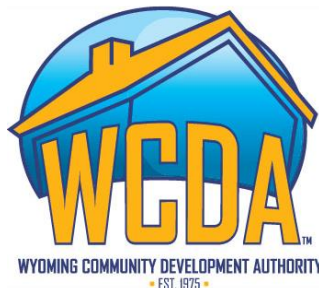


# WYOMING COMMUNITY DEVELOPMENT AUTHORITY

## Affordable Rental Housing Compliance Manual

For Tax Credit, Bond, HOME, NSP and NHTF Projects

Effective January 1, 2019



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# **1. INTRODUCTION**

## **A. The Purpose of the Affordable Rental Housing Compliance Manual**

This manual focuses on the responsibilities of owners and managers of all Affordable Rental Housing Projects from the beginning of the lease up period through the end of the compliance period. Tax Credit and Bond financed projects are governed by Section 42 of the Internal Revenue Code, Home Investment Partnerships Program (HOME) projects are governed by the Rules and Regulations under Title II of the Cranston-Gonzalez National Affordable Housing Act; specifically 24 CFR Part 92, Neighborhood Stabilization Program (NSP) was created by the Housing and Economic Recovery Act of 2008 and is governed by 24 CFR Part 570 and the National Housing Trust Fund (NHTF) was established by the Housing and Economic Recovery Act Section 1131 and is governed by the rules and regulations at 24 CFR Part 93. Also, all projects are governed by promises made by the Owner in their application for funding and any other more restrictive rules implemented by the Wyoming Community Development Authority (WCDA). These rules can be found in the Land Use Restrictive Agreement for Tax Credit and Bond Projects, in the HOME Agreement for a HOME project, in the NSP Agreement for an NSP project and in the NHTF Agreement for a NHTF project

This manual includes sample forms; some of which are required for use in the State of Wyoming, some of which are highly recommended and some of which are available just to make your life easier and your tenant files more organized. WCDA is committed to providing quality affordable housing for the low-income citizens of Wyoming and it is our goal to assist owners and managers to better understand and fulfill their obligations under the programs. A couple ways to make the Owner and Investors of the project happy is to have complete, accurate and organized files and a well maintained visually appealing project. Monitors that get to review organized and complete files will find far fewer non-compliance issues that they have to report to the Owner and Investors. Be prepared to be monitored, you know it's going to happen and it will benefit everyone in the long run. This manual is intended as a reference to promote a better understanding of the Tax Credit, Bond, HOME, NSP and NHTF programs.

Please be aware that most Tax Credit, Bond, HOME, NSP or NHTF regulations have a variation or exception for specific circumstances. The following manual will over simplify the rules and regulations, therefore, Owners are responsible for being aware of all applicable federal and state rules and regulations that govern their projects.

## **B. The Low Income Housing Tax Credit Program (LIHTC)**

The Tax Reform Act of 1986 established a tax credit for low-income rental housing that was directly based on the number of low-income tenants residing in the complex.

Section 252 of the Act and Section 42 of the Internal Revenue Code (IRC) govern the Low-Income Housing Tax Credit (LIHTC) program that began in 1987 and received permanent authorization with the Omnibus Budget Reconciliation Act of 1993. The LIHTC program provides incentives for investment of equity capital in the development of affordable single family or multifamily rental housing. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction or acquisition and rehabilitation of rental housing units that will remain income and rent restricted for an extended period of time.

Credits are allocated based on a federal economic formula with a ceiling of 9% for non-federally subsidized projects or a ceiling of 4% if the project is federally subsidized. The acquisition credit for existing buildings also has a ceiling of 4%. Developers may be for-profit or nonprofit. Investors, often represented by limited partnerships, use the tax credits to reduce their income tax liabilities.

Wyoming's Affordable Housing Allocation Plan includes guidelines for the competitive ranking of applications. The amount of credits given to each state for allocation is based on population, indexed for inflation, with a minimum of approximately \$3.5 million. This manual does not address how to obtain Tax Credit funding. Persons interested in developing Tax Credit funded projects should visit WCDA's website: [www.wyomingcda.com](http://www.wyomingcda.com) and review the current Wyoming Affordable Housing Allocation Plan for more information.

Many recognize the Low Income Housing Tax Credit's influence on development, but its effect on management must also not be minimized. To reduce the risk of recapture, management must at a minimum, follow all tax credit regulations throughout a 15-year credit period. From a management perspective, a thorough understanding of the tax regulations governing this program is imperative.

### **C. The Home Investment Partnership Program (HOME)**

HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended. Program regulations can be found at 24 CFR Part 92. HOME provides formula grants to States and localities that communities and developers use, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income households. The program was designed to reinforce several important values and principles of community development. The eligibility of households for HOME assistance varies with the nature of the funded activity. At the federal level rental projects with five or more assisted units, must have at least 20% of the units occupied by households with incomes that do not exceed 50% of the HUD-area median income; however, WCDA requires that all HOME assisted rental units be occupied by tenants that are at or below 50% of area median income. The HOME

program is administered by HUD and Participating Jurisdictions (PJ's). The PJ for the State of Wyoming is the Wyoming Community Development Authority. The PJ must ensure that HOME-funded housing units remain affordable for a specified period of time. Owners that do not keep their projects affordable for this period of time may be required to pay all the funding back to HUD.

**D. The Neighborhood Stabilization Program (NSP)**

This program was created by the Housing and Economic Recovery Act of 2008. All of the funding from this program has been appropriated, but in Wyoming we do have 2 multi-family rental projects and 4 single-family rental homes that fall under the rules and regulations for NSP. These rules and regulations can be found at 24 CFR Part 570. WCDA will be enforcing compliance requirements for NSP which are almost exactly the same as the HOME program requirements. The one major difference is that the HOME Student rule doesn't apply to the NSP program.

**E. The National Housing Trust Fund (NHTF)**

This program was created by the Housing and Economic Recovery Act section 1131 and is governed by the regulations found at 24 CFR Part 93. To date, the State of Wyoming does not have any completed projects funded under this program, but expects to receive applications for this funding beginning in 2017. The compliance requirements for NHTF will be almost exactly the same as the HOME program requirements. The major differences being that all NHTF units must be occupied by households with incomes that do not exceed 30% of the HUD-area median income, rents cannot exceed the 30%, Extremely Low level, the NHTF program has its own set of rent and income limits, the minimum affordability period is 30 years and the HOME Student rule doesn't apply to the NHTF program.

**F. The Credit Period vs. The Compliance Period**

For a Tax Credit project the Credit period is the initial 15 years of the project in which the owner may be claiming credits. The Compliance period is the period of time that the Owner must keep the project in compliance with all of the IRS regulations and WCDA requirements. The Compliance Period will be a minimum of 30 years with some lasting as long as 75 years.

Once an LIHTC project has been placed in service, the tax credits can be claimed annually on a building-by-building basis over a 10-15 year credit period beginning with either:

- a. the taxable year in which the building is placed in service, or
- b. at the election of the taxpayer (owner), the succeeding taxable year.

The date elected to begin claiming credits, once made, is irrevocable. No credits are

given if the building does not comply with IRS regulations for meeting initial compliance. This means that eligible households must occupy the required number of units throughout the 15 year credit period. Not only must these units be occupied by eligible households, they must also be rent-restricted for the same period of time. Even though credits are claimed over the initial 10 year period, owners are liable to the IRS for the initial 15 year period as credits could be re-captured for non-compliance during this first 15 years. In the early 1990's IRS changed the compliance period and added an extended use period of 15 years. Thus, the project's compliance period consists of the original 15 year period, plus the 15 year extended use period, plus any extra period of time agreed to by the owner in their application for credits. As a general rule, the compliance period for an LIHTC project can range from 30 to 75 years.

HOME, NSP and NHTF units also have a required minimum compliance period that is dictated by HUD. The HUD required period of time can range from 5 to 30 years depending on the funding source or whether the project was new construction or rehabilitation of an existing building. The Owner usually agrees to extend this period of time in their application for funding and per WCDA requirements must now run for at least the same length of time as any mortgage attached to the property. The compliance period for a project funded with NSP will vary depending on the type of project and the time frame put forth in the application for funds. The minimum compliance period for a project funded with NHTF is 30 years but WCDA also requires the compliance period to run for at least the same time frame as the NHTF mortgage on the property.

## **G. Regulations Change Over Time**

During the period of time that the LIHTC, Bond, HOME, NSP and NHTF programs have been in effect, WCDA, Congress, IRS and HUD have made changes to the rules and regulations governing each of these programs. Many of these changes occurred early in the life of these programs therefore, it is possible that projects affected may already be out of their compliance period. That said, many of the changes affect projects that are still in their compliance period. These changes range from the way rent is calculated, the required extension of the compliance period, student rule exemptions, the Section 8 student rule requirement for HOME funded projects, inclusion of staff units in eligible basis and multiple sets of income limits that affect the programs. It is the responsibility of owners and managers to educate themselves and be aware of these changes as they will continue to occur.



## 2. GENERAL COMPLIANCE & MONITORING

The LIHTC and Bond programs are governed and regulated by the IRS and HOME, NSP and NHTF programs are governed and regulated by HUD. Thus, we have different rules and regulations for each program; which at times can be conflicting. Even though the WCDA only allocates funding and monitors compliance for the LIHTC, Bond, HOME, NSP and NHTF programs for the State of Wyoming, a project may have other sources of funding with their own compliance requirements. When rules conflict you will almost always yield to the most restrictive rules and limits. There are times when you must qualify households using the rules for each funding source. For example, in the case of the conflicting HUD and LIHTC Student Rules, we must qualify households using both rules for tenants that are in a combination HOME & LIHTC unit. The LIHTC, Bond, HOME, NSP and NHTF programs require that the Wyoming Community Development Authority monitor each and every project for compliance. Monitoring is done on a regular schedule as dictated by each program.

