



**UTAH  
HOUSING**  
corporation

# **Housing Credit Compliance Manual**

## **Multifamily Finance**

**October 2022**

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## **Introduction**

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

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

## **Foreword**

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

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

Compliance monitoring by UHC will be administered through the Multifamily Finance Department. The contact phone number for Housing Credit compliance monitoring is (801) 902-8200 or (800) 284-6950.

## **Background**

The Code requires UHC to include in their Housing Credit Qualified Allocation Plan (QAP) a procedure to monitor all Housing Credit projects for continuous compliance with IRC §42 requirements and notify the Internal Revenue Service (IRS) of any non-compliance of which it becomes aware, whether or not it is corrected. The compliance monitoring requirements became effective on January 1, 1992, were amended on January 14, 2000, and apply to all Housing Credit projects, even if the projects received an allocation prior to 1992. UHC, as the state allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring. The IRS has issued final regulations, Income Tax Regulation 1.42-5 (“1.42-5”), relating to the requirements for compliance monitoring.

The purpose of this Manual is to set forth the procedures to be followed by UHC and the owners of Housing Credit projects in order to comply with the requirements of the Program. The compliance monitoring requirements are subject

to modification by the IRS and income determination requirements are subject to modification by the United States Department of Housing and Urban Development (“HUD”).

This Manual includes a number of chapters designed to cover the specific compliance monitoring requirements under Section 42.

**Chapter 1** presents an overview of the program fundamentals;

**Chapter 2** presents the owner's requirements;

**Chapter 3** addresses rents;

**Chapter 4** summarizes tenant certification, income, verifications, etc.;

**Chapter 5** addresses recertification processes, move-out rules and allowable transfers;

**Chapter 6** gives a summary of audit requirements, Extended Use requirements and Fees associated with having a Housing Credit project.



## Chapter 1– PROGRAM FUNDAMENTALS

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<b>Project Lifecycle</b>	The owner agrees to comply with the restrictions required under the specific year’s Qualified Allocation Plan (QAP), related points the owner received in order to obtain credit allocation, and the Land Use Restriction agreement (LURA).
<b>Before Credit Period</b>	The credit amount allocated to each building in a project is partially calculated on the following factors:
<b>Eligible Basis</b>	<p>In general, the Eligible Basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42 (d). As a general rule, the adjusted basis rules of Section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42 (d) are:</p> <p>Buildings located in areas designated as a "qualified census tract" or "difficult development area" may be eligible for an increase in allowable basis.</p> <p>If non-Housing Credit units are of a quality standard greater than that of Housing Credit units in the building, the costs of non-Housing Credit units generally are not included in eligible basis. The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g. carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g. parking, garages, swimming pools, etc.) may be included in eligible basis if there is no separate charge for use of the facilities and they are made available on a comparable basis to all tenants in the project.</p> <p>Eligible Basis is reduced by federal grants, residential rental units which are above the average quality standard of the low-income units, any historic rehabilitation credits, and non-residential rental property.</p> <p>The eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the form 8609, and does not change from year to year.</p>
<b>Claiming Credits</b>	<p>Tax credits may be taken annually for 10 years, which is known as the “credit period” and are based on a percentage of the qualified costs of the building. The credit percentage is a calculation based on the Applicable Federal Rate (AFR) for the month the project is placed in service, or, at the owner’s election, the month in which a carryover/commitment is entered into by the owner and UHC. The credit percentage rate may also be determined by congress. Check with the QAP or 8609 form to determine the rate that applies to your project.</p> <p>Owners of qualified residential rental projects must satisfy the minimum set-aside and gross rent requirements for a minimum 15-year initial compliance period, and</p>

an extended use period that is determined at the time of application for Housing Credits, and codified in the LURA.

Prior to issuance of 8609 form, the owner must certify to the total project costs. The owner must also certify that all Program requirements have been met. Any violation of the requirements of the Program could result in the loss of tax credits to the owner.

**LURA**

A Land Use Restriction Agreement (LURA) is to be executed by the project owner and UHC and is to be recorded at the county recorder's office against the project's property. The LURA commits the project owner to operate in accordance with the agreements (rent and income limits, special uses of units and extended use restrictions, etc.) made between the Applicant and UHC as inducements for the Housing Credit allocation. The LURA shall be recorded at the time the sponsor or project owner obtains an ownership interest in the site and is to be superior to all other liens.

**Credit Period**

The owner is under certain requirements and obligations once credits are awarded and during the credit, compliance and extended use periods. Please see Chapter 2.

In exchange for the investment in low-income housing, the owner will receive tax credits for each of ten years, which is known as the credit period. The credit period begins with the taxable year in which the building is placed in service or, at the election of the owner (which is irrevocable), the succeeding taxable year.

Units do not automatically generate tax credits. A unit will only begin to generate tax credits once initially occupied by a qualified low-income household and other specifications are met within a specific timeframe.

**IRS Form 8609**

Form 8609, Low-Income Housing Credit Allocation and Certification documents the allocation of Housing Credits.

Part I of Form 8609 must be completed only by UHC and will be sent to the owner after the project is placed in service and all documentation required by UHC (Final Cost Certification) is reviewed and approved. If UHC becomes aware that an owner or its agent has filed a self-prepared 8609 with the Internal Revenue Service, UHC reserves the right to determine that all parties involved will not be eligible for future participation in Utah's Housing Credit Program for a period determined by the Corporation.

Part II of the Form 8609 is completed and signed by the Project Owner. Upon completion, Owner files the original document(s) with the IRS at the Philadelphia Service Center for the first Taxable Year in which the credit was claimed. A copy of the executed form must be sent to UHC. See the instructions on IRS Form 8609 and Schedule A for details.

For the first year of the credit period only, a complete owner's certification (Part II) of IRS Form(s) 8609 must be submitted to UHC. For projects in subsequent years of the compliance period, it is not necessary to submit the first-year 8609 form to UHC. However, the owner must submit copies of IRS Form 8609-A and 8586 to UHC for each year of the 15-year compliance period (Federal Compliance Period). For more information, see Annual Reports.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. UHC cannot give legal or tax advice on the filing or completion of tax forms as this falls outside UHC jurisdiction.

**Minimum  
Set-Aside  
Election**

To participate in the program, the project must dedicate (set-aside) at least:

1. No less than 20% of the project units must be set-aside for tenants whose incomes are 50% or less of the area median income (AMI); or
2. No less than 40% of the project units must be set-aside for tenants whose incomes are 60% or less of the AMI; or
3. No less than 40% of the project units must be both rent-restricted and occupied by tenants whose average income limit in the project is 60% or less of the AMI.

The Minimum Set-Aside determines both the minimum percentage of tax credit units at the project and the income limit used to determine tenant eligibility. The Minimum Set-Aside must be maintained for the entire compliance period and through the extended use period.

The Project Sponsor specifies the Minimum Set-Aside when applying for a tax credit allocation and elects the Minimum Set-Aside on IRS Form 8609. This election is irrevocable and sets the applicable income limit for all Housing Credit units in the project. Managers and owners must confirm the Minimum Set-Aside established in the first year of the credit period in order to remain in compliance, and the project must continue to comply with that set-aside. For example, 40/60 Minimum Set-Aside, if the applicable fraction for building "A" is 100%, all tax credit units must adhere to the 60% rent and income restriction.

**Average  
Income**

The Consolidated Appropriations Act of 2018 signed into law on March 23, 2018 established Average Income (AI) as a third minimum set-aside election for Housing Credit (HC) developments. This new election allows developments to designate units as low as 20%, and up to 80% of Area Median Income (AMI) as long as the average AMI level of the HC units in the project, as defined in line 8b on IRS Form 8609, is 60% or less of AMI.

**[Average Income Test Final and Temporary Regulations \(October 7, 2022\).](#)**

- A development meets the requirements of the AI test if the owner's project contains a qualified group of units that constitutes a minimum of 40 percent or more of the residential units in the project. When there are more than the minimum percentage number of HC units, one unit going out of compliance will not cause a project to fail the minimum set-aside test.
- The average of the designated imputed income limitations for the units taken into account for meeting the minimum set-aside test must not exceed 60% of AMI.
- AI applies to the designated income and rent levels of the units, not the incomes of individual resident households. The designations must be in 10% increments, up to 80% of AMI, i.e., 20% AMI, 30% AMI, 40% AMI, 50% AMI, 60% AMI, 70% AMI, or 80% AMI.
- AI applies to both income and rent limits. If a unit has a designated limit of 20% of AMI, the maximum rent level that may be charged to a household in that unit is 30% of 20% of AMI.
- The minimum set-aside election is irrevocable once made on Form 8609. Therefore, existing developments already placed in service are not eligible to change their minimum set-aside/income election to Average Income.
- Next Available Unit (NAU) rule for AI developments, (i) provides that a unit is over income if the household's income exceeds 140% of 60% AMI, if the income target for the over income units is 60% or less, or 140% of the designated income target, if the income target is more than 60% of AMI (i.e., 80% AMI unit) and (ii) effectively requires that the next available unit of comparable or smaller size be rented (A) to a tenant whose income does not exceed the designated limit applicable to the new unit, if it was previously a low-income unit or (B) to a tenant at an income level that would not cause a violation of the 60% average, if the new unit had not previously been a low-income unit. Suppose multiple units are over-income simultaneously in a project that has elected the AI set-aside (average income project) and has a mix of HC and market-rate units. In that case, the owner need not comply with the NAU in a specific order concerning occupancy. Instead, renting any available comparable or smaller vacant unit to a qualified tenant maintains all over-income units' status as a low-income unit until the next comparable or smaller unit becomes available.
- The 30% of AMI income and rent level under the Housing Credit for purposes of AI is not the same as the Extremely Low-Income and rent restriction under the National Housing Trust Fund. The Housing Trust Fund statute and regulation define "Extremely Low-Income" as the greater of 30% of AMI or the federal poverty line for applicable household size. AI unit designation is based solely on AMI.

Applicants will designate units at a specific AMI by unit type (e.g., 5 two-bedroom units at 80% AMI) at the time of application. Income/Rent designations must be equally distributed among bedroom sizes and unit types. Refer to UHC's QAP for requirements on equitable distribution of units and targeting categories. The initial designation of a unit to be made no later than when a unit is first occupied as a HC unit.

Under the AI election, AMI designations are permitted to float between units of the same unit type in the project.

An owner may change the imputed income designation of a previously designated HC unit in any of the following circumstances:

- To enhance protections outlined in the Americans With Disabilities Act of 1990 (ADA), the Fair Housing Amendments Act of 1988, the Violence Against Women Act of 1994, the Rehabilitation Act of 1973, or any other Utah, Federal, or local law or program that protects tenants and that is identified by the IRS or an Agency.
- A household's unit designation may be changed to a higher designation only if household income at annual recertification exceeds 140% of the current income limit for the original designation.
- To restore the required AI income limitation for identifying a qualified group of units to satisfy the AI set-aside or determine the units to be used in computing applicable fraction(s). The rule is limited to newly designated or redesignated, vacant units or occupied by a tenant that would satisfy the new, lower imputed income limitation.

Owners electing the AI as the minimum set-aside for developments with more than one building can elect to treat each building as part of a multiple building project by selecting "yes" on line 8b of the IRS form 8609. Selecting "yes" under 8b on the IRS 8609 form means that AI applies across the entire project rather than building by building.

The management company for a development that elects the AI set-aside will be required to provide certification of additional training on AI prior to lease-up of the development.

In addition to other reporting required by the IRS and/or by UHC under the QAP, owner/management must report on an annual basis a complete matrix of all buildings, units, income/rent AMI% designation, redesignations, unit type, units over 140%, and the AI percentage for the development.

UHC will make a determination of non-compliance the same as it does with the other minimum set-asides. If an owner elects AI and fails to meet the Average income standard at the end of a year, it is not a qualified low-income housing development for the year under IRC Section 42(g)(1)(C), and this non-

compliance must be reported to the IRS with Form 8823 and the owner could be subject to a loss of Credits.

Due to the complexity of the AI election, all developments that are not 100% LIHTC and elect the AI minimum set-aside may be subject to an increased compliance monitoring fee. The monitoring fees for AI can be found under Chapter 6 – Audit.

**Multi-Building Projects**

Under IRC Section 42(g) (3)(D), each building is considered a separate project and the minimum set-aside applies separately to each building. Alternatively, an owner may elect to treat individual buildings as part of a multiple-building project. In such cases, the minimum set-aside applies on a project-wide basis. Form 8609, line 8b, documents the owner’s election to treat the building as part of a multi-building project. If the election is made (the “Yes” box is checked), the owner must identify all the buildings to be included in the project on an attachment to the Form 8609. The buildings should be identified by name, address, BIN, and the amount allocated to each building. See instructions for Form 8609, line 8b for details.

**Federal Income and Rent Limit**

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

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

IRS Revenue Ruling 94-57 allows taxpayers to rely on the old income limits and maximum rents until 45 days after the effective date published by HUD in connection with revised income limits.

