility and certification of income, as follows:

##### TENANT SELF CERTIFICATION

The initial income certification is required to be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 [Section 8], not in accordance with the determination of gross income for federal income tax liability. However, owner/agents are no longer required to verify income and income from assets at annual recertification if a project is a 100 percent tax credit property with no additional layering of funding including but not limited to tax exempt

bonds, HOME, HUD Risk-sharing Section 542c, NHTF. Mixed-income tax credit properties, to the extent there is not some other financing or rental subsidy program such as Section 8 or RD, are not required to verify income and income from assets at recertification. An annual self-certification by the tenant household is required in order to satisfy the annual certification requirement.

#### STUDENT STATUS

Since student status is not one of the defined requirements of the LURA, the student rules under IRC Section 42 are no longer applicable.

#### UNIT TRANSFERS

Unit transfers from building-to-building are allowed without triggering noncompliance regardless of whether a household's income is over the applicable limit at the time of transfer.

#### AVAILABLE UNIT RULE

The available unit rule is revised to provide that if a household's income goes over 140 percent of the applicable income limit, a currently vacant unit or the next unit in the same building must be rented to a qualifying household (the "comparable or smaller" requirement no longer applies.) This is essentially a one-for-one unit replacement.

#### APPLICABLE FRACTION

Only the unit fraction will be examined to determine a building's applicable fraction.

#### RENT LIMITS

Rent limits as elected by the owner at the time of allocation continue to be in force during the extended use period. Owners of properties that were awarded selection points for additional rent restrictions should refer to the respective QAP or LURA to determine whether those additional rent restrictions are time-limited or if they are in effect for the full term of the extended use period.

#### UTILITY ALLOWANCES

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

MFA will continue to update the tax credit program income and rent limits based on the Section 8 income limits published by HUD annually.

### 8.5 MONITORING COMPLIANCE DURING THE EXTENDED USE PERIOD

The following is the monitoring procedure MFA will follow during the extended use period:

#### ANNUAL CERTIFICATION

The project owner shall provide to MFA, annually, on March 31, a Certification of Continuing Program Compliance. The Owner's Certification of Continuing Program Compliance during the extended use period contains agency-defined certification language pursuant to the terms of the LURA.

#### ANNUAL ONLINE REPORTING

The requirement to submit tenant and financial data via HDS Next Gen and WCMS remains the same in extended use.

## INSPECTIONS

At least every five years, MFA will perform a physical inspection of the property and review of tenant files and other pertinent documentation. The first review in the extended use period will be five years from the last inspection conducted during the compliance period. The greater of five units or 10 percent of the tax credit units chosen at random not to exceed 15 units in any development will be inspected. Different units may be chosen for the file review as those receiving a physical inspection. MFA tax credit compliance staff will continue to work with other inspection entities such as local inspection officials, other government agencies and MFA staff to share inspection information. Also, we will accept HRA HQS inspections done in the same year as our review. If inspected by MFA tax credit compliance staff, inspection will be pursuant to Uniform Physical Conditions Standards. MFA reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of tax credit units. MFA may perform a review at least through the end of the extended use period of the buildings in the project.

## ANNUAL MONITORING FEES

The amount of annual compliance monitoring fees is \$20 per unit since inspections are less frequent and are done on a smaller number of units. The agency reserves the right to adjust the fee due to changing circumstances. Fees are due at the same time as the annual certification and summary report.

## PROPERTIES WITH HUD OR RD

No housing tax credit inspections or fees will be required for properties with project-based Section 8, RD or other HUD programs since these properties are already subject to inspections and consequences under those programs are in place. Owners will be required to submit the Owner's Certification of Continuing Program Compliance during the extended use period and an Owner's Certification of Continued Monitoring of Federal Program, indicating whether or not the property is subject to monitoring for such federal programs and identifying the date of the most recent inspection review. These certifications and report are due on January 31 or the next business day. If a property is no longer subject to monitoring for HUD and/or RD programs, then the property must be placed back on the housing tax credit monitoring schedule. If the development is placed back on the housing tax credit monitoring schedule, MFA will resume all compliance monitoring activities, including charging a fee for monitoring. The timing of the next review will be based on the last inspection conducted by RD, HUD or its contract administrator.