### **Monitoring Requirements**

LIHTC and Bond funding requires at least 20% of the units and tenant files in a project be monitored at least once every 3 years. The first inspection must occur by the end of the second calendar year following the year the last building in the project was placed in service.

HUD requires that 15 – 20% of the HOME and NHTF units and tenant files in a project be monitored as follows:

- a) the first onsite inspection must occur within 12 months of project completion and at least once every 3 years thereafter. If compliance issues are found at the first inspection, a follow-up onsite inspection must occur within 12 months or within a reasonable time frame established by the WCDA

WCDA will monitor all NSP projects on the same time frame and to the same standards as are required by the HOME program.

HUD, now also requires that upon completion of a HOME, NSP or NHTF project, WCDA or its agent, must conduct an on-site inspection to confirm that contracted work is complete and the property meets the property standards specified in subsection 92.251.

HUD also requires that WCDA monitor the physical condition and the tenant files for the same units at each project. At all projects, WCDA will inspect the entire project site, common areas, all major systems, building exteriors and all other project records will

also be reviewed at the time of the on-site monitoring. Health and Safety issues identified during an inspection visit must be corrected within 24 hours of the finding and HUD now requires the inspector to adopt a more frequent inspection schedule for a property where Health and Safety issues are discovered.

Owners will be given reasonable notice via email and regular mail prior to a monitor arriving at the property. As notice will be given via email and regular mail, it is imperative that WCDA be kept updated on all pertinent email and regular mailing addresses and that the Owner supply WCDA with all email contact information for the Owner, Management Company and Site Manager.

Via this letter you will be notified of the date and approximate time that the monitor will be on site. Units to be inspected will be randomly selected at the time the monitor arrives at the project. It is the Owner or Manager's responsibility to notify all of the tenants of the possibility the monitor may need to enter their unit on the specified day. The monitor will not enter any unit unless they are accompanied by a staff person from the project; preferably a manager and/or maintenance person.

Units not available for inspection will be noted as non-compliant. WCDA will follow HUD guidelines in reference to infested units, which are considered unavailable to inspect at the time. To correct this non-compliance a second monitoring will be done and the cost for the monitor to return to the property will be charged to the project. Projects experiencing excessive non-compliance may be monitored more frequently than the program minimums.

The key to an LIHTC project owner's ability to claim the full amount of tax credits or a HOME, NSP or NHTF project owner's ability to avoid affordability period extensions and fines is continuous compliance with Federal and State regulations throughout the compliance period. The main components of compliance are:

- Only renting to Qualified Households
- Restricting rents to the lower of the maximum dictated by the IRS, HUD, RD or WCDA
- Providing housing that meets the Uniform Physical Condition Standards
- Compliance with the Fair Housing Act and Section 504 rules

Wyoming considers fulfilling the promises made in the Application for funding, LURA, HOME, NSP, or NHTF Agreement or IRS form 8609 another important part of compliance. Those promises made by the owner at time of application affected the project's ranking and could have been the basis for a successful allocation. Therefore, it is important for all involved in the project to be fully aware of the promises agreed to in these documents.

These agreements remain in place throughout the compliance period and may be amended only with mutual agreement between the Owner and WCDA. Noncompliance

with the LURA, HOME, NSP or NHTF Agreement is treated the same as federal noncompliance in that a notice of noncompliance is issued to the owner and the WCDA will expect all noncompliance to be corrected within the correction period. An owner's failure to correct any noncompliance can result in the issuance of penalty fees as outlined in the Wyoming Affordable Housing Plan. Non-compliant Owners and Management Companies will also be given negative points on any future applications for funding.

Compliance issues discovered and corrected by management prior to receiving notification of a monitoring review will not be cited. Compliance issues found during a monitoring review and not corrected while the monitor is still on site will be given a specific correction period in which they will need to be corrected. All non-compliance issues discovered at a project will be dealt with as required by the program or WCDA regulations. Extensions of the correction period may be requested for correction of issues involving extenuating circumstances.

It is WCDA's goal to assist Owners and Managers in keeping their projects in compliance and minimizing any penalties. The most direct avenue to a completely compliant project includes due diligence, strong internal controls, organized files and evidence. One very important kind of evidence are writings made contemporaneously, in other words, notes written on the spot that document those unusual or peculiar events that explain disparities or conversations with tenants and third party sources. WCDA's Compliance Officer will attempt to assist you with those oddities that occur.

# 3. LIHTC COMPLIANCE REGULATIONS

## A. Year of Allocation

Different compliance regulations are in force depending on the year the Tax Credit allocation was awarded. All monitoring and compliance is based on the year of allocation. The year of allocation is the first two numbers following the "WY" of the Building Identification Number (BIN).

## B. Compliance by building

Except for the Vacant Unit Rule, monitoring and compliance are building issues. Records must be kept by building and by unit number. Every building is assigned its own BIN; therefore, all record keeping and reporting must be sorted and submitted by BIN. One exception to this is that for a project with only Bond financing the Available Unit Rule-Over 140% is a project wide rule; whereas in a Tax Credit project the Available Unit Rule-Over 140% is a building rule.

## C. Placed-in-service-date

The Placed-in-service date for new construction is the date the certificate of occupancy is received for the first unit, a.k.a. "the date on which the building is ready and available for its specifically assigned function". Therefore, it is the date that a unit could be occupied, not the date that it is occupied. For rehabilitation of an existing building, the owner selects a date within a 24 month period over which rehab expenditures are aggregated. The PIS date for each building is recorded on IRS form 8609.

## D. Eligible Basis

Eligible basis consists of:

- a. the cost of new construction, or
- b. the cost of rehabilitation, and/or
- c. the acquisition cost of existing buildings (not including land cost).

Things that could be included in eligible basis would be the cost of the low-income units, facilities for use by the tenants and other facilities reasonably required by the project. Also included could be swimming pools, other recreational facilities and parking areas as long as there are no additional fees for the use of these items and they are available for use by all tenants in the project. Eligible basis does not include commercial space. Any reduction in eligible basis that results in a decrease in qualified

basis is noncompliance that must be reported to the IRS.

## **E. Qualified Basis**

In order for a low-income unit to be counted in qualified basis it must at least meet the following criteria:

- Tenant eligibility verified and documented
- Rent restricted at the appropriate level
- Non-transient residency
- Unit suitable for occupancy
- Unit recorded as an LIHTC unit
- Unit available to the public on a non-discriminatory basis

To determine the amount of credit an owner can claim each year you will need to know the qualified basis, as the amount an owner can claim is the qualified basis multiplied by the project's particular tax credit percentage. In order to know the qualified basis you will need to know the applicable fraction for the building. The applicable fraction is the lesser of:

1. The Unit Fraction - the proportion of compliant low income units to all rental units in the building, or
2. The Floor Space Fraction - the proportion of floor space of the compliant low income units to the floor space of all rental units in the building

Owners have until the end of the initial credit year to establish the project's applicable fraction for each building. The low income occupancy achieved by the end of the initial credit year establishes the project's original qualified basis. Only low income units in the original qualified basis are eligible to receive the full tax credit value during the accelerated 10 year period. Those units not established in the original qualified basis can be claimed by determining 2/3 of the value of the credit which is now "de-accelerated" through year 15. Due to the complexity of this issue, WCDA recommends that Owners consult with a qualified tax professional to determine the amount of credit an Owner can claim.

## **F. Minimum Set Aside**

The most critical choice that an owner will establish is the minimum number of low-income units to be maintained in the project and the applicable income limit for households to qualify for a tax credit unit; known as the minimum set aside. This is usually known as the 20/50 or 40/60 election and once it is made it is irrevocable. The owner specifies the minimum set aside when applying for a tax credit allocation and makes the election on the form 8609 for each building. WCDA is considering adding the recently approved "income averaging" option as a set-aside, once the 2019 Wyoming

Qualified Housing Allocation Plan has been approved by the Governor, which should occur in late 2019.

The minimum set aside must be met within the initial credit year or the property will never be eligible for tax credits. The minimum set aside must be met before any credits can be claimed. In addition, the minimum set aside must be maintained for the entire 15 year initial credit period or recapture of the credit for all units will result. As this election is of the utmost importance, it becomes imperative the owner understands the importance to their answer on line 8b of the form 8609. Line 8b dictates whether the building is part of a multiple building project or whether the building is a project unto itself. The minimum set aside is project wide so it is of great importance that owners and managers understand what they have designated as the project.

The minimum set aside must not be confused with other more restrictive state set-asides that may be found in the LURA. In addition, the minimum set aside should not be confused with HOME, NSP or NHTF funding requirements or requirements of other subsidy programs such as Rural Development. The minimum set aside is exactly what it says it is; a minimum. A tracking system should be put in place to determine and follow the most restrictive set-asides to insure compliance.

## **G. Record Keeping & Submission Requirements**

IRS regulations dictate the LIHTC record keeping requirements that owners need to follow in order to maintain compliance. Owners and managers need to familiarize themselves with these requirements and need to understand that a state or IRS audit could occur at any time. Record keeping responsibilities include 3 types of project records:

- Tenant files
- Monthly unit data tracking
- Project files, including records regarding the use of facilities included in the project's eligible basis

An owner must keep records for each qualified low-income household by building and by unit throughout the compliance period.