For additional guidance regarding the appropriate income and rent limits. UHC approves properties to utilize the Novogradac & Company’s [“Rent and Income Limit Calculator”](#) for assistance in calculating the applicable rent and income limits for their property. UHC approves this tool only as a courtesy as it is the responsibility of the owner(s) to ensure correct income and rent limits are used.

**Applicable Fraction**

The applicable fraction is the lesser of:

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

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

- Units that have never been occupied (empty units), or are occupied by a non-qualified household, cannot be included in the numerator, but must be included in the denominator;
- Vacant units that were last occupied by a non-qualified household cannot be included in the numerator, but must be included in the denominator.
- Units not suitable for occupancy, including Housing Credit units being rehabilitated in the first year of the credit period, cannot be included in the numerator, but must be included in the denominator.
- Common space units (units for FT manager, FT maintenance or Security) are not included in either the numerator or denominator. (Only if approved at time of application, or if approved in writing by UHC and occupied by a full-time employee, working for the property on which they reside).

**Empty Units  
VS.  
Vacant Units**

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

To be considered as a Housing Credit unit, an eligible tenant must occupy the unit on the last day of the month.

A vacant unit cannot be counted as a Housing Credit unit simply because it is held or pre-leased to a qualified tenant. If a Housing Credit unit becomes vacant during the year, the unit remains eligible for the tax credit for purposes of the Minimum Set-Aside requirement and determining the Qualified Basis of the project. The unit remains eligible for the tax credit for the purposes of the Minimum Set-Aside and determining the Qualified Basis of the project as long as the unit is ready for occupancy and habitable as defined by the UPCS and local codes and owner is making all attempts to re-rent the unit.

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

Only units that have been previously occupied by an eligible household may be included as a qualifying low-income unit for compliance purposes. Under IRS rules, if a unit has never been occupied by an eligible household, has been vacated by a market rate household, or otherwise did not qualify as a Housing Credit unit prior to being vacated, that unit cannot be counted as a qualifying Housing Credit unit.

**Special Needs and Set-Aside Units**

At initial lease up, and throughout the extended use period, the owner(s) must work with service providers to fill the Special Needs set-aside units (as listed on the application and LURA) with qualified tenants. Units must be held for specific special needs as outlined in the project application and LURA for at least 60 days before renting units to the general public. All attempts made by the owner must be documented (newspaper and internet ads, signs, flyers, records of communication with service provider, etc.) and kept in a file for tracking and to be presented for review at the time of a UHC audit or upon other request from the agency. Failure by the owner to fill these units with qualified tenants, or lack of sufficient efforts to do so, and failure to report these units within the required software systems may result in a "Not in Good Standing" status with UHC. The requirement for Special Needs set-aside units will remain effective throughout the life of the project.

**Gross Rents**

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

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

Please see Chapter 3 for more information regarding Rents.

**Initial Audit**

The first inspection for new projects will occur no later than the end of the second year of the credit period. This initial inspection will consist of a 100% file review and a physical inspection according to the sample size chart listed under Chapter 6 – Audit.

**Compliance Period**

The compliance period begins in conjunction with the start of the credit period, however, while the credit period has a duration of 10 years, the compliance period extends an additional 5 years beyond the end of the credit period, for a total of 15 years. Owners must maintain all compliance during the entire 15-year compliance period to prevent possible recapture by the IRS.



The Monitoring Fees for inspections completed during the compliance period can be found under Chapter 6 – Audit.

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

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

Under IRS rules and to preserve affordable housing, Project Owners must commit to extended compliance with the section 42 guidelines, for a minimum of 15 years or more, as determined by UHC and recorded in the LURA. This period is in addition to the initial 15-year compliance period and is termed the extended use period. Please refer to your LURA for the extended use time period, commitments and obligations for your specific project.

The Compliance Monitoring Fees for inspections completed during the extended use period can be found under Chapter 6 – Audit.

## 1.1 FAIR HOUSING & DISCRIMINATION

### Fair Housing

Housing Credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C. Sections 3601 through 3619.

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely of the fact that the applicant holds a Section 8 rental voucher or certificate.

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

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

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

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

You can read more about the Fair Housing Act here:

<https://www.justice.gov/crt/fair-housing-act-2>

Anyone with questions regarding the accessibility requirements can obtain the Fair Housing Act Design Manual at

[www.huduser.org/portal/publications/destech/fairhousing.html](http://www.huduser.org/portal/publications/destech/fairhousing.html)

**Fair Housing,  
Disparate  
Impact and  
Criminal  
History**

On April 4, 2016, HUD released guidance regarding disparate impact, criminal history and fair housing concerns within landlord policies. This guidance identified policies, which, in design, are neutral, but in application may have an adverse effect on one group of people of a protected characteristic or class more than another. UHC will require owners to certify fair housing compliance annually and the use of an affirmative fair housing marketing plan that will be evaluated at the time of audit review. UHC will refer any fair housing complainants, including both disparate treatment and disparate impact of protected classes to the appropriate state fair housing enforcement agency and to HUD's Region VIII Denver office. In addition, UHC will report any discrimination findings to the IRS as required by the IRS Form 8823. For more information see [Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#).

**Violence Against  
Women Act  
(VAWA)**

On November 16, 2016, HUD published the final rule regarding the implementation of housing protections authorized in the Violence Against Women Reauthorization Act of 2013. The 2013 VAWA legislation and resulting final rule expands the number of affordable housing programs subject to VAWA protections, which now includes properties funded with Low Income Housing Tax Credits. This final rule was effective on December 16, 2016.

VAWA provides protections for all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation, and which must be applied consistent with all non-discrimination and fair housing requirements. A domestic violence incident does not constitute good cause for eviction of the victim if the victim otherwise meets tenant occupancy rules.

In addition to this final rule, HUD published a notice titled the Notice of Occupancy Rights under the VAWA that LIHC owners must provide to tenants and applicants to ensure they are aware of their rights under VAWA and these implementing regulations. In addition, this Notice provides the following to housing providers:

- a model emergency transfer plan that may be used to develop their own emergency transfer plans,
- a model emergency transfer request form that must be provided to tenants requesting an emergency transfer under these regulations, and
- a certification form for documenting incidents of domestic violence, dating violence, sexual assault, and stalking.

Compliance with the rule with respect to completing an emergency transfer plan and providing emergency transfers and associated recordkeeping and reporting requirements, is required to be in place. HUD released four Model forms for use on HUD properties to ensure compliance with the requirements of VAWA.

These forms are accepted by UHC and may be modified but must retain the same information and language. These model forms are:

1. Notice of Occupancy Rights Under the Violence Against Women Act ([HUD Form-5380](#)).
2. Model Emergency Transfer Plan ([HUD Form-5381](#)).
3. Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternated Documentation ([HUD Form-5382](#)).
4. Emergency Transfer Request Form ([HUD Form-5383](#))

VAWA protects HC tenants and applicants from being denied housing based on or as a direct result of being a victim of domestic violence, dating violence, sexual assault, and stalking. There are three different times a Notice of Occupancy Rights (HUD form – 5380) must be included and given to all applicants and tenants:

1. Denial of Tenancy: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452 (b)(1).)
2. Move-in. Owners must include the HUD Form-5380 Notice of Occupancy Rights to tenants and [HUD Form 91067](#) in addition to the lease if the current lease does not include VAWA protections.
3. Eviction: Owners cannot evict for incidents or threats of domestic violence, dating violence, sexual assault, or stalking. These are not to be considered serious or repeated lease violations by the victim or good cause to terminate the tenancy of the victim. Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of the tenant’s household or any guest or other person under the tenant’s control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)). HUD Form -5380 must be included with any eviction notice.
  - a. VAWA requirements do not limit Owners from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking. As long as the Owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)
  - b. VAWA requirements do not limit Owners from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking). If the owner can demonstrate an actual and imminent threat would be present to other tenants or staff if the tenant or lawful occupant is not evicted.

“Actual and imminent threat” consists of real physical danger that would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include the duration of the risk, the nature, and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.) An Owner should only utilize “actual and imminent threat” when there are no other actions that could be taken. To reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).) If there are no HUD funds associated with a Tax Credit property and there is an incident of housing discrimination based on domestic violence, dating violence, sexual assault, or stalking, contact the Department of Justice at [The Office on Violence Against Women](#).

For more information, see [Violence Against Women Reauthorization Act](#).

## 1.2 PROPERTY TYPES

**Property Types** When a project is awarded funds from multiple funding sources or is designated as a specific type of housing, additional compliance and monitoring levels may be added. As an owner/manager, it is your responsibility to stay in compliance with all types of housing, sources and funding requirements. Please understand one is not more important than another. Compliance with all is required.

There are many ‘types’ of properties in addition to different types of funding sources and each require different compliance adherence; here are just a few with a description:

**Assisted Living Project**  
(Note: Tax Credits are no longer awarded for these types of projects)

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

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

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

**Assisted Living:  
Supportive  
Services**

Usually, the cost of services, which are required as a condition of occupancy, must be included in gross rent, even if federal or state law requires the service be offered to tenants by building owners. The exception to the rule is certain fees paid for supportive services. Supportive services are any service provided under a planned program of services designed to enable tenants of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

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

“Basic Supportive Services” can include: laundry; housekeeping; regular daily meals in a common dining area; 24 hour monitored emergency call service using call buttons and two-way communication devices in units; planned social activities; and scheduled transportation to various sites in the vicinity including commercial areas, shopping centers, hospitals, and doctor's offices. Additional supportive services may include: medication management by a technician, maintenance of detailed medication records; consultation with a nurse as needed about health concerns and medication plans; assistance by non-medically certified aides each day during waking hours in activities of daily living including getting in and out of bed and chairs, walking, using the toilet, dressing, eating and bathing; and routine checks by staff to insure the resident's general well-being. Tenants can have incapacitating infirmities requiring continual

assistance as long as the assistance needed is not continual or frequent nursing, medical or psychiatric services.

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

**Assisted Living:  
Rents**

Each rental amount can vary according to the level of care provided and is made in exchange for use of the unit and supportive services. The HAP portion of payments may only be applied toward rental costs of the dwelling unit, and not for covering any portion of the cost of any supportive service relating to assisted living. This rent can include maintenance and management charges related to the dwelling unit and tenant-paid utilities, but not any charges attributable to supportive services relating to assisted living. The payment standard for the market area must be used.

Gross rent does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by any 501(c)(3)) if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. Section 42(g)(2)(B)(iii).

**Assisted Living:  
Non-Optional  
Fees or Services/  
Mandatory Fees**

Charges for non-optional services, such as a washer and/or dryer hookup fee and built in/on storage sheds or lockers (paid month-to-month or in a single payment) must always be included within gross rent, and not cause the Gross Rent for the unit to exceed the Maximum Rent Limits for the property. **Fees are considered non-optional when they are a condition of occupancy or when no reasonable alternative is available, even if state or local laws require the services be provided.**

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

**Assisted Living:  
Income**

Annual income at an assisted living unit must include:

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

The personal allowance of an individual **IS NOT** included in annual income.

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

**Acquisition and Rehabilitation**

An acquisition occurs when an owner applies for a tax credit allocation to purchase an already existing building. A rehab occurs when the owner applies for a tax credit allocation to make upgrades to an already owned existing building. In both an acquisition and rehab, the building will not have previously had tax credit funding, but may have had other types of funding.

Re-syndication occurs when project has previously been allocated tax credits and has entered its extended use period (or beyond), and the owner applies for additional tax credits to rehab the project. See re-syndication below for additional details.

In order to receive tax credits all units must be considered suitable for occupancy. Units not suitable for occupancy, including tax credit units being rehabilitated, in the first year of the credit period, cannot be included in the numerator for the applicable fraction, but must be included in the denominator for each building. Please see Applicable Fraction for more information.

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

In some cases, a building(s) that was not originally designed as residential housing, such as a warehouse or a school, may be re-purposed as affordable housing. In such cases, there are no existing tenants in the building and lease up will be done like a regular new construction project.

If a building was originally designed as housing and has current tenants in the building(s). This is known as an 'in-place' acquisition/rehab.

**'In-Place' Acquisition/ Rehab**

In cases of acquisition/rehab projects with in-place tenants, all existing tenants must be certified. A key date managers must know is the date of acquisition (the date the new owner/newly formed partnership purchased the property). This is the date that will be the 'effective date' for all the in-place tenants on the TIC form.

In-place certifications must be completed within 120 days of the date of acquisition, and residents must qualify, in order to count the unit towards the applicable fraction, and 'lock-in' their qualified household income in accordance with the IRS Safe Harbor Rev. Proc. 2003-82, 2003-2 C.B. 1097. If an in-place tenant is not certified and qualified within 120 days of the acquisition date, and their income increases above the applicable income limit, there is no protection by the IRS Safe Harbor.



