Dakota County Community Development Agency

(DCCDA)

Housing Tax Credit Program
COMPLIANCE GUIDE

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Introduction

The Minnesota Legislature has designated the Minnesota Housing Finance Agency (Minnesota Housing) as the primary apportionment agency of Housing Tax Credits (HTC) in Minnesota. The Legislature has also designated qualified local cities and counties as suballocators of tax credits: the cities of Duluth, Rochester, St. Cloud, St. Paul and Minneapolis, and Washington County and Dakota County.

Foreword

Dakota County CDA (DCCDA) has contracted with Janken Housing Solutions, Inc. (JHS) to perform compliance monitoring services for the Housing Tax Credit Program in Dakota County. DCCDA and JHS shall be under no obligation to undertake an investigation of the accuracy of the information submitted for compliance monitoring. JHS' review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed or rehabilitated pursuant to the Housing Tax Credit (HTC) Program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the project. If any information submitted by building owners to JHS is later found to be incorrect in any material respect, it is the responsibility of the building owners to inform JHS and to request a reexamination of the information. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.

In January 2007, the Internal Revenue Service (IRS) released its Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), updated it in September 2009 and again in January 2011. The 8823 Guide was not intended to change any Section 42 rules or policies, but to provide definitions of what the Internal Revenue Service (IRS) considers "in compliance" and for consistency in reporting "out of compliance," and "back in compliance," on IRS Form 8823.

DCCDA and JHS' compliance, monitoring and reporting policy and procedure are reflective of instructions in the 8823 Guide.

This guide has not been reviewed or approved by the IRS and should not be relied upon for interpretation of federal income tax legislation or regulations.

Background and Overview

Section 42 (m)(i)(B)(iii) of the Internal Revenue Code (Code and IRC are used interchangeably throughout this guide) requires housing tax credit agencies to include in their Housing Tax Credit Qualified Allocation Plan (QAP) a procedure to monitor all tax credit projects for compliance with the requirements of Section 42 throughout the compliance period.

An allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any noncompliance of which it becomes aware whether or not it is corrected. The monitoring requirements became effective on January 1, 1992, were amended on January 14, 2000, February 26, 2019, and July 7, 2020, and apply to all tax credit projects, even if the projects received an allocation prior to 1992. DCCDA and JHS are authorized by these regulations to charge a reasonable fee to cover the costs of compliance monitoring.

The purpose of this guide is to set forth the procedures to be followed by DCCDA and JHS and the owners of tax credit projects in order to comply with the requirements of Section 42. The compliance monitoring requirements are subject to modification by the IRS, and income determination requirements are subject to modification by HUD. JHS will revise this guide when needed.

Owners should be aware that Treasury Regulations Section 1.42-5T explicitly provides that the credit agency monitoring procedures only address the requirements for housing credit agency monitoring, and do not address forms and other records that may be required by the IRS on examination or audit.

Projects with Allocations from Multiple Allocators. Some tax credit projects receive tax credits from both Minnesota Housing and a suballocator. Tax credit compliance monitoring for those projects will be done by the entity that first allocated credits to the project unless the allocators make other arrangements regarding the project.

Tax-exempt Bond Projects. Some tax credit properties receive their allocation of credits through the use of tax-exempt bonds. Minnesota Housing will monitor developments that received an allocation through the issuance of tax-exempt bonds except where the bonds were issued in a suballocator jurisdiction. In those cases, the suballocator will be responsible for compliance monitoring unless the allocators make other arrangements regarding the project. Tax-exempt bond developments must comply with the same IRS requirements and HTC compliance monitoring procedures as non-tax-exempt bond developments.

Projects Electing the Average Income Test (AIT) Minimum Set-aside. On October 12, 2022, IRS published Treasury Regulations 1.42-19, which provide guidance on the AIT, including how the minimum set-aside is met, the timing for when units must be designated for income and rent limits, unit redesignations, unit transfer and available unit rules, and correction of noncompliance. Additional temporary provisions under 1.42-19T regarding reporting requirements were also included for further public consideration.

Chapter 1 – Program Summary

The following is a summary of the requirements of the HTC program. It is not intended to be detailed or comprehensive.

1.01 Minimum Set-aside Election

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

1. **No less than** 20 percent of the housing units in a project must be set aside for tenants whose incomes are 50 percent or less of the Multifamily Tax Subsidy Project income limits (MTSP); or
2. **No less than** 40 percent of the housing units in a project must be set aside for tenants whose incomes are 60 percent or less of MTSP; or
3. **No less than** 40 percent of the housing units in a project must be set aside for tenants whose income does not exceed the imputed income limitation designated by the owner with respect to the specific unit. The designated imputed income limitation for each unit shall be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent or 80 percent of MTSP, and the average of the imputed income limitations for the project shall be 60 percent or less of MTSP (Average Income Test).

Each building is considered a separate project under IRC Section 42(g)(3)(D), and the minimum set-aside applies separately to each building, unless the owner elects to treat buildings as a multiple-building project, in which case the minimum set-aside and other project rules apply to the identified project. Owners identify the building(s) in a multiple-building project by attaching a statement to the owner's first-year tax return. Refer to instructions on IRS Form 8609, line 8b for details. This election also determines to which buildings unit transfers may be made and the number of units that JHS must inspect during an on-site review.

Rental agents or managers should confirm the set-aside that was established by the building owner at the time the set-aside option was made (the election is made on IRS Form 8609 for the first year of the credit period) to ensure continued compliance. Once selected, the option **cannot** be changed. Note that this is only the minimum set-aside. All low-income units must comply with the respective minimum set-aside income and rent election. For example, for a 20/50 minimum set-aside, if a building's applicable fraction is 100 percent, all units must have an income and rent restriction of 50% of MTSP.

Owners may elect additional state-established, set-aside requirements (such as additional rent restrictions, serving certain populations, etc.) as a condition of obtaining credits. These will be reflected in the allocation documents, which include the Carryover Agreement and Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits (Declaration). 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 Section 42 requirements.

If a property is financed using Native American Housing Assistance and Self-Determination Act (NAHASDA) or HOME funds that 1) have not been subtracted from the basis calculation or 2) have an interest rate below the Applicable Federal Rate, and the owner receives tax credits at the 70 percent present value rate (i.e., 9% credits), then the owner must rent 40 percent of the units **in each building** to households whose income is 50% of MTSP or less.* There is not a corresponding rent restriction with this HOME income limit set-aside. Rent limits are set according to the elected tax credit set-aside and/or any additional rent restrictions under which the allocation was made.

*Buildings placed in service after July 30, 2008, are not subject to this provision.

1.02 Rent and Income Requirements

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

The formula for computing **maximum** gross rent is based on 1.5 persons per bedroom not to exceed 30 percent of the corresponding income election.

1.03 Rent and Income Figures

The U.S. Department of Housing and Urban Development (HUD) annually publishes MTSP figures for all Minnesota counties. Minnesota Housing uses these figures to calculate the maximum allowable rents and tenant incomes for rental units receiving the tax credit. Minnesota Housing publishes MTSP income and rent limits for projects receiving an HTC allocation and notifies owners and managers of the updated limits as they become available.

Due to the Housing and Economic Recovery Act of 2008 (HERA), income limits for projects funded with tax credits and/or financed with tax-exempt housing bonds (TE Bonds) are held harmless from decreases; therefore, they are calculated and presented separately from the Section 8 income limits. Beginning with the publication of FY2009 Median Family Income estimates and Income Limits, the Section 8 income limits **cannot** be used for tax credit or TE Bond properties.

Be sure you are using the correct limits table for your property. To avoid confusion, Minnesota Housing produces different tables (e.g., Table A, B, C) for income and rent limits. According to HERA, the placed in service (PIS) date for a project determines which table to use. Refer to the Minnesota Housing website, Rent & Income Limits (mnhousing.gov), to determine which tables apply to which range of PIS dates.

When determining which table to use for properties with PIS dates both before and after the income limit effective dates, also consider the following:

- The earliest PIS date for a building governs. For example, if a building has acquisition credits with a PIS date prior to January 1, 2009, it uses Table A even if rehab is PIS after January 1, 2009.
- Under Section 42, each building is considered a separate project unless the owner elects to treat buildings as a multiple-building project. The multiple-building election is made by the owner on line 8b in Part II of IRS Form 8609. However, since IRS Form 8609 is typically issued well after the PIS date, owners of properties with buildings placed in service both before and after the publication of new limits must determine what this election will be and which buildings are part of the project. The owner must document this determination in the property's records, and when completing Part II of IRS Form 8609, the election must be consistent.
- The earliest PIS date for any building that is part of a multiple-building project (line 8b on IRS Form 8609 is or will be checked "yes" and the owner has identified the buildings that are part of the multiple-building project) determines which table will be used by all of the buildings that are part of that multiple-building project.
- If buildings are not part of a multiple-building project (line 8b is or will be checked "no" and therefore each building will be treated as a separate project), then each building may use a different table depending on their respective PIS dates.
- Under IRS Revenue Procedure 94-57, the owner may establish a different table for rent limits than the table used for income limits if the owner made a proper Statement and Election of Gross Rent Floor to use the carryover/preliminary determination date to set the rent floor and income and rent limits decrease prior to the PIS date.

1.04 Building Regulations

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

- **Eligible Basis**. In general, the eligible basis of a building is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42 (d). As a general rule, the adjusted basis rules of Section 1016 apply, with the exception that no adjustments are made for depreciation. Some of the special provisions for determining eligible basis under Section 42 (d) are:
    - Buildings located in areas designated as a "qualified census tract" or "difficult development area" may be eligible for an increase in allowable basis.
    - If non-HTC units are of a quality standard greater than that of HTC units in the building, the costs of non-HTC 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, and swimming pools) may be included in eligible basis if there is no separate charge for use of the facilities and they are made available on a comparable basis to all tenants in the project.
  - Eligible basis is reduced by federal grants, residential rental units that are above the average quality standard of the low-income units, any historic rehabilitation credits, and nonresidential rental property.
  - Eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of IRS Form 8609, and it does not change from year to year.
- **Applicable Fraction**. The applicable fraction is the lesser of:
  - The unit fraction, which is the number of HTC 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 HTC 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 (low-income units), and in the denominator (total units) of the applicable fraction, please note:

  - Units that have never been occupied or are occupied by a nonqualified household cannot be included in the numerator but must be included in the denominator.
  - Vacant units that were last occupied by a nonqualified household cannot be included in the numerator but must be included in the denominator.
  - Units not suitable for occupancy, including tax credit units being rehabilitated in the first year of the credit period, cannot be included in the numerator, but must be included in the denominator.
  - Common space units (units for full-time manager, full-time maintenance or security – refer to section 1.05 below), are not included in either the numerator or denominator.
  - <u>For projects that elected the AIT minimum set-aside, only units that are part of a qualified group of units (as defined in Treas. Reg. 1.42-19(b)(2)) may be included in the numerator of a building's applicable fraction. Unless a building is a separate project, units included in the numerator of a building's applicable fraction do not need to be a qualified group of units on their own. See Treas. Reg. 1.42-19(e)(4).</u>

1.05 Full-time Resident Manager's Unit

The full-time resident or on-site manager's unit may or may not be included in determining the applicable fraction depending on the circumstances. According to IRS Revenue Ruling 92-61, the ways in which the on-site manager's unit may be considered are:

- For buildings that have been placed in service after September 9, 1992, the full-time manager's unit must be treated as common space (i.e., it would not be included in either the numerator or denominator of the applicable fraction).
- For buildings that were placed in service prior to September 9, 1992, the full-time manager's unit may be treated as follows:
    - The full-time manager's unit is considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low-income tenant); or
    - The full-time manager's unit is considered common space. As common space, the unit would not be included in either the numerator or the denominator of the applicable fraction.

Example: A building contains 24 units and the applicable fraction is 100 percent. Credits were allocated on 23 units. This means that the manager's unit was treated as common space when the credit was allocated. The applicable fraction would be 23/23 or 100 percent.

A full-time manager or maintenance person must occupy a resident manager's unit. The number of hours worked does not define full-time; rather, it is defined by the fact that the manager's presence on site is reasonably required for the development. Some things to consider are what is warranted by the type, size and/or location of the development, as well as what is needed in terms of the resident population. Some developments may not need to employ a resident manager for what is normally considered full-time, and other developments may need to employ more than one on-site manager or maintenance person. Full-time is considered to be whatever is reasonably required to make operations run smoothly at the development. As a general guide, a manager who performs management functions such as leasing units, preparing certification paperwork, cleaning, general maintenance, preparing turnovers, collecting rent, etc., and is available to the site on an on-call basis to respond to emergencies may be considered a full-time manager under this ruling. According to IRS Revenue Ruling 2004-82, dated August 30, 2004, a unit may also be occupied by a full-time security officer and be treated as common space, if reasonably required.

As noted in a Chief Counsel Advice Memorandum dated June 2, 2014, whether or not an owner charges rents, utilities, or both for common space units is not relevant in the treatment of the units as facilities that are reasonably required for the project. As such, the fact that the owner of a qualified low-income building charges rents, utilities, or both for units for resident managers or maintenance personnel is not relevant in the treatment of such units as facilities reasonably required for the project. The character and size of the project are, among other things, relevant in determining whether any property, including an employee-occupied unit, is functionally related and subordinate to the project.

All developments, especially those that are new allocations, need to notify DCCDA through JHS of the status of common space unit(s) and the method that is being used. Owners must submit a Request for On-Site/Employee Unit (and Treatment of Common Space Unit) form. Pursuant to Revenue Ruling 92-61 " for any unit or change in status to a unit utilized as a site office, or occupied by a full-time resident manager, a full-time maintenance person or a full-time security person as defined in Chapter 8, page 5 of the 8823 Guide and IRS Revenue Ruling 92-61. The following conditions require submission of these forms at the time any change is anticipated:

- Initial request for a common space unit
- Change to a different unit
- Common space unit no longer required

JHS will issue an acknowledgement of the common space unit or the reason for denial. For the most part, JHS will rely on the owner's determination of whether a full-time unit is reasonably required by the development. However, if JHS becomes aware that the unit is not occupied by a full-time manager, maintenance, or security personnel, as represented by the owner, it may become a noncompliance issue.

A unit occupied by a part-time manager, caretaker or maintenance person must either be treated as a qualified low-income unit or as a market rate unit. If the unit is treated as a qualified low-income unit, then the household must meet all tax credit eligibility criteria. Note that any reduction in rent in exchange for services must be considered as income.

1.06 Calculating the First Year Applicable Fraction

To determine the applicable fraction for the first year, find the low-income portion* as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12 (per instructions on IRS Forms 8609 and 8609-A). Note that the applicable fraction must be calculated for both the unit and floor space fraction.