## TRANSFER OF OWNERSHIP, OWNERSHIP INTEREST, EXIT OF LIMITED PARTNER

MFA may require documentation to process these requests. An assignment and assumption agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will put the new owner or partner on notice that it is subject to the terms of the LURA including all compliance restrictions and annual compliance monitoring. Documentation of signatory authorization for the new owner or partner may be requested.

## EXPIRATION OR TERMINATION OF EXTENDED USE PERIOD

During the three-year period after the LURA has expired or terminated pursuant to IRC Section 42(h)(6)(ii), owners are required to annually submit the owner's report listing all low-income households that occupied a unit at the end of the term of the LURA the respective tenant-paid rent, utility allowance and move-out date, if applicable, along with a certification that no low-income Tenants have been evicted or displaced for other than good cause. This report and certification will be due on January 31 or the next

business day. No monitoring fees will be due during this three-year period and MFA is not required to perform inspections

## 8.6 CONSEQUENCES OF NONCOMPLIANCE DURING THE EXTENDED USE PERIOD

The following are the procedures for and consequences of noncompliance:

- ◆ All properties whose compliance period has expired and are subject to the requirements of the extended use period will be listed on MFA’s website categorized in either “good standing” or “not in good standing.”
- ◆ If an owner fails to comply with the monitoring requirements and/or terms of the LURA, MFA will issue a Notice of Noncompliance and recommendations for correction similar to what is issued during the compliance period. All owner/agents will be given a period of time not to exceed 90 days in which to clarify or correct noncompliance and report to MFA that all corrections have been made. An extension of an additional 90 days may be granted, with good cause. If a property has one or more noncompliance findings, but the owner is making a good faith effort to correct within a reasonable time then the property can be considered in good standing. If the violation(s) cannot be corrected within the 90-day correction period (or within the 90-day extension, if granted) MFA may request that the owner and/or management agent formulate a plan and reasonable timeline to bring the violation(s) back into compliance and advise MFA in writing of such a plan.
- ◆ Owner/agents will have demonstrated good faith efforts by carrying out the plan within the referenced timeline and the property will remain in good standing.
- ◆ If an owner repeatedly delays requests for monitoring reviews, fails to submit annual certifications, reports and compliance monitoring fees, does not correct all noncompliance timely or according to the agreed-upon plan, where applicable, or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance) the following are consequences:
  - A Report of Development Not in Good Standing, will be issued for such serious and/or flagrant noncompliance. This report will be sent to the owner and filed with the MFA development team. MFA may withhold providing or awarding any funds or tax credits awards to the owner, its partners and/or proposed developments to be managed by the management company until the property is back in good standing. Once good faith efforts are demonstrated to the agency’s satisfaction, the agency will reinstate the property, owner and management company in good standing and update the website to reflect the change in status.
  - The agency and any interested party have the right to enforce specific performance of the LURA through the court system.

Important: Owner/agents must keep careful track of when a development, and in some cases certain buildings within a development, transition from the compliance period into the extended use period. Premature implementation of the extended use period compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which MFA would be required to file IRS form 8823.

## SECTION 9: GLOSSARY

<b>Affordability Period</b>	Total of the initial Compliance Period plus the Extended Use Period (30-year minimum plus any additional time required and documented in the LURA).
<b>Annual Gross Income</b>	The amount of regular income plus asset income a household is anticipated to receive during the next twelve months following certification.
<b>Applicable Fraction</b>	The fraction, the numerator of which is the number of low-income units and the denominator of which is the total number of residential rental units less any unit exempted by Revenue Ruling 92-61; or the fraction, the numerator of which is the floor space of the low-income units and the denominator of which is the total floor space of the residential rental units less any unit exempted by Revenue Ruling 92-61, whichever is less. The eligible basis of a building is multiplied by the applicable fraction to determine the Qualified Basis of a building for tax credit purposes.
<b>Area Median Income (AMI)</b>	The median income level, issued annually by HUD for each metropolitan area and for each county outside a metropolitan area, which is adjusted for family size and used to calculate maximum income of eligible persons and rents for rent restricted units. As of July 30, 2008, any Project located in a rural area (as defined in Section 520 of the Housing Act of 1949) shall have income limitations measured by the greater of the HUD median income or the national non-metropolitan median income.
<b>Average Income Election (AI)</b>	This election under Section 42 of the IRS Code was authorized by the Consolidated Appropriations Act of 2018. This set-aside allows the Project to serve households up to 80 percent AMI (80%) as long as at least 40 percent of the total units are rent, and income restricted and the average income limit for all tax credit units in the Project is at or below 60 percent AMI (60%).
<b>Next Available Unit Rule</b>	If upon re-certification, a low-income tenant's income is greater than 140% of the applicable income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that unit continues to be rent-restricted and the next available unit of comparable or smaller size in the Development is rented to a qualified Low-income Household.