**Note: evictions or not renewing leases (forcing non-qualified households out of the unit so it can be rented to a qualified household) is not considered good cause. (See IRS 8823 guide, Chapter 6 for a detailed explanation of the good cause requirement).**

If, for any reason, verifications cannot be completed for in-place tenants within the 120 days of the acquisition date, these tenants, once qualified, will have an effective date matching the date that all the certification paperwork is completed and signed. These households' income is not protected by the IRS Safe Harbor rule.

It is for this reason, UHC highly recommends certifying all in-place tenants within the 120 days (can be up to 120 days before or after) the acquisition date.

**Tenant  
Relocation Plan**

Projects with tenants in place at the time of Application must submit a relocation plan, describing the extent to which current tenants will be relocated or dislocated either temporarily or permanently, the amount of funds and assistance being provided to relocated/dislocated tenants, and the effort that will be made to bring relocated/dislocated tenants back to the project upon completion. Federal funded programs and projects that require acquisition of real property are required to comply with The Uniform Relocation Assistance and Real Property Act.

**Income Limits  
Inside 120 days**

For all in-place tenants whose certifications are completed within the 120-day window surrounding the date of acquisition, use the income limits in effect on the date of acquisition.

**Outside 120 days**

For all certifications completed outside the 120-day window, use the income limits effective as of the date the certification is completed and TIC is signed. If the acquisition date falls within the 45 day grace period after new income limits are released (but not yet mandatory), the owner is free to choose the higher of the two available income limits.

**Rent Limits**

In most cases, the rent limits to be used will correspond to the income limits. However, there is the possibility that higher rent limits can be used if the owner received the initial allocation of credit in prior year(s) to the acquisition date (re-syndication). If this is the case, another key date managers must know is the Gross Rent Floor election date.

**Resyndication**

The term "Resyndication" describes an existing LIHTC project that receives a subsequent allocation of Tax Credits, only after the property completes the initial 15-year compliance period. Resyndication is handled similar to a rehab with the following exceptions:

1. In place tenants, who originally qualified at move-in and are over the 140% income limit at Resyndication, are subject to "Income

Grandfathering.” To document a household that falls under this protection, the file must contain one of the following:

- a. The complete, original move-in certification file placed in the new Resyndication file.
  - b. If the original move-in certification file is not available (or complete), the owner may apply to UHC for a waiver for the household only if household’s AMI% is less than the owner’s minimum set-aside election. Please note, documentation must accompany this request showing all steps taken to retrieve original move-in paperwork for the in-place household. If the waiver is given, it must be placed in the household’s file, applies only to the named household, and the waiver applies to the household’s income only. A new full-certification for the household as of the Resyndication placed in service date must also accompany the waiver.
2. Income Limits must correspond to the new placed in service date of the Resyndication. This may result in using lower income limits than in previous years.
  3. Gross rent floor limits of the 2<sup>nd</sup> allocation of Tax Credits when initially allocated may be used for rent limits if:
    - a. At time of allocation, rent limits are higher than limits at placed in service date, and only if owner elects to UHC in writing at time of allocation.
  4. Extended Use Period: For Housing Credit Projects previously restricted by a LURA, the new LURA will require a 15-year initial Compliance Period plus a 35-year Extended Use Period.
  5. Projects that have a lower weighted average AMI than what would be achieved by maximizing the rent tiering structure for the same number and configuration of rent restricted under units may apply under the current rent tiering structure at Resyndication. Note that such projects may only raise rents to the new income and rent limits as units turn over. No existing tenant household may experience a rent increase as a result of higher rent limits as approved by UHC.
  6. Projects may increase the number of units that were included in the original LURA, but may not reduce the number of units. In addition, Special Set-aside units and other special restrictions will still be enforced from the original allocation.

**Mixed Income Properties**

Mixed income properties contain both Housing Credit qualified units and conventional units with no income/rent/student restrictions (market rate units).

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

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the Project;
- Must be substantially the same size as other units in the Project; and

- Cannot be geographically segregated from other units in the Project.

Housing Credit units must be suitable for occupancy under Uniform Physical Conditions Standards (UPCS) and local health, safety and building codes. Units that are not suitable for occupancy, including previously qualified Housing Credit units being rehabilitated in the first year of the credit period, are considered “out of compliance”. The non-compliance is corrected when the unit is again suitable for occupancy, and the unit’s character will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

The UPCS does not supersede or preempt local health, safety and building codes. A Housing Credit project under Section 42 must also satisfy the local standards. Compliance with the Americans with Disabilities Act (ADA) and federal Lead-Based Paint requirements (applicable to acquisition/ rehabilitation projects) is an important consideration in determining the project’s suitability of occupancy.

**Mixed Use  
Recertification’s**

Owners of mixed income properties are required to recertify eligibility annually as to the gross annual income of Housing Credit households. Income recertification should be performed in accordance with the verification requirements for an initial certification. See the ‘Initial Certification’, ‘Recertification’, ‘140% Rule’ and ‘Next Available Unit Rule’ sections in this manual for further information.

**Project owners and managers should be aware the 140% and Next Available Unit Rules have particularly important application to mixed properties, impacting continuing resident qualification.**

**Permanent  
Supportive  
Housing**

Permanent Supportive Housing, or PSH, is a model that combines low-barrier access to affordable housing and dedicated supportive services in an effort to help individuals and families lead more stable lives. PSH targets people, particularly the homeless or chronically homeless, with psychiatric Disabilities, chronic health challenges, or other barriers to accessing or retaining stable housing. PSH provides robust supportive services to reduce instability in housing. PSH projects will deliver supportive services through a combination of on-site services and linkages to available community services. PSH projects will have tenant selection policies that prioritize people who have been homeless the longest or have the highest service needs as evidenced by vulnerability assessments.

**Tax-Exempt  
Bond**

**Tax-Exempt Certificate of Continuing Program Compliance**

The Tax-Exempt Bond project owner or authorized representative must prepare and submit a Certificate of Continuing Program Compliance to UHC; the due dates are specified in the Tax Regulatory Agreement for the project.

**Please Note:** The Certificate of Continuing Program Compliance is a separate report from those listed in this manual.

**HUD(Project  
Based)/RD**

Projects under these funding types may be subject to REAC inspections and may be part of the Alignment Program between HUD and UHC. Additionally, the

**Funding  
Combined with  
LIHTC**

utility allowance used will depend on the various funding and may differ from those allowed under a strictly tax credit project. Projects under these funding guidelines may also receive subsidy payments and such payments are not counted towards the household rent portion for tax credit purposes. It should also be noted Rural Housing projects must use the Section 8 method of calculating income based on "annual income", not the RHS method of "adjusted annual income" for Housing Credit qualified tenants

**The paperwork, documentation and calculations required for the RD/HUD does not satisfy all of the Housing Credit requirements. Do not rely on the RD/HUD file to successfully pass a Housing Credit review.**

**Section 8**

Tenants can receive tenant-based subsidy, or a Section 8 Voucher. This subsidy can be carried with the resident to help subsidize their rent wherever they would like to live.

There are a few things to take special note of regarding Section 8 and Tax Credit:

- Owners/management will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective tenant as such holder.
- The public housing authority (PHA) utility allowance must be used for any Section 8 households. If there is more than one PHA that has coverage in your area, the PHA which holds that particular Section 8 voucher for that unit must be used.
- The Section 8 subsidy payment made on behalf of the tenant is not counted toward the household's portion of rent for the Tax Credit program. Section 42 (g)(2)(B)(i).
- The PHA will already have a file on the tenant. This is completely separate from the Tax Credit file and all new verifications are required to be obtained.

## Chapter 2 – OWNER REQUIREMENTS

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

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

### **On-going Compliance**

The owner is responsible for compliance with the Section 42 Code. Owner must take any lawful action to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 of the Code.

UHC is assigned the responsibility for monitoring compliance. Any and all financial consequences to the owner as a result of non-compliance, whether identified by UHC or the IRS, will be the responsibility of the owner.

### **Record Keeping & Record Retention Requirements**

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

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
- The number of occupants in each Housing Credit unit and the household's student status.
- The number and percentage of residential rental units in the building that are Housing Credit units, offices, management units, and common units.
- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include rent rolls, leases, and utility allowances as required by the IRS.
- The Housing Credit unit vacancies in the building, marketing information, and information which shows when and to whom each of the next available units were rented.
- The annual income certification of each Housing Credit household.
- Documentation to support each Housing Credit Tenant's Income Certification including application/recertification questionnaire, and verifications. Anticipated income of all adult persons expecting to occupy the unit must be verified and included on a Tenant Income Certification prior to occupancy and recertified annually for continued eligibility. Income verifications (written, third party verification is always preferred)

are sent directly to and returned by the source to management, not through the applicant.

- The character and use of the non-residential portion of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Records demonstrating that any state established set-aside elected by the owner has been complied with for each year of the compliance period.
- If the Average Income minimum set aside is elected, a complete listing of all units, AMI designation, redesignation, household move-in dates, recertification dates, units over 140%, move-out dates and the average income percentage for the property at the end of each year.

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

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

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

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

### **Special Needs and Set Asides**

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

Special Needs and Set-Aside Tracker Website: NOTE – Only projects with special needs and set-aside units are required to use this website. If you are unsure as to

whether your project has any special needs or set-aside units, please refer to your LURA or contact our office. It is strongly recommended the information be entered on the same day the household occupies the unit. Compliance auditors will use information provided on the website when conducting on-site audits. This website was created to assist service providers in referring tenants to Housing Credit projects. Please note that the use of this website is mandatory for all projects that contain special needs and set-aside units.

The website is located at <https://utahhousingcorp.org/multifamily/set-aside/login> Anyone uncertain about how to access and use this website should contact our office.

**Change of  
Ownership/  
Management**

When a Project Owner proposes to sell, transfer or convey all or any part of the Project, the Project Owner agrees that the project will not sale, transfer or convey all or any part of the Project without first obtaining written consent of UHC, which consent shall not be unreasonably withheld. The new owner must then contact UHC within 30 days of the sale and include a copy of the recorded Statutory Warranty Deed indicating the change of ownership or a copy of the title policy indicating the new owner as the vested owner of the property.

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

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

Owners are also required to notify UHC in writing when there is a change with the management company. The written notification including a management agreement must be received by UHC no later than 30 days prior to the change taking place. Management companies “Not in Good Standing” with UHC will not be approved to take on new properties.

**Casualty Loss**

The determination that a unit is suitable for occupancy is based on its physical condition, without regard for the cause of the non-compliance, at the end of a taxable year. However, there are relief measures in place when the damage is the result of a casualty event within the meaning of IRC §165.

CCA 200134006 provides the definition of “casualty loss” under IRC §42(j)(4) would be the same as the definition utilized in Publication 547, Casualty, Disaster, and Thefts, and Publication 584, Casualty, Disaster, and Theft Loss Workbook; i.e., damage, destruction, or loss of property resulting in identifiable event that is sudden, unexpected, or unusual.

While no credit is allowable, IRC §42(j)(6)(E) provides relief from the credit recapture provisions to the extent the loss is restored by reconstruction or replacement within a reasonable period established by the Secretary. CCA 200134006 clarifies that a period of up to 2 years following the end of the tax year in which the casualty loss occurred is consistent with general replacement principles involving casualties.

If the property is within an area where the President has declared a Major Disaster Area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U. S. C. 5121 et seq. and is within its first year of the credit period, UHC has the discretion to treat the allocation as returned credit in accordance with the requirements of § 1.42-14(d)(3), or may toll the beginning of the first year of the credit period under § 42(f)(1). The tolling time period cannot be more than 24 months after the end of the calendar year in which the President declared the area a major disaster area. No qualified basis shall be established until the building is restored and no Housing Credit shall be claimed during the restoration period of such first-year buildings.

Reporting any reduction in qualified basis is required under Section 1.42-5(c)(1), even if units are restored within the reasonable timeframe.

Within 14 days of the casualty loss event, the Owner/Agent managing the Project at which a casualty loss occurred must complete and upload the “Notice of Casualty Loss” form in the Certification Portal under the miscellaneous section. Once the form is completed and uploaded, contact the MultiFamily Compliance department at 801-902-8200. This required form is in the Compliance Forms section on the UHC site.

## **Training**

Successful operation of a Housing Credit development is management intensive; the owner is responsible for ensuring that the project is properly administered. Thorough understanding of Housing Credit requirements and compliance monitoring procedures requires training of owners and managers. This training should occur before a development is occupied, and should be provided to the on-site property management staff. At a minimum, such training should cover key compliance terms, fair housing, qualified basis rules, determination of rents, tenant eligibility, file documentation, available unit procedures and unit vacancy rules, agency reporting and record retention requirements, and site visits. Continuing education each year or at a minimum every other year is required in order to keep up with regulatory and procedural changes.

Training will be presented or sponsored by UHC Multifamily compliance regularly. Quarterly online trainings will be available at no cost and will be available on the [UHC website](#) in a recorded video format for review at any time.



Staff members who have never been responsible for, or have no prior experience with completing, tracking, and follow-through, or documenting certifications for the Program are required to attend mandatory training.