Assume that a low-income building was placed in service on January 15 and has the following lease-up schedule during the first year of the credit period:

Month	Low-Income Units	Total Units	Monthly Unit Fraction	Low Income Sq Ft	Total Sq Ft	Monthly Square Foot Fraction
January	1	10	0%	1000	12000	**0.00%
February	2	10	20%	2000	12000	16%
March	4	10	40%	3800	12000	31.66%
April	6	10	60%	5400	12000	45%
May	7	10	70%	6300	12000	52.5%

Month	Low-Income Units	Total Units	Monthly Unit Fraction	Low Income Sq Ft	Total Sq Ft	Monthly Square Foot Fraction
June	7	10	70%	6300	12000	52.5%
July	7	10	70%	6300	12000	52.5%
August	8	10	80%	7200	12000	60%
September	9	10	90%	8400	12000	70%
October	10	10	100%	12000	12000	100%
November	10	10	100%	12000	12000	100%
December	10	10	100%	12000	12000	100%
	Sum of monthly Unit Fraction/12		**66.66%**	**Sum of monthly Sq Ft Fraction /12**		**56.68%**

* As mentioned in Section 1.04, for projects that elected the AIT minimum set-aside, only units that are part of a qualified group of units (as defined in Treas. Reg. 1.41-19(b)(2)) may be included in the numerator of a building's applicable fraction.

The owner may **not count the unit occupied in January toward the first-year applicable fraction since the building was not placed in service the full month. For all other months, even if a resident moved into a unit on the last day of the month, that unit is considered occupied at the end of the month. The first-year applicable fraction for this building would be 56.68 percent based on this lease-up schedule.

1.07 Qualified Basis

Qualified basis is the portion of the eligible basis applicable to HTC units in a building. Qualified basis is the product of a project's eligible basis multiplied by the applicable fraction. The original qualified basis is determined as of the last day of the first year of the credit period and is reported to the IRS on Part II of IRS Form 8609.

1.08 Claiming Credits

The credits are based on a percentage of the qualified costs of the building and may be claimed annually for 10 taxable years beginning in the year the project is placed in service, or, at the owner's election, the year following placed in service. DCCDA will issue IRS Form 8609 for each building with Part I completed. The owner completes Part II and files the IRS Form(s) 8609 with the IRS at the Philadelphia Service Center, with an original signature in Part II, for the first taxable year in which the credit was claimed. Refer to IRS Form 8609 and Form 8609-A for detailed instructions.

1.09 Compliance Period and Extended Use Period

All developments receiving a tax credit allocation must comply with eligibility requirements for a period of 15 years beginning with the first taxable year of a building's credit period. This is typically referred to as the "compliance period." All developments receiving a tax credit allocation after December 31, 1989, must execute and record a Declaration prior to the end of the first year of the credit period. The Declaration requires developments to comply with eligibility requirements for a minimum additional 15 years beyond the 15-year compliance period for a total of 30 years or more. This is typically referred to as the "extended use period." The Declaration is a covenant that runs with the land. Refer to Chapter 9, "Compliance and Monitoring After Year 15" for details on requirements after the 15-year compliance period has expired.

1.10 Outline of DCCDA Compliance Process

1. All tax credit projects subject to monitoring by DCCDA must submit a completed owner certification and annual occupancy report to JHS by February 15 or the next business day of each calendar year (refer to Chapter 4 of this guide for further details).
2. JHS will conduct a compliance inspection of each development at least once every three years and will perform a file review and physical inspection on 20 percent of the low-income units in each project.
3. For new projects, JHS will conduct a monitoring inspection no later than the end of the second year of the credit period.
4. If changes in equity ownership are planned, the owner must submit a Request for Action form and other requested documentation. (Refer to Chapter 7 of this guide for additional information.)
5. In the event that JHS 1) does not receive certification or documentation, or 2) is not permitted to inspect tenant files, or 3) upon inspection or review, JHS becomes aware of an aspect of the project that is not in compliance:
    a. JHS will provide written notice to the owner of the lack of certification, inspection or other noncompliance.
    b. JHS will allow a correction period to correct the noncompliance.
    c. JHS will file IRS Form 8823 "Report of Noncompliance" no later than 45 days after the end of the correction period regardless of whether or not the noncompliance has been corrected. Refer to Chapter 8 of this guide for more detail.
    d. <u>JHS may take other legal action to enforce the terms of the Declaration. Failure to take such action does not release an owner from its obligation to comply</u>.

1.11 Owner's Responsibility

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

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

The owner is responsible for compliance with the Code. The 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, the IRS, or HUD from time to time pertaining to the owner's obligations under IRC Section 42. JHS is assigned the responsibility for monitoring compliance. Any and all financial consequences to the owner as a result of noncompliance, whether identified by JHS, DCCDA, or the IRS, will be the responsibility of the owner.

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

1.12 Noncompliance

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

Chapter 2 – Internal Revenue Service Reporting Requirements

The Internal Revenue Service (IRS) and DCCDA require owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this guide to either the IRS or JHS as appropriate will constitute noncompliance and may make the owner subject to recapture of or ineligible for tax credits.

2.01 Low Income Housing Allocation Certification (IRS Form 8609)

IRS Form 8609 will be issued by DCCDA for each building within a project. If allocations were issued in multiple years, a separate IRS Form 8609 will be issued for each year's allocation. If rehabilitation and acquisition credits are issued on the same building, the acquisition and rehabilitation will receive separate IRS 8609 forms.

Part I of the IRS Form 8609 will be completed by DCCDA and sent to the owner after the project is placed in service and all documentation required by DCCDA is reviewed and approved. Each year Minnesota Housing files IRS Form 8610 with the IRS, which includes the original 8609s issued by DCCDA that year. This allows the IRS to compare the 8609s issued by the allocating agency with the 8609s submitted with the taxpayer's return.

DCCDA must complete Part I of the 8609. If DCCDA becomes aware that an owner or its agent has filed a self-prepared 8609 with the IRS, DCCDA reserves the right to determine that all parties involved will not be eligible for future participation in Minnesota's HTC Program for a period of ten (10) years.

The owner completes Part II and files the Form(s) 8609 with the IRS at the Philadelphia Service Center, with an original signature in Part II, for the first taxable year in which the credit was claimed. Refer to IRS Form 8609 and 8609-A for detailed instructions.

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

2.02 Low Income Housing Credit (IRS Form 8586)

One Low Income Housing Credit (IRS Form 8586) form must be completed to claim tax credits for the first taxable year in which credits are taken and every year thereafter in the compliance period.

If the owner is claiming tax credits on IRS Form 8586 from a flow-through entity, (such as a partnership, S corporation, estate or trust) the individual investor must complete only Part I of Form 8586.

2.03 Declaration of Land Use Restrictive Covenants

The building owner must record an approved Declaration which must be in effect on or before the end of the first taxable year credits are claimed (IRC Section 42(h)(6)(A)). Failure to timely and properly record this extended use agreement is an event of noncompliance and will be reported to the IRS.

Owners must comply with any occupancy restrictions required by IRC Section 42 or the Declaration throughout the compliance period and extended use period. Some Declarations will contain relief provisions that allow an owner to petition DCCDA for certain modifications to those requirements. Owners should refer to the Declaration for the specific project to determine if relief provisions apply. If the project selected the Single Room Occupancy (SRO) housing threshold requirement and the Declaration requires the owner to comply with that threshold, DCCDA recognizes that under some circumstances it may be appropriate for an owner to seek relief from the SRO housing threshold requirement as follows:

Single Room Occupancy (SRO) Threshold Relief Provision:

If, for a particular unit held to Single Room Occupancy (SRO) housing threshold requirements that require units (SRO Unit(s)) to be affordable by households whose income does not exceed 30% of MTSP, the necessary rental assistance or operating support (collectively SRO Unit subsidy) is (i) withdrawn or terminated due to reasons not attributable to the actions or inactions of the owner; (ii) such withdrawal or termination materially adversely impacts the financial feasibility of the project; (iii) alternative funding is unavailable; and (iv) the project is otherwise in full compliance with all the terms of the funding for the project, the owner may petition DCCDA to eliminate its requirements for the affected SRO Unit(s). Such petition must contain all material facts and supporting documentation substantiating the owner's request including, but not limited to, items (i), (ii) and (iii) above. Upon confirmation of such facts, which such confirmation shall not be unreasonably withheld or delayed, owner shall no longer be required to treat such SRO Unit(s) as SRO Unit(s) but must convert the rents of those units to the 50 percent tax credit rent limit; provided that more restrictive thresholds and/or selection priority or funding requirements, if any, do not apply. If such conversion occurs, in order to retain the tax credit allocation, the above-described 50 percent tax credit rent limit and the IRC Section 42 minimum set-aside elected for the project by the owner must be maintained for the remainder of the tax credit compliance and extended use periods.

If DCCDA shall, at any time thereafter, in its sole discretion, determine that an SRO Unit subsidy may be available for the remainder of the tax credit compliance and extended use periods, and this would not adversely affect the full availability of the tax credit allocation, and this would permit the SRO Unit(s) to again serve 30 percent income households, then at DCCDA's request, the owner shall promptly apply for such SRO Unit subsidy for the SRO Unit(s), upon terms reasonably acceptable to such owner, and if such SRO Unit subsidy is obtained, shall again set aside such SRO Unit(s), when and to the extent then available, to income qualifying individuals.

To request approval to exercise this SRO relief or any other occupancy requirement with a relief provision in the Declaration, the owner must submit a Request for Action. During the review and approval process, DCCDA will advise the owner of documentation that must be submitted.

2.04 Recapture of Low Income Housing Credit (IRS Form 8611)

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

Chapter 3 – Recordkeeping and Records Retention Requirements

3.01 Recordkeeping

Under the recordkeeping provision of Treasury Regulations Section 1.42-5, the owner must keep records for each building in the project for each year in the compliance period showing:

- 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 HTC unit and the household's student status
- The number and percentage of residential rental units in the building that are HTC units, offices, and management units
- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include tenant ledgers, leases, and utility allowances as required by the IRS
- The HTC unit vacancies in the building, marketing information, and information that shows when and to whom each of the next available units was rented
- The annual income certification and annual student certification of each HTC household
- Documentation to support each HTC Tenant's Income Certification, including an application/recertification questionnaire and verification. Anticipated income of all persons expecting to occupy the unit must be verified and included on a tenant income certification (TIC) prior to occupancy and recertified annually for continued eligibility
- The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Records demonstrating that any state-established set-aside elected by the owner has been complied with for each year of the compliance period.
- <u>For properties electing the AIT, both (1) the qualified group of units that satisfy the AIT minimum set-aside and (2) the qualified group of units to be used in determining the applicable fractions for the building(s) in the project must be identified and recorded annually in the owner's books and records. See Treas. Reg. 1.42-19T.</u>

3.02 Records Retention

The owner must retain the records described above for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit 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.

Refer to IRS Revenue Ruling 2004-82, published August 30, 2004, which clarifies that owners may comply with the records retention provisions under Treasury Regulations 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 IRS Revenue Procedure 97-22.

Owners must maintain applicant and tenant information in a way to ensure confidentiality. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, such as burn, pulverize, shred, etc.

Chapter 4 – Monitoring: Certification and Review

4.01 Annual Certification

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

- The project met the minimum requirements of the 20/50 test under Section 42(g)(1)(A) of the Code; the 40/60 test under Section 42(g)(1)(B) of the Code; the Average Income Test under Section 42(g)(1)C) of the Code; or the 15/40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code, whichever applies to the project.
- There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the project.
- At initial occupancy, the owner has received a Tenant Income Certification with supporting documentation and an Annual Student Certification from each low-income household. At annual recertification, the owner has received an Annual Student Certification and, where applicable, a Tenant Income Certification with supporting documentation from each low-income household.
- Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code.
- No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.
- All units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code).
- No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619 has occurred for this project. A finding of discrimination includes an adverse final decision by the HUD Secretary, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the project is and has been suitable for occupancy, taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project.

- There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification submission.
- All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) or 42(g)(2)(D)(iii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income.
- An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. The owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).
- The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
- There has been no change in the ownership or management of the project that has not been reported to DCCDA.

4.02 Annual Submission Requirements

The annual owner's certification must be submitted to JHS by February 15, or the next business day, of each calendar year. This includes projects that have received a carryover allocation of tax credits or a preliminary determination letter in the case of tax-exempt bond allocations (even if the project has not yet been placed in service). The certification is supported by a report of unit events.

The annual owner certification and occupancy reporting are completed using JHS's Electronic Reporting Program. A reminder notice that JHS sends or emails is considered notification of an upcoming compliance review. Unless otherwise clarified, DCCDA, at its sole discretion, may report on Form 8823 compliance violations that are uncorrected when the reminder notice is sent.

Also submit IRS Form 8609 for each building, with Part II completed as filed with the IRS. **Submit IRS forms 8609 for the first year of the credit period only.** Send a copy to JHS and DCCDA at the time they are filed with the IRS.

Annual monitoring fees are also due with the owner's certification, beginning with the first credit year. Refer to Section 4.07 of this guide for details regarding monitoring fees.

Note that the owner's certification provides that all months within each 12-month period are subject to certification, and all certification items must be completed.

Unit event data entered in PORT must be complete and must report gross income at move-in and certification dates, student status, rent amounts and utility allowance information, gross income at annual recertification (or report if a unit is not subject to income recertification) and recertification dates, where applicable, move-out and transfer information, etc. At recertification, if tenant income exceeds 140 percent of the maximum income limit (170 percent for deep rent skew properties), the owner must comply with the available unit rule (Sec. 42 (g)(2)(D)).

Note that JHS uses the above information for monitoring but must also supply information on occupants of HTC units to HUD annually to satisfy its obligations under the Housing and Economic Minnesota Housing Recovery Act of 2008.

Failure to submit annual owner certifications, occupancy information, utility allowance documentation and other required documentation, including IRS 8609 forms with Part II completed, will be considered noncompliance.

4.03 Compliance Monitoring Review Requirements

General. Under DCCDA's review process, owners must maintain ongoing tenant records on DCCDA approved forms for each unit in the project. The forms provide an historical record of tenant compliance for each unit.

JHS on behalf of DCCDA must inspect each development at least once every three years. JHS reserves the right to adjust the inspection schedule for any reason. JHS shall inspect the tenant income certification(s), the documentation to support the certification(s), and the rent record for each tenant in at least 20 percent of the low-income units in each project, based on the owner's IRS Form 8609, line 8b election to treat buildings as a single or multiple building project and at least 20 percent of the low-income units in each project. For larger projects, Revenue Procedure 2016-15 established a schedule of the minimum number of units to inspect based on the number of low-income units in the project:

Number of Low-Income Units in the Low-Income Housing Project	Number of Low-Income Units Selected for Inspection or Low-Income Certification Review (Minimum Unit Sample Size)
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

JHS reserves the right to inspect up to and including 100 percent of the tax credit units in any project for any reason. The first inspection for new projects will occur no later than the end of the second year of the credit period.

The HTC units to be inspected or reviewed must be chosen in a manner that will not give advance notice that certain records will or will not be inspected. JHS may give an owner reasonable notice of inspection, not to exceed 15 days, so that the owner may assemble records. In accordance with IRS requirements, JHS will not notify the owner which units will be inspected until the day of inspection. Notice of more than 15 days, however, may be reasonable when extraordinary circumstances beyond JHS' control exist, such as disasters and severe weather, or illness or family emergency of the inspector or site representative, but only if reasonable efforts to find another inspector or site representative are unsuccessful. In addition, JHS will inspect at least one vacant unit in each project, if applicable. Vacant units may be substituted for selected units or inspected in addition to selected units, at the inspector's discretion.

Noncompliance that is identified and corrected by the owner prior to notification of an upcoming compliance review or inspection need not be reported to the IRS. The IRS considers the date of the notification letter a "bright line" date.