Owners must also provide, to the monitoring agency, these reports, fees and information regarding the project's status:

- LIHTC **Original** Owner's Continuing Compliance Certification: annually
- Utility Allowances currently in use: annually
- Audited Financial Statements: annually
- Compliance Monitoring Fees: annually
- Updated Project Contact Sheet: annually
- Any other IRS Forms necessary for Compliance Monitoring: annually

- Copies of any health, safety or building code violations: at on-site monitoring
- Copies of any documentation pertaining to any fair housing complaints: at time the complaint is made
- Qualified Basis Tracking Sheet: first year only
- Completed Form 8609 within 60 days of issuance
- Owners must gather unit history information and submit this electronically, via the Procorem Compliance Application On-line on an annual basis to the monitoring agency

Beginning January 1, 2015, all Procorem Compliance Application On-line submissions, Compliance Monitoring Fees and the Original Annual Owner's Continuing Compliance Certification will be due on or before February 28<sup>th</sup> of each year. These certifications will be completed by the Owner, signed by the Owner, the Owner's signature will be notarized and the Original Certification will be mailed to the Compliance Officer at WCDA. These forms can be accessed on the WCDA website at: <http://www.wyomingcda.com/index.php/multifamily/C92>

Projects that haven't met the submission requirements will be subject to a non-compliance fee of \$25.00 per day that they are delinquent. Beginning in 2013, annual audited financial statements must be submitted to the WCDA on or before March 31<sup>st</sup> of each year.

## **H. Record Retention Requirements**

The owner must retain the above described records for the first year of the credit period for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the credit period, meaning the original files must be retained for at least 21 years. IRS has said that they will allow electronic storage of these records as long as they can be accessed at any time necessary. All other records are required to be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for that year.

## **I. Maximum Gross Rent**

The maximum gross monthly rent for a tax credit qualified unit cannot exceed 1/12th of 30% of the applicable income limit for the unit. For projects allocated funding in 1990 or later, the applicable income limit for calculating rent is based on the number of bedrooms in the unit. For the LIHTC program, Wyoming has now adopted the IRS definition of Gross Rent.

Therefore, Gross Rent includes:

1. The tenant paid portion

2. A Utility allowance for utilities paid by the tenant
3. Required payments for services (non-optional)
4. Minimal amounts paid by the tenant to the owner toward purchase of the unit

And, Gross Rent excludes:

1. Section 8 rental assistance or any comparable rental assistance program
2. Government paid fees for supportive services
3. Rental payments to the Owner as far as an equivalent amount is paid to RD

Gross rent cannot exceed the applicable tax credit rent limit at initial move-in. However, the gross rent can later increase above the applicable tax credit rent limit if the tenant-paid rent portion increases as a requirement of the rental assistance program (generally rental assistance programs require that the household pays a certain percentage of its income on rent).

As noted above; for projects allocated funding in 1990 or later, the applicable rent limit is based on the number of bedrooms in the unit. You calculate 1.5 people per bedroom (except studio or efficiency units you figure 1 person) to determine the applicable income limit. You will multiply 1.5 (people) times the actual number of bedrooms and use the income limit for that size of household; which may not be the actual size of the household occupying the unit. This calculation may result in an answer ending in .5. If this happens you will add the income limits on either side of the resulting number and divide by 2. For example, if you end up with 4.5 people you add the 4 person income limit to the 5 person income limit and divide by two. Now that you have the applicable income limit you will divide that by 12 and multiply by 30%. This will give you the maximum gross monthly rent that can be charged for that unit. When calculating maximum monthly rents, all monthly rents must be rounded down to the nearest dollar. Past LIHTC income and rent limits are posted on the WCDA website for your convenience; although, it is the Owner's responsibility to verify accuracy. Beginning in 2017, WCDA will post the link to the Novogradac Rent and Income Calculator on the WCDA website and you will be required to go to that site for LIHTC rent limits. Rents on Tax Credit units may be increased without prior permission from WCDA.

## **J. Overcharging of Rents**

Charging more than the allowable rent is non-compliance and recapture of credits may result. A utility allowance is included in the gross monthly rent for any utilities paid by the tenant; phone, cable and internet are not considered utilities. IRS has taken the position that once a tenant has been overcharged for rent, the unit will not be considered back in compliance until January 1st of the following year. The IRS 8823 Guide indicates that an owner cannot avoid the disallowance of credits by rebating excess rents charged to tenants in any year of the compliance period.



The 8823 Guide states:

“A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis” (Page 11-8).

“A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees” (Page 11-9).

Once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge.

The 8823 Guide states on Page 11-10:

“Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner’s tax year. A unit is back in compliance on the first day of the owner’s next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHTC by rebating excess rent or fees to the affected tenants.”

Therefore, if WCDA discovers overcharging of the rent for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued at the beginning of the next year, as long as the rent has been properly lowered and is now below the applicable limit. While refunding the overcharge does not prevent the noncompliance 8823 from being issued, WCDA will still require the owner to reimburse the tenant before a corrected 8823 will be issued for the unit.

## **K. Utility Allowances**

Whenever the tenant directly pays utility costs, a utility allowance must be used to determine the maximum rent paid by the tenant. You will subtract the utility allowance and any non-optional charges from the maximum gross rent allowed by HUD in order to calculate the maximum tenant portion of the rent. Charges for truly optional services that the tenant has elected to take part in do not need to be subtracted from the maximum rent allowable.

Internal Revenue Bulletin 2008-39 was published on 9/29/08. It contains final regulations 42-10, for utility allowances. For all Tax Credit projects and all Bond Funded projects and any HOME funded projects where funds were committed prior to August 23, 2013, utility allowances should be calculated as follows:

1. Rural Housing Services (RHS) - If a building receives assistance from RHS the applicable

utility allowance in the building is the RHS approved UA. Additionally, if any tenant in the building receives RHS rental assistance the applicable UA for ALL units in the building (including those occupied by tenants receiving HUD assistance) is the RHS allowance.

2. HUD regulated buildings - If neither a building nor any tenant receives RHS assistance and the rents and utility allowances are reviewed by HUD on an annual basis, the applicable UA for all units in the building is the HUD utility allowance.
3. Other buildings (including Tax Credit and HOME) - If a building is not subject to either 1 or 2 above, the applicable utility allowance for rent-restricted units in the building is determined under the following methods:
  - a. For tenants receiving HUD rental assistance, use the applicable PHA utility allowance.
  - b. For other tenants, the general rule is to use the PHA utility allowance. However, if a local utility company estimate is obtained in accordance with (c) below, that estimate becomes the appropriate utility allowance.
  - c. Utility company estimate. The estimate is obtained when an interested party receives, in writing, information from a local utility company providing the estimated cost of that utility.
  - d. HUD Utility Schedule Model. May be found at <http://huduser.org/portal/resources/utimodel.html>.
  - e. Energy consumption model. A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model. This estimate will be done by an industry professional certified to make these calculations.

**\*Please Note\***

In May 2016 HUD set the date for projects with HOME or NHTF funding committed on or after August 23, 2013 that will change the requirement for calculating utility allowances for projects with HOME or NHTF units. A project with HOME or NHTF funding, committed by WCDA on or after August 23, 2013, may no longer use the utility allowances published by the Public Housing Authority (PHA). At that point, utility allowances submitted with funding applications and used by those projects awarded funding after that date must be calculated using one of the following methods.

The following five methodologies used in other Federal housing programs will meet the HOME and NHTF regulatory requirement that the utility allowance for a specific project be based upon the utilities used at the project. An Owner may adopt one or more of these options across its HOME or NHTF rental program or may limit their use to a single method. However, a project must use the same UA methodology for all HOME and NHTF units within a single project. HUD encourages Owners to align with other funders, to the extent feasible, when determining the UA for a project with multiple funding sources.

The acceptable methods include, but are not limited to:

1. HUD Utility Schedule Model -

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

2. Multifamily Housing Utility Analysis -

In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). HOME 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.

3. Utility Company Estimate (26 CFR 1.42-10(b)(4)(B)) –

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

4. LIHTC Agency Estimate (26 CFR 1.42-10(b)(4)(C)) –

Under IRS regulations, the tax credit allocating agency estimate entails two options: 1) an agency estimate that is a prospective projection of utility costs based on site and building characteristics, and 2) an actual usage methodology. If a project is receiving both HOME and LIHTC funding, a PJ may coordinate with the LIHTC agency to obtain a project-specific agency estimate or may accept a UA approved by the LIHTC agency based on its actual usage methodology. The WCDA will not be providing agency estimates.

5. Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(E)) –

A PJ may approve a UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

More information regarding the new Utility Allowance regulations for the HOME and NHTF programs can be located at:

<https://www.hudexchange.info/resources/documents/HOMEfires-Vol13-No2-Guidance-on-How-to-Establish-Utility-Allowances-for-HOME-Assisted-Rental-Units.pdf>

The Wyoming Affordable Housing Plan does not allow sub-metering.

Utility allowances must be updated at least annually since they are included in the maximum allowable rent calculations when utilities are paid by the tenant in an LIHTC unit. Copies of utility allowance documentation must be submitted to WCDA annually. Realize that any changes in utility allowances have a direct impact on the net chargeable rent to the tenant.