Furthermore, if UHC staff determines there are issues such as untimely, inaccurate, and/or incomplete certifications or submission of documentation, mandatory training is required for property staff.

### **Reporting**

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

### **Certification Portal**

UHC's compliance reporting portal is Certification Portal (CP), reporting to [CP](#) is mandatory for all Housing Credit projects. Failure to update project information, through this site, in a timely manner, will constitute a "Not In Good Standing" status with UHC and may result in the issuance of 8823 form to the IRS. To access the CP manual click [here](#).

### **Annual Reporting Requirements**

Owners must use the mandatory [CP](#) website for all reporting. Should you have problems with the CP website, please contact our office.

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

**Annual Reports - Due April 30th:** Project owners are required to submit annual reports during the calendar year after the IRS Form(s) 8609 are issued and each subsequent year thereafter, including the end of the calendar year of the end of the extended use period of the project. *For example, if a project received Form(s) 8609 in 2017, annual reports must be submitted by April 30, 2018, and each year thereafter until the end of the extended use period. Please note the final annual reports from the extended use period will be due April 30th of the following year.*

**Annual Owner Certification** - The Annual Owner Certification must be submitted in CP and a signed copy submitted to UHC in PDF format. All certification questions must be answered and forms must be signed and dated by a **PROJECT OWNER** only, to be accepted by UHC. This form certifies that annual income certifications and supporting income and asset documentation has been received from each Housing Credit tenant and that the project is otherwise compliant with general program requirements.

### **Annual Reporting**

**Audited/Unaudited Financials** – In conjunction with the annual owner certification, UHC additionally requires submission of either audited/CPA-

**Requirements –  
Documentation**

prepared or unaudited financial reports, containing the Balance Sheet and Operating Statement to the CP system in PDF format. This information is utilized as supporting documentation to the annual financial template submission outlined below, and should be reflective of the financial status as of December 31 for the prior calendar year. This supporting submission must be entered and completed no later than April 30 of every year.

**Balance Sheet** – UHC requires every project to upload a completed balance sheet on the CP website containing YTD financials as of December 31 of the prior calendar year. This submission is completed using the UHC provided template located under Document Templates/Financial Audit in CP.

**Operating Statement** – UHC also requires every project to upload a completed operating statement on the CP website containing YTD financials as of December 31 of the prior calendar year. This submission is completed using the UHC provided template located under Document Templates/Financial Audit in CP.

**Budget** - UHC requires every project to upload a projected budget for the upcoming year to be completed and uploaded not later than December 1 of the prior year. For example, the budget for 2020 will be due on December 1, 2019. This submission is completed using the UHC provided template located under Document templates/Budget in CP.

**Utility Allowance Documentation** – Copy of documentation used during the prior calendar year to calculate a project’s applicable utility allowance is also required as part of the annual reporting. Along **with appropriate calculations shown by highlighting amounts used and totaling, to arrive at amounts actually used which should match those used on the CP website.** If the project owner pays all utilities, a letter stating such must be enclosed in lieu of utility allowance documentation. The utility allowance documentation or ‘project owner pays all utilities’ letter must be uploaded in the ‘Miscellaneous’ section of the Document Templates in CP and are due April 30<sup>th</sup> with all other annual owner reporting requirements.

**Annual Certification of Qualified Nonprofit Organization** - Projects who received an allocation of credits from the nonprofit set-aside pool are required to submit the *Annual Certification of Qualified Nonprofit Organization* form. This form is available on-line in CP under Document Templates/Miscellaneous.

**IRS forms 8609, Schedule A, and 8586** - These must be submitted to UHC at the time they are filed with the IRS. For projects that are in subsequent years of the compliance period (post 15 projects) it is not necessary to submit the above IRS forms.

Annual owner reporting, along with all supporting documentation is due no later than April 30<sup>th</sup> of each year following the end of the program year throughout the

compliance and extended use periods. Upon receipt, UHC will review each annual report via a “desk audit”. This review will identify missing items or substantial errors. If errors or missing items are found, UHC will inform the Project Owner/management and provide a correction period of 30 days to rectify the reports. For missing items or corrections not made within the 30-day period, UHC will take further actions including 1) extensions for extenuating circumstances if requested by the Project Owner/management, 2) Place project/owner Not in Good Standing, And/or 3) notification to the IRS of an event of non-compliance via form 8823.

**Quarterly Reporting Requirements – Tenant Data**

Project managers are required to use [CP](#) to submit all transactions (move-in, move-out, re-certifications and transfers) and other project information on a quarterly basis (or as otherwise advised by UHC). All submissions must be entered and completed no later than 30 days following the end of each quarter, as outlined below.

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

**Quarterly Reporting Requirements – Financial Data**

In addition to quarterly tenant data submissions through CP, UHC also requires project management to submit, on a quarterly basis, project financials as outlined below and due no later than 30 days following the end of each quarter. This submission is completed using the UHC provided template located under “Available Document Templates” section in CP.

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

**Operating Statement - Actuals** - Must be entered and completed no later than 30 days after the end of each quarter. *For example, the 1st quarter actual operating*

*financials for quarter ending March 31, 2019, will be due on April 30, 2019. Reported figures should reflect the actual financials for the reported quarter, not YTD aggregate figures.*

**HUD  
Demographic  
Collection  
Requirement**

The Housing and Economic Recovery Act of 2008 (HERA) included a provision directing UHC to collect and report demographic and economic information regarding tenants living in Low Income Housing Credit properties to HUD. Owners are responsible for collecting Race and Ethnicity data for each household member by using UHC form 33 or a form that contains similar language. **Parents or guardians are to complete the form for children under 18.**

This information is reported for each household member, and includes, but is not limited to, Race: Ethnicity; Family composition; Income; Use of Section 8 (or similar) Rental Assistance; Disability status; and Date of birth. There is no penalty or non-compliance reported for persons who decline to complete the form. However, the owner or manager must document the file of the attempt made to collect the household data. The owner must comply with the HUD reporting requirements in a timely manner. The tenant data is reported in UHC's CP compliance system.

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

IRS Form 8611      **Recapture of Low Income Housing Credit (IRS Form 8611) is used by taxpayers who must recapture tax credits claimed in previous years. A copy of Form 8611 must be filed with the IRS upon completion by the owner.**

### Chapter 3 – RENTS

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<b>Reminder!</b>	The allowable rent amount the tenant can pay will be based on the Gross Rent Limit for your property based on your minimum set-aside (50%, 60% or Average Income), any LURA rent restrictions agreed to by the owner at application for credits, and further reduced by any utility allowance, non-optional/condition of occupancy fees, non-refundable fees, and any non-allowable charges.
<b>Fees</b>	Any fees specifically addressed in this manual may have limitations to the allowable amount to be charged to tenants. If limitations are not followed, fees will be considered non-allowable and must be included in gross rents.
<b>Security Deposits</b>	It is permissible to charge eligible tenants the first and last months' rent, as a fully refundable security deposit, if the same is charged to other tenants.
<b>Condition of Occupancy Fees</b>	Any fees that are a condition of occupancy, even if state or local laws require the services be provided, must be included in the Gross Rent calculation and not cause the Gross Rent for the unit to exceed the Maximum Rent Limits for the property.
<b>Lease Initiation Fees</b>	An eligible tenant cannot be charged for a fee for the work involved in completing the additional forms or documentation required, such as the Tenant Income Certification. This also includes the customary forms such as the lease.
<b>Unit Preparation Fees</b>	Decorating fees or fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining units in a manner suitable for occupancy. This includes any amounts offered by tenants to expedite their move-in date. These amounts may not be charged or accepted by the owner/management company.
<b>Application Fees</b>	Application fees may be charged to cover the <u>actual cost</u> of reviewing a prospective tenant's income, credit history, and landlord references. The fee may not exceed the average expected out-of-pocket actual costs of reviewing tenant qualifications at the project.
<b>Pets/ Companion and Assistance Animals</b>	<p>The following are UHC's policies regarding (1) pets and (2) assistance animals.</p> <p><i>Pets</i> are considered an option for any tenant in the state of Utah if the landlord allows them.</p> <p>Application fees may be charged to cover the actual cost of reviewing a prospective tenant's application for approval for a pet. The fee may not exceed the average expected out-of-pocket actual costs of reviewing a pet application.</p> <p>Any deposit (including pet deposits) paid to the owner or management company must:</p> <ol style="list-style-type: none"><li>a) Be fully refundable for the entire amount paid AND;</li></ol>

- b) Be comparable to amounts charged for Housing Credit units as well as Market units AND;
- c) Not be excessive.

If a tenant chooses to have a pet in their unit, pet rent charged to the tenant will be considered an optional, non-condition of occupancy charge by UHC as long as the fee is comparable for Housing Credit units as well as Market units AND not excessive.

*Assistance animals* are not pets and include service animals, emotional support/therapy and comfort animals. They provide assistance, perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more symptoms or effects of a person’s disability. They do not need to be trained or certified to serve the function of alleviating the disability and are not just limited to dogs or cats.

Pet policies do not apply to assistance animals, so pet application fees, pet deposits and pet rent may not be charged for assistance animals.

Assistance animals, however, may not become a threat or a nuisance to other tenants, and owners or management companies can require the tenant to clean-up after and maintain control of the assistance animal. In addition, for all pets and assistance animals, if the animal causes damage, charges to the tenant for the actual damage are allowable.

Please see FHEO-2013-01 for more information.

**Month-to-Month Fees**

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

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

**Eviction Turnover Fees**

A property may charge a tenant who is being evicted an eviction turnover fee IF the following three conditions exist:

1. The fee cannot be an upfront fee. The fee may only be charged and collected when an eviction is necessary AND;
2. The fee is paid to the management company for the actual costs of preparing the file for eviction. This fee is not an additional fee paid to the eviction attorney AND;
3. The fee amount is reasonable and does not exceed the actual costs. For the purposes of this condition 3, UHC will assume that a fee of no more than \$50 is reasonable.

Please note; if any one of these conditions is not met, the fee is not considered allowable and will be required to be included in the gross rent calculation.

**Required Renters Insurance**

Required renter’s insurance is a permissible fee/charge as long as:  
(a) the fee/charge is included in the Gross Rent calculation (regardless if the tenant is actually being charged the fee) AND;  
(b) the fee doesn’t cause the Gross Rent for the unit to exceed the LURA Maximum Rent Limits for the property.

**Non-Optional Service Fees**

Charges for non-optional services such as a washer and/or dryer hookup fee and built in/on storage sheds or lockers (paid month-to-month or in a single payment) must always be included within gross rent. Additionally, any non-optional fees or services provided by the property, or any fees that are a condition of occupancy must also be included in Gross Rent. Please note: A service/fee is considered optional only when:  
a) It is not a condition of occupancy AND;  
b) There is a reasonable alternative.

**Project Amenity Fees**

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

**Subsidy Payments**

Subsidy payments to an owner under various HUD Section 8 programs or any other comparable program are excluded and not considered in determining gross rent. The tenant’s portion of the rent payment, plus the applicable utility allowance and any mandatory charges are considered in determining if the rent exceeds the gross rent maximum for the county (Section 42 (g)(2)(B)(i)). Similarly, when considering rent-to income ratios, managers must compare income only to the tenant paid portion of the rent – not including the subsidy payment.

**Utility Allowance**

The Maximum Rent payable by a tenant is reduced by any applicable utility allowance. Under Section 42 (g)(2)(B)(ii) and Treas. Reg. Section 1.42-10, Gross Rent includes any utility allowance for the cost of any utilities, other than telephone, cable television, or Internet, paid directly by the tenant(s) and not by or through the owner of the building. Notice 2009-44 clarifies that utility costs paid by a tenant to the owner based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. See Utility Allowance Options below for more information.

**Utility Allowance Options**

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

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

- A. **RHS Utility Allowance** - USDA Rural Housing Services (RHS) financed projects, or units with tenants receiving RHS assistance.
- B. **HUD Utility Allowance** – All HUD-regulated buildings.

Buildings without RHS or HUD assistance:

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

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

- E. **Energy Consumption Model** - An Energy Consumption Model using an energy and water and sewage consumption and analysis model. Owners must submit a written request to UHC requesting to use this option. The model must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by a qualified mechanical engineer properly licensed in the State of Utah that has jurisdiction over the building. The engineer and building owner must not be related within the meaning of IRC section 267(b) or 707(b), to which the engineer and building owner must certify. The owner and engineer must also certify that the model complies with the minimum requirements described above. Use of the energy consumption model is limited to a building's available historical data including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances and characteristics of the building location. Utility rates used for this model must be no older than the rates in place sixty days prior to the effective date of the utility allowance.



**Ration Utility Billing Systems (RUBS)** – RUBS uses a formula when there are no sub-meters, that allocates a property’s utility bill among its units based on the units’ relative floor space, number of occupants, or some other quantitative measure, but not actual consumption by the tenant(s) in the unit. Under this model, any amount paid by a tenant for utilities must be included in gross rent and the owner or owner’s agent must be able to prove for each month, all Housing Credit units were below the applicable rent limit.