4.04 Procedure for Compliance Inspection

In the year a compliance inspection is due, JHS will notify the owner and manager by email. The owner or manager will be required to complete and submit a Compliance Review Information form as part of the inspection. This form is used to identify other inspections that are due in the same year so that inspections can be coordinated (if possible), to answer questions regarding property characteristics, and to identify and submit the applicable administrative records such as utility allowance source documentation, tenant selection plans, AFHMP, fire, boiler and elevator certificates, etc., for review. Once the date and time of the inspection has been agreed to, no more than 15 days in advance of the inspection, JHS will send a confirmation email. The confirmation email is considered JHS' notification of an upcoming compliance review. Unless otherwise clarified, compliance violations that are uncorrected as of the date of the confirmation email may be reported on Form 8823. If the file review and physical inspection will be conducted separately, separate confirmation emails may be sent. At least 24 hours prior to the inspection date, the owner must notify all occupants of restricted units that their unit may be inspected. A site representative must accompany the compliance officer during the inspection.

The compliance inspection includes, but is not limited to, a review of: (1) at least 20 percent of the low-income tenant files in each project (or the number of units identified in Rev. Proc. 2016-15, whichever is less), including a full inspection and calculation of income eligibility and student status, (2) utility allowance information and other property administrative records, and (3) an inspection of the general physical condition of the property, including 20 percent of the low-income units in each project (or the number of units identified in Rev. Proc. 2016-15, whichever is less), In addition, all buildings must be inspected and the unit sampling must include vacant units. The compliance officer will request a list of vacant units at the time of inspection and may substitute one or more vacant units for units selected or may inspect one or more vacant units in addition to units selected.

In accordance with IRS requirements, JHS will not notify the owner which units will be inspected until the day of inspection. Owners must **notify occupants of all program-restricted units that their unit may be inspected** at least 24 hours prior to the inspection date. Alternate units will be selected at random if there are unattended children under age 18 or if an occupant is sleeping or bathing/showering. If the inspector finds systemic noncompliance, up to 100 percent of the units may be inspected. A $125 re-inspection fee will be charged if the compliance officer is unable to complete the inspection due to owner/agent's failure to notify residents or owner/agent's failure to appear for the inspection. The re-inspection fee will be added to the next compliance monitoring fee.

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

1. **Site**. The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair.
2. **Building exterior**. Each building on the site must be structurally sound, secure, habitable and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
3. **Building systems**. The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC and sanitary

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

4. **Dwelling units**. (i) Each dwelling unit within a building must be structurally sound, habitable and in good repair. All areas and aspects of the dwelling unit (for example the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable and in good repair. (ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water. (iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. (iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.
5. **Common areas**. The common areas must be structurally sound, secure and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable and in good repair.

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

All dangerous and/or life-threatening hazards are considered critical violations and will require correction within 72 hours. The compliance officer will leave a list of these items with the site representative on the day of the inspection and send a copy to the owner.
Notwithstanding the above inspection requirements, a low-income housing tax credit project under Section 42 must continue to satisfy local health, safety and building codes. JHS may rely on local code inspections rather than performing a separate physical inspection of the property.

When selected for a compliance inspection, JHS will determine whether there has been or will be a physical inspection that meets the local inspection requirements.

As permitted by Treasury Regulations Section 1.42-5, JHS may accept an inspection conducted by HUD's Real Estate Assessment Center (REAC).

In accordance with HUD's Industry Standards Notice issued July 11, 2016, all repairs to address UPCS deficiencies in preparation for an inspection or when correcting noncompliance must be made in a good and workmanlike manner with materials that are suitable for the purpose and free from defects. The phrase "good and workmanlike manner" means:

a. Ensuring that the component, as repaired, performs its intended function/purpose; and
b. Finishing the repair in a manner reasonably compatible with design and quality of the original and adjoining decorative materials.

Each repair must be made in accordance with the industry standard for the particular, inspectable item (e.g., a hole in the drywall is repaired using the same or equivalent materials, materials have the same texture, minimal deviation from and/or have an indistinguishable difference from the original esthetics/appearance.) A violation will be recorded for each substandard repair made to avoid or disguise an observed deficiency based on the size of the area affected and/or the item inspected.

The following is a partial list of typical items that are often incorrectly repaired:

- Cracks in Brick Wall. Tuck-pointed using mortar is the correct means of repair; caulking is not appropriate.
- Drywall Repair. Sheetrock with mud and/or tape is the correct means of repair. Simply covering a hole or damaged drywall with plywood/laminate is not correct.
- Wooden Door Repair. Wood or wood veneer is the correct material for repair. Sheetrock mud or plywood is not correct.
- Downspouts. Same materials, shape and design are correct. Plastic or PVC piping is not correct.
- Erosion. Correcting the root cause of the erosion is the correct means of repair, for example, correct or repair the drainage or add fill-soil. Simply hiding or covering the erosion with mulch or straw is not correct.
- Electrical Panels. Installing a correct panel cover or using manufactured blanks is the correct means of repair. Using caulking or expandable spray foam to fill gaps is not correct.
- Refrigerator Gasket. Replacing the gasket is the correct means of repair. Using white electrical tape, fingernail polish, white-out, etc., is not correct.

- Stick to Hold up a Window. Repairing or replacing the original lock is the correct means of repair. Placing a stick in the window as the primary means of securing a window or sliding door is not correct.

4.05 Compliance Forms

The following forms have been approved by the National Council of State Housing Agencies (NCSHA) as recommended practices:

- Tenant Income Certification (TIC)
- Student Status and Financial Aid Verification
- Under $5,000 Asset Certification (MHFA HTC 24)
- Zero Income Certification
- Employment Verification

The forms with HTC and a number in the footer and the TIC are required forms. **No other forms will be considered acceptable.** The other forms are strongly recommended. Each form has a version date located in the lower right-hand corner. **Please replace old forms with any that have been newly revised.**

In addition, the following are required forms:

- Minnesota Government Data Practices Act Disclosure Statement
- Annual Student Certification (MHFA HTC 35)
- Head of Household and Household Member Demographic Information (owners may use an equivalent form that collects the same data)
- Resident Notification Letter and Lease Rider (not required for section 8 units using the HUD model lease)

The Household Demographics form is used to collect data for households approved for occupancy to satisfy the Housing and Economic Recovery Act’s requirement for monitoring agencies to submit tenant data to HUD. Collecting and reporting the data to JHS is required; however, a tenant file will not be found out of compliance if a completed form is not on file.

4.06 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered with correction fluid or “white-out” will not be accepted by JHS. When a change is needed on a document for the HTC Program, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial and date the change.

4.07 Annual Monitoring Fees

JHS charges annual monitoring fees to cover the costs of conducting compliance monitoring. The annual fee(s) must be submitted when the owner's certification is due. Fees are charged on all units within each property. JHS will charge an annual monitoring fee of $40 per HTC unit and $20 per Market Rate Unit, based on the total number of units, plus $35 per unit for detailed file review and physical inspections for 20% of units in project (usually every 3 years), with a minimum of $500. JHS reserves the right to adjust fees due to changing circumstances. DCCDA also charges $10 per unit, based upon the total number of units.

4.08 Records Retention

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

4.09 Liability

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the tax credit is allowable. DCCDA and JHS' obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's noncompliance (Treasury Regulations Section 1.42-5(g)).

Chapter 5 – Project Rental Requirements

5.01 Allowable Fees and Charges

Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project. Customary fees, normally charged, such as damage deposits and pet deposits are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required, such as the TIC.

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 "Unit Transfer Fees" and similar fees, unless the owner can clearly document what these fees cover and that they are not used for preparing a unit for occupancy.

For further information on how DCCDA and JHS will determine and report noncompliance, refer to the 8823 Guide: Chapter 11, Category 11g – Gross Rent(s) Exceed Tax Credit Limits.

NOTE: If tenant facilities (e.g., parking, garages, swimming pools, community rooms, laundry hookups, storage lockers, etc.) were included in the eligible basis, they must be made available to all tenants on a comparable basis, and a separate fee must not be charged for their use.

Gross rents for the HTC Program are the rents paid by tenants (excluding federal or state rental assistance such as Section 8) plus an allowance for utility costs paid directly by tenants (except telephone and cable) and any other mandatory charges. 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), excess utility charges, etc. must always be included in gross rent. The total gross rent cannot exceed the applicable Multifamily Tax Subsidy Project (MTSP) rent limits for the project. In addition, the IRS has clarified that month-to-month lease fees, mandatory renter's insurance, transaction fees or charges associated with Walk In Payment Systems (WIPS) or other online rent payment systems if the tenant does not have another option to pay rent that does not require a fee to be paid, and payments for utilities under a Ratio Utility Billing System (also known as RUBS), which is a formula 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 based on actual consumption, are considered rent. The fees are allowable, but the gross rent must include these amounts and must be below the applicable rent limit. When completing the TIC and reporting in PORT, include the monthly amount of RUBS payments with tenant paid rent.

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

Rent Increases Limited to Once Annually. Beginning on January 1, 2020, rent increases for occupied units are limited to once annually. Rents may not be increased until the anniversary of the initial lease or the last rent increase, whichever is later.

This limit applies to the rent charged for the unit and not the portion of tenant-paid rent for residents assisted with Section 8 or other rental assistance, which may increase or decrease based on changes in income; however, for units assisted with state or local project-based rental assistance, owners may increase contract rents in accordance with the respective project-based rental assistance contract. Owners may increase rents for units assisted with Housing Support when the Minnesota Department of Human Services (DHS) adjusts the room and board rate, but only if it does not affect the tenant payment. Assisted Living properties that utilize the DHS Room and Board Rate for the Housing Support program to determine client obligation of rent and services may increase rent during a resident's first lease period to align future rent adjustments with the July 1 annual update to the DHS Room and Board Rate[1]. This is limited to units occupied by households receiving the benefit of Housing Support from the Department of Human Services, from the Elderly Waiver or CADI Waiver programs, or households who are taking the required spend-down steps to qualify for such programs. This limit also applies regardless of the term of the lease or any language in the lease that would allow rents to increase more than once annually. Rents must always comply with limits imposed by the

[1] An Assisted Living property for purposes of this section is property that is marketed or held out as an assisted living facility and provides assisted living services. Refer to Minn. Stat. 144G.08, subd. 10.

program(s) that financed the development and/or respective unit. This includes DCCDA funding sources as well as funding sources outside of the agency.

- **Example 1**: The last rent increase for an occupied unit on a month-to-month lease occurred on October 1, 2019. The owner may not increase the rent for that household until October 1, 2020, and if the same household continues to occupy the unit, a subsequent rent increase may not occur until October 1, 2021.
- **Example 2**: An initial six-month lease was signed on July 1, 2020. If the same household continues to occupy the unit, the owner may not increase the rent for that unit until July 1, 2021; a subsequent rent increase for that household may not occur until July 1, 2022.
- **Example 3:** Mid-month move-in will be treated as a full month. An initial lease began May 17, 2020, when the tenant moved in and rent for the month of May was pro-rated. The owner may increase rent starting May 1, 2021.

If after occupying a unit an eligible resident 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 resident as with any other resident. Also refer to Good Cause Termination language in section 5.03, below.

5.02 Section 8 Rents

The portion of the rent paid by households receiving rental assistance under Section 8 or other comparable federal or state rental assistance programs can exceed the tax credit rent ceiling as long as the owner receives a Section 8 or other government rental assistance payment (this includes assistance from Housing Support (formerly Group Residential Housing)) on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the maximum allowable tax credit rent.

When considering rent to income ratios for tenant screening, managers must compare income only to the tenant-paid portion of the rent, not including the subsidy payments.

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

5.03 Minimum Lease Requirements/Good Cause Termination

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

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

At a minimum, the lease must include:

- The legal name of parties to the agreement and all other occupants
- A description of the unit to be rented
- The date the lease becomes effective
- The term of the lease
- The amount of rent
- The use of the premises
- The rights and obligations of the parties, including the requirement of the household to annually recertify its student status and income (where applicable)
- 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

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-to-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

To comply with the statutory provisions of the Violence Against Women Act (VAWA), owners should use the VAWA Lease Addendum form HUD-91067 or its successor form. Refer to section 5.14 of this guide for more information about VAWA.

Good Cause Termination. During the compliance period, extended use period and for three years after expiration of the Declaration, households in qualified tax credit units may not be evicted or have their tenancy terminated (including lease non-renewal) for other than good cause. DCCDA considers good cause to be (a) serious or repeated violation(s) of the material terms and conditions of the lease. Any incidents described in the VAWA Lease Addendum form HUD-91067 or its successor form do not constitute good cause for eviction of a survivor if the survivor is or is part of an otherwise eligible household. The owner must state the good cause in any eviction, lease non-renewal or termination of tenancy notice. The tenant has the right to contest the eviction, lease non-renewal or termination of tenancy in court.

To help ensure that residents understand their rights, a Resident Notification Letter must be provided at each lease signing, and a Lease Rider must be executed and attached to the lease. Existing tax credit qualified households were to be provided a Resident Notification Letter and execute a Lease Rider by December 31, 2020. The Resident Notification Letter and Lease Rider are not required for units occupied by households assisted with Project-based Section 8 using the HUD Model Lease.

5.04 Household Size

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

Minimum and Maximum Household Size. While IRS regulations do not specifically address occupancy requirements; DCCDA encourages maximum utilization of space. Therefore, DCCDA recommends that written occupancy policies be established that reflect maximum utilization (at least one person per bedroom is recommended as a minimum) and maximum standards of no fewer than two persons per bedroom. In situations where there is more than one qualified applicant for a unit, DCCDA 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 RHS, use RHS regulations).

Factors that Affect Household Size for Income Limits. When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

- Children temporarily absent due to placement in a foster home;
- Children in joint custody arrangements who are present in the household 50 percent or more of the time (if disputed, determine which parent claimed the children as dependents for purposes of filing a federal income tax return);
- Children who are away at school but who live with the family during school recesses;
- Unborn children of pregnant women. When a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question: “Will there be any changes in household composition within the next 12-month period?” If an applicant answers that a child is expected, the manager should explain to the tenant that to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided;
- Children who are in the process of being adopted;
- Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse or has no

dependents living in the unit). If the person on active military duty is the head, co-head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person's income must be counted in full;

- Family members in the hospital or at a rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above; and
- Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must be listed on the TIC as "other adult family member". If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income.

When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following[2]:

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

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. 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.

Deployment of Military Personnel to Active Duty. Owners are encouraged to accommodate the unique circumstances of households where a member is called to active duty in the Armed Forces. Specific actions that an owner can take and remain in compliance include, but are not limited to:

- Allow a guardian to move into the low-income unit on a temporary basis to provide care for any dependents the military person leaves in the unit. The guardian's income is not included in the household's income.
- Allow a tenant living in a low-income unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis as long as the head and/or co-head of the household continues to serve in active duty. Income of the

[2] Change 4 to HUD Handbook 4350.3, published in 2013, removed foster adults and foster children from this section. Foster adults and foster children must be counted as household members for both income and occupancy purposes.

dependent (e.g., Supplemental Security Income (SSI) benefits, military benefits) is not included in the household's income.

- Allow leases to remain in effect for a reasonable period of time without recertification (if required) depending on the length of deployment beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§501-591, even though the adult members of the military family are temporarily absent from the unit.