Any utility allowance must be implemented within 90 days of the updated change or publication by the Public Housing Authority. Each PHA publishes their utility allowances at different times of the year, so you will want to get to know when to expect them. Projects with HOME or NHTF funding committed on or after August 23, 2013 are no longer allowed to use the PHA published utility allowances.

## 4. Special LIHTC Rules

### A. Vacant Unit Rule

If a low-income unit becomes vacant during the year, the unit remains LIHTC compliant and eligible for the tax credit for purposes of the set-aside requirement and determining the qualified basis provided the unit is made move-in ready within a reasonable period of time and reasonable attempts are made to rent the unit or the next available comparable or smaller size unit to an eligible household AND no other comparable or smaller size units in the project are rented to non-qualifying individuals. This is a "project rule" not a "building rule" and thus includes all vacant units in the project.

"Reasonable attempts" indicates that efforts toward marketing and renting a unit that is suitable for occupancy must be made, and proof of such marketing is made available to the compliance monitor. Under no circumstances can you claim credit on the unit if you violate this rule. Concurrently, if an owner with vacant units violates this rule by renting to a non-eligible applicant, credit on all vacant units in the project will be lost and those units cannot be counted toward the minimum set-aside.

Units that have never been occupied are termed "empty" rather than vacant, and cannot be counted as low-income units. However, they must be included in the building's total unit count for purposes of calculating the applicable fraction.

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

### B. Available Unit Rule/ 140 % Rule

If the household income for residents in a qualified unit increases to more than 140% of the current applicable income limit, the unit is considered an "over-income unit" but may continue to be counted as a qualified low-income unit as long as two conditions are met.

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

The owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building until the applicable fraction (excluding the over-income units) is restored to the percentage on which the credit is based.

This should not be a problem in 100% Tax Credit project as every unit must be rented to an income qualified household, but it does make it extremely important that households are correctly income qualified. IRS Regulation 1.42-15, effective September 26, 1997, allows over-income tenants who were previously LIHTC eligible to move to a different unit within the same building, because when a current resident moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit and vice versa. The Available Unit Rule is a building rule, so transferring a household with an income over 140% to another building is not allowed. Violating this rule means losing the credits on all 140% units. These units would no longer count toward the minimum set aside.

### C. Relocating Existing Tenants/Unit Transfers

When any existing household moves to another unit within the same building, the status of the two units will swap. Thus, if a qualified tenant moves to an 'empty' or 'vacant' unit, the new unit ceases to be 'empty' or 'vacant' and becomes a qualified unit. The other unit will then be deemed 'empty' or 'vacant'. When the transfer occurs between different buildings in the same project, the same rule applies; the status of the two units swaps; as long as the income of the tenant that is transferring units did not exceed 140% of the current applicable income limit at the most recent certification.

When a transfer is permitted, the household's Lease and Tenant Income Certification are moved over to the new unit. Management does not need to execute a new lease and a new TIC for a transfer, but must enter the transfer in WCDA's online reporting system. The household's annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

Please note that for transfer purposes, if, on the IRS form 8609 the owner elected to say 'No' to line 8b; which asks "Are you treating this building as part of a multiple building project for purposes of section 42?" then the owner has chosen to treat each building as a separate project. In this case, any "building" transfer is actually a project transfer and must be treated as a move-out and move-in. The household would have to be income qualified at the time of transfer. You will treat this as a move out and a move in, because the tenant is not moving to another building, they are moving to another project. Therefore, you must know how your Owner Answered the question on Line 8b on the IRS form 8609, because it is quite possible that you are dealing with buildings that are actually separate projects.

The WCDA will consider all buildings in projects that have passed the end of the first 15 year credit period to be considered as part of a multiple building project.

During the initial credit period, existing tenants cannot be relocated for purposes of qualifying more than one LIHTC unit to count toward the minimum set-aside or applicable

fraction. Under no circumstances can one household be used to initially qualify more than one tax credit unit in a project.

#### **D. Staff units**

Revenue Ruling 92-61 [Section 13], effective September 9, 1997 allows a unit for a full-time staff member to be considered part of a project's "common area." Such units are not classified as residential rental units and thus are not included in either the numerator or denominator of the applicable fraction under section 42(c) (1) (B) for purposes of determining the building's qualified basis. Revenue Ruling 2004-82 further expanded staff units to include a unit occupied by a full-time security officer for the project if the owner requires a security officer to live on site.

Two options apply:

(1) If the unit occupied by staff is actually a rental unit and is to be counted as part of the qualified basis, then the staff must be income eligible, be income certified, and sign a lease the same as any low income tenant. In this case, if the staff member receives free rent or a rental discount, the imputed value of the rent discount must be included as income.

(2) If the unit was originally designated as a staff unit and is actually common area, then the staff does not have to be income eligible, certified, leased, or considered a tenant, but they do have to be a full-time employee. The owner's LIHTC application and the allocation documents should stipulate the number of common area units set-aside for staff. If not, the owner should work with the WCDA on amending or clarifying the language in the LURA.

IRS has stated that they prefer that staff are not charged rent for a staff unit and that they are also not charged for utilities for that unit. The IRS has stated in the 8823 Guide, "...if the Owner is charging rent for the unit, the Service may determine that the unit is not reasonably required by the project..."

Moving staff units around the property is not allowed without WCDA approval. A written request must be submitted to WCDA which shows a bona fide need for the change. A staff unit must always remain the same bedroom size as originally designated in the application for funding.

Units designated as "common area" staff units at time of funding allocation may never be used as market rate tenant units. If you don't need the designated Staff Unit for Staff, as long as you have 100% Tax Credit Property (no market rate units), you can rent the unit to an income-qualified household at the highest AMI level at the property and the rent should be restricted accordingly.

## **E. Non-transient occupancy**

All Tax Credit units in a project must be used on a non-transient basis. Generally, a Tax Credit or Bond unit is considered to be used on a non-transient basis if the initial lease term is six months or greater.

To be in compliance, a six-month minimum lease term is required at initial occupancy of low-income units. A six month lease addendum should be signed with in-place tenants who do not have six months left on an existing lease when a building is being rehabilitated and then placed in service. The only exceptions to this requirement would be Single Room Occupancy housing rented on a month-by-month basis (30-day lease) or transitional housing for the homeless.

WCDA realizes that there are special circumstances when a tenant may terminate occupancy prior to the end of the six-month term of the lease. These circumstances may include: a tenant "skips" out of their lease, employment is obtained in another city, tenants are called to military duty, medical reasons or even death. In these circumstances the WCDA will not cite non-compliance as long as the original intent was to lease the unit for a period of six months and if the unit is made rent ready and marketed as soon as possible.

## **F. Open to the General Public**

All residential rental units in the project must be available for use by the general public. LIHTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, prohibiting discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability.

The IRS 8823 Report of Noncompliance form states:

The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the low-income housing tax credit on a per-unit basis.

Tax credit units may not be provided only for members of a social organization or provided by an employer for its employees. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, life-care facility, dormitory, trailer park, retirement home providing significant services other than housing, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under Section 42.

However, as clarified in IRC subsection 42 (g)(9), a qualified low-income project does



not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) who are members of a specified group under a Federal program or state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

"Available to the general public" applies to all residential rental units, market and tax credit.

## **G. Full-time Students**

Households comprised solely of full time students are not LIHTC eligible, unless they meet one of the exceptions under IRC Section 42(i)(3)(D).

**The Tax Credit regulation for students is only a concern when every member of the household is a full-time student.**

A student, as defined by the IRS, is "an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer occurs, is a full-time student at an educational organization described in the Internal Revenue Code or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in the Internal Revenue Code or of a state or political subdivision of a state".

1. The determination of full or part time will be based on the criteria used by the educational organization.
2. An educational organization is one that normally maintains a regular faculty and curriculum and normally has an enrolled body of students at the place where the educational activities take place. This would include elementary schools, junior, middle & senior high schools, colleges, universities, technical, trade and mechanical schools; but not on-the-job training. On-line colleges are considered to be an educational organization. A full-time student may also be someone that only attends night school; if they meet the institution's definition of full time.
3. One day of attendance in a month is considered to be a full month.
4. Kindergarten could be considered full time if it is considered a full day by the educational organization.
5. There is no grandfathering of eligibility because the tenant was not a student when they moved in and later became one.

The IRS has made it clear that student status is to be monitored on a tax-year basis, thus an applicant would not be eligible if the person had been or will be a full-time student for any 5 months of the tax year, January through December, even if they had graduated or quit school prior to applying for an LIHTC unit.

A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household income qualifies, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into effect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

Owners and managers must adjust tenant certification procedures to consider student status according to this interpretation. Wording to this affect should be included in all leases. Most comprehensive leases include the requirement that the household immediately alert management to any change in student status. In addition, household student status must be re-verified annually to confirm the continuing eligibility of the household. Failure to verify student status is noncompliance. It is also important to remember that the HOME program has now implemented a Student Rule, so if your project has Tax Credit and HOME funding, there are two different Student Rules that you must certify to.

#### Student Status Exceptions for LIHTC units:

A unit would not be disqualified for tax credits if it is occupied as specified in Section 42(i) (3) (D)-

##### By an individual who is—

- a. A student and receiving assistance under title IV of the Social Security Act (TANF),
- b. A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (foster care), or
- c. A student enrolled in a job training program receiving assistance under the Workforce Investment Act or under other similar Federal, State, or local laws, or

##### Entirely by full-time students if such students are-

- a. single parents and their children and such parents are not dependents claimed by another individual for tax purposes (as defined in section 152) and the children are not dependents of another individual other than the parents, or
- b. married and are eligible to file a joint tax return. The IRS does recognize the marriage of same-sex partners.