1. **Actual Consumption Sub-Metering** – Treas. Reg. 1.42-10(a): “If the cost of a particular utility for a residential units is paid pursuant to an actual-consumption sub-metering arrangement within the meaning of paragraph (e)(1) of this section, then that cost is treated as being paid directly by the tenant(s) and not by or through the owner of the building.” §1.42-10 Utility Allowances.
  - a. Inclusion of utility allowances in gross rent. If the cost of any utility (other than telephone, cable television, or Internet) for a residential rental unit is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent for that unit includes the applicable utility allowances determined under this section. This section only applies for purposes of determined gross rent under section 42(g)(2)(B)(ii) as to rent-restricted units.
2. **Energy Acquired Directly From a Renewable Source** (Temporary until March of 2019) – This model assumes sub-metering principles to electricity generated from renewable sources by the building owner or by some other person from whom the building owner purchases it directly. Qualification for this sub-metering treatment requires the charges to the tenants for this energy to be comparable to local utility rates. To the extent that tenants consume this energy, charges by the building owner must not exceed the rates the local utility company would have charged the tenants if they had acquired the energy from that company instead of the building owner.

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

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

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

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

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

The utility allowances must be reviewed at least once during each calendar year. Any changes to the utility allowance must be implemented within 90 days of the new utility allowance effective date. The utility allowance requirement is satisfied when:

- The appropriate utility allowance is used;
- The utility allowance is properly calculated;
- Gross Rent includes the utility allowance; and
- The Maximum Gross Rent is not exceeded.

UHC does not typically allow for alteration to the utility allowance calculation used by a property or management company. However, if a change is needed, please contact UHC for prior approval.

## Chapter 4 – TENANT CERTIFICATION

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<b>Minimum and Maximum Household Size</b>	While IRS regulations do not specifically address occupancy requirements, UHC encourages maximum utilization of space. Therefore, it is UHC's recommendation that written occupancy policies be established which reflect maximum utilization. UHC suggests that owners set a maximum standard of no fewer than two persons per bedroom. In situations where there is more than one qualified applicant for a unit, UHC recommends giving preference to the household that is most suitable to the unit size. Owners should comply with state and local laws, regulations and financing requirements (e.g. if Rural Housing Service, use RHS regulations).
<b>Household Size</b>	The number of household members is needed in order to determine the maximum allowable income.
<b>Factors that Affect Household Size</b>	<p>When determining family size for income limits, the owner must include the following individuals who are not living in the unit:</p> <ul style="list-style-type: none"><li>• Children temporarily absent due to placement in a foster home;</li><li>• Children in joint custody arrangements who are present in the household 50% or more of the time;</li><li>• Children who are away at school but who live with the family during school recesses;</li><li>• Unborn children of pregnant women; when a pregnant woman is an applicant, the unborn child is included in the size of the household, and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question: “Will there be any changes in household composition within the next 12-month period?” If an applicant answers that a child is expected, the manager should explain to the tenant that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided (<i>UHC Form 27</i>).</li><li>• Children who are in the process of being adopted;</li><li>• Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse or has no dependents living in the unit). If the person on active military duty is the head, co-head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person’s income must be counted in full;</li><li>• Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above; and</li><li>• Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must be listed on the Tenant Income Certification as “other adult family member”. If the family chooses to include the permanently confined person as a member of the household, the</li></ul>

owner must include income received by these persons in calculating family income.

### **Determining Family Size**

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

- A live-in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
  1. Is determined to be essential to the care and well-being of the person(s); Is not obligated for the support of the person(s); and
  2. Would not be living in the unit except to provide the necessary supportive services.

HUD 4350.3. Change 4, effective 8/7/2013, states that in order to qualify as a live-in aid, a person must now disclose and provide verification of their social security number. (paragraph 3-6.E.3.a.(2) (e)).

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

Managers must obtain verification of the need for a live-in care attendant and should not add the attendant to the lease.

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

### **Income Initial Certification / Recertification**

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

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

**Electronic Signatures**

UHC does permit but does not require electronic signatures for all eligibility documentation in the application and certification process. Owners/management choosing to use electronic signatures, electronic transmission, and storage of electronic documents must do so in compliance with federal, state, and local laws. Applicants and tenants have to option to utilize wet signatures and paper documents upon request.

**Tenant Income Certification**

The Tenant Income Certification (TIC), UHC Form 06, has been provided for your use in certifying a project's eligible tenants. The use of this Tenant Income Certification is required in order to ensure the continuity necessary for accurate monitoring of these projects. The form is a legal document which, when fully executed, qualifies the applicant to live in a Housing Credit unit. It is not to be used as a rental application.

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

The TIC must be signed and effective no later than the move-in date for new tenant files, with re-certifications being signed and effective no more than 12 months from the move-in date or effective date of the last certification. Tenants must use resident's legal name(s) as it appears on the lease and management should instruct the prospective tenant(s) to sign the Tenant Income Certification exactly as such. Resident signatures must be dated using the actual date of signature, backdating and use of "true and correct as of" is not acceptable. Units cannot qualify for tax credits unless the household is certified using the TIC and under lease with a term of at least 6 months at initial move-in.

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

An Initial Certification done after the move-in date is considered late and would cause a non-compliance event.

**Application**

As the Housing Credit program uses special definitions for income and households, standard property management application forms may not collect sufficient information to determine tenant eligibility. Owners and managers must ensure their applications collect all necessary information. Information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets.

An application, fully completed by the applicant in his or her own handwriting, unless assistance is requested or required (clarifying documentation explaining this request or need should be provided), is critical to an accurate determination of tenant eligibility. The following minimum items should be included in the application:

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

When having applicants complete the application and forms, it is correct to first have potential residents disclose their income and assets, family composition, etc., on an Eligibility Application and complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Certification Form must be completed at the time of application. Please see ‘Documentation Requirements – Student’ Section for more information.

**Initial  
Eligibility  
Determination**

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

**Minimum  
Lease  
Requirements**

All tenants occupying Housing Credit units are required to be certified and to execute at least an initial six-month lease. (Exceptions for housing of homeless and single room occupancy are listed below). The six-month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period.

The lease must reflect the correct date of move-in, or the date the tenant takes possession of the unit.

At a minimum, the lease must include:

- the legal name of parties to the agreement and all other occupants
- a description of the unit to be rented (number of bedrooms)
- the date the lease becomes effective
- the term of the lease
- the amount of rent

- Outline of all applicable fees and charges, along with their amounts; both optional and non-optional
- the use of the premises
- the rights and obligations of the parties, including the obligation of the household to annually recertify its income
- the signatures of all household members 18 years of age or older and/or persons under the age of 18 who are the head of household, co-head or spouse
- a statement explaining that the development is participating in the Program, and that tax credit units are under certain program regulations including income eligibility, student eligibility, and annual recertification of household income
- VAWA language or Addendum HUD Form #91076.

**A unit does not qualify for tax credits unless the household is certified and under a lease.**

**Single Room Occupancy**

Single room occupancy (SRO) housing must have a minimum lease term of one month. Tenants in SRO housing may share bathrooms, cooking facilities, and dining areas. Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

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

**Documentation Requirements**

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

**Each household file must have a fully executed Tenant Income Certification (UHC Form 06) with supporting documentation and an Annual Student Certification (UHC Form 21) for each year of occupancy.** For more information regarding file documentation requirements please see Third Party Documentation and Supporting Documentation further in this chapter.

**Student Eligibility**

Under Section 42 Regulations, most households in which all occupants are full-time students, are not eligible and units occupied by these households may not be counted as Housing Credit units.

IRS Code Section 151(c)(4) defines a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC Sec

170(b)(1)(A)(ii). Treas. Reg. Sec. 1.5 1-3(b) further provides that the five calendar months need not be consecutive. It should also be noted that any amount of time, even a single day, within a given month where an occupant is considered a full time student, counts that month towards the 5 months.

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

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

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

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

\*The JTPA program was repealed in 1998, and replaced with the Workforce Investment Act (WIA). WIA, and JTPA when it existed, funds programs such as adult literacy, English as a second language, General Education Diploma (GED) courses, vocational services for the blind, employment and training programs for Native Americans and migrant and seasonal farm workers, job corps, veterans employment programs, summer youth employment and training, employment and training for dislocated workers and displaced homemakers, etc. Students in those programs are eligible for the JTPA exemption provided the school or community education dept., verifies that the applicant/resident is a participant in a program similar to those funded under JTPA or WIA.

\*\*Previously means within five (5) years of the effective date of the initial income certification. "Foster care" means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care



responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes.

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

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

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

### **Third Party Documentation**

Written verification directly from the source (third-party verification) is the standard and most reliable method of verifying income. Written verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances. When obtaining 3<sup>rd</sup> party verifications, please consider the following:

1. If using mail, the original envelope must be kept in file with verification,
2. If verification is via fax, ensure fax header is set to correct date and time and keep fax cover sheet with verification, and ensure entire fax is readable,
3. If verification is via email, keep email with verification sent from third party.
4. If verification is completed via Internet, the date the item was printed must be included, as well as reflection of the tenant name, the website the information was obtained from and a clear determination that income verified is the gross, not net, amount.

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

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

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

As third party verification is the primary required form of verification, for all cases where it cannot be obtained, documentation of efforts made to obtain it must be recorded to justify usage of alternate forms of verification. The following clarification documentation is acceptable and must be included in tenant files:

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

### **Validity of Verifications**

All verifications, including applications, must be dated no more than 120 days prior to the effective date of the certification. Verifications older than 120 days from the effective or move-in date are no longer valid and must be re-done. Verifications dated after the move-in or effective date are considered late and will create a non-compliance event.

Please note the effective date must be either the move-in date for the first year, or the anniversary date of the original move-in date.

Reminder: An Initial Certification that is done after the move-in date, or a recertification that is completed after the anniversary date, is considered late and causes a non-compliance event.

**Supporting Documentation**

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

Once the application, Annual Student Certification Form, and release of information on relevant forms has been completed, third party verification should then take place. Please see ‘Third Party Documentation’ section above for third party requirements and ‘Validity of Verifications’ for the time frame in which supporting documentation is valid.

Upon receipt of all income verification and supporting documentation, owners or managers must calculate income and income from assets based on information provided on the verification forms, complete the Tenant Income Certification, and determine if the resident is qualified for participation in the Housing Credit Program. This process must take place prior to the effective date of the Initial Certification (move-in date). It is highly recommended all income and asset calculations are shown in the file.

See Annual Income and Assets section of this manual for in-depth income and asset requirements.

**Clarifications**

Any incomplete, inconsistent, or missing information on verifications must be followed up with the source and a notation made to the resident file via a Clarification Record or other form as it is not appropriate to write directly on 3<sup>rd</sup> party verifications. It should be noted that clarifications may only be used once proper 3<sup>rd</sup> party verification have been obtained as management cannot initially verify any income/asset information over the phone.

**Corrections to Documents**

While UHC understands that management may need to make changes and corrections to documents, any **documents altered with correction fluid/tape or “white-out” will not be accepted and must be re-done.** When a change is needed, the person making the correction should draw a single line through the incorrect information, write or type the correct wording or number, and have all parties who signed the document initial the change. It should be noted that this applies to all documentation contained in the file, regardless of the party that completed it (such as 3<sup>rd</sup> party verifications where the employer made inappropriate alterations).

**Extenuating Circumstances**

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

**Forms**

All UHC forms are available online and are updated periodically. It is a UHC requirement to use the most current form version(s) in tenant files. Forms can be found at: <https://utahhousingcorp.org/multifamily/compliance/forms>

**Required Forms**

Required forms must be included in every tenant move-in file and re-certification file for the duration of occupancy, regardless of household circumstances. These forms

cannot be exchanged for management forms, even when questions and format are the same.

- Annual Student Certification – Form 21
- UHC Tenant Income Certification – Form 06 or UHC Self-Certification TIC – Form 28 (as appropriate).

For more information regarding file documentation requirements please refer to Chapter 5 – Tenant Certification.

### **Additional Forms**

The use of additional forms is not required for every file or under every circumstance. However, information gathered from a quality application or tenant interview will dictate which additional forms may be required as documentation of varying situations within each household. Company/management created forms are allowed in place of UHC’s additional forms, as long as the same questions and information is contained on each form. If it is found during audit that company forms do not ask or gather the same information, use of UHC’s forms can become mandatory.

Additionally, while not required under any circumstance, UHC highly recommends management adopt some form of a “calculation worksheet” to assist managers in showing individual income and asset calculations. This assists management in resident qualification and is extremely helpful during file audits by UHC. To access UHC’s Recommended Forms click [here](#).

## **4.1 Income**

### **Income**

Potential tenants for rent-restricted units should be advised early in the application process of the maximum income limits that apply to Housing Credit units. Management should explain to potential tenants that the anticipated income of all persons 18 years of age or older and unearned income of minor children expecting to occupy the unit must be included, verified, and certified on a Tenant Income Certification. Certification from the owner that this has been performed for each Housing Credit tenant is required under IRS rules.