<b>Building Identification Number (BIN)</b>	A nine-digit alpha numeric designation assigned by MFA to identify building(s) in a LIHTC project.
<b>Carryover Allocation</b>	The provision under Section 42 of the Code which allows a Project, under certain conditions allowed by Section 42 of the Code, to receive a tax credit allocation in a given calendar year and to be placed in service within a period of two calendar years after the calendar year in which Applicant qualifies for a carryover allocation. The carryover allocation is MFA's binding commitment for tax credits.
<b>Code</b>	The IRS Section 42 Code of 1986, as in effect on the date of the QAP, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued with respect thereto by the Treasury or the IRS of the U.S.
<b>Compliance Period</b>	With respect to any building that is included in the LIHTC Project, a minimum period of 15 years beginning on the first day of the first taxable year of the tax credit period with respect thereto in which a LIHTC Project shall continue to maintain the low-income units as low-income units pursuant to Applicant's set-aside election in the Application, pursuant to Section 42 of the Code. Compliance Period plus Extended Use Period equals Affordability Period
<b>Credit Period</b>	With respect to any building that is included in the LIHTC Project, the period of 10 years beginning with 1) the taxable year in which the building is Placed in Service or 2) at the election of the Project Owner, the succeeding taxable year.
<b>Development Period</b>	After the award of Tax Credits has been made by MFA, during the acquisition, rehab or construction, before project is placed in service.
<b>Eligible Basis</b>	The sum of the eligible cost elements that are subject to depreciation, such as expenditures for new construction, rehabilitation and building acquisition.

<b>Extended Use Period</b>		With respect to any building that is included in a LIHTC Project, the period of affordability <b>following</b> the initial 15-year Compliance Period during which time the project continues to be restricted to affordable low-income housing. The minimum Extended Use Period required by Code is fifteen years. Compliance Period plus Extended Use Period equals Affordability Period. <b>Feasibility analysis</b> – a financial analysis based on rules established by the IRA and MFA to determine a Project’s financial feasibility, which is completed to ascertain a tax credit amount, the adequacy of financing sources, the income required to support operation of the Project.
<b>Gross Rent</b>		Maximum amount that a Tenant can pay for rent before deducting a utility allowance.
<b>HOME Partnership (HOME)</b>	<b>Investment Program</b>	HUD’s HOME program is an alternative funding source for owner/agents. Comes with additional requirements.
<b>Households or individuals experiencing homelessness</b>		A household or individual is considered homeless if they: <ol style="list-style-type: none"><li>1. lack a fixed, regular, and adequate nighttime residence, which includes a primary nighttime residence of places not designed for or ordinarily used as a regular sleeping accommodation (including cars, parks, abandoned buildings, etc.) or publicly or privately operated shelters or transitional housing, including a hotel or motel paid for by government or charitable organizations; or</li><li>2. are being discharged from an institution where they’ve been a resident for 90 days or less and the person resided in a shelter (but not transitional housing) or place not meant for human habitation immediately prior to entering that institution; or</li><li>3. are being evicted from their primary nighttime residence within 14 days and no subsequent residence has been identified and the individual/household lacks the resources and support networks (i.e. family, friends, faith-based or other social networks) needed to obtain housing; or</li><li>4. have ALL of these characteristics:<ul style="list-style-type: none"><li>o unaccompanied youth (less than 25 years of age) or family with children and youth;</li><li>o defined as homeless under other federal statutes who do not otherwise qualify under this definition;</li></ul></li></ol>



- has not had a lease, ownership interest, or occupancy agreement in permanent housing for 60 days prior to applying for occupancy;
  - has moved two or more times in the 60 days immediately prior to applying for occupancy; AND
  - has one or more of the following: a) chronic disabilities, b) chronic physical or mental health conditions, c) substance addiction, d) histories of domestic violence or childhood abuse, e) child with a disability, f) or two or more barriers to employment, which include i) lack of a high school diploma or GED, ii) illiteracy, iii) low English proficiency, iv) history of incarceration or detention for criminal activity, or v) history of unstable employment.
5. are fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening situations related to violence; have no other residence; and lack the resources and support networks needed to obtain housing.