Verification documenting the exception being claimed must be included in the tenant file and it should be verified to be true and pertinent on an annual basis.

In addition, WCDA requires owners to include a provision in all LIHTC and HOME leases requiring tenants to notify management of any change in student status during the lease term. If student status changes, the household's eligibility must be reevaluated.

## **H. Section 8 Voucher Holders**

Section 42 states that LIHTC properties may not refuse Section 8 certificate or voucher holders simply on the basis of their Section 8 status. However, this does not assure tenant qualification, because applicants eligible for Section 8 must also meet the project's resident selection criteria, such as: income limits, student status, previous landlord references, or criminal or credit selection criteria standards.

## **I. Tenant Data Collection**

As mandated by Congress with passage of the Housing and Economic Recovery Act of 2008 (HERA), HUD now requires that every state collect and submit specific demographic and economic information to them regarding households that reside in LIHTC financed units. Some of this information is tenant specific and some is property specific.

Every state is required to report to HUD information on every tenant regarding: race, ethnicity, family composition, age, annual income, use of rental assistance, disability and amount of monthly rental payments. All of this tenant specific information can be noted on the new and required TIC for LIHTC units. Obviously, race and ethnicity will never change, but all of the other information will need to be updated annually. A household cannot be forced to divulge race, ethnicity or disability, but all other information should be known by the project. It should also be noted that when asking the question about disability it is a "Yes" or "No" answer; HUD is not looking to find out what a tenant's disability is; only if they are disabled or not. Never "guess" as to the answer to any question.

This information must be uploaded to WCDA on or before February 28<sup>th</sup> of each year. The information provided should only be for the previous year; January 1st through December 31st. This information will be submitted via the Procorem Compliance On-Line system.

## **J. Suitable for Occupancy Requirement**

A unit must be suitable for occupancy in accordance with state or local codes in order for credits to be claimed. If the unit is not habitable, no credits can be claimed. Tax credit units that are vacant must be made ready to rent as soon as possible. Units not available for occupancy on December 31<sup>st</sup> would not be eligible for credit for that year.

In a related situation, the IRS has ruled that should a unit be destroyed due to casualty loss (i.e., fire, flood, or any other disaster) for which credits cannot be claimed while the

unit is being replaced, if the unit is restored within a reasonable time within a taxable year, credits can again be claimed and no recapture would occur. However, the key wording in that statement is within a taxable year. If the unit is not made rent ready on or before December 31<sup>st</sup> no credit can be claimed for that unit.

According to the Revised 8823 guide, casualty loss is defined as, “the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.” Casualty loss ranges from car accidents, fires, government demolitions, hurricanes, mine cave-ins, sonic booms, storms, tornados, vandalism, etc. Property damage is not considered a casualty loss if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or a progressive deterioration, as in the case of damage caused by termites.

The physical damage due to the casualty loss must be reported to WCDA as noncompliance with UPCS Code or local standards as follows:

- As soon as the damage occurs, Owner/Agents must report the damage to WCDA in writing within 10 business days from the incident.
- WCDA is required to file an IRS Form 8823, taking the unit or building off line.
- Owner/Agents must notify WCDA in writing again when repairs are completed. WCDA will then file an IRS Form 8823 form putting the unit or building back into compliance.
- The IRS states that credits will be protected if a unit/building is restored within a reasonable period of time and each unit is occupied by qualified tenants by December 31<sup>st</sup> of the year the casualty occurred. If reasonable time takes an owner into January to get units back into service, credits will be disallowed for the affected units for the year of casualty loss.

## **K. Annual Tax Credit and Bond Project Recertification Requirements**

WCDA requires that 100% Low Income Tax Credit Projects do a full third party documentation re-certification for every household on the first year anniversary of their move-in date. Not recertifying a household on their first anniversary is considered noncompliance with State regulations and a monetary fine may be assessed as stated in the Wyoming Qualified Affordable Housing Plan and this Compliance Manual.

WCDA no longer requires full third party income certifications, in 100% Low Income Tax Credit projects, after the household’s first anniversary. Although WCDA no longer requires annual re-certifications after the household’s first anniversary, it may be that the Owner, Investor or Syndicator does require that they are done so you will want to check with them before you quit doing full re-certifications.

Even though full third party income re-certifications are no longer required after the first anniversary Owners are still required to:

- a. do third party certifications for any new household members
- b. do third party certifications for all units upon a change in ownership
- c. continue to provide WCDA with annual compliance reports
- d. continue to certify units regarding the Full time Student Rule (annually)

If the WCDA discovers that Residents at a 100% low-income property are not being properly initially qualified, the WCDA may require that the Owner re-instate third-party re-certifications for all households, every year, until the Owner can prove that all households are being properly income-qualified. The WCDA reserves the right to require re-instatement of third-party re-certifications for any property that fails to abide by any and all program requirements or that WCDA determines to be an at risk project.

Managers must be aware that if a new over-income household is moved in, they may have to re-certify all households to make sure that none have gone over the 140% limit. This makes it extremely important that you are very careful when qualifying new move-ins.

Tax Credit Projects that have any market rate units are still required to conduct third-party re-certifications annually for all households throughout the entire term of the compliance period, as required by IRS regulations.

## **L. Changes in Household Size**

Changes in the size of an existing household after initial certification must also be addressed. Tenants who reasonably believe (or know) that they will be adding members to their household are required to disclose this information at the initial move-in certification so that all relevant income sources can be considered. Failure to do so is considered tenant fraud.

There is actually no established safe harbor for adding household members. The generally accepted practice is six months or more, however, adding members sooner, does not automatically disqualify the unit if a reasonable person would determine there was no intent to mislead or manipulate the program. If the WCDA concludes that the tenants manipulated the income limitation requirements and the owners failed to demonstrate ordinary business care and due diligence in their duties, or if there appears to be a systematic pattern at the project, a unit will be considered out compliance as of the date the household initially occupied the unit.

Additions to the household must be third-party income qualified and a separate TIC will be created for each new member. A household may continue to add members as long as at least one member of the original low income household continues to live in the unit.

Once all of the original tenants have moved out of the unit, it is possible that the remaining tenants must be income certified as a new move-in household. However, if Management is able to determine the first new member independently qualified as a one person household at the time they moved into the unit they may remain as a qualified tax credit household. If more than one tenant has been added to the household, then the total move-in income of all additional tenants would have had to income qualify for the size of household in order for them to continue occupancy. If the total income for new members would have been over the income limit at move-in they will have to either be re-certified as a qualified household or will have to vacate the unit.

Management's need to determine if the tenant(s) independently qualified illustrates the necessity to complete an independent TIC when a new member is added to an existing household. This information should be in your lease since it may be that at re-qualification they may be over income and cannot stay in the unit.

Increases in household size often result in increased incomes and for a Tax Credit project can often trigger the Available Unit Rule.

### **M. Post Year 15 Monitoring Procedures**

In Wyoming, there will be no change in compliance requirements or monitoring procedures during the extended use period and throughout the entire compliance period agreed to by the Owner at time of allocation.

Except, buildings which had been considered separate projects due to the Owner's answer of "No" on Line 8b of the 8609 will all be considered one project after the first 15 year credit period has elapsed. We have consulted with the IRS on this change and their response was that after the 15 year credit period has elapsed they had no opinion.

Monitoring Inspections and tenant file reviews will continue on a three-year schedule, with 20% of the units/files reviewed in the same manner as during the initial compliance period. Any noncompliance noted in the initial report that is fixed during the correction period will be considered "clear". Any project with open noncompliance findings not cleared within the correction period will be charged a fee of \$25.00 per day and will also garner the owner negative points for future allocations. Correction period extensions may be requested for compliance issues that involve extenuating circumstances.

## 5. HOME, NSP, NHTF and LIHTC Regulations

### A. Tenant Application Procedure

Your application may be your most valuable tool in the qualification process. It will be the first document that the WCDA monitor will want to see in a file as it is the starting point that all other documentation must support. Because the LIHTC, Bond, HOME, NSP and NHTF programs use special definitions for income, assets, and household composition, standard property management application forms may not collect sufficient information to determine eligibility.

A comprehensive housing application is critical to the accurate identification of all necessary information required to effectively determine household eligibility for the LIHTC, Bond, HOME, NSP and NHTF programs. WCDA does not require a specific application form be used; but does require the application to be sufficiently detailed with regard to all sources of income and assets, and student status (Tax Credit student rules and HOME student rules, if applicable) enabling an owner and the WCDA monitor to effectively make a determination of household eligibility for these programs.

Applications should only be accepted when they are complete; in other words all of the questions have been answered to your satisfaction AND they have been signed and dated by all adult household members.

If possible, the application process should include a face-to-face interview with all adult household members to review the application and historical documents and clarify any discrepancies or missing information.

### B. Project Policies and Procedures

There are two policies that every project is required to have in place; the **Resident Selection Criteria Policy** and the **Occupancy Policy**. Once set, these two policies will help to maintain consistency and fairness at the project. These policies should be readily accessible to tenants, owners, regional managers, state monitoring staff and every staff member at a project.