5.05 Utility Allowance

The IRS requires that utility allowances be set according to Treasury Regulations Section 1.42-10 effective May 2, 1994, and amended July 29, 2008, as well as the Final and Temporary Utility Allowance Treasury Regulations Section 1.42-10T issued March 3, 2016. Please read these regulations carefully.

Failure to maintain or provide the utility allowance and supporting documentation annually is considered noncompliance; without proof of the amount of the utility allowance, there is no way to correctly compute the rent. In addition, an incorrect utility allowance calculation may result in noncompliance for rents that exceed the tax credit rent limits.

It is the owner's responsibility to contact the appropriate organization to request current utility allowance information. DCCDA and JHS do not collect or maintain the various utility allowances. All costs incurred in obtaining a utility allowance are the responsibility of the owner.

If a utility (other than telephone, cable television or Internet) is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent includes a utility allowance. If all utilities are paid by the owner, the utility allowance is zero.

Utility allowances are applied individually to each building in the development. Therefore, depending on the development, an owner or manager could have buildings in the same development using different utility allowances.

Regulations require that new utility allowances be used to compute rents that are due 90 days after the effective date of the new allowances. For new buildings, owners are not required to review or implement new utility allowances until a building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

Treasury Regulations Section 1.42-10 lists the different sources of utility allowances for tax credit developments. The following is a summary of the sources of utility allowances:

- USDA RHS financed projects, or units with tenants receiving RHS assistance, must use the RHS utility allowance for all HTC units.

- Buildings regulated by HUD, where the utility allowances are reviewed annually by HUD or its contract administrator must use the HUD-approved utility allowance for all HTC units.
- Any individual units occupied by residents who receive HUD assistance (Section 8 Existing, etc.), must use the HUD utility allowance from the Public Housing Authority (PHA) administering the assistance. As of May 2, 1994, the PHA utility allowance would only need to be used for the specific apartment the PHA resident occupied. Check to find out who administers the local Section 8 Existing Housing Program; it may be the city or county HRA/PHA.
- For Section 42 buildings without RHS or HUD assistance, the following options may be used:
    - A PHA utility allowance from the local housing authority administering Section 8 vouchers for the area in which the property is located.
    - A utility company estimate. Any interested party (including a low-income tenant, a building owner, or an agency) may request the utility company estimation of utility consumption in the building's geographic area. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for that geographic area. Costs incurred in obtaining the estimate are borne by the initiating party. The party that obtains the local utility company estimate must retain the original of the utility company estimate and must furnish a copy to the owner and the monitoring agency. The owner of the building must make copies available to all tenants in the building. In the case of deregulated utility services, the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building in order for that company's rates to be used. The estimate should include all component deregulated charges for providing the utility service.
    - An Average of Actual Consumption using the methodology described in the HUD published Multifamily Notice H-2015-4. This Notice provides instructions to owners and management agents of Section 8 and other HUD assisted properties for completing the required utility analysis. This analysis is also used for the USDA RHS program and allowed for HTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). Owners may use the methodology from the notice, including the required baseline utility analysis; the optional factor-based utility analysis; and, the utility analysis sample size.
    - A HUD Utility Schedule Model (HUSM). This model can be found on HUD's website. Utility rates using the HUD utility model must be no older than the rates in place 60 days prior to the beginning of the 90-day period before utility allowances can be used in determining the gross rent.

- An Energy Consumption Model (ECM) using an energy and water and sewage consumption and analysis model. 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, characteristics of the building location, and available historical data. The utility consumption estimates must be calculated by a mechanical engineer properly licensed in the state of Minnesota or a Residential Energy Services Network (RESNET) certified Home Energy Rating System (HERS) rater. The engineer or HERS rater and building owner must not be related within the meaning of IRC Section 267(b) or 707(b), to which the engineer or HERS rater and building owner must certify. The owner and engineer or HERS rater must also certify that the model complies with the minimum requirements described above. Use of an ECM is limited to a building's consumption data and local rates for the 12-month period ending no earlier than 60 days prior to the beginning of the 90-day period before utility allowances can be used in determining the gross rent. In the case of new buildings with less than 12 months of consumption data, 12 months of data can be used for units of similar size and construction in the geographic area.
    - Please note that when a property uses Master Meters, utility bills may be compared to tenant ledgers to confirm that:
        - Only costs billed to property are passed on to tenants;
        - All costs billed to tenants were included as part of ECM calculations at the same residential/commercial rates used in ECM calculations.
        - Costs for common area utilities are NOT passed on to tenants. Owner is required to pay for common area utilities.
        - Collection of more than the amounts charged to owners may be considered impermissible fees.

If an owner wishes to change methodology to the ECM, HUSM, or Average of Actual Consumption (not allowed for HUD or RHS assisted properties), a request must be submitted to JHS at the beginning of the 90-day period before utility allowances can be used in determining the gross rent. Owners may only change methodology once in a 12-month period. The request must include the following:

1. $400.00 review fee; and
2. Completed and signed Utility Allowance Certification form; and
3. Proposed Utility Allowance Information form, HTC-21; and
4. Copy of owner's notice to residents and description of how residents were notified (e.g., copy sent to each unit, posted in common areas and office). If the property is not yet occupied at the time the request is made, indicate when the property is expected to be occupied in the cover letter or email; and

5. Completed HUSM Excel file; or
6. ECM calculation methodology and workbook; and
7. Rate information from applicable utility companies using currently published rates no older than 60 days from notice to residents and. Highlight all applicable rates, riders, franchise fees, and other charges used to determine the utility allowance; and
8. Copy of a recent utility bill showing all rates and charges from each source. Owners may need to require utility release authorization forms in order to obtain a copy of utility bills. For new construction where there is no bill, evidence of who the utility supplier(s) will be and, if electric is part of the utility allowance, evidence of whether electric lines are overhead or underground; and
9. Printout of applicable state and local tax rates from Department of Revenue's Sales Tax Calculator: https://www.revenue.state.mn.us/sales-tax-rate-calculator

If requesting the Average of Actual Consumption, submit items 1-4 above and the required items as stated in Multifamily Notice H-2015-4.

JHS will review and base its decision for approval or non-approval of the methodology and allowance figures on the completeness, quality and accuracy of information provided. Approval of the utility allowance does not constitute a guarantee that the utility allowance is absolutely correct. If at any time it is determined that a utility allowance has been understated, and, therefore, some or all of the units are not rent restricted under Section 42(g)(2), then JHS must report the noncompliance to the IRS on IRS Form 8823.

Once the initial utility allowance has been approved, the owner must update the allowance annually but submission to JHS is not required. Utility allowance and source documentation will be reviewed as part of the inspection of administrative records.

The owner must also notify tenants of updated ECM, HUSM or Average of Actual Consumption utility allowances and make the data upon which the utility allowance is calculated available for inspection by the tenants at the beginning of the 90-day period before the effective date. Records must be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant, at the convenience of both the apartment owner and tenant. This is required for an initial change to these three methods and for all annual updates.

With the exception of HUD and RD-regulated properties, owners may combine any methodology for each utility service type (electric, water gas etc.). For example, if residents are responsible for electricity and water, an owner may use the appropriate PHA allowance to determine the water portion of the allowance and use the Average of Actual Consumption to determine the electric portion of the allowance. Be advised, however, that the effective date of the PHA allowance will likely be different than the Average of Actual Consumption resulting in adjustments to utility allowances and, potentially, rents multiple times during the year.

Any increase in the utility allowance may cause gross rents to exceed the limit. If this is the case, the owner must reduce the amount of tenant-paid rent to avoid noncompliance. 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 to remain below the rent limit.

For all updated utility allowances, changes must be implemented no later than 90 days after the effective date.

NOTE: Pursuant to Treasury Regulation Section 1.42-10, units occupied by households with a Section 8 Housing Choice Voucher or other state or local government rental assistance must use the utility allowance required by the applicable rental assistance program.

5.06 Submetering and Renewable Energy

IRS Notice 2009-44 clarified that effective July 29, 2008, under Treasury Regulations 1.42-10, utility costs paid by a tenant based on actual consumption in a submetered, rent-restricted unit are treated as paid directly by the tenant. Submetering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A submetering system typically includes a master meter, which is owned or controlled by the utility supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a submetered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners (or their agents) retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

- The utility rates charged to tenants in each submetered, rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);
- If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of submetering, then the fee will not be considered gross rent under Section 42(g)(2) of the Code. The fee must not exceed an aggregate amount per unit of the greater of (i) five dollars per month; (ii) an amount (if any) designated by publication in the Internal Revenue Bulletin (IRB); or (iii) the lesser of the amount (if any) specifically prescribed under state or local law or a maximum amount (if any) designated by publication in the IRB; and
- If the costs for sewerage are based on the tenants' actual water consumption determined with a submetering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Treasury Regulations 1.42-10T provide that if an owner provides utilities through a renewable energy source, the rate charged to the tenant for the renewable energy cannot exceed the rate at which the local utility company would have charged for the utility if that entity had provided it to them. A utility is produced from a renewable source if (1) it is produced from energy property described in Section 48, (2) it is energy produced from property that is part of a facility described in Section 45(d)(1) through (4), (6), (9), or (11), or (3) is a utility described in guidance published for this purpose in the IRB.

5.07 Physical Requirements of Qualified Units, Suitable for Occupancy

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

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the project;
- Must be substantially the same size as other units in the project; and
- Cannot be geographically segregated from other units in the project.
- HTC 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 low-income units being rehabilitated in the first year of the credit period, are considered "out of compliance." The noncompliance is corrected when the unit is again suitable for occupancy, and the unit's character will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

The UPCS do not supersede or preempt local health, safety and building codes. A low–income housing project under Section 42 must also satisfy the local standards.

Units intended for eligible tenants must be comparable in size, location and quality to those rented to other tenants. In the event that units rented to non-qualifying households are above the average quality standards of the units rented to HTC households, then the basis in the project which is used to determine the amount of tax credits must be reduced by the portion which is attributable to the excess costs of the above-standard units. This reduction in eligible basis need not occur if an election is made to exclude such excess costs pursuant to Section 42(d)(3) of the Code.

5.08 Fair Housing Policy, Affirmative Marketing, and General Public Use

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

DCCDA's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations and related policy guidance. Housing providers should ensure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful to, because of protected class status:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

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 HTC properties to comply with the requirements of the Fair Housing Act will result in the denial of the HTC on a per unit basis. Anyone with questions regarding accessibility requirements should visit HUD's Fair Housing Accessibility First website.

HUD enforces the Fair Housing Act and the Minnesota Department of Human Rights (MDHR) enforces state-specific protections. DCCDA and JHS will refer complainants to HUD or MDHR 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 DCCDA must report to the IRS.

On April 4, 2016, HUD's Office of General Counsel issued guidance on criminal background screening, focusing attention on the ways in which even well-intentioned tenant selection policies can act as tools of exclusion. This guidance applies to all housing providers, including owners and managers of tax credit properties. In response, Minnesota Housing prepared a Tenant Selection Plan (TSP) guidance document that identifies best practices for tenant selection plans. The TSP guidance is recommended for all properties. The document contains a summary of the HUD guidance on criminal background screening and reflects the agency's consideration of best practices, along with special factors affecting supportive housing programs. Note that various funding sources and jurisdictions may impose other tenant selection plan requirements. Owners and managers should consult with an attorney to ensure your tenant selection plan complies with program requirements, the Fair Housing Act, and the Minnesota Human Rights Act.

Owners must adhere to Equal Opportunity, Affirmative Marketing, and Fair Housing practices in all marketing efforts, eligibility determinations and other transactions. The Equal Housing Opportunity logo or statement should be used in all advertising of vacant units. *(We do business in accordance with the Federal Fair Housing Law. It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status, or national origin.)*

Owners must develop and implement an Affirmative Fair Housing Marketing Plan in accordance with HUD and DCCDA requirements. Owners must regularly review and update the plan and use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions. Affirmative marketing includes actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), or disability. A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs posted, etc. Records will be reviewed during on-site monitoring to determine adequate documentation of compliance with federal requirements.

In accordance with the Violence Against Women Reauthorization Act of 2013 (VAWA), tenant selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking. Refer to Section 5.14 of this guide for more information about VAWA.

An online Affirmative Marketing Toolkit is available to assist in creating the AFHMP.

IRS also requires HTC properties be otherwise available to the general public. Under Treasury Regulations 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.

Note that the General Public Use Rule was clarified on July 30, 2008, to allow occupancy restrictions or preferences that favor tenants 1) with special needs, 2) who are members of a specified group under a federal or state program or policy that supports housing for such specified group, or 3) who are involved in artistic or literary activities.

5.09 Vacant Units

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

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

The Vacant Unit Rule is the subject of IRS Revenue Ruling 2004-82, Answering 12 Questions About Low-Income Housing Credit Under IRC Section 42 (refer to questions #8, #9, and #10), published August 30, 2004. The IRS Revenue Ruling clarifies that an owner may not move a household from building to building to qualify more than one unit in a property (question #8); that "reasonable attempts" are customary methods of advertising apartment vacancies in the area of the property for identifying prospective tenants and may include, but are not limited to: displaying a banner and for-rent signs at the entrance to the property, placing classified advertisements in local newspapers, and contacting prospective low-income tenants on a waiting list for the property and on a Section 8 and public housing waiting list with the local public housing authority (question #9); and that a unit is not an available vacant unit if the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between the owner and a prospective tenant (question #10).

5.10 Other Stipulations

An owner or a person related to the owner may reside in a building if it contains five or more units. If a building contains four or fewer units, an owner, or a person related to the owner, occupying a unit in the building would cause the building to be in noncompliance, unless the building is acquired and rehabilitated pursuant to a development plan sponsored by the state or local government or qualified nonprofit organization.

5.11 Student Eligibility

Under Section 42, most households where all of the members are full-time students are not eligible, and units occupied by these households may not be counted as HTC units. IRS Code Section 151(c)(4) defines a "student" as an individual, who during each of five 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). Treasury Regulation 1.51-3(b) further provides that the five calendar months need not be consecutive.

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

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

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

- Students are married and entitled to file a joint tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception.
- 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;
- 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 in Minnesota, the Minnesota Family Investment Program (MFIP)); or
- 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.**
- 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). In 2014, the WIA was replaced with the Workforce Innovation and Opportunity Act (WIOA). WIOA (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 farmworkers, 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 department verifies that the applicant/tenant is a participant in a program similar to those funded under JTPA (now WIOA). Click here for a list of WIOA programs.

*** "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. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a federal matching of any payments that are made.

To properly document student eligibility, all households must complete an Annual Student Certification (form HTC 35) as part of the initial certification and annually thereafter. Properties that are 100 percent tax credit qualified and not required to recertify income are **not** exempt from this annual requirement. Note this is a required form.

Verification also must be obtained, when applicable, to support the full or part-time student status (use Student Status and Financial Aid Verification form [refer to Chapter 6 of this guide for income information regarding student financial aid]) and the applicable exemptions(s) (e.g., tax return, marriage certificate, verification of participation in JTPA or similar program, verification of MFIP income, or verification from the state agency of previous participation in foster care).

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 exemptions.

5.12 Loss of Eligibility Upon Becoming a Full-time Student

If a previously qualified HTC household becomes a full-time student household, the household **must** meet at least one of the above exemptions and be able to prove such status in order for the unit to remain in compliance. Under current legal interpretations of federal HTC regulations and requirements, the “available unit rule” that applies to HTC units with households that are no longer income eligible does not apply to student households that qualify under one of the exceptions above and later ceases to qualify. Unlike changes in income, a unit occupied by a full-time student household that does not meet or no longer meets one of the above exceptions immediately ceases to count as a tax credit unit.