**Households with children** Households that include one or more persons under the age of 18 years.

**Households with special housing needs** Households in which an individual or household member is in need of supportive services, tenancy supports and housing and meets at least one of the following definitions:

1. Has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment. In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.
2. Households or individuals experiencing homelessness (see definition above).

**Imputed Asset Income** The cash value of all assets multiplied by the HUD-determined passbook rate of 2%. This is the income that would have been received had all assets earned the passbook rate of interest. The greater of imputed income or actual asset income is used in calculating annual gross income if the total of all assets is greater than \$5,000.

<b>IRS Form 8609</b>	Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to obtain a housing credit allocation from the housing credit agency (MFA). A separate Form 8609 must be issued for each building in a multiple building project. Form 8609 can also be used to certify certain information.
<b>IRS Form 8823</b>	Housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions or any building disposition. A copy of Form 8823 is also given to the owner(s).
<b>Lease Up Period</b>	During this period owners must qualify the units they wish to count as TC units. Once this period ends, the owner can now begin to claim Tax Credits; this date also begins the compliance period.
<b>Land Use Restriction Agreement (LURA)</b>	The agreement submitted to the agency restricting the property to affordable housing use during the Compliance Period and Extended Use Period.
<b>Low Income Housing Tax Credit (LIHTC)</b>	Provides tax credits to developers and investors for the development of rental housing affordable to low-income families and individuals.
<b>Low income housing tax credit (LIHTC) program or tax credit program</b>	the rental housing program administered by MFA pursuant to Section 42 of the Code and by the state of New Mexico Executive Order 97-01.
<b>Low-income tenants</b>	Households that occupy set-aside units.
<b>Low income units or set-aside units</b>	Units which are rent restricted and set-aside for tenants whose income does not exceed 50 percent, 60 percent or some lower percentage, whichever is elected, of Area Gross Median Income.

<b>LIHTC project</b>	The proposed or existing rental housing development(s) for which tax credits have been applied for or received.
<b>Management Units</b>	Units set-aside for Project employees i.e. property managers, maintenance staff, etc., regardless of whether rent is charged to the Project employees or not. These units will be considered common area and are not considered in any low-income unit count calculations included in scoring categories.
<b>Market rate units</b>	Residential rental units that are not low-income units.
<b>Native American Housing and Self Determination Act (NAHASDA)</b>	Reorganized the system of housing assistance provided to Native Americans through HUD by creating a block grant program. Regulations can be found in 24 CFR Part 1000.
<b>Owner's Certification of Continuing Program Compliance</b>	Certification submitted annually to the U.S. Dept of the Treasury and to MFA as to the continued compliance of the project requirements of Section 42 of the code.
<b>Passbook Rate</b>	Interest rate determined by HUD and applied to assets when calculating imputed asset income. Currently listed as .06%
<b>Placed in Service Date</b>	The date on which the first unit of a new construction Project is certified or otherwise officially declared as available for occupancy as evidenced by the Certificate of Occupancy. For rehabilitation Projects, it is the date of the Certificate of Substantial Completion. For acquisitions of existing projects, it is the date of purchase by a new Project Owner.
<b>Qualified Action Plan (QAP)</b>	The Qualified Allocation Plan, which is annually adopted by Board action on which was approved by the Governor of the state of New Mexico pursuant to Section 42(m)(1)(B) of the Code and sets forth the Project selection criteria and the preferences for Projects which will receive tax credits.