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

### **Annual Income**

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

the level of benefit provided to a household, but it is not used in the Housing Credit Program.

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

Total Gross Income from all Sources = Annual Income

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

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

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

**Projecting  
Tenant Income  
and anticipated  
income**

Housing Credit projects are both rent and income restricted, therefore, all applicants to be included in the household must have all current and anticipated income they expect to receive during the twelve-month certification period verified and included in the total household income calculation. This includes all household members under the age of 18 who are treated as adults because they are an emancipated minor, as well as unearned income of any household member (including minor children). Proper verification of all income sources must take place prior to occupancy. Households are further required to be re-certified annually for continued eligibility. As part of this income verification, management must convert all verified incomes to annual amounts.

Owners and managers should use current circumstances to project income, unless verification forms or other verifiable documentation indicates that an imminent change will occur. Information available regarding any anticipated changes should be used in determining anticipated income, from all known sources, in addition to current circumstances.

For guidance in this section and in determination of tenant income, the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. The HUD Handbook 4350.3 can be obtained by calling 1- 800-767-7468 or by visiting [HUD's website](#).

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

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

**Earned/  
Unearned  
Income**

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

**Employment**

Employment income is calculated as the gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including foster adults and persons under the age of 18 who are the head, spouse or co-head). This includes salaries of adults received from a family-owned business. UHC does not require Year to Date (YTD) calculations. If owners/managers use YTD to calculate income, the methods and policies on calculating YTD must be consistent and cannot be changed so that a household will or will not qualify.

1. To annualize full-time employment, multiply:

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

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

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

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

**Seasonal or  
Sporadic  
Income**

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

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

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

Use Form #10 – Employment Verification for documentation purposes.

**Self-  
Employment  
Income –  
Existing  
Business**

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

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

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

Use Form 18 – Existing Business Verification for documentation purposes.

**Self-  
Employment**

If the business is new and the resident has not yet filed a tax return showing income from a business, a Self-Employment Verification – New Business Verification should

**Income – New Business** be completed and the resident must self-certify the anticipated net income from the business. Self-employment can be annualized for the current year business activity based on the number of full months in business. The formula is:

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

Use Form #19 – New Business Verification for documentation purposes.

**Family Business/ Employed by Management** If an applicant or tenant is employed by a business owned by their family or is employed by the property owner or the management company, a copy of a recent pay stub is required. This is in addition to the third party written verification.

**Unearned Income** The income of unemployed applicants with regular income from any source, such as Social Security, Pension, recurring gifts, etc., must be verified as covered below. Please note if the applicant is not employed the applicant may or may not have source(s) of unearned income, and Form #14 – Non-Employed Affidavit must be completed.

**Unemployed Income** Include payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay. Any payments that will begin during the next 12 months must be included. Unemployment compensation should be included when calculating the annual income and may be verified by:

- A verification form completed by the unemployment compensation agency; or
- Records from unemployment office stating payment dates and amount.

Unemployment compensation that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months.

**Delayed Periodic Payments – Welfare Payments** Settlement payments from claim disputes over welfare, unemployment, or similar benefits caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

*Example: A family member loses his/her job on October 19<sup>th</sup> and applies for unemployment benefits. The family receives a lump sum payment of \$700 in December to cover the period from 10/20-12/5 and begins to receive \$100 a week effective 12/6. Include in income the \$700 lump sum and \$100 weekly periodic payment.*

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

Exclude foster care payments made through the official foster care relationships with local welfare agencies for foster children or foster adults. HUD 4350.3 Change 4.



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

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

**Zero Income** If an applicant is currently unemployed, with no regular verifiable income from any source, and claiming zero (0) income, he/she must execute a Certification of Zero Income (*UHC Form 25*) and Non-Employed Affidavit (UHC Form 14) or similar forms which asks all required questions.

**Social Security Income** The gross amount (before any deductions for Medicare, etc.) of periodic social security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support; The following item is required to verify the income derived from the above sources:

- Copy of award or benefit statement. This statement is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living raise. If an eligible tenant does not have a benefit statement from Social Security, the eligible tenant (or rental applicant) may call 1-800-772-1213 (TTY 1-800-325-0778), or obtain a statement online at <https://www.ssa.gov/myaccount/>, or visit their local social security office.

The Cost of Living Adjustment (COLA) is released by the Social Security Administration each year, typically around mid-October, and takes effect the proceeding January. COLA adjustments will need to be accounted for if an increase is released and can affect government payments other than social security.

**Social Security Deferred Periodic Payments** In situations where social security or SSI benefit income is paid in a lump sum as a result of *deferred* periodic payments, that lump amount is *excluded* from annual income and included as an asset.

**Annuities/ Insurance/ Retirement Funds/ Pensions, etc.** The full amount of periodic amounts received from annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (e.g. Black Lung Sick Benefits, Veterans Disability). The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. Please see Pension/Annuity Verification Form #15.

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

**Periodic  
Payment  
Definition**

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

**Clarification  
for Pensions in  
Divorce  
Situations**

Clarifications regarding the calculation of annual income and income from assets for individuals with federal, state, or local government pensions.

- ◆ Federal government pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.
  
- ◆ Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.
  
- ◆ In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant.

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

**Gift Income**

Recurring monetary contributions or gifts regularly received from persons not living in the unit is considered gift income and must be counted by owners as income. These sources may include rent and utility payments paid on behalf of the family, and other cash or non-cash contributions provided on a regular basis.

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

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

Some temporary, non-recurring or sporadic “gift” incomes are specifically excluded as countable income, these include: Groceries and/or contributions paid directly to a child care provider by persons not living in the unit, non-recurring, or sporadic income, including gifts (such as birthday, graduation or other gifts or presents), relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Actual income distributed from trust funds that are non-revocable by or under the control of any member of the tenant family.

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

**Alimony/Child Support Income**

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

**Alimony/Child Support: -Being Received**

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

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

may require the family to sign a certification stating the amount of child support received. Please note that this is only acceptable as the last resort and documentation must be present in file of attempts to gather preferred documents prior to using this method.

Please see Alimony/Child Support Payer – Form 09, and Natural Parent/Child Support/Alimony Affidavit – Form 07.

**Alimony/Child Support:  
-Not Being Received**

In many cases, child support has been court ordered but the full amount is not being received. In such cases, verification from the child support enforcement agency will be sufficient. Or, the tenant can provide a statement attesting to the fact that support payments are not being received; the likelihood of support payments being received in the future, and that a reasonable effort has been made to collect the amounts due. Amounts awarded but not received can only be excluded from annual income when applicants have made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments. See Natural Parent/Child Support/Alimony Affidavit – Form 07.

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

**UHC requires in cases where a self-affidavit is provided as verification for non-receipt of child support, an ORS agency report or other backup documentation be provided as support to the tenant statement.**

**Student Financial Assistance**

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

**Student Financial Assistance & Section 8**

For students receiving Section 8 assistance; all student financial aid, in excess of amounts received to cover the cost of tuition, is included in annual income;

- (1) under the Higher Education Act of 1965,
- (2) from private sources, or
- (3) from an institution of higher education except when:
  - The student is over the age of 23 with dependent children or
  - The student is living with his or her parents who are receiving Section 8 assistance.

Notice PIH 2015-21 updates what should be included as ‘tuition’ and states, “The Department of Education . . . defines tuition and fees as the amount of tuition and required fees covering a full academic year most frequently charged to students. . . values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit—hour basis, the average full-time credit hour load for an entire academic year is used to estimate

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

**Armed Forces/Military Reserve Pay**

All regular Military and armed forces pay, special pay, and allowances of a member of the Armed Forces are counted as income for Section 42 purposes. Hostile Fire pay is excluded. See Military Compensation Verification Form - #35

GI Bill education benefits are excluded from annual income for purposes of the Tax Credit Program in Utah.

**Relocation Payments**

All relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are excluded from income.

**Trust Fund Payments**

If only the income (and none of the principal) from the trust is currently available to a family member, count the actual income distributed from trust funds that are not revocable by a under the control of any member of the tenant family. See HUD 4350.3 for more information.

**Exclusions to Annual Income**

\*Please note: unless specifically excluded, any source of income should be considered included and must be added to annual household income.

- Income from employment of children (including foster children) under the age of 18 years;
- Meals on wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC);
- Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;
- Grants or other amounts received specifically for medical expenses, including Medicare premiums paid by an outside source, set-aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income eligibility, out of pocket expenses for participation in publicly assisted programs (such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, child care, etc.);

- Earnings in excess of \$480 for each full-time student 18 years of age or older (excluding the head of household, co-head or spouse);
- Adoption assistance payments in excess of \$480 per adopted child;
- Temporary, non-recurring or sporadic income (e.g. gifts);
- Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- Special pay to a household member serving in the armed forces who is exposed to hostile fire;
- Amounts received under training programs funded by HUD;
- Compensation from state or local employment training programs and training of a household member as resident management staff. Amounts excluded under this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance under the program by the state or local government;
- A resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time.
- Reparation payments made by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. Examples include payment by the German and Japanese governments for atrocities committed during the Nazi era.
- Deferred, periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.
- Payments received for the care of foster children or foster adults.
- Amounts received on behalf of someone not living in the unit as long as the amounts are (i) not inter-mingled with the family funds, and (ii) used solely to benefit the person not residing with the family. For such amounts to be excluded, the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the family and the amounts meet the conditions above.
- Recurring child care payments paid directly to a provider by persons not living in the unit.
- The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
- Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).

**Exclusions to Annual Income by Federal Statute**

- Interests of individual Indians in trust or restricted lands, and the first \$2,000 per year of income received by individual Indians that is derived from trust or restricted lands.
- Payments received under the Alaska Native Claim Settlement Act (43 U.S.C. 1626(c)) received from a Native Corporation, Including:
  - Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum;
  - a partnership interest;
  - land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution of stock); and
  - an interest in a settlement trust.
- Payments from certain sub-marginal U.S. land held in trust for certain Indian tribes.
- The First \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe.
- Payments, rebates or credits received under Federal Low-income Home Energy Assistance Programs. Includes any winter differentials given to elderly.
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs, AmeriCorps.
- Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program).
- Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 94 Stat. 1785).
- Any earned income tax credit to the extent it exceeds income tax liability. (26 U.S.C. 32(j)).
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (CCDBG) (42 U.S.C. 9858q).

## 4.2 Assets

### **Assets**

Assets are items of value, other than necessary personal items, that may be turned into cash. Asset income is any income generated by assets such as interest on savings accounts, return on investments or any other self-generating revenue from the ownership of an asset of value. All interest income is considered, along with verified income, in determining the eligibility of a household, even when the earnings are re-invested.

At the time of application, all asset information, including total value and derived income, should be obtained. If the total household assets exceed \$5,000, verification of all assets and their income is required. Households with assets totaling less than \$5,000 do not require verification, however, actual earned income, as disclosed by the resident, should still be counted towards total household income. The applicant will affirm that this information is correct by executing the Tenant Income Certification.

This section discusses different examples of household assets and how to verify and calculate each. For a complete listing and discussion of earned/unearned income and asset income, please refer to the HUD Handbook 4350.3 and definition of “Net Family Assets” in 24 CFR 813.102.

### **Cash/Savings**

Cash held in savings accounts, safe deposit boxes, homes, etc. For savings, certificates of deposit, and passbook accounts use the current balance. Assets held in foreign countries are considered assets. For cash on hand, use the actual value and there will be no interest income.

Verification forms can include current bank statements, Checking/Savings UHC Form 32 for savings accounts or letters/documents from a financial institution. Interest and dividends must be calculated and included if applicable. Self-affidavits for cash on hand amounts and safe deposit boxes are allowed. See Equity in Property for proper verification for homes.

### **Direct Express Card**

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

### **Checking Accounts**

Checking accounts must have a six-month average balance calculated to determine the average cash value of the account. Verification forms can include six, consecutive, most recent bank statements or a verification from the bank. See Checking/Savings UHC Form 32. Interest and dividends must be calculated and included if applicable. If



an owner accepts an IRS Form 1099 from the financial institution, the owner must adjust the information to project earnings expected for the next 12 months.

**Crypto  
Currency**

There is no set interest rate or rate of return on this type of account, only the change in value. The current value is used when verifying this asset. Additional documentation such as a screenshot or printout of the balance should be obtained if assets exceed \$5,000. The cryptocurrency account's current value must be included in the Tenant Income Certification.

**Stocks/Bonds/  
CDs**

When assets are stocks, bonds, treasury bills, certificates of deposit or money market accounts, etc., the value can vary from one day to another. The value of these assets may go up or down the day before or after income is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. See UHC Form #20 – Stock/Bonds Verification.

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

**Revocable  
Trusts**

These include the cash value of any revocable trust available to the household. The actual income received is added to actual income from assets. See HUD 4350.3 for more information.