5.13 Unit Transfers

The IRS considers each building in a property to be a separate project unless the owner elects to treat certain buildings as part of a multiple building project. Owners make the election for multiple building projects on Part II, line 8b of IRS Form 8609. Until DCCDA becomes aware of an owner’s election, DCCDA and JHS will treat the property as if all buildings are separate projects.

According to the IRS, there is no such thing as a transfer between buildings that are **not part of the same multiple-building project**. If a household moves to another project within the same property, it must be reported as a move-out for the vacated unit. To treat the newly occupied unit as a qualified tax credit unit, the household must be certified and meet initial eligibility requirements. The newly occupied unit must be reported as a new move-in.

Managers of properties containing buildings treated as separate projects must obtain copies of the owner-filed 8609s and use caution when determining if a transfer or move-out/move-in applies.

Transfer Within Same Building. When a current 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. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

Transfer to Different Building/Same Project. When a household whose income is no greater than 140 percent of the income limit moves to a low-income unit in a different building within the same project during any year of the 15-year compliance period, the vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. If a household whose income exceeds 140 percent of the applicable income limit wishes to move to a different building in the same project, the newly occupied unit will be treated as a non-qualifying unit. Mixed income properties can rely on the most recent income certification. Properties that are exempt from income recertification requirements may allow transfers between buildings in the same project even though the household's current income is not known.

Example: Transfer to different building/same project. ABC Acres consists of building A and building B. Owner has elected to treat buildings A and B as part of a multiple-building project. If a household moves from building A to building B, it is a unit transfer.

Example: Move-out/move-in to different building/different project. XYZ Apts. consists of building 1 and building 2. Owner has not elected to treat buildings 1 and 2 as part of a multiple-building project. Even though the two buildings are both part of XYZ Apts., and are located next door to each other, if a household moves from building 1 to building 2, it is reported as a move-out for building 1 and a new move-in requiring a new initial certification for building 2.

For properties electing the AIT minimum set-aside. The above guidance regarding unit transfers also applies to properties electing the AIT, but the unit designations also swap status. For example, if a qualified household in a 40% designated unit transfers to a unit designated as a 70% unit, the newly vacated unit becomes a 70% designated unit and the unit the household moves into becomes a 40% designated unit. If a qualified household in a 50% designated unit transfers to a market-rate unit, the newly vacated unit becomes a market rate unit and the unit the household moves into becomes a 50% designated unit. See Section 6.01 – Unit Redesignation for Projects Electing the Average Income Test Minimum Set-aside.

JHS provides the following form on its website, "Documentation of Unit Transfer," to assist in documenting when a unit transfer occurs, and the status of the units involved.

5.14 Violence Against Women Act

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was extended to include the Low Income Housing Tax Credit program. Owners have a legal obligation to comply with the statutory requirements found in Section 601 of VAWA 2013.

An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation or occupancy.

To comply with the *core statutory provisions* of the law, owners/agents must provide and distribute the following forms to applicants/tenants:

- HUD Form 5380 – Notice of Occupancy Rights under the Violence Against Women Act; and
- HUD Form 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation.

These documents are to be provided:

  - With the notice that an application has been denied
  - At the time the household is admitted
  - With any notice of eviction
  - With any notice of lease non-renewal or termination of tenancy

Existing residents who do not already have HUD Forms 5380 and 5382 should receive a copy of each during their next annual recertification, lease renewal, or by other means.

Owners should also develop and implement an Emergency Transfer Plan using HUD's model Forms 5381 and 5383. The emergency transfer plan allows for survivors to move to another safe and available unit if they fear for their safety. Owners should be mindful of unit transfer rules outlined in Section 5.13 above when making their plan.

Owners must be familiar with the statutory requirements impacting their developments and consult with their legal counsel as needed. Also refer to HUD Notice H 2017-05 "Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance for Multifamily Owners and Management Agents" for valuable definitions and examples of how to fully implement VAWA protections.

Find VAWA Forms 5380, 5381, 5382 and 5383 on HUDClips5. Find VAWA lease addendum 91067 on HUDclips9. Owners/agents should customize the forms for use at their properties, but they must maintain the base information and language.

Owners may bifurcate leases to evict or terminate tenancy of the perpetrator and continue housing the survivor if the survivor is or is part of an otherwise eligible household.

Chapter 6 – Income Determinations

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

For new projects electing the AIT minimum set-aside, the initial income and rent designation of each unit must be made no later than when a unit is first occupied as a low-income unit. For AIT projects placed in service on or before December 31, 2022, occupied HTC units are considered designated on January 1, 2023, based on the owner's existing designation. For AIT projects placed in service after December 31, 2022, vacant units must be designated before the move-in of a low-income household. For all AIT properties, when leasing units, owners must complete a TIC that is consistent with each unit's respective income and rent limit designation. DCCDA and JHS will consider the owner to have designated a unit based on the MTSP level that is recorded on the TIC and reported on the Electronic Reporting Program annually.

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

Owners should use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. For guidance in this section and in determination of tenant income, HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs is used and is recommended as a reference guide. HUD Handbook 4350.3 and HUD notices can be obtained by calling 1.800.767.7468 or by visiting HUD's website.

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

Please keep in mind that rental agents sometimes attempt to establish only that the applicant has sufficient income to support monthly rent payments; however, tax credit projects are both rent restricted and income restricted. Therefore, if a rental agent intends to include the applicant as an eligible tenant, **income from all required sources must be verified and included in the income calculation.**

6.01 Income Certification/Recertification

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

Initial Eligibility Determination. Initially, tenant eligibility is determined at the time of move-in certification (refer to "special instructions for newly PIS properties with existing residents" below). Before a household takes occupancy, owners or managers must determine that the household will cause the unit to be a qualifying HTC unit. For projects electing the AIT, the owner must complete a TIC that is consistent with its income and rent designation for the unit.

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

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

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

It is correct to first have potential residents disclose their income and assets, family composition, etc., on a Household Questionnaire and complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Certification (HTC

35) must be completed at the time of application. Third party verification should then take place (note that verifications are valid only if they are no older than 120 days from the date received by the owner—the application must also be no older than 120 days). Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the resident file. A Phone Verification/Clarification Record can be used for this purpose. Finally, management should calculate income and income from assets based on information provided on the verification forms and complete the TIC. This process must take place prior to the effective date of the Initial Certification (move-in date). The TIC should be signed no earlier than five days before the move-in date but must be signed no later than the move-in date. The TIC should be effective as of the date of move-in. An Initial Certification that is done after the move-in date is considered late and would cause a noncompliance event.

If a tenant is unable to timely sign the TIC as described above 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. Assuming the tenant file contains documentation of the reason for a late signature, a “true and correct as of” statement is unnecessary when the tenant does sign.

RHS projects must use the Section 8 method of calculating income based on “annual income” not the RHS method of “adjusted annual income” for HTC qualified tenants.

Special Instructions for Newly Placed in Service Properties with Existing Residents.

- **Acquisition/Rehab.** For households occupying a unit at the time of acquisition, an initial TIC may be completed up to 120 days after the date of acquisition using the income limits in effect on the day of acquisition. <u>All verifications must be received, and the TIC must be fully completed, signed, and dated within that 120-day period for the effective date of the TIC to be the acquisition placed in service (PIS) date</u>. This is the only exception to the general rule that all verifications must be completed prior to the effective date of the TIC. <u>This exception does not apply if any verifications are received later than 120 days or any part of the TIC is completed or signed after the 120-day period. In that case, the effective date will be the date the last adult member of the household signs the TIC form.</u>
- **Rehab-only properties**, the initial certification may be completed any time on or after the rehab PIS date. The move-in date on the TIC must be no earlier than the rehab PIS date. The effective date may be any date the owner chooses on or after the PIS date (note that verifications must be no older than 120 days from the date of receipt by the owner, and all verifications must be complete prior to the effective date).

  For the tax credit initial certification of project-based Section 8 or other HUD or Rural Development (RD) subsidized units, JHS will accept an annual certification (but not an interim recertification) effective within 120 days of the PIS date (note that except for RD properties, a TIC must also be completed and signed). However, remember that owners are not allowed to use information obtained through Enterprise Income Verification (EIV) for non-HUD programs, including IRC Section 42. If a property has both HUD and tax credits, EIV cannot be used to verify income for Section 42, nor can it be in the tax credit portion of a tenant's file.

It is important to note that even if a unit is occupied by a household that appears to be qualified, until the TIC is fully and properly completed and signed, the unit is treated as non-qualifying and tax credits are not available.

- **Properties with an Existing Allocation of Housing Tax Credits that Receive an Additional Allocation.** Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period <u>may be</u> concurrently income-qualified households for purposes of the extended use period. As a result, as long as all §42 requirements are met, including annually certifying student status, verifying income and assets for annual recertification for mixed-income properties, rules regarding unit transfers, etc. any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit. If the new allocation is for rehabilitation only, vacant units will continue to be treated as low-income units subject to the vacant unit rule. If the new allocation is for acquisition/rehabilitation, vacant units lose their status as low-income units until they are occupied by qualified households that are properly certified.

Annual Recertification.

- **Mixed Income Projects.** Owners of mixed-income projects are required to recertify annually as to the gross annual income of HTC households. Income recertification should be performed in accordance with the verification requirements for an initial certification.

  Reminder: Owners are not allowed to use information obtained through EIV for non-HUD programs, including Section 42. If a property has both HUD and tax credits, EIV cannot be used to verify income for Section 42, nor can it be in the tax credit portion of a tenant's file.

  The recertification process should begin 120 days prior to the anniversary date of the previous certification. The residents must complete a recertification application/questionnaire (refer to the Household Questionnaire provided by JHS) to disclose income, assets, family composition and student status, and also complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Certification (MHFA HTC 35) must be completed at the time of recertification. Third party verification should then take place. Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the resident file. Finally, calculate income and income from assets based on information provided on the verification forms, and complete a TIC. The TIC is to be signed after all verifications are received and management has completed the form, but it must be effective on or before the anniversary date of the previous certification. It is acceptable to do a recertification effective before the anniversary date (to conform to the annual recertification date for a Section 8 household, for example). Recertifications that are done or effective after the anniversary date cause a noncompliance event.

However, if an owner sends timely notice informing a tenant that annual recertification is due, but the household vacates the unit, the unit will not be considered out of compliance. Owners must document the file regarding attempts to timely obtain the recertification and the date the tenant actually moves out of the unit. This must also be disclosed on the Owner's Certification of Continuing Program Compliance. For further information on how JHS and DCCDA will review and report noncompliance, refer to the 8823 Guide: Chapter 5, page 2, Category 11b – Topic: "Household Vacates Unit."

- **100 Percent HTC Projects***: Effective January 1, 2009, annual income recertifications are not required for 100 percent low-income projects. A project is 100 percent low-income when the allocation was based on all units in the project and all units (common space units are not part of the equation) are in compliance. It is absolutely essential that each initial certification in a 100 percent low-income project be done very carefully and thoroughly. If a TIC has insufficient documentation of gross annual household income or it is determined for any reason that one or more households do not qualify, the owner must resume conducting annual recertifications until 100 percent of the units are back in compliance.

- **Income Certification Not Timely or Properly Documented.** The IRS, DCCDA and JHS expect that owners will conduct timely and proper certifications as discussed above. However, if an initial certification or annual recertification was not properly or timely documented, the noncompliance can be addressed in either of two ways:

  1. Owner can perform a new (re)certification using current income and asset sources and current income limits. Assuming the household is eligible, the unit would be out of compliance on the date of move in or when the recertification was due and back in compliance on the date the new certification is signed by all parties; or

  2. Owner can perform a retroactive (re)certification which completely and clearly documents the sources of income and assets that were in place at the time the (re)certification should have been effective; and applies income and rent limits that were in effect on that date. All supporting documents, including the household questionnaire and verifications as well as any clarification records must contain information reflective of the intended effective date. Calculating gross annual household income based on income, asset or other data that occurred after the intended effective date will render the certification late or unacceptable, not retroactive, regardless of any "true and correct as of" statement. When requesting

income or asset verification directly from the source, make it very clear that the information requested must be information that was known and in effect for the intended effective date. It may help to contact third parties directly to explain what is needed from them before sending verification forms. Any documents signed by residents that are intended to apply retroactively must be signed and dated using the current date (no back-dating). The head of household must add their initials and the current date next to a “This certification is true and correct as of (inserting the intended effective date)” statement below the signatures on the TIC form (and HTC35 Annual Student Certification, if applicable). While retroactive (re)certifications are allowed, they must not be done routinely. Owners may be subject to serious risks if a household is determined to not be income eligible after they have been allowed to occupy a unit or if the owner has unknowingly violated the available unit rule.

Unit Redesignation for Projects Electing the Average Income Test Minimum Set-aside. Treasury Regulation 1.42-19, allows owners to change a unit’s income and rent designation in the following circumstances:

- **Federally permitted changes.** If permission for the change is contained in IRS forms, instructions, or guidance published in the Internal Revenue Bulletin.
- **As the housing credit agency permits.** For circumstances other than those expressly allowed under Treasury Regulation 1.42-19(d), owners may establish a written policy and procedure regarding the circumstances under which it would redesignate an occupied unit to a different income and rent limit than currently designated. Redesignations in compliance with that policy and procedure are permitted. Owners may redesignate an occupied unit to a lower income and rent limit designation for any reason if the household is qualified for the lower income limit.
- **As appropriate to other laws.** A change in designation is permissible when the change is required or appropriate to enhance protections contained in the following, as amended:
  - The Americans with Disabilities Act of 1990 **(ADA)**
  - The Fair Housing Amendments Act of 1988 **(FHA)**
  - The Violence Against Women Act of 1994 **(VAWA)**
  - The Rehabilitation Act of 1973 **(Section 504)Any other state, federal, or local law or program** that protect tenants as identified by the IRS or Minnesota Housing.
- **As households transfer.** If a current income-qualified resident moves to a different unit in the same building or project. Refer to Section 5.13 of this guide for additional information on unit transfers.
- **To address noncompliance with AIT minimum set-aside or *project average.** When an event occurs that causes a previously qualifying group of units identified for either the minimum set-aside or the applicable fraction to no longer be described in

Treas. Reg. 1.41-19(b)(2)(ii), redesignation may be allowed. This is limited to units that are vacant or are occupied by a household that would satisfy the new lower imputed income limitation. Note that rent may need to be lowered to avoid noncompliance with rent limits. Such correction may also include adding or removing units to the qualified group of units to achieve an average of imputed income limitations at or below 60% MTSP. If an issue is not discovered and corrected within the taxable year that the problem occurs, any retroactive correction to designations must be made within 180 days of discovery by the owner, JHS or DCCDA. If discovered by the owner, the issue and owner's intended corrective action must be promptly reported to JHS to benefit from this discretionary correction period. On a case-by-case basis, if retroactive correction is made within 180 days of discovery, JHS and DCCDA have the discretion to waive in writing any failure to comply with the requirements of Treas. Reg. 1.42-19T(c)(1)-(3).