Your **Resident Selection Criteria Policy** will dictate your requirements that the applicants must meet to reside at the project, above and beyond the income and student limitations. All residents must be income qualified and have their student status verified. Your policy will dictate the more restrictive requirements set by the Owner that will attract residents who will be an asset to the community. An Owner can set requirements regarding:

- The ability to pay rent and utilities
- Credit History
- Previous Landlord History
- Criminal History

None of the above listed notations are a protected class, therefore, you can set specific requirements to be met. Having these requirements in place, and known to all staff, will simplify tenant selection, create consistency, reduce resident turnover and alleviate some of the managerial burdens.

It must be known that, once set, these policies and limits must be strictly and consistently adhered to. For example, if you set a minimum income limit or a credit history standard you must adhere to that limit or that standard for every potential resident. Deviation from a set policy could possibly lead to discrimination issues.

As we all know, discrimination occurs when different standards are applied to different people. The Fair Housing Act specifies 7 different classes that we must not discriminate against and HUD now also requires that we do not discriminate against two additional groups of people, LGBT; Lesbian, Gay, Bisexual or Transgender and Victims of Violence.

Your **Occupancy Policy** is set to prevent under-utilization or over-crowding of your units. HUD's recommended maximum standard is basically two people per bedroom. HUD states that this standard is reasonable for most units. The actual size of the rooms will dictate what reasonable occupancy actually is.

It is also acceptable to set a standard for the minimum number of occupants per bedroom; such as, at least one person per bedroom, although you are not required to set a minimum occupancy level for the LIHTC, Bond, HOME, NSP or NHTF programs.

It must also be remembered that you cannot restrict the age or sex of any occupants when considering bedroom number or distribution.

Projects that have any HOME, NSP or NHTF funding must also have a written policy covering the requirements of the **Violence Against Women Act (VAWA)**.

Once these policies have been set it is advisable to have them reviewed by an attorney that is well versed in local landlord/tenant law and the fair housing law.

There are other policies that projects are recommended to have in place; the **Request for Reasonable Modifications/Accommodations Policy** and a **Grievance Procedure**. According to the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 all Owners must allow reasonable modifications and reasonable accommodations for persons with disabilities that request them (refer to the DOJ definition of a disabled person). All projects must pay for any reasonable accommodations. Projects with any



federal funding must also pay for modifications as long as they are reasonable and if they would not impose an undue financial and administrative burden on the housing provider or they would not fundamentally alter the nature of the provider's operations. Projects without any federal funding must allow these modifications to be made at the expense of the tenant. Tax Credits and some Bond Funding are not considered federal funding.

It is up to the tenant to request a modification or accommodation. Although it is not required that the tenant make the request in writing, it is prudent to have a procedure in place whereby the tenant can make this request. This procedure should include all of the steps and requirements throughout the process to accomplish the modification or accommodation. It should also be noted that there must be a "nexus" or identifiable relationship between the disability and the request.

Tenant **grievances** will occur at a project. In order to handle grievances prudently and discriminately a policy should be put into place that specifies how grievances will be adjudicated. On a regular basis WCDA is contacted by tenants with concerns or complaints. It is the policy of WCDA to listen to tenant concerns and also contact management staff for details. WCDA is not the Fair Housing Office for the State of Wyoming. WCDA staff are not attorneys and prefer to remain neutral in all tenant/landlord disputes. Our goal is to remain impartial and mediate when possible so that situations do not escalate. However, if WCDA has reason to believe that tenant complaints are credible a special onsite review will be scheduled.

Copies of each of these policies should be provided to each household prior to the lease being signed. Although, it may be an Owner's decision to supply this information to all prospective applicants prior to the submission of the application and the application fees.

Other Policies and Procedures that projects should consider implementing include:

- Application Process
- Waiting List Procedure
- Crime Enforcement
- Natural Disaster Plan
- Pet or No Pets Policy
- Service/Companion Animal Policy
- Smoking or No Smoking

Having these policies in writing can be valuable in the event of a discrimination accusation.

## C. Restricted Rents

As noted in a prior section, one of the key components of affordable housing is restricted rents. Over charging of rents in a Tax Credit project can cause loss of credits for up to a year. This loss of credit will happen even if it was an inadvertent mistake. For example, if you are unaware of a utility allowance increase and it puts the gross rent over the maximum, you will lose credits. Tax Credit rent restrictions and calculations are discussed in this manual at Chapter 3. LIHTC Compliance, I. Maximum Gross Rent. When calculating maximum rents all rents must be rounded down to the next dollar.

As HOME, NSP and NHTF rents have their own rules and regulations, they will be discussed later in the HOME, NSP and NHTF Compliance Section. It must be stated here and it will be stated again, an Owner cannot raise the rent on a HOME, NSP or NHTF unit, as outlined in the Restrictive Agreement without written approval from WCDA.

In a project that has Tax Credit and HOME units it may be necessary to change a HOME unit into a higher income level Tax Credit unit if the HOME unit's household income increases above the 80% HOME limit. Again, it is important to remember that you cannot increase this new Tax Credit household's rent until you have replaced that household with a lower income HOME qualified household. The goal is to constantly have the agreed upon number of HOME and Tax Credit units at the agreed upon income and rent levels. This requires that you pay constant attention to HOME tenant income levels and is one of the reasons that annual re-certifications for HOME units are required in Wyoming. This is also one of the reasons that WCDA requires all Tax Credit projects that also have HOME units to include the complete HUD verbiage or Affordable Housing Addendum and the Federal Privacy Act Statement in all tenant files.

## D. Income Qualifying Households

As noted in a prior section, income qualifying households is of the utmost importance in order to keep a project in compliance with federal regulations. This is a fact of the LIHTC, Bond, HOME, NSP and NHTF programs. Not only must you income qualify households, you must be able to produce the acceptable certifications and verifications necessary to prove they are qualified. The LIHTC, Bond, HOME, NSP and NHTF income qualifying procedure requirements are the same. The IRS (Section 42) mandates that income is calculated using Annual Income as defined under Section 8 Housing Assistance Payments Program in 24 CFR Part 5.609. Income and Asset qualification requirements can be found in the HUD Handbook 4350.3; Section 5. A copy of the current Section 5 can be downloaded from the WCDA website, but it is your responsibility to be aware of any updates and changes.

The HUD Handbook 4350.3; Section 5 defines annual income as the anticipated total

income from all sources received by all persons in the household (even if temporarily absent), including all unearned income and all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income.

Income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility.

Per HUD Handbook 4350.3, the owner must generally use current circumstances to anticipate income. However, if information is available on changes expected to occur during the year, the owner must use that information to determine the total anticipated income. Two common scenarios include:

1. Unsecured income: WCDA does not require owners to include unsecured income sources when calculating household income. For example, if an applicant or tenant is unemployed, WCDA does not require that individual to anticipate income he or she may earn if a job is secured, unless it is verifiable that a job has been secured with a future start date.
2. Sporadic or seasonal income: Per IRS guidance in the 8823 Guide, the owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates. If income cannot be determined using current information, the owner may anticipate income based on the income that was earned within the last twelve (12) months prior to the income determination.

Any income or asset source not specifically excluded must be included. For information regarding annual income inclusions and exclusions and how to calculate annual income, see HUD Handbook 4350.3 and the HUD list of Inclusions and Exclusions; both of which are available on the WCDA website.

Beginning July 31, 2008, it is now important to remember that LIHTC, Bond, HOME, NSP and NHTF units have different income limits. LIHTC and Bond projects will use the same income limits. HOME and NSP projects will use the same income limits. NHTF units have a separate income limit. Income limits are accessible via the WCDA website, they are posted in different areas of the website and they usually take affect at different times of the year. When a unit qualifies as both a Tax Credit and a HOME or a Tax Credit and an NHTF unit, you must use the lesser of the two income limits.

Maximum household income limits are based on the number of people in a household. A household can consist of one or more people and these people do not have to be related.

You must include the following as household members, when calculating income levels,

- unborn children
- children who are in the process of being adopted

There are household members that may be temporarily away, that would also be considered part of a household, when calculating income levels, they include:

- Children temporarily placed in foster care
- Dependent children in the household at least 50% of the time; although these children may not be included in 2 households receiving LIHTC or HOME assistance at the same time
- Children away at school that will be home during school breaks
- Persons temporarily confined to a hospital or nursing home
- A person away on active military duty only if this person leaves dependents or a spouse in the unit
- Foster Children
- Foster Adults

Households will make their own decision whether to include persons permanently absent. If included in household size, their income is included, but they are not included in the number of bedrooms necessary.

There are certain individuals that are not considered part of a household, when calculating income levels, they include:

- Live-in Care Attendants
- Visitors or Guests

## **E. Live-in Care Attendants**

Live-in Attendants would be considered when calculating number of bedrooms needed by the household.

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly, near-elderly, or persons with disabilities. To qualify as a live-in aide, the individual:

- (a) must be determined to be essential to the care and wellbeing of the tenant,
- (b) must not be financially obligated to support the tenant, or vice versa and
- (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services.

While some family members may qualify, spouses can never be considered a live-in aide since they would not meet qualifications (b) or (c).

Additionally, the live-in aide cannot move a spouse, child, or other family member into the unit, as doing so would indicate that the aide is living in the unit for reasons other than the care of the tenant. A live-in aide for a tenant should not be counted as a

household member for purposes of determining the applicable income limits, and the income of the aide is not counted as part of the total household income.

The need for a live-in care aide must be certified with documentation from a medical professional and included in the tenant file. The owner may verify whether the live-in aide is necessary only to the extent to document that the applicant/tenants has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination.