**Equity in  
Property**

Equity in rental property or other capital investment.  
Include the current fair market value less;

- (a) Any unpaid balance on any loans secured by the property; and
- (b) Reasonable costs that would be incurred in selling the asset (i.e., penalties, broker fees, etc.). Must have verification in the file if over \$5,000.

Note: If the person's main business is real estate, then count any income as business income. Do not count it as an asset and as business income.

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

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

**Rental  
Property**

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

- IRS Form 1040 with Schedule E (Rental Income).

- Lessee's written statement identifying monthly payments due the tenant and tenant's affidavit as to net income realized.

**Retirement Accounts**

IRA, Koegh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty, \*unless benefits are being received through periodic payments\*. If no periodic payments are being received, determine the amount of the asset by using the average balance for the previous six months.

Retirement and pension funds. While the person is employed include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.

At retirement, termination of employment, or withdrawal, periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:

- If benefits will be received in a lump sum, include the lump sum receipt as an asset.
- If benefits will be received through periodic payments, include the benefits in annual income.  
Do not count any remaining amounts in the account as an asset. HUD 4350.3 Change 4.
- If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset. HUD 4350.3 Change 4.
- In instances where the applicant/tenant is a retired Federal government employee, receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorized OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal government employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant.

**Life Insurance**

Count the cash value of life insurance policies available to the individual before death (i.e., the surrender value of a whole life policy or a universal life policy). Do not include a value for term insurance, which has no cash value to the individual before death.

<b>Personal Property held as an Investment</b>	Gems, jewelry, coin collections, antique cars, or other items held as an investment are considered assets and should be counted toward household assets. An applicant's wedding ring and other personal jewelry are not considered assets.
<b>Lumps Sums</b>	Count as an asset, any lump sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution; settlements on insurance claims (including health and accident insurance, worker's compensation and personal or property losses); and any other amounts that are not intended as periodic payments.
<b>Mortgage or Deed of Trust</b>	<p>With a mortgage or deed of trust held by an applicant (e.g., contract for deed); payments are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.</p> <p>To calculate the actual income, this combined figure must be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)</p> <p>To count the cash value of this asset, determine the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off.</p>
<b>Jointly Owned Assets</b>	Assets owned by more than one person should be pro-rated, according to the percentage of ownership. If no percentage is specified or provided by state or local law, pro-rate the assets evenly among all owners.
<b>Valuing Assets</b>	<p>In computing assets, owners must use the cash value of the asset; that is, the amount the family or household would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. Expenses which may be deducted include:</p> <ul style="list-style-type: none"> <li>• Penalties for withdrawing funds before maturity;</li> <li>• Broker/legal fees assessed to sell or convert the asset to cash; and</li> <li>• Settlement costs for real estate transactions.</li> </ul> <p>For non-liquid assets, enough information should be collected to determine the current cash value. This can be understood to mean the net amount the family would receive if the asset were converted to cash.</p>
<b>Disposed Assets</b>	Assets are considered to be disposed of only if the gross amount received is more than \$1,000 below Fair Market Value. Divestitures due to divorce, separation, foreclosure or bankruptcy are excluded. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount

actually received. If a tenant has sold his/her home (either a private residence or rental) or disposed of other assets within the past two years for less than fair market value, the owner/management should request:

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

If a tenant sets up a non-revocable trust for the benefit of another person while residing in assisted housing, the trust is considered as a disposed of asset for two years as of the created date, even if the income from the trust is reinvested back into the trust.

Market Value  
Less: (Unpaid Encumbrances)  
Less: (Cost to Convert)  
Cash Value  
Less: (Amount Received)  
= Value of Divested Asset

**Household  
Assets \$5,000  
or more**

Third party verification of assets is required when the combined value of all assets exceeds \$5,000. If net family/household assets exceed \$5,000 the annual income must include the greater of:

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

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

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

**Household  
Assets Under  
\$5,000**

Effective October 11, 1994, an owner may satisfy the third party documentation requirement for a tenant's income from assets if the tenant submits to the owner a signed, sworn statement that the value of the combined assets is less than \$5,000. The use of UHC's form entitled Under \$5000 Asset Certification (*UHC Form 13*) or similar form is required for this procedure.

The under \$5000 Asset Certification form must also be used when an applicant/tenant declares the household has no assets, including checking and/or savings accounts. If a project is required to obtain third party verifications because of participation in another housing program (i.e., Section 8, RHS, etc.), or the owners, investors or management company's policy includes third-party verification of assets, then do not use the Under \$5000 Asset Certification.

UHC's monitoring procedure and IRS Revenue Procedure 94-65 do not permit an owner to rely on a Housing Credit tenants signed, sworn statement of annual income from assets, if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income.

In this case, the owner must obtain other documentation of the Housing Credit tenant's annual income from assets to satisfy the documentation requirement of third party asset verification.

## **Asset Exclusions**

### **Household Assets Do Not Include:**

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

## Chapter 5 - RECERTIFICATION

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The recertification process can begin as early as 120 days prior to the anniversary date of the previous certification. Residents must complete a recertification application/questionnaire to disclose income, assets, family composition and student status. Completion of the annual student certification as well as filling out the top portions of relevant verification forms for release of information is also required. Third party verification should then take place with any incomplete, inconsistent or missing information followed up with the verification source, with a clarification added to the tenant file as needed.

Similar to move-in files, owners/managers must calculate income and income from assets, based on information provided on the verification forms, and complete a Tenant Income Certification (TIC). The TIC is to be signed after receipt of all verifications, but must be signed and effective on or before the anniversary date of the previous certification. Management must also sign certifications after completion and signature of the tenant, but also on or before applicable anniversary due date. It is acceptable to complete a recertification before the anniversary date (to conform to the annual recertification date for a Section 8 household, for example).

### **100% Tax Credit Property Recertification**

For 100% Tax Credit properties, all households that initially qualified and have completed one full re-certification on the first anniversary of their original move-in date, can complete a 'self-certification' on the move-in anniversary every year thereafter.

An application and the Annual Student Certification Form are requirements of the self-certification every year along with the Self-Certification TIC. Please see the Self-Certification TIC instructions (UHC Form 28) for more information on how to correctly complete the Self-Certification TIC form.

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

### **Late Recertifications**

Re-certifications completed after the anniversary date cause a non-compliance event.

However, projects will be considered in compliance when the owner/management made sufficient efforts to complete the recertification paperwork in a timely manner. Efforts are documented in the tenant file, such as tenant notices, record of phone calls or other contact efforts. If at the time of audit, no re-certification has been completed, due to move-out or circumstances otherwise out of the control of management, the unit will not be considered out of compliance. In such cases, the actual date of move-out should be noted.

**Change in Household Composition**

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

For mixed properties, after six months; the addition of a household member to an existing low-income household requires the income certification for the new member of the household, including third party verification. The new tenant’s income is added to the income disclosed on the existing household’s tenant income certification. The household continues to be considered income-qualified; however, if the combined income exceeds 140%, owners must apply the available unit rule. Note that a certification done in conjunction with adding a household member does not “re-set” the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

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

Decreases in family size do not trigger an immediate income certification. Subsequent annual income re-certifications will be based on the income of the remaining members of the household. Managers must document all decreases in household composition even where an annual recertification is not required.

For 100% Tax Credit properties, after 6 months; a household may continue to add and remove members as long as at least one member of the original Housing Credit household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit.

**Above 140% income limit within the first six months**

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

**140% Rule**

**This rule is applied on a building basis and goes hand in hand with the Next Available Unit Rule.**

Under IRS rules, when the household income in a qualified Housing Credit unit increases to more than 140% of the applicable income limit, the unit is considered an “**Over-Income Unit.**” Once a unit becomes an “Over-Income Unit,” the Next Available Rule IRC §42(g)(2)(D) is applied.

Note: For all properties, it is not considered “good cause” to move out tenants based solely on exceeding 140% of the applicable limit, if the household qualified at move-in.

**Next Available Unit Rule**

Following initial certification, an eligible household’s income can increase to 140% of the maximum income level. A household whose income exceeds the maximum income level by more than 140% (an “over-income” household) will remain in compliance as long as:

- the ‘over-income’ unit continues to be rent restricted and
- the next available unit or any available unit of comparable or smaller size in the same building is rented to an eligible household at the qualifying rent.
- The owner must continue to rent any available comparable units to qualified households until the percentage of Housing Credit units in a building (excluding the over-income units) is equal to the percentage of Housing Credit units on which the credit is based. At that point, failure to maintain the over-income units as Housing Credit units has no immediate significance.

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

**100% Tax Credit**

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

The Next Available Unit rule applies to 100% Housing Credit Projects, because all of the units in the Project must be rented to income-eligible tenants, and be rent restricted, as its application differs from mixed properties. As the next available unit is always rented to a qualified tax credit household, no special action with swapping unit types is required to be compliant with this rule. Units that are over-income at the time of recertification will continue to be rent restricted and count towards the applicable fraction.

**Mixed Project**

Mixed unit project (both tax credit and market units) - Under this rule, a current tenant whose income exceeds the applicable limitation may move to a different unit within the same building without changing the Housing Credit status of the project. In effect, IRS permits the Project Owner to transfer the qualified Housing Credit unit



status of the former unit to the newly occupied unit even though the household income exceeds the 140% limit.

Moreover, because the status of the unit does not change as a result of the move under these limited circumstances, the move does not cause any other over-income Housing Credit units in the same building, to lose their status as qualified Housing Credit units. This rule is violated if the unit vacated by the over-income household is rented to a non-qualified tenant. If this occurs, all over-income Housing Credit units within the same building lose their status as low-income units. **Caution: Violating this rule means losing the credits on all 140% units. These units would no longer count toward the Minimum Set-Aside**

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

**Unit Transfer: Different Building** UHC does not allow transfers between buildings. A household must initially certify if management allows a transfer to different building.

**Move-outs** Notices to vacate, move-out dates and reason for move must be in the tenant files along with all legal paperwork served to the tenant, security deposit disposition and ending balance of tenant ledger.

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

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

**Marijuana Use** The use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). QHWRA requires owners/agents to establish lease standards that prohibit admission to assisted housing for any household with a member determined to be illegally using a controlled substance. Further, owners may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana. Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use

interferes with the health, safety or right to peaceful enjoyment of the residents. Section 577 of QHWRRA affords owners the discretion to evict or not evict current tenants for their use of marijuana. Please see 'Use of Marijuana in Multifamily Assisted Properties' released from HUD on December 29, 2014 for more information.

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

### **Vacant Unit Rule**

Under IRS rules, Project Owners/Management Companies cannot count a vacant unit as a Housing Credit unit if the unit did not qualify as a Housing Credit unit prior to being vacated.

A vacant unit cannot be counted as a Housing Credit unit simply because it is being held for a qualified tenant. A vacant unit is not available for purposes of the vacant unit rule when the unit is no longer available to rent due to contractual, binding agreements such as a lease.

If a Housing Credit unit becomes vacant during the year and was previously occupied by a qualified household, the unit remains eligible for the tax credit for purposes of the Minimum Set-Aside requirement and determining the Qualified Basis of the project. The unit will continue to qualify as long as:

- Reasonable attempts are made to rent the unit or the next available comparable or smaller size unit (in the project) to an eligible household.
- The vacant unit is kept habitable and 'rent ready'.

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

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

## Chapter 6 - AUDIT

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### **Compliance Inspection Procedure**

UHC is required to inspect each property eligible for monitoring a minimum of once every three (3) years. However, depending on the level of non-compliance found in the previous audit/inspection (see Non-Compliance Section), UHC reserves the right to change the frequency of audits or conduct an unannounced visit to the project when Auditors are within the project area.

Under most circumstances, UHC will send a letter notifying the owner of an inspection 15 days before the inspection date. This letter will indicate the date, time, and place of the meeting. Information, such as a copy of the Utility Allowance used during the prior year and supporting documentation that covers the full compliance period under review, rent rolls, and other information, must be provided to UHC at the time of the audit.

Note: UHC does not make it common practice to re-schedule audits. For extenuating circumstances, please contact our office at the earliest opportunity. This does not guarantee an audit will be re-scheduled and failure to appear as scheduled will result in a non-compliance event and/or IRS form 8823's, and could generate additional fees for re-scheduling and re-inspection. (Such fees will be dependent on various factors such as distance, time, size of audit, etc.).

Compliance inspections include a sampling of tenant files as well as review of physical condition standards and analysis of overall compliance with all program requirements.

### **Minimum Audit Requirements**

The minimum requirements addressed during property review include, but are not limited to:

- A review of the current and last 12/31 rent record;
- Current and prior year utility allowance on file;
- Current policies regarding VAWA emergency transfers;
- Rental Criteria and Disparate Impact;
- Rental applications in files, completed, including certification of assets and disposal of assets, if applicable;
- Tenant income certifications completed for move-in and current year, including all required signatures and dates;
- Income verification(s), including anticipated income, completed and properly documented;
- Assets properly documented and verified if total assets are more than \$5,000 in value;
- Student eligibility documented;
- Lease and lease addendum completed at move-in;
- Special Needs/Set Aside documentation;
- Tenant ledgers and move-out files/dates;
- Physical inspection of Site, Building(s), Building Systems, Dwelling Units, and Common Areas, etc.