When redesignating an occupied unit, a new initial certification must be completed if the household's income on the original initial certification would not qualify the household for the new designation. (For mixed-income properties, use the household income from the most recent annual recertification to make this determination). A new certification is not necessary for unit transfers within a building or within the same multiple-building project, where unit designations swap status.

***Important Reminder**: The IRS considers buildings to be separate projects unless the owner elects to treat certain buildings as a multiple-building project. Owners make the election for multiple building projects on Part II, line 8b of IRS Form 8609. DCCDA and JHS will treat the property as if all buildings are separate projects until the owner notifies DCCDA and JHS of a multiple building election. Managers of properties containing some 100 percent buildings and some mixed-income buildings must obtain copies of the filed 8609s and use caution when determining if 100 percent buildings are exempt from recertification. If the 100 percent buildings are part of a multiple-building project that includes mixed income buildings, the 100 percent buildings do not qualify for the exemption. If the 100 percent buildings are treated as a separate project or are part of a multiple-building project that contains only 100 percent HTC buildings, then they do qualify for the exemption.

Example 1: Recertification exemption does not apply: A property consists of building A (100 percent HTC) and building B (mixed income). Owner has elected to treat buildings A and B as part of a multiple-building project. Building A is not exempt from recertification because the project is not 100 percent HTC.

Example 2: Recertification exemption applies but only to certain buildings: A property consists of building A (100 percent HTC) and building B (mixed income). Owner has not elected to treat buildings A and B as part of a multiple-building project. Building A is exempt from recertification because it is a 100 percent project. Because building B is mixed income, annual income recertifications must be completed for building B.

Example 3: Recertification exemption applies but only to certain buildings: A property consists of building A (100 percent HTC), building B (mixed income), building C (100 percent HTC) and building D (mixed income). Owner has elected to treat buildings A and B as part of a multiple-building project. Owner has elected to treat buildings C and D as separate projects. Building A is not exempt from recertification because the project is not 100 percent. Building C is exempt from recertification because it is a separate 100 percent project. Because building D is mixed income, annual income recertifications must be completed for building D.

Example 4: Recertification exemption applies: A property consists of building A (100 percent HTC) and building B (100 percent HTC). Regardless of whether the owner elected to treat buildings A and B as separate projects or as part of a multiple-building project, both building A and building B are exempt from recertification.

The recertification exemption applies only to the HTC Program. Units funded by certain other programs (e.g., Tax-exempt bonds, HOME, National Housing Trust Fund, Section 8, MARIF) have income recertification requirements that must be met separately.

- **All Projects.** The Annual Student Certification (MHFA HTC 35), and any applicable supporting documentation for exemptions, is always required annually, no later than the anniversary of the initial certification.

All owners are advised to read IRS Revenue Procedure 2003-82, which became effective November 24, 2003. This revenue procedure provides safe harbors under which the IRS will treat a residential unit in a building as low income if the household income has been certified as eligible in the year before the first credit year but household income exceeds the income limit at the beginning of the first taxable year of the credit period. Revenue Procedure 2003-82 was issued as a result of questions from taxpayers regarding when individuals must satisfy the applicable income limit when they move into an existing building (or are existing residents) on or after the date a taxpayer acquires a building to be rehabilitated, but before the beginning of the first credit year. Because of those questions, some taxpayers required that the household income not exceed the applicable income limit at the beginning of the first credit year, even though the household income was below the income limit when the household moved into the unit (or was initially certified). This has resulted in some households being evicted, where permissible under local law, from tax credit properties.

Note that the purpose of Revenue Procedure 2003-82 is to provide taxpayers protection from challenges by the IRS on this issue. Testing for application of the Available Unit Rule referred to in the Revenue Procedure consists of confirming with the household(s) that the sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts are identified, the TIC must be updated based on the household's documentation. It is not necessary to complete third party verifications. DCCDA and JHS are not required to monitor for compliance with Revenue Procedure 2003-82.

Change in Household Composition. For all properties, if there is a change in household composition within the first six months of occupancy, owners or managers must certify the household as if it were a new move-in. This requirement to certify does not apply in cases of natural changes in household composition such as birth, adoption, or death, or in cases covered under the Violence Against Women Reauthorization Act of 2013 (VAWA). 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 not to allow the addition or removal of household members in order to "manipulate" move-in eligibility.

For mixed-income 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 and Annual Student Certification, prior to occupancy. The new tenant's income is added to the income disclosed on the existing household's most recent TIC. This new certification is an "Other Cert." The effective date of the "Other Cert" is the date the new household member moves in. The household continues to be considered income-qualified; however, if the combined income exceeds 140 percent of the applicable income limit, owners must apply the available unit rule. Note that an "Other Cert" done in conjunction with adding a household member does not "reset" the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

For 100 percent HTC 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 and Annual Student Certification, prior to occupancy. The new tenant's income is added to the income disclosed on the existing household's original income certification. If a recertification is on file because the household occupied the unit for more than a year prior to January 1, 2009, when the exemption became effective, use the most recent recertification. This new certification is an "Other Cert," and an "Other Cert" done in conjunction with adding a household member does not "reset" the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

DCCDA and JHS strongly recommend owners and managers screen subsequent household members in the same manner as any new household (e.g., credit check, landlord reference) 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 after the first six months of occupancy do not trigger an immediate income certification. Subsequent annual income recertifications will be based on the income of the remaining members of the household. A "Documentation of Decrease in Household Composition" form should be used to document when the change occurs and who is being removed from a unit.

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

If an owner takes action to remove a noncompliant household by initiating an eviction action, the unit will not be considered out of compliance. If the household does not vacate the unit (i.e., court does not grant the unlawful detainer), a recertification will be required within 120 days of the determination.

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

If an owner elects the AIT, a low-income unit will be considered over-income if the household’s income exceeds:

- 140% of 60% MTSP if the unit’s designated income limit is 60% or less; or
- 140% of the unit’s designated income if the unit’s designated income limit is 70% MTSP or 80% MTSP

Under the AIT, an over-income unit ceases to be a qualified low-income unit if any unit of a comparable or smaller size in the building is rented to a new household whose income exceeds the applicable imputed income limit. The applicable imputed income limitation depends upon whether the unit being occupied was a low-income unit before becoming vacant. If the unit being occupied was previously taken into account as a low-income unit prior to becoming vacant, then the applicable imputed income limitation is the limitation designated prior to the unit becoming vacant. If the unit was not previously occupied by a low-income household (a market-rate unit), then the owner designates the income limit such that the project continues to meet the Average Income Test. In other words, if the comparable or smaller vacant unit is an HTC unit, rent the unit based on the existing income designation of the vacant unit. If the comparable or smaller vacant unit is market rate, rent the unit based on the income designation of the over-income unit. If multiple units with different income designations trigger the Available Unit Rule, owners are not required to rent available units in any specific order. See Treas. Reg. 1.42-15(c)(2)(ii).

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

A comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available (i.e., floor space fraction or unit fraction). An owner may consider a residential unit with similar square footage and amenities to be a comparable unit. A unit that is no longer available for rent due to a reservation that is binding under local law is not an “available unit” for purposes of this rule.

6.02 Tenant Income Certification

The Tenant Income Certification form (TIC), is used to certify a project's eligible households. The use of this form is required in order to ensure the continuity necessary for accurate monitoring of these projects. The form is a legal document that, when fully executed, qualifies the applicant to live in an HTC 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 TIC. It must be signed and dated by all household members over age 18 (and by any household members under age 18 who are treated as adults because they are the head of household, co-head or spouse) and by the owner or owner's agent at initial move-in and upon annual recertification. The effective date of the initial certification should be the move-in date. For projects receiving their credit allocation due to acquisition and/or rehabilitation and where there are existing households, the effective date of the first HTC certification for those existing households should be no earlier than the first PIS date (i.e., the acquisition PIS date). DCCDA and JHS recommend that the initial TIC be signed no earlier than five days prior to the effective date and no later than the effective date. Annual recertifications must be effective on or before the anniversary of the effective date of the previous certification.

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 noncompliance, DCCDA and JHS strongly advise owners and managers to certify and recertify on a timely basis.

NOTE: Supporting documentation (application/questionnaire, income verifications, asset verifications, student certification, etc.) is considered part of the TIC and must be included in the file.

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

6.03 Government Data Practices Act Disclosure Statement

In working with tenants, the owner or manager must warrant compliance with applicable data privacy laws and regulations including the Minnesota Government Data Practices Act, which sets policies on the information that can be obtained, stored and/or released in connection with public programs. In order to comply with this regulation, a signed and dated Government Data Practices Act Statement form and all relevant attachments must be kept in each household's permanent file. The name of the property must be printed in the box provided, and relevant attachments must be indicated by checking the appropriate boxes. Note that this is **not** a release authorization for verification of income and assets and must not be used as such. Each adult household member's name must be printed clearly at the top in the box provided. An unsigned and/or undated form is not valid and will be noted at the time of file inspection.

- The form is to be signed one time and is valid as long as the resident lives at the property and participates in the program(s) identified in item #2 on page one of the disclosure statement form. If a resident moves from one unit to another, the original signed and dated form should be moved to the file for the new unit. A copy should be kept in the file for the old unit.
- A valid form **must** include all relevant attachments. Some properties or units within a property may require two or more attachments for multiple programs.
- Only one form is needed per unit as long as the head of household, spouse, co-head, and all household members over the age of 18 have signed and dated the form.
- If an adult is added to the household or a minor reaches age 18, they must be added to, and they must sign and date, the original form. It is not necessary to complete a new form.
- A copy of the form should be made available to the applicant/tenant. It is acceptable to give them an unsigned copy.
- For new residents, the form should be completed at the time of initial application.

6.04 Miscellaneous Forms to Verify Income

The forms listed below are provided to assist in qualifying eligible tenants. The release of information (found at the 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 TIC.

- Asset Verification 401K
- Asset Verification Whole or Universal Life
- Alimony/Child Support Verification (three versions)
- Pension/Annuity/Investment Verification
- Bank Verification
- Certification of Unborn Child/Adoption/Custody
- Disability Status

- Divestiture of Assets Verification
- Employment Verification
- Foster Care Verification
- Live-in Aide Verification
- Live-in Aide Agreement
- Military Pay Verification
- Phone Verification/Clarification Record
- Public Assistance Verification
- Real Estate Verification
- Regular Contributions Verification
- Self-Employment Certification (4 versions)
- Special Needs Verification
- Stocks/Bonds Verification
- Student Status and Financial Aid Verification
- Unemployment Compensation Verification
- Veteran's Benefits Verification
- Verification of Section 8 Eligibility
- Workers Compensation Verification
- Zero Income Certification

Use of these forms is optional as long as a form that contains the same or additional information is used. <u>It should be noted that IRC Section 42 does not require disclosure of social security numbers; however, disclosure may be necessary to verify income or assets in some cases.</u> A Calculation Worksheet form can be used to assist managers in showing the individual calculations of income and asset income. This is highly recommended and will greatly assist an inspector during a file review.

6.05 Annualized Income

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

Owners must convert all verified incomes to annual amounts.

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

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 average number of hours (e.g., verification shows 30-35 hours per week, use 32.5 hours).
- Average weekly amounts by the number of weeks the individual is expected to work.
- Other periodic amounts (e.g., monthly, bi-weekly) by the number of periods the individual expects to work.

Use an annual wage without additional calculations. For example, if a teacher is paid $25,000 a year, use $25,000, whether the payment is made in 12 monthly installments, nine 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 $1,200 a month, typically works nine months per year and collects unemployment in the amount of $600 a month for the remaining three months, income is calculated as follows:

$1,200 x 9	=	$10,800
$600 x 3	=	<u>$1,800</u>
		$12,600 = Total Annualized Income

Unemployed Applicants. The income of unemployed applicants with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as mentioned previously.

If an applicant is currently unemployed with no regular verifiable income from any source and claims zero income, he or she must execute a Certification of Zero Income (found in the Verification section of the Compliance Guide). Note that the HUD Handbook requires non-monetary contributions (excluding groceries) to be counted as income.

6.06 Annual Income

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

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

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

Total Income from all Sources = Annual Income

Earned/ unearned Income	+	Income from assets	=	Annual Income

Annual income has two components: Earned/unearned income and asset income.

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

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

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

The following are examples of income that are included in annual income. Also listed are specific types of income that are excluded. For those types of income with no specific verification instructions, refer to Chapter 6, section 6.14, General Income Verification Requirements, below. Generally, if a particular type of income is not specifically mentioned as being excluded, then it is included in annual income:

- Interest, dividends and other income from net family assets;
- The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all

adults in the household (including foster adults and persons under the age of 18 who are the head, spouse or co-head). This includes salaries that adults received from a family-owned business.

- Net income, salaries and other amounts distributed from a business.

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

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

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

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 form should be completed, and the resident must self-certify the anticipated net income from the business. Attach any available supporting documents (e.g., trip sheets, financial statements, contracts). Self-employment can be annualized for the current year's business activity based on the number of full months in business. The formula is:

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

- The gross amount (before any deductions for Medicare, etc.) of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18, including foster children 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 listing the gross monthly benefit. This statement is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living adjustment (COLA). If an eligible tenant does not have a dated benefit statement from Social Security that is not older than 120 days and that lists the gross monthly benefit, the eligible tenant (or rental applicant) may call the local office of the Social Security Administration (SSA) or access Social Security online. From the boxes in the middle, select "My Social Security." The applicant/tenant will need to log in or create an account (this requires the applicant/tenant to have an email address). Select either "get a Benefit Verification Letter" or "View Payment History." To request a Proof of Income Letter from SSA's toll-free number, call 1.800.772.1213. The SSA has stated that benefit statements will arrive in the mail in about 10 days after SSA receives the request. The benefit statement is mailed to the applicant/tenant, who must then provide a copy to the owner.

- 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, Dependent Indemnity Compensation (widow of killed in action serviceman). 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;
    - Federal Government/Uniformed Services 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 are counted as income for a tenant/applicant receiving such funds.
    - Other state, local government, Social Security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.
    - In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However,

where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant.

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

- Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits.
- Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay. Any payments that will begin during the next 12 months must be included. These amounts must be annualized unless there is clear documentation that such payments are limited to a defined time period.

Unemployment compensation may be verified by a verification form completed by the unemployment compensation agency, records from the unemployment office stating payment dates and amount, or a printout of the applicant/tenant's unemployment information from the unemployment office's official website. Note that such printouts might only contain the person's account number and not have their name listed. If the printout does not contain the person's name, have the applicant/tenant sign and date the printout with a short statement that this information accurately represents his or her account information.

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

For students receiving Section 8 assistance, all financial assistance a student receives, 1) under the Higher Education Act of 1965, 2) from private sources, or 3) from an institution of higher education that is in excess of amounts received for tuition and any other required fees and charges (refer to HUD Notice H2015-12) is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. Refer to Paragraph 3-13 of HUD Handbook 4350.3 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

This rule applies to both part-time and full-time students.

Welfare Assistance. Documentation Required: To verify income from welfare or public assistance, a written statement from the welfare agency is required. The statement should address the type and amount of assistance the family is currently receiving and note any changes in assistance expected during the next 12 months. Some agencies no longer complete verification forms; preferred second party verification is an online printout or a current award letter.

Annual Income for Section 8 Household: The annual income for a household receiving housing assistance payments under Section 8 can be verified by obtaining a statement from the public housing authority (PHA). The owner must submit the Verification of Section 8 Eligibility form to the PHA for completion. If the form shows that the tenant's income does not exceed the applicable income limit, the household is eligible to occupy a rent-restricted unit. This form then “replaces” all other verifications of income and assets.