If the qualified tenant vacates the unit, the aide must vacate as well. If an aide would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program. This information should be clearly stated in all Leases or as a Lease addendum. While the live-in aide is not considered a household member, he/she is still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with tenant house rules. An owner may deny a live-in aide that does not pass criminal background checks or remove an aide who exhibits behavior that is disruptive, illegal, or endangering to other tenants and staff, as defined in the tenant selection criteria and lease. Sample forms to verify and document a live-in aide are available on the WCDA website.

## **F. Income Qualifying Requirements, Tips and Hints**

1. All of the LIHTC, Bond, HOME, NSP and NHTF programs require the use of anticipated gross income, unless the tenant is self-employed. Some government programs allow for adjustments; such as childcare or medical expenses, while these programs do not.
2. All of the LIHTC, Bond, HOME, NSP and NHTF programs require gross income to be the "anticipated" income (including any expected changes) for the following 12 months after certification.
3. Income for a self-employed person is calculated differently and is described in Section 5 of the HUD Handbook 4350.3.
4. All of the LIHTC, Bond, HOME, NSP and NHTF programs require the inclusion of unearned income from all household members, including foster children and foster adults. Although, funds paid by a government entity to the household for the care of the foster children or adults are not included in household income.
5. All of the LIHTC, Bond, HOME, NSP and NHTF programs require the inclusion of any net income earned from assets held; as long as the tenant has access to the

asset. For Tax Credit and Bond units, the household can self-certify to the amount of their assets by completing the "Under \$5,000 Asset Certification" form. The HOME, NSP and NHTF programs do not recognize this form and require assets to be verified with third party documentation. All of the LIHTC, Bond, HOME, NSP and NHTF programs have a list of income sources that are specifically included and excluded from the income calculation. This list is included in the HUD Handbook 4350.3 Chapter 5 and is available on the WCDA website.

6. WCDA requires that you complete a full 3<sup>rd</sup> party income re-certification for all HOME, NSP and NHTF households on an annual basis. This will be done by the Section 8 method unless otherwise stated in the HOME Agreement. Tax Credit re-certification requirements are specified in this manual under Chapter 4. Special LIHTC Rules, K. Annual Tax Credit & Bond Project Re-certification Requirements.
7. All of the LIHTC, Bond, HOME, NSP and NHTF programs require 3<sup>rd</sup> party verification of income; whenever possible. All verifications completed by employers must be delivered directly from the Project to the Employer and directly back to the Project; potential tenants cannot hand deliver employer verifications. Faxed and emailed documents between Project and Employer are acceptable as long as you can verify the source of the fax or email. WCDA allows tenants to supply official government documents and it is now acceptable for tenants to supply pay check stubs as the first source of documentation. If you are going to use pay check stubs, HUD requires that you collect at least 2 months of pay stubs. Never rely on an amount deposited into a bank account as an amount for income; it may not be a gross amount and will be cited as non-compliance.
8. The LIHTC and Bond programs say that verifications are valid for 120 days following receipt by the Manager/Owner & the HOME, NSP and NHTF programs say verifications are good for 6 months following receipt by the Manager/Owner. After this time a new verification must be obtained. It is wise to date stamp documents as they are received.
9. All of the LIHTC, Bond, HOME, NSP and NHTF programs require every question on an application or verification to be answered. Do not consider an unanswered question to be a N/A, no or yes. You must do a follow-up with documentation in the case of unanswered questions or vague answers. There is a "telephone verification" form included under Other Forms on the WCDA website. WCDA will accept emailed information from the source. Your goal is to have a paper trail that shows due diligence.

10. Significant differences in answers and amounts between the tenant application and the source verification must be investigated and explained.
11. Assets disposed of for less than fair market value, that are over \$1000 in value, must be dealt with as instructed in Section 23 HUD Handbook excerpt 5-33.
12. After total annual income and assets have been calculated, this information will be entered on the Tenant Income Certification (TIC) by the project representative. The TIC (and the Lease) will be signed and dated by all tenants 18 years of age or over and the project representative. At move-in the TIC should be signed on the same day as the Lease. At re-certification if a new lease is being executed it should be signed and dated on the anniversary date of the last lease.
13. Under no circumstances may "white-out ink" or "white-out tape" be used on any documentation. When information needs to be changed or corrected you will cross through the incorrect information, write in the correct information and all parties will initial the change.
14. If you do your due diligence, create a paper trail and write a narrative explaining those "oddities" that will occur, it will help the WCDA monitor in understanding your conclusion of qualification.
15. Qualifying Section 8 tenants may be done slightly differently. Additional forms of income verification may be used for tenants who receive housing assistance through the HUD Section 8 program. For these tenants only, acceptable forms of income verification include a signed copy of the appropriate HUD form 50058 OR a Section 8 Income Verification form which can be found in this manual. These forms may be used to support the TIC which must be executed for every LIHTC, Bond, HOME, NSP and NHTF household. Strictly being Section 8 income qualified does not guarantee eligibility for any of the programs. Households must also meet all other Tax Credit, Bond, HOME, NSP and NHTF requirements and also must qualify under any project specific tenant selection criteria requirements. It should also be noted that you must be able to document the household's gross income as the Section 8 income total may have deductions included that are not allowed by the LIHTC, Bond, HOME, NSP or NHTF programs.

## **G. Calculating Child Support and Alimony**

WCDA follows the requirements of the HUD Handbook 4350.3 Chapter 5, Section 1, Subsection 5-6, F. which says:

"Owners must count alimony or child support amounts awarded by the court unless the

applicant certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment."

1. The owner may accept printouts from the court or agency responsible for enforcing support payments or other evidence indicating the frequency and amount of support payments actually received.

2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states, these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as a "pass-through" payment. These amounts must be counted as annual income.

3. When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the tenant to sign a certification stating the amount of child support actually received.

## **H. When to Include Student Financial Assistance**

HUD tells us not to include any student financial assistance unless the household is receiving Section 8 assistance.

For households receiving Section 8 assistance you will include all assistance in excess of tuition and fees required for certain classes. To calculate the financial assistance you will need to determine the total amount of assistance the student is receiving then subtract the cost of tuition and fees for the period of time the assistance is meant to cover. You will never include student loans as financial assistance.

There are 2 exceptions for the previous paragraph. You will not include financial assistance for a student receiving Section 8 assistance if:

1. The student is over age 23 with dependent children, or
2. The student is living with his or her parents who are receiving Section 8.

## **I. Correcting Documents**

WCDA will not accept documents that are incomplete, that have been marked with correction fluids (e.g. whiteout), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the



erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the tenant should be initialed by the tenant. Corrections to the lease or its addendums should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents should be signed with the current date, but noted as being “true and effective” as of the actual certification effective date. The “true and effective” statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification effective date continues to be the anniversary date of the move-in, not the date the documents were completed retroactively.

## J. Leases

All tenants occupying Tax Credit, Bond, HOME, NSP and NHTF units must be certified and under lease no later than the date the tenant takes possession of the unit. Initial Tax Credit and Bond leases must be for a minimum of 6 months and all others must be for a minimum of one year, which is no less than 365 days.

WCDA does not require a specific model dwelling lease to be used by owners. However, the Wyoming Affordable Housing Plan requires that all leases must be reviewed and accepted by WCDA prior to lease up or any changes. Some required guidelines are listed below.

### **The lease should include, but is not limited to:**

1. The legal name of all parties to the agreement and all additional occupants
2. Identification of the unit to be rented (number, street address, etc.)
3. The date the lease becomes effective
4. The term of the lease
5. The amount for rent—If this reflects a contract rent amount which may include a subsidy payment, rather than just the tenant portion of the rent, a lease addendum listing only the tenant share of rent is recommended.
6. The rights and obligations of the tenants, including the obligation of the tenant to recertify income annually for HOME, NSP and NHTF units and at the 1<sup>st</sup> anniversary for Tax Credit and Bond units
7. "Guests or Unauthorized Occupants" policy
8. Additions or changes to the household policy
9. Student Status requirements for LIHTC units & HOME units; the NSP and NHTF programs do not currently have any student restrictions

10. Unit inspection & maintenance requirements
11. Fair Housing Policy
12. Subletting is not allowed
13. Tenant Fraud Consequences
14. The rights and obligations of the landlord
15. Language addressing changes in income, utility allowance, income limits, basic rent, family composition or any other change and its impact on the tenant's rent
16. Signatures and dates
17. The tenant paid rent plus utility allowance and other mandatory fees must not exceed the maximum gross rent percentage allowed by the LURA, HOME, NSP or NHTF Agreement
18. The initial lease term must be at least 6 months on all Tax Credit and Bond units, and at least 12 months for all HOME, NSP and NHTF units (no less than 365 days) except for SRO housing which may have a 30-day lease or transitional housing for the homeless which provides "temporary housing" and has no lease requirement. Successive leases are not subject to a minimum lease term.
19. The beginning date of the lease and effective date of the TIC should be the same. Preferably, a lease and a move-in TIC are signed by all parties at the same time.
20. Additionally, the lease should not contain any clauses that would allow termination prior to the 6 month Tax Credit or 12 month HOME, NSP or NHTF requirement. The WCDA considers a "lease break fee" an indication the tenant could terminate the lease and does not allow this fee to be charged. A lease break fee effectively gives the tenant the ability to buy their way out of the lease.
21. Required HUD verbiage on all leases (including Tax Credit units) for projects that have any HOME, NSP or NHTF units at all. WCDA can supply an approved Affordable Housing Addendum for leases that don't include the HUD required verbiage.
22. Beginning August 23, 2013, leases may not include terms that require tenants to accept supportive services (with an exception for residents of transitional housing).
23. Owners may only refuse to renew or terminate the lease of a tenant if there is good cause. Good cause is defined as: repeated violation of lease terms; violations of federal, State or local law; or for completion of the tenancy period for transitional housing. The 2013 Final HOME Rule expressly states that an increase in a tenant's income does NOT constitute good cause for termination of, or refusal to renew, a lease. The IRS also states that an increase in household income is not good cause for termination of, or refusal to renew, a lease.
24. All leases for all affordable units in the State of Wyoming must include a signed copy of the Federal Privacy Act Statement.
25. Wyoming requires that all Leases have the Fair Housing Logo on the front page.

## **K. Prohibited and Required Terms in Leases**

All leases **may not contain** any of the following provisions:

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

**All leases (in projects with any HOME units) must contain all of the following:**



1. The lease shall have the Equal Housing Opportunity Logo on the front page with a statement stating that the owner does business in accordance with the Federal Fair Housing Law.
2. The unit for which you are applying may have been assisted with federal funds and is governed by the HOME Investment Partnerships Program 24 CFR Part 92, as amended. This program requires that in order to be eligible for admittance into this unit, your total household annual income must be at or below 50% of median income (very low-income as defined under 24 CFR Part 92).

If after initial occupancy and income determination, your total household annual income increases above 80% of median income (low-income as defined under 24 CFR Part 92), you will be required to pay 30% of your adjusted gross monthly income for rent and utilities, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C.42) must pay rent governed by section 42.

3. The size of the dwelling unit must be appropriate to the Lessee's needs, Lessee agrees to transfer, within a reasonable time to an appropriate size dwelling unit based on family composition, if the Lessor determines that the size of the dwelling unit is no longer appropriate.
4. If it is found that the Lessee has misrepresented to the Lessor the facts upon which his rent is based, so that the rent he is paying is less than what he should have been charged, the Lessor may then terminate this agreement and an increase in rent will be made retroactive, due and payable within 30 days from the date of notice of the increase. In the event of any rent adjustment pursuant to the above, the Lessor will mail or deliver a Notice of Rent Adjustment to Lessee.
5. The information given to the Lessor on household composition, income, net family assets and allowances and deductions is accurate and complete to the

best of my knowledge and belief. I understand that false statement or information are punishable under Federal law, and that if I knowingly falsify or omit information I may be:

- Evicted from my apartment or house
- Required to repay all overpaid assistance my family received
- Fined up to \$10,000
- Imprisoned for up to 5 years; and/or
- Prohibited from receiving future assistance

**WCDA is willing to supply you with the “Affordable Housing Addendum” that incorporates all of these requirements.**

The following Federal Privacy Act Statement will be made a part of **every lease** in **every project**. The Federal Privacy Act Statement is included as part of the Affordable Housing Addendum. If you are not using the Affordable Housing Addendum then you will need to add the Federal Privacy Act Statement as an addendum to your Lease.

Congress now requires that WCDA submit specific demographic and economic information regarding HOME, NSP, NHTF and LIHTC households to HUD on an annual basis. Submission of this information is a mandate by Congress and tenants should read and sign the following statement acknowledging that they understand the purpose and use of this information. Understanding and signing the following statement is a requirement for occupancy at any LIHTC, Bond, HOME, NSP or NHTF project.

## **Federal Privacy Act Statement**

The U.S. Department of Housing and Urban Development collects information on tenants in Low Income Housing Tax Credit and HUD-assisted rental housing. The U.S. Privacy Act of 1974 established requirements governing HUD's use and disclosure of the information it collects on individuals and families.

For affordable housing assisted units, the Wyoming Community Development Authority is required to send HUD information on the tenants' income, family composition, rent, etc. This information was already given by the tenants to the Lessor when applying or being re-examined. It is transferred to HUD via on-line data transmission.

**USE:** HUD uses the information for budget development, program evaluation and planning, and reports to the President and Congress. HUD also uses the information to monitor compliance with Federal requirements on eligibility and rent and to verify the accuracy and completeness of the income information.

**PUBLIC ACCESS:** Summaries of tenant data are available to the public. Disclosure of information about individuals and families is restricted by the Privacy Act of 1974. Such information is released to appropriate Federal, State or local agencies to verify information relevant to eligibility and rent determinations and when applicable to other civil, criminal or regulatory matters.

**INFORMATION REQUIREMENTS:** The information requirements must be provided to HUD so that it can carry out its monitoring and data collection responsibilities. Failure to do so may result in eviction or the withdrawal of housing assistance (depending on the housing program).

**AUTHORITY:** HUD is permitted to ask for the information by the U.S. Housing Act of 1937 as amended, 41 U.S.C., 1437 et seq., the Housing and Community Development Act of 1981, Public Law 97-35, 85 Stat., 348,408.

I have read this Federal Privacy Act Statement on \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

If you believe you have been discriminated against, you may call the Fair Housing and Equal Opportunity Hotline at 800 877-7353.

## **L. Fees and Deposits**

WCDA only allows landlords to charge reasonable fees and deposits to tenants. The difference between a fee and a deposit is that a deposit refers to funds that could be refunded whereas a fee is a monetary charge that will not be refunded.

WCDA does allow the following reasonable fees and deposits:

1. A reasonable damage or security deposit no greater than the maximum applicable monthly gross rent
2. A reasonable credit or criminal history check fee at time of application; these fees cannot exceed the out-of-pocket expense to the landlord.
3. Charge for a pet; the state of Wyoming does allow “Non-refundable pet deposits” thereby making it a fee unless it is the landlord’s intent to refund it. As pets are optional, Wyoming will also allow landlords to charge a monthly pet fee. Monthly pet fees cannot exceed \$30.00 per pet per month.
4. Optional fees for services such as washer/dryers, extra storage or garages not included in eligible basis that the tenant has elected to part in.

Fees that the WCDA does not allow include:

1. Last month’s rent at the time of move-in
2. Transfer fees when a household moves from one unit to another. Transferring tenants from one unit to another is a cost of doing business that cannot be charged to the tenant. WCDA does allow that the original damage deposit can stay with the original unit and a new damage deposit can be collected for the new unit.
3. A lease break fee; when a tenant vacates a unit prior to the end of the lease WCDA does not allow a landlord to charge a fee. The landlord already has the right to collect rent on the unit until the end of the lease period or until the unit is re-rented; whichever comes first.
4. A re-letting fee; when a tenant vacates a unit prior to the end of the lease WCDA does not allow a landlord to charge a fee. Re-letting is a normal cost of doing business that cannot be charged to the tenant. The landlord already has the right to collect rent on the unit until the end of the lease period or until the unit is re-rented; whichever comes first.
5. A pre-move-in cleaning fee; owners are responsible for keeping all units in a rent ready status and cannot charge this fee to a tenant.
6. Deposits or fees for service/assistance/companion animals.

## **M. Fair Housing**

Fair Housing Law applies to all phases of housing in the United States. Therefore, it

applies to the LIHTC, Bond, HOME, NSP and NHTF programs. This law stems from the Fair Housing Act of 1988 (FHA). The FHA pertains to anti-discrimination. Currently, there are 7 protected classes under this law. Therefore, you cannot discriminate against anyone or any group of people because of: Race, Color, Religion, Sex, Disability, Familial Status or National Origin. As mentioned previously, HUD has now added, LGBT; Lesbian, Gay, Bisexual or Transgender and Victims of Violence. This law prevents discrimination in the sale, rental, financing, appraising, advertising and brokerage services in all phases of housing. It is recommended that you display the Fair Housing Poster at all projects and it is required that you include the Fair Housing Logo on the first page of all leases and policies.

One of the major components of the Fair Housing Act is accessibility to housing. Housing should be as accessible to each of the 7 protected classes as to every eligible person or household. One thing to remember here is that just being a member of a protected class does not make every person or household eligible. Eligibility is based on income, student status and any other project requirements; which may include credit, previous landlord and criminal history.

Fair Housing is vital in the course of the affordable housing business. All projects must have an Affirmative Fair Housing Marketing Plan. This plan must specify what the owner will do to attract tenants who are not likely to apply for the housing without special outreach, such as minorities, families with children, persons with disabilities, or other persons protected by fair housing laws. HUD also requires that Owners review this plan at least once every 5 years. If you find that the plan needs to be changed or updated, you must re-submit the plan to HUD for approval.

One key to avoiding Fair Housing lawsuits is education. WCDA promotes Fair Housing and makes training available to all interested parties at many venues throughout the year. WCDA requires all Owners, Management companies and Site Managers attend Fair Housing training and be well versed in the requirements. If you are involved in a Fair Housing dispute and you receive an adverse judgment, this will be considered non-compliance. Providing specific guidance and all the rules and regulations covered by the Fair Housing Act is not practical for this manual. However, if you go to the HUD website at [hud.gov](http://hud.gov) and search for Fair Housing you will find massive amounts of information.

Another topic that often falls under the discussion of Fair Housing is dictated by Section 504 of the Rehabilitation Act of 1973. Section 504 only applies to one protected class; the handicapped/disabled. One of the major components of Section 504 is accessibility to housing. Housing should be as accessible to the handicapped/disabled as to every eligible person or