<b>Qualified Basis</b>	The portion or percentage of the eligible basis that qualifies for the tax credit. It is calculated by multiplying the eligible basis by the applicable fraction.
<b>Real Estate Assessment Center (REAC)</b>	The system MFA uses to perform inspections on Risk-Sharing Section 542c and Section 8 projects. REAC follows the Uniform Physical Condition Standards (UPCS)
<b>Recapture</b>	A drop in a project's low-income occupancy reduces its qualified basis may cause recapture. The determination is made exclusively by the IRS.
<b>Rent restricted unit</b>	With respect to a LIHTC Project, a unit for which the gross rent does not exceed 30 percent of the imputed Area Gross Median Income limitation applicable to such unit as chosen by the Applicant in the Application and in accordance with the Code. Gross rent must be determined from the rent charts included in the Application package and must correspond to the percentage of Area Gross Median Income selected by the applicant in the Application. It includes the cost of utilities and must be reduced by the amount of tenant-paid utilities. Gross rent includes all income for the unit, including tenant and any subsidy payments. See also "unit."
<b>Rural development or RD or USDA</b>	Rural development or other agency or instrumentality created or chartered by the U.S. to which the powers of RD have been transferred.
<b>Senior Housing</b>	Projects that qualify for an exemption from familial status discrimination under the Fair Housing Act. To qualify for this exemption, Projects must be: (i) provided under any state or federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the state or federal program); or (ii) intended for, and solely occupied by persons 62 years of age or older; or (iii) intended and operated for occupancy by persons 55 years of age or older in compliance with the Housing for Older Persons Act (HOPA), 24 CFR Part 100 Final Rule.

<b>Set-aside</b>	All or a portion of a Project's units that are rent restricted and/or limited to use by a specified tenant income category or a particular special needs tenant group. Set-asides will be described in the LURA.
<b>Set-aside election</b>	The federally imposed minimum proportion of total project unit's set-aside as low-income units at one or more Area Gross Median Income level(s). This election is made by the Applicant and meets the minimum requirements of Code Section 42: larger proportions of units are generally set-aside by the Applicant and restricted in the LURA.
<b>Set-aside units</b>	Low-income units.
<b>Single room occupancy (SRO)</b>	Housing consisting of single room dwelling units. The unit must contain either food preparation and/or sanitary facilities.
<b>Tax credit allocation</b>	Tax credits approved for a project by MFA in an amount determined by MFA as necessary to make a project financially feasible and viable throughout the Project's Compliance Period pursuant to Section 42(m)(2)(A) of the Code.
<b>Tax credit ceiling rents</b>	The maximum rent that may be charged for a rent restricted unit.
<b>Tax credit Income Limits</b>	The maximum annual gross income (adjusted for household size) that a household can have in order to be eligible for the Tax Credit Program. Determined by HUD and distributed by MFA.
<b>Tax-exempt bond financed Project</b>	A project, which is being financed by the issuance of tax-exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.
<b>Tenant Income Certification (TIC)</b>	Owners must have tenants of TC units sign a written certification that the information they provided regarding their income and household composition is complete and accurate. This certification must be completed

before a unit can be counted as a TC unit. For new tenants, the certification should be signed at the time the tenant signs the lease.

**Uniform Physical Condition Standards (UPCS)** The set of standards used by inspectors used to assess the physical condition of the property

**Utility Allowance** A portion of the gross rent in a building where the tenant pays the utility company directly. The utility allowance is an average monthly cost paid within a building. The total rent paid by the tenant must be reduced by this amount.

## SECTION 10: APPENDIX

MFA has prepared the following list of appendix for quick access for owner/agents:

Appendix A: Exhibit 5-1: Income Inclusions and Exclusions

Appendix B: Affordable Addendum Information / "Owner's Certification of Legal Review"

Appendix C: "Sample Tenant Release and Consent Form"

Appendix D: Acceptable forms of income verification (Exhibit 4-3) Acceptable forms of asset verification (Exhibit 4-4)

Appendix E: Verification Sample forms

- Sample "Certification of Zero Income"
- Sample "Child Support Affidavit"
- Sample "Family Support / Gift Income"
- Sample "Under \$5,000 Asset Affidavit"
- Sample "Verification of Assets"
- Sample "Verification of Employment"
- Sample "Certification of Zero Income"

Appendix F: Sample "Student Affidavit"

Appendix G: "Annual Owner's Certification of Continuing Program Compliance"

Appendix H: IRS Revenue Ruling 90-60

Appendix I: IRS Revenue Ruling 92-61

Appendix J: "MFA'S 542(c) Program"

Appendix K: Sample: "Tenant Income Certification (TIC)"

Appendix L: Student Status and Financial Aid Verification