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, DCCDA and JHS recommend that the owner or the owner's agent verify and calculate the household income directly from the source(s) and not rely on PHA verification for initial certifications.

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

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

- Verification form completed by the person paying the support.
- Verification form completed by the support enforcement office as to amounts being paid.
- Copy of a separation or settlement agreement or copy of a divorce decree stating the amount and type of support and payment schedule.
- A copy of the latest check.
- When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may accept a certification from the family stating the amount of child support received.

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

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

Recurring Monetary or Non-monetary Contributions or Gifts Regularly Received from Persons not Living in the Unit. These sources may include rent, utility and other payments paid on behalf of the household, and other cash or noncash contributions provided on a regular basis.

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

- A Regular Contributions Verification signed by the person providing the assistance stating the purpose, dates and value of the contributions and/or gifts; or
- A statement or affidavit from the tenant stating the purpose, dates and value of the gifts.

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

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

- Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant family.
- All regular pay, special pay, and allowances of a member of the Armed Forces, except hostile fire pay. Note that until January 1, 2012, Basic Pay Allowance for housing is disregarded for properties located in a county that contains a qualified military installation to which the number of members assigned to units based out of the military installation as of June 1, 2008, has increased by 20 percent or more from December 31, 2005. This applies to the county that contains the military installation and also to adjacent counties. A qualified military installation is a military installation or facility with 1,000 or more members as of June 1, 2008.

6.07 Exclusions from Annual Income

- Income from employment of children (including foster children) under the age of 18 years;
- Meals on wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act of 1966 [42 U.S.C. 1780(b)], including reduced-price 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;
- Loans such as personal loans (see HUD Handbook 4350.3 on business loans which are **not** excluded);
- Temporary, nonrecurring or sporadic income (e.g., gifts);
- Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- Special pay to a household member serving in the armed forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
- For Section 8 tenants only, any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum or in prospective monthly amounts are excluded from annual income.
- 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 payments by the German and Japanese governments for atrocities committed during the Nazi era.

- Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump-sum amount or in prospective monthly amounts (but these amounts are included in assets; refer to the section that addresses assets).
- Payments received for the care of foster children or foster adults.
- Amounts received in behalf of someone not living in the unit as long as the amounts are (i) not intermingled 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.

6.08 Income Excluded by Federal Statute

(updated May 12, 2014, and published in the Federal Register, Vol. 79, No. 97 on May 20, 2014)

- The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 {7 U.S.C. 2017(b)}.
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions) {42 U.S.C. 5044(f)(1), 5058};
- Certain payments received under the Alaska Native Claims Settlement Act {43 U.S.C. 1626(c)} received from a Native Corporation;
- Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540 section 6);
- The first $2,000 of per capita shares received from judgment funds awarded by the Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;
- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study programs or under the Bureau

of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended);

- Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g) (Green Thumb, Senior Aides, Older American Community Service Employment Program);
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (pub. L. 101-201) or any other fund established pursuant to the settlement in the In Re "Agent Orange" liability litigation. M.D.L. No. 381 (E.D.N.Y.); Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 25 U.S.C. 1728);
- 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 (42 U.S.C. 9858q);
- Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32 (l));
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 [42 U.S.C. 12637(d)];
- Any allowance paid under the provisions of 38 U.S.C. 1933 (c), to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);
- Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));
- Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

- Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 [25 U.S.C. 1774f(b)];
- Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437 a(b)(4));
- Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L 111-269, 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101, et seq.) and administered by the Office of Native American Programs;
- A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al v. Ken Salazar et al., United States District Court, District of Columbia, as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);
- Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));
- Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a)); and
- Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. 93-288, as amended) and comparable disaster assistance provided by States, local governments and disaster assistance organizations (42 U.S.C. 5155(d)).

6.09 Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household. Assets of all household members, including minors, foster children, and foster adults must be considered.

Verification of assets is required. The asset information (total value and income to be derived) **must** be obtained at the time of application or recertification. The applicant/tenant will affirm that this information is correct by executing the TIC.

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

Effective October 11, 1994, an owner may satisfy the third-party documentation requirement for a tenant’s income from assets if the tenant submits to the owner a signed, sworn statement that the value of the combined assets is less than $5,000. The use of Minnesota Housing’s form titled Under $5000 Asset Certification (MHFA HTC 24) is required for this procedure. The form must also be used when an applicant/tenant declares there are no assets, including checking and/or savings accounts. If a project is required to obtain third party verifications because of participation in another housing program (e.g., Section 8, HOME, RHS), or an owner's or management company's policy is to third-party verify assets, then do not also use the Under $5000 Asset Certification.

Note that neither the Under $5,000 Asset Certification nor third-party verification of assets is required if a Housing Choice Voucher recipient's gross annual household income is verified by the respective housing authority on a Verification of Section 8 Eligibility form, as these amounts will already have been verified and included by the housing authority.

DCCDA and JHS' monitoring procedure and IRS Revenue Procedure 94-65 do not permit an owner to rely on a low-income tenant's 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 low-income tenant's annual income from assets to satisfy the documentation requirement of third-party asset verification.

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

Household assets include:

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets. Balances held on re-fillable gift/debit cards are treated like savings accounts.
    a. Documentation Required: Verification forms, account statements (must obtain six consecutive months of statements to determine the six-month average balance for checking accounts), passbooks, certificates of deposit, letters or documents from a financial institution or broker.

       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.

       In the case of real estate that is in the process of being foreclosed, satisfactory documentation would be 1) a copy of the most recent property tax statement showing the current market value of the home, and 2) a copy of the most recent mortgage statement or foreclosure notice showing the balance owed.
2. Revocable trusts. Include the cash value of any revocable trust available to the household.

3. Equity in rental property or other capital investment. Include the current fair market value less (a) any unpaid balance on any loans secured by the property; and (b) reasonable costs that would be incurred in selling the asset (i.e., penalties, broker fees, etc.). **NOTE:** If the person's main business is real estate, then count any income as business income. Do not count it as an asset and as business income.
    a. 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:
        i. 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
        ii. Amortization schedule showing interest for the 12 months following the date the purchaser intends taking occupancy.
    b. For rental income from property owned by the tenant, request:
        i. IRS Form 1040 with Schedule E (Rental Income).
        ii. Lease between the tenant and the tenant's renter.
        iii. Lessee's written statement identifying monthly payments due the tenant and tenant's affidavit as to net income realized.
4. Stocks, bonds, treasury bills, certificates of deposit, money market accounts, mutual funds. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after income is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received.
    a. Documentation Required: Verification form, 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, copy of most recent statement from asset source.
5. Individual retirement and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count occasional withdrawals as income.)
6. Retirement (such as 401-k, 403-b) 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:

a. If benefits will be received in a lump sum, include the lump sum receipt as an asset.

b. If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account.

c. 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.

d. 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.

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

8. Personal property held as an investment. Include gems, jewelry, coin collections, and antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.

9. 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.

10. A mortgage or deed of trust held by an applicant (e.g., contract for deed). Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

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

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

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

6.10 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). Nonrevocable trusts are not covered under this paragraph.

6.11 Assets Owned Jointly

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

6.12 Instructions for Valuing Assets

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

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

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

Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received, if the difference is more than $1,000. If a tenant has sold his/her home (either a private residence or rental) or disposed of other assets within the past two years for less than fair market value, request:

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

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

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

Owners must determine estimated asset income by multiplying total net assets by the interest rate specified by HUD. From September 29, 1995 until February 1, 2015, the rate was 2 percent (.02). Effective February 1, 2015, HUD decreased the rate to .06 percent (.0006) and will publish the amount annually when income limits are published.

6.13 Example of Calculating Income from Assets

Type of Asset	**Cash Value of Asset**	**Actual Income Per Year**
Checking Account	$300	$0
Savings Account	2,000	115
Certificates of Deposit	10,000	986
Rental Property	15,000	0
TOTAL	**$27,300**	**$1,101**

Since total assets exceed $5,000, estimated (imputed), income must be calculated: Total assets x .02 = $27,300 x .02 = $546. For certifications effective February 1, 2015, and later, the calculation would be $27,300 x .0006 = $16.38.

Annual income must include the $1,101 actual income because it is greater than the estimated (imputed) income received on the assets.

6.14 General Income Verification Requirements

All income and asset sources must be disclosed on the eligibility application and verified. A good application must be used as the basis for determining what verifications will be necessary.

JHS staff will review the application, along with all supporting documentation and the TIC, during a tenant file review.

The following describes the types of third-party verification, in order of acceptability:

1. **Third-party verification from source (written)**: An original or authentic document generated by a third-party source that is dated within 120 days from the date of receipt by the owner. Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant-provided documents. These documents are considered third-party verification because they originated from a third-party source.

   Examples of tenant-provided documentation that may be used include, but are not limited to pay stubs, payroll summary report, employer notice/letter of hire/termination, social security benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

   Verification of income using The Work Number or state government databases such MAXIS used by the Minnesota Department of Human Services is also acceptable.

   Owners must consider the following when using tenant-provided documentation:

   a. Is the document dated and current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.
   b. Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent four to six, consecutive pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.
   c. Is the document an unaltered original? The greatest shortcoming of tenant-provided documents as a verification source is their susceptibility to undetectable change through the use of high-quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

2. **Written documentation sent directly to the third-party source by mail or electronically by fax, email or internet:** Verification forms must contain a release authorization signed by the applicant/tenant. Do not use a blanket release authorization, as this entitles the owner or manager to obtain information to which it is not entitled or needed for eligibility determination. The Data Practices Act Disclosure Statement is not a verification release. Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

Income verification requests must be sent directly to and from the source. They are never given to the tenant to obtain signatures. It is suggested that a self-addressed stamped envelope be included with a mailed request for verification. If the returned 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.

3. **Third-party verification from source (oral):** When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file. When verifying information by phone, the owner must record and include in the tenant's file the following information:
    a. Third-party's name, position, and contact information;
    b. Information reported by the third party;
    c. Name of the person who conducted the telephone interview; and
    d. Date and time of the telephone call.
4. **Family Certification:** An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted only if the information cannot be verified by another acceptable verification method. In these instances, the owner must document in the file why third-party verification was not available. The owner may witness the tenant signature(s) in lieu of a notarized statement or affidavit.

Electronic Verification. The owner may obtain accurate third-party written verification by facsimile, email, or Internet if adequate effort is made to ensure that the sender is a valid third-party source.

- Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.
- Email. Similar to faxed information, information verified by email is more reliable when preceded by a telephone conversation and/or when the email address includes the name of an appropriate individual and firm.
- Internet. 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.

Steps used to obtain written verification as described in section 6.14, 1, 2 and 3 above must be documented to show just cause for using other types of verification. The owner must include the following documents in the tenant file:

- 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.

NOTE: If a tenant is employed by a business owned by the tenant's family or is employed by the property owner or the management company, a copy of a recent pay stub, verifying year-to-date earnings, is also required.

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

Optional streamlined income determination for fixed-income source at annual income recertification.

Owners may use a streamlined income determination to adjust a family’s income according to the percentage of a family’s unadjusted income that is from fixed income (refer to list of fixed income sources below) as follows:

- When 90 percent or more of a family’s unadjusted income consists of fixed income, owners must apply a cost-of-living adjustment (COLA) to the family’s fixed income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. Owners may accept a self-certification by the tenant to adjust income for non-fixed sources.
- When less than 90 percent of a family’s unadjusted income consists of fixed income, owners must apply a COLA to each of the family’s sources of fixed income. Owners must verify all non-fixed income sources using regular verification methods.

The following are fixed income sources eligible for the streamlined approach:

- Social Security, Supplemental Security Income, Supplemental Disability Insurance;
- Federal, state, local or private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or

- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest (e.g., Veteran's Administration (VA) Disability, TANF, federal pensions).

The current COLA or rate of interest specific to the fixed source of income must be used in order to adjust the income amount. Verification of the COLA or rate of interest must be obtained from a public source or through tenant-provided, third party generated documentation and a copy must be placed in the tenant file. If no such verification is available, this streamlined process cannot be used and regular, third-party verification will be required.

This streamlined process can only be used for two years following regularly verified income and only for the sources described above. Every third year, third party verification must be obtained.

6.15 Effective Term of Verification

Verifications are valid for 120 days from the date of receipt by the owner, not the effective date of the TIC. If verifications are more than 120 days old from the date of receipt by the owner, the owner must obtain new verifications.

6.16 Date Stamp

All income, asset and eligibility verifications should be date-stamped as they are received.

6.17 Electronic Signatures

JHS will not fail a tenant file solely because it contains documents signed by electronic means as long as the owner has followed the guidance in HUD Notice H 20-10. Applicants and tenants must still be given the option to use wet signatures on paper, if requested.

As part of the inspection of administrative records, compliance staff will review the owner's e-signature policy and procedures, if applicable, to determine whether the requirements of HUD Notice H 20-10 are being satisfied for the use of electronic signatures.

Chapter 7 – Sale, Transfer or Disposition of the Project after the Placed In Service Date

Owners must notify DCCDA and JHS in advance of any sale, transfer of ownership interest, foreclosure or abandonment. Where provided in the Declaration, DCCDA must approve the proposed sale or transfer of interest. Failure to notify DCCDA from the time of selection or preliminary determination letter throughout the term of the extended use period will be considered noncompliance and will have an adverse effect on all individuals/entities from the development team on each side of the transfer that submits applications in future rounds.

To begin the notification process, the owner must submit a Request for Action form. DCCDA will advise the owner of documentation that must be submitted for review, and, if applicable, DCCDA approval. Documents for property sales may include, but are not limited to, copies of purchase agreements and assignments or amendments; Minnesota Secretary of State Certificate of Good Standing and organizational documents of the purchaser; and a copy of the warranty deed. Any prospective purchaser, member or partner must certify that they have the training and/or experience to successfully operate a tax credit property. Drafts may be submitted for review prior to closing, but final documentation must be submitted within 10 days after the closing date. DCCDA will update its records to recognize an ownership or ownership interest change after DCCDA staff has reviewed all requested documentation. All compliance requirements and any consequences for failing to comply are the responsibility of the owner of record that DCCDA has listed on file.

Under some HTC Qualified Allocation Plans (QAPs), any sale or transfer of ownership interest from the date of reservation to five years after the PIS date will have an adverse effect on all individuals/entities that wish to submit applications for tax credits in future years. Under more recent QAPs, any unapproved changes from the time of selection or preliminary determination letter throughout the term of the extended use period will have an adverse effect on all individuals/entities from the development and management team on each side of the transfer that submits applications in future rounds. Please refer to the applicable QAP for specific language regarding penalties.

Owners must also notify DCCDA and JHS within 30 days of any casualty loss and/or destruction of any part of the property. Under IRC Section 42(j)(4)(E), taxpayers are provided relief from the credit recapture provisions in the event of a casualty loss if the loss is restored within "a reasonable period established by the Secretary," which has been interpreted by the IRS to be up to two years following the end of the tax year in which the casualty loss occurred. Refer to CCA 200134006; also refer to IRC Section 165. This standard applies throughout the extended use period.

During the 15-year compliance period, DCCDA must notify the IRS of any sale, foreclosure, abandonment, casualty loss or destruction by filing IRS Form 8823. The IRS has suggested in Treasury Regulation 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 tax credit period so the transferee can substantiate credits claimed. Under IRC Section 42(j)(6), revised July 30, 2008, there is no recapture on dispositions as long as 1) it is reasonably expected the building will continue to be operated as a qualified low-income building; and 2) the taxpayer elects to be subject to the new longer statute of limitations. Owners are not required to post a Credit Disposition Bond or pledge Treasury Securities to avoid recapture.

Chapter 8 – Correction and Consequences of Noncompliance

In January 2007, the IRS issued its Guide for Completing Form 8823, Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), which provides instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are to be reported. The 8823 Guide has been updated from time to time, most recently in January 2011.

Owners and property managers are encouraged to read the guide and refer to it when questions arise as to how to correct noncompliance.

8.01 Notice to Owner

DCCDA through JHS is required to provide prompt written notice to the owner of an HTC project if JHS does not receive the Owner's Certification of Continuing Program Compliance (HTC 12) and other forms. JHS is also required to provide prompt written notice to the owner of an HTC project if it does not receive or is not permitted to inspect the TICs, supporting documentation and rent records; or if it discovers by inspection, review, or in some other manner that the project is not in compliance with the provisions of Section 42 or its Declaration.

8.02 Correction Period

JHS will establish a correction period in the Notice of Noncompliance, which will be a period of up to 90 days from the date of the notice to the owner described in paragraph (e)(2) of Treasury Regulation 1.42-5. JHS is permitted to extend the correction period for up to six total months, but only after determining there is good cause for granting the extension. Requests for an extension must be in writing, must be received by JHS no later than the last day of the correction period identified on the Notice of Noncompliance, and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

JHS will review the owner's response and supporting documentation, if any, to determine whether the noncompliance has been clarified or corrected and will issue a revised Report to Suballocator as needed.

8.03 Notice to the Internal Revenue Service (IRS)

DCCDA 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).

DCCDA must check the appropriate box on Form 8823 indicating the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. If the noncompliance or failure to certify is corrected, DCCDA will provide a date on which the noncompliance was corrected. If DCCDA cannot determine that an owner's actions have corrected all noncompliance, no correction date will be provided; however, an attachment to Form 8823 will be provided that identifies any noncompliance that has been corrected. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of Treasury Regulation 1.42-5, respectively, that results in a decrease in the qualified basis of the project under Section 42 (c)(1)(A) is noncompliance that must be reported to the IRS. DCCDA will send the owner a copy of Form 8823.

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

If DCCDA reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, it is not necessary to file Form 8823 in subsequent years to report that building's noncompliance.

8.04 Recapture of Credit

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

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

Vacant units that were previously occupied by HTC tenants can continue to be counted for minimum eligibility as long as the owner has made reasonable attempts to rent the unit to an eligible tenant and the unit is suitable for occupancy. Refer to IRS 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 noncompliance occurs; and
- Assessment of interest for the recapture year and previous years.

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

If there is a minimal reduction in the floor space fraction or number of qualified units, no recapture will occur, provided the building remains a qualifying HTC building.
Recapture will not occur if, within a reasonable time after the noncompliance was discovered, the situation is corrected.

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

The above information has been provided for informational purposes in order to give a general understanding of recapture procedures. The IRS 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. JHS is not responsible for determining whether or not a specific event of noncompliance is a recapture event.

Chapter 9 – Compliance and Monitoring After Year 15

9.01 Background

After the 15-year compliance period has expired, there may be no tax impact in the event of noncompliance; therefore, filing IRS Form 8823 to report noncompliance is no longer an effective consequence. By establishing policy that reflects the terms of the Declaration rather than all IRC Section 42 regulations, by creating reasonable and less frequent inspection criteria, and by redefining some of the reporting and eligibility criteria as identified below, it is hoped that it will be administratively easier and less costly for owners and managers to operate tax credit properties and maintain compliance at a time when the tax benefit is no longer available. Therefore, after year 15, compliance can be achieved much easier, but the spirit of the program is not compromised, and the housing will continue to serve the people for whom the program was intended.

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

In addition, based on the requirements of the extended use period specified in IRC Section 42 regulations and in the Declaration referenced below, DCCDA has the authority to establish different criteria for eligible/ineligible student households, available unit rule, unit transfers, and the process for performing annual recertifications during the extended use period, as long as income and rent restrictions, general use requirements (fair housing), Section 8 acceptance, minimum set-asides, the applicable fraction, and initial and annual recertifications are required. Note, however, that should an owner wish to apply for a new allocation of tax credits, households determined to be income-qualified for purposes of IRC Section 42 credit during the 15-year compliance period may be concurrently income-qualified households for purposes of the extended use period **as long as all Section 42 requirements are met in the extended use period**. This includes annually certifying student status and not renting to ineligible, full-time student households, verifying income and assets for annual recertification for mixed-income properties, following rules regarding unit transfers between buildings that are not part of the same project as defined by Section 42, etc. Management agents should consult with their owners before implementing any changes noted in this chapter.

9.02 Compliance Period

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

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

9.03 Extended Use Period

IRC Section 42(h)(6) establishes that buildings are eligible for the credit only if there is a minimum long-term commitment to low-income housing. Specifically, to receive a credit allocation in 1990 and later, the owner must record an extended low-income housing commitment. The document that evidences this commitment is called the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits (Declaration). The Declaration is recorded with the respective county recorder and/or registrar of titles and "runs with the land," regardless of subsequent changes in ownership.

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

- Beginning on the last day in the compliance period on which such building is part of a qualified low-income housing project, and
- Ending on the later of:
    - The date specified by DCCDA in the Declaration, or
    - The date that is 15 years after the close of the compliance period

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

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

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

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

- It will maintain the applicable fraction by leasing units to individuals or families whose income is at or below 50% or 60% of MTSP (or other MTSPs per the AIT), as irrevocably elected by the owner at the time of allocation (including adjustments for family size) and as determined in accordance with Section 42;

- It will maintain the Section 42 rent and income restrictions;
- All units subject to the credit shall be leased and rented or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in IRC Section 42(g) (Section 42(g) pertains to the minimum set-aside election;
- The owner agrees to comply fully with the requirements of the Fair Housing Act as it may, from time to time, be amended;
- The owner will not refuse to lease a unit to the holder of a Section 8 voucher or other form of tenant-based rental assistance because of the status of the prospective tenant as such holder and will not evict or otherwise terminate tenancy (including lease non-renewal) for other than good cause;
- Each low-income unit will remain suitable for occupancy;
- The determination of whether a tenant meets the low-income requirement shall be made by the owner at least annually on the basis of the current income of such low-income tenant; and
- Other restrictions as required under the specific year's QAP and related points the owner received to obtain a credit allocation. These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the extended use period.

Note that the Declarations have changed from year-to-year according to the respective QAPs; however, the basic language pertaining to the extended use period required by Section 42 has not materially changed.

9.04 Tenant Eligibility Criteria During the Extended Use Period

During the extended use period, DCCDA and JHS require tenant eligibility and certification of income, as follows:

- **Tenant Income Certification** (TIC). At initial occupancy, an initial income certification is required (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 recertification is as follows:
    - **Mixed-income** tax credit properties must recertify annually, but owners are not required to verify income and income from assets (unless there is other financing or a rental subsidy program that requires verification). Households must complete a Household Questionnaire or similar form. From information provided

by the tenant household, owners must calculate gross annual income, complete and sign the TIC form and report the recertification on JHS' Electronic Reporting Program.

- **100 percent tax credit** properties have no recertification requirements; however, on the anniversary date of move-in or the last certification effective date, owners must report the unit and household and JHS' Electronic Reporting Program, and complete all information except current income and student status.
- Any household that experiences a change in composition within the first six months of occupancy (not including birth or death) must meet initial eligibility requirements and a new initial TIC must be performed.

- **Student Status**. Since student status is not one of the defined requirements of the Declaration, the student rules under IRC Section 42 are no longer applicable.
- **Unit Transfers**. Unit transfers from building to building are allowed without triggering noncompliance regardless of the multiple-building election or whether a household's income is over the applicable limit at the time of transfer.
- **Available Unit Rule.** The available unit rule is revised to provide that if a household's income goes over 140 percent of the applicable income limit, a currently vacant unit or the next unit in the same building must be rented to a qualifying household (the "comparable or smaller" requirement no longer applies). This is essentially a one-for-one unit replacement.
- **Applicable Fraction.** Only the unit fraction will be examined to determine a building's applicable fraction.
- **Rent Limits.** Rent limits as elected by the owner at the time of allocation continue to be in force during the extended use period. Owners of properties that were awarded selection points for additional rent restrictions should refer to the respective Qualified Allocation Plan (QAP) or Declaration to determine whether those additional rent restrictions are time-limited or if they are in effect for the full term of the extended use period.
- **Utility Allowances.** Utility allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.

9.05 Monitoring Compliance During the Extended Use Period

The following is the monitoring procedure DCCDA and JHS will follow during the extended use period:

1. **Annual Owner Certification and Occupancy Reporting.** By February 15 of each year, or the next business day after February 15, JHS requires all owners to submit an annual certification of compliance along with reporting occupancy information in JHS'

Electronic Reporting Program. Instructions are provided with the annual reminder notice.

2. **Inspections.** At least every five years, JHS will perform a physical inspection of the property and review tenant files and other pertinent documentation. The first review in the extended use period will be no more than five years from the last inspection conducted during the compliance period. A minimum of three low-income units chosen at random, or a maximum of 10 percent of the low-income units up to 15 units in any development, will be inspected. If the first three units pass inspection, then no additional units need to be inspected. DCCDA and JHS reserve the right to inspect up to 100% of the low-income units. Different units may be chosen for the file review as those receiving a physical inspection. JHS compliance staff will continue to work with other inspection entities such as local inspection officials, other government agencies, Minnesota Housing staff etc., to share inspection information. JHS may accept HRA Housing Quality Standards (HQS) inspections done in the same year as the Agency's review. If inspected by JHS compliance staff, the inspection will be pursuant to Uniform Physical Conditions Standards (UPCS). JHS reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of tax credit units. JHS may perform a review at least through the end of the extended use period of the buildings in the project.
3. **Annual Monitoring Fees.** The amount of annual compliance monitoring fees is $20 per unit since inspections are less frequent and are done on a smaller number of units, plus $35 per unit for detailed file review and physical inspections for 20% of units in project (usually every 5 years), with a minimum of $500. JHS reserves the right to adjust the fee due to changing circumstances. Fees are due at the same time as the owner's annual certification.
4. **Transfer of Ownership or Ownership Interest.** Refer to Chapter 7.
5. **Expiration or Termination of Extended Use Period.** For three years after the Extended Use Period naturally expires or is terminated pursuant to IRC Section 42(h)(6)(E)(ii), owners may not evict or terminate tenancy (including lease non-renewal) for other than good cause and may not increase rents above the allowable Section 42 rent limit. Owners are required to annually update JHS' Electronic Reporting Program during this three-year period on all low-income households that occupied a unit at the expiration or termination of the Extended Use Period, including the respective tenant-paid rent, utility allowance(s), and move-out date, if applicable. Owners must also submit an annual certification that no low-income residents have been evicted or tenancy terminated for other than good cause and that rents do not exceed the allowable Section 42 rent limit. This report and certification will be due on February 15 or the next business day. DCCDA will release the Declaration, upon owner's Request for Action, after this three-year tenant protection period ends or earlier if no protected households remain in the property.

The Declaration allows for an amendment by written agreement between DCCDA and the owner. A temporary suspension of restrictions or amendment to the Declaration may be requested in the event a property suffers from a decline in market conditions that is not expected to improve, and subsequent vacancies compromise the economic viability of the property. The owner must demonstrate that reasonable efforts have been made to meet all compliance requirements. A change in applicable fraction, rent limits or other terms may be negotiated with DCCDA in order to preserve as many low-income units as possible but still protect the economic viability of a property. The owner must submit a Request for Action to begin the process.

9.06 Consequences of Noncompliance During the Extended Use Period

The following are the procedures for and consequence(s) of noncompliance:

- If an owner fails to comply with the monitoring requirements and/or terms of the Declaration, JHS will issue a Notice of Noncompliance and recommendations for correction similar to what is issued during the compliance period. All owners will be given a period of time not to exceed 90 days with which to clarify or correct noncompliance and report to JHS that all corrections have been made. An extension of an additional 90 days may be granted, with good cause. If a property has one or more compliance violations, but the owner is making a good faith effort to correct the violations within a reasonable time, then the property may be considered in good standing at the sole discretion of JHS. If the violation(s) cannot be corrected within the 90-day correction period (or within the 90-day extension, if granted) JHS may request that the owner and/or management agent formulate a plan and reasonable timeline to bring the violation(s) back into compliance and advise JHS in writing of such a plan. Owners will have demonstrated good faith efforts by carrying out the plan within the referenced timeline and the property will remain in good standing.
- If an owner repeatedly delays or ignores requests for monitoring reviews; fails to submit annual certifications, reports and compliance monitoring fees; does not correct violations in a timely manner or according to the agreed-upon plan, where applicable; or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance) the following are consequences:
    - At its sole discretion, DCCDA may determine that the property and the owner are Not in Good Standing. If a management company is affiliated with, related to, or has common ownership with the owner (as determined at the sole discretion of DCCDA), the management company will also be considered Not in Good Standing; and
    - A Report of Development Not in Good Standing (HTC 31) will be issued to the owner and filed with the DCCDA development team. No further DCCDA funds or tax credits will be awarded to the owner, its partners (and/or proposed developments to be managed by the management company, if affiliated with or related to the owner as described above) until the property is back in good standing.; and

- The property may be ineligible for a lower property tax rate under the Low Income Rental Classification (LIRC); and
- DCCDA and any interested party have the right to enforce specific performance of the Declaration through the court system.

Once good faith efforts are demonstrated to JHS's satisfaction, DCCDA will reinstate the property, owner and management company to good standing status.

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

Chapter 10 – Tax Credit Assistance Program (TCAP) and Section 1602 (Tax Credit Exchange) Program

10.01 Background

The American Recovery and Reinvestment Act of 2009 established two new programs providing state allocating agencies, including DCCDA, with tools to help certain HTC-financed rental housing projects close financing gaps created by reduced credit pricing and lack of syndicator equity: the Tax Credit Assistance Program (TCAP), administered by HUD, and a program authorizing state allocating agencies to exchange HTCs for cash (the Section 1602 Program), administered by the U.S. Department of Treasury (Treasury). TCAP funds may only be awarded to projects where there is an allocation of HTCs. Section 1602 funds may be awarded to projects with or without HTCs.

10.02 Compliance and Asset Management

Properties funded with TCAP and/or Section 1602 Program funds must comply with DCCDA loan documents and with Section 42 for the full term of the compliance and extended use periods, as evidenced by a Declaration. Additionally, during the compliance and extended use period, both programs are subject to asset management oversight by DCCDA.

10.03 Monitoring and Reporting

JHS will monitor compliance with TCAP and the Section 1602 Program in the same manner as the HTC Program as described in this guide; however, Section 1602 will require reporting violations to Treasury in a form and manner required by Treasury, and not to the IRS on Form 8823. Asset management includes, but is not limited to, lease-up compliance monitoring, operational and financial reporting, and other monitoring pursuant to a Regulatory Agreement with DCCDA.