**File Audit** Under the UHC review process, owners must maintain ongoing tenant records on UHC-approved forms for each unit in the project. These forms provide a historical record of tenant compliance for each unit. A typical file review will include an in depth review of the prior calendar year. However, review of items from other years, particularly move-in and current re-cert year, is not uncommon. For tenants who have moved out prior to the file review, management should have access to tenant move-out files to make available for review.

**Special Needs and Set-Aside Units review** As part of the file review, management will provide pertinent information regarding special set-aside units, if applicable, as outlined under the special needs and set-asides section of this manual.

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

**Audit Sample** As part of recurring UHC site visits, our office shall inspect the physical condition of the property as well as a sampling of tenant units. Physical reviews conducted according to standards governed by the Department of Housing and Urban Development’s Uniform Physical Conditions Standards (UPCS). These standards require properties to be in “decent, safe and sanitary condition and in good repair”.

Effective July 9<sup>th</sup>, 2020 IRS Reg. 123027-19 amended the compliance monitoring requirements with respect to low-income housing properties. The minimum number of low-income units for inspection and file review will be the lesser of (1) or (2) below:

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

<b>Number of low-income units in the low-income housing project</b>	<b>Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)</b>
<b>1</b>	<b>1</b>
<b>2</b>	<b>2</b>
<b>3</b>	<b>3</b>
<b>4</b>	<b>4</b>
<b>5-6</b>	<b>5</b>
<b>7</b>	<b>6</b>

<b>8-9</b>	7
<b>10-11</b>	8
<b>12-13</b>	9
<b>14-16</b>	10
<b>17-18</b>	11
<b>19-21</b>	12
<b>22-25</b>	13
<b>26-29</b>	14
<b>30-34</b>	15
<b>35-40</b>	16
<b>41-17</b>	17
<b>48-56</b>	18
<b>57-67</b>	19
<b>68-81</b>	20
<b>82-101</b>	21
<b>102-130</b>	22
<b>131-175</b>	23
<b>176-257</b>	24
<b>258-449</b>	25
<b>450-1,461</b>	26

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

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

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

The first inspection for new projects will occur no later than the end of the second calendar year following the year the last building is placed in service. This initial inspection will consist of 100% file review and a physical inspection according to the sample size chart listed above.

The Housing Credit units inspected or reviewed are chosen in a manner that will not give owners of Housing Credit projects advance notice that their records will or will not be inspected, to prevent alteration of inspection results. UHC may give an owner

reasonable notice that an inspection will occur so that the owner may assemble records. However, during the inspection/audit, after management is notified of the units to be inspected, apartment staff may not pre-walk or alter either selected files or units. If an inspector becomes aware, at any time during the visit, that such is occurring, new units and or files may be selected for review.

As selection of tenant files is random, all tenants should be properly notified, at least 24 hours in advance, of the possibility of entry into their unit for the scheduled date.

**Suitable for  
Occupancy**

Under IRS rules, a unit shall not be treated as a Housing Credit unit unless it is suitable for occupancy. Additionally, each building in a Housing Credit project must also be suitable for occupancy, in accordance with state and local health, safety, and building codes, for credits to be claimed. The Project Owner/Management Company is responsible for correcting the violations if state or local officials have cited the building for health, safety, and/or building code violations.

Uncorrected violations may render the building or low-income units unsuitable for occupancy. For units deemed to be not habitable, no tax credits can be claimed. Such violations will typically generate a non-compliance event.

**UPCS  
Inspectable  
Areas**

UPCS require agencies to inspect the following five major areas:

**(1) Site** – The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair.

**(2) Building exterior** – Each building on the site must be structurally sound, secure, habitable, and in good repair. The building’s exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

**(3) Building systems** – The building’s systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building’s systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.

**(4) Dwelling units** –

(i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit’s bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

- (ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.
- (iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.
- (iv) The dwelling unit must include at least one battery operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

**(5) Common areas** – The common areas must be structurally sound, secure and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead based paint. *For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies.*

The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all 26 Revised APR /2016 regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

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

## **Non Compliance**

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

Owners and property managers are encouraged to read the guide and refer to it when questions arise as to how non-compliance should be corrected. The 8823 Guide can be found on the IRS website at:

<https://www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf>

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

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

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

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

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

UHC typically determines the frequency of re-inspection dependent on the percentage of non-compliance, as outlined below. UHC reserves the right to expand any audit or sample, or to conduct audits on a more frequent basis if deemed necessary.

Percentage of Non-compliance For Files and Physical Combined	Next audit year
0-15%	<b>3 years</b>
16%-34%	<b>2 years</b>
35% or More*	<b>1 year</b>



**\*The audit may be expanded. Additional fees apply to audit expansions and follow-up inspections**

**Non-Compliance Through Credit/Compliance Period**

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

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

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

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

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

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

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

If rent and/or income limits are found to be over Program limits, UHC must issue IRS Form(s) 8823.

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

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

**Bright Line Date**

In general, non-compliance that is identified and corrected by the owner *prior to notification* of an upcoming compliance review or inspection need not be reported to IRS. IRS considers the date of the notification letter a “bright line” date. However, more serious violations, such as over charges on rent, may still be reportable via form 8823.

**Correction Period**

The correction period will be established by UHC and set forth in the notice of non-compliance and will be a period of up to 90 days from the date of the notice to the owner described in paragraph (e)(2) of Reg. 1.42-5. UHC is permitted to extend the correction period for up to six months, but only if UHC determines there is good cause for granting the extension.

Requests for an extension must be in writing, must be received by UHC no later than the last day of the correction period identified on the Notice of Non-compliance, and must include an explanation of the efforts to correct the non-compliance and the reason the extension is needed. Include an estimated date the extension is needed through. UHC will review and determine if the time-frame and extension is appropriate.

UHC will review the owner’s response and supporting documentation, if any, to determine whether the non-compliance has been clarified or corrected.

**Extended Use Period Background**

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

The Extended Use Period for each property is specified by the LURA. It is, at minimum, fifteen years, or may extend to eighty four years after the close of the compliance period (minimum low-income housing commitment of 30 years). The Extended Use Period begins at the same time as the compliance period, but the rules regarding the Extended Use Period do not go into effect until after the compliance period ends.

See Owner Responsibilities for determination of the end of the Compliance Period.

**Protections to tenants under the Extended Use Period**

Under IRS Section 42(h)(6)(E)(ii) the termination of an Extended Use Period due to foreclosure or deed in lieu, or for failure to present a qualified contract, shall not be construed to permit before the close of the 3-year period following such termination:

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

**Owner Responsibilities under the Extended Use Period**

Under the UHC LURA, the Owner agrees to comply with the following during the extended use period:

- Maintain the minimum set aside by leasing units to individuals or families whose income is 50%, 60%, or the Average Income of 60% as irrevocably elected by the owner at the time of allocation, or less of the area median gross income as determined in accordance with IRC Section 42;
- Maintain the applicable fraction for each building in the project.
- Maintain the Section 42 rent and income restrictions;
- The owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended;
- The owner will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective tenant as such a holder;
- Each Housing Credit unit will remain suitable for occupancy;
- The determination of whether a tenant meets the Housing Credit requirement shall be made by the owner at least annually on the basis of the current income of such Housing Credit tenant; and
- Other restrictions as required under the specific year’s Qualified Allocation Plan (QAP) and related points the owner received in order to obtain a credit allocation.

These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the Extended Use Period.

Notify UHC of any proposed owner/management change at least 30 days in advance of such change. Full compliance with all Program regulations is required prior to any owner/management change.

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

**Tenant Eligibility & Record Retention under the Extended Use Period**

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

Tenant Income Certification. Initial certifications and verifications of household income are required prior to move-in for all units of 100% Housing Credit and mixed income projects.

- a. **100% Housing Credit projects** – Tenants need only complete one recertification after initial move-in. A self-certification and accompanying required documents will be required every year after the recertification.
- b. **Mixed income projects** – Tenants must continue to annually re-certify income and assets.
  - Student Status. UHC will continue to enforce the student rule.
  - Unit Transfers. Unit transfers from building to building are allowed without triggering non-compliance 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% 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 as long as the owner maintains the rent, income and unit type units agreed in the LURA.
  - Rent Limits. Rent limits as elected by the owner at the time of allocation continue to be in force during the Extended Use Period.
  - Utility Allowances. Utility Allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.
  - UHC will continue to update the Program income and rent limits based on the Multifamily Tax Subsidy Program (MTSP) income limits published by HUD annually.

**Extended Use Monitoring Compliance**

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

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

**Non-compliance**

Income and rent limits are specified in the Land Use Restrictions Agreement (LURA) between the owner and UHC. It is the owner’s responsibility to ensure rents and income limits are followed throughout the credit and extended use periods.

**Through  
Extended Use  
Period**

If rents are found to be over the LURA specified limits, the owner is required to reimburse the overage amount to the tenant(s).

If the income limits are found to be over the LURA limits, the owner/management company will not be in good standing with UHC. All future applications for credit allocation will not be accepted while the Owner, Partner or Management company is considered to be “Not in good standing” with UHC.

Non-compliance includes but is not limited to:

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

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

- If UHC determines the non-compliance cannot be reasonably corrected within 90 days; and
- The Owner submits a Correction Plan detailing the timeline for the corrections, which is approved by UHC, an extension period of up to 6 months may be granted to allow for correction of the non-compliance.

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

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

The owner will be subject to non-compliance fees as determined appropriate by UHC for any Post-15 year properties if the owner does not comply with the program requirements or if non-compliance is not corrected within the correction period, including extensions.

**UHC Record Retention**

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

**Compliance Monitoring Fees**

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

Annual Monitoring Compliance Payments are due February 1 of each year. Projects which fail to pay the Annual Compliance Monitoring fees timely will be assessed a late fee of \$500.

**2015 or Prior Projects**

**2015 application or prior projects receiving tax credit allocation**

**Initial Compliance Monitoring Fee:\*\***

<b>≤ 25 Units</b>	<b>\$500 plus \$20 per Housing Credit Unit</b>
<b>≥ 26 Units</b>	<b>\$1,000 plus \$20 per Housing Credit Unit</b>
Annual Compliance Monitoring Fees for 2 <sup>nd</sup> and Subsequent Years:	
<b>\$20</b>	<b>Per Housing Credit unit annually.</b>
<b>Projects on a three (3) year audit schedule will receive a 15% discount on annual compliance monitoring fees.</b>	
<b>Projects on a two (2) year audit schedule will receive a 7.5% discount on annual compliance monitoring fees.</b>	

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

**2016 Tax Credit Allocations**

**2016 tax credit allocations**

**Initial Compliance Monitoring Fee:\*\***

<b>≤ 25 Units</b>	<b>\$500 plus \$30 per Housing Credit Unit</b>
<b>≥ 26 Units</b>	<b>\$1,000 plus \$30 per Housing Credit Unit</b>

	Annual Compliance Monitoring Fees for 2 <sup>nd</sup> and Subsequent Years:
<b>\$30</b>	Per Housing Credit Unit annually
	<b>Projects on a three (3) year audit schedule will receive a 15% discount on annual compliance monitoring fees.</b>
	<b>Projects on a two (2) year audit schedule will receive a 7.5% discount on annual compliance monitoring fees.</b>

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

**2017 & Forward Tax Credit Allocations**

**2017 & forward tax credit allocations**

**Initial Compliance Monitoring Fee:\*\***

<b>≤ 25 Units</b>	\$500 plus \$35 per Housing Credit Unit
<b>≥ 26 Units</b>	\$1,000 plus \$35 per Housing Credit Unit
	<b>Annual Compliance Monitoring Fees for 2<sup>nd</sup> and Subsequent Years:</b>
<b>\$35</b>	Per Housing Credit Unit annually
	Projects on a three (3) year audit schedule will receive a 15% discount on annual compliance monitoring fees.
	Projects on a two (2) year audit schedule will receive a 7.5% discount on annual compliance monitoring fees.

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

**Average Income Elected Projects**

**Average Income Elected Projects**

<b>100% AI Properties</b>	No additional fee
<b>All other AI Properties</b>	Additional 20% of base fee

\*\*The per unit portion of the Initial Compliance Monitoring fee will be prorated for the number of months between the issuance of IRS Form(s)

8609 and February 1 of the following year, when the next full year's annual compliance monitoring fees are due. Pro-rated Initial Compliance Monitoring fees will be collected with the Final Cost Certification fees.

**All Projects**

<b><u>For all Projects</u></b>	<b>3% per Unit</b>	<b>Increase based on Housing Credit Units and increases annually, every year.</b>

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

**Additional  
Inspection Fees**

Projects will be charged additional inspection fees when:  
 An expanded file inspection is required due to a non-compliance trend or,  
 Additional units are inspected because of a trend of code or other violations.

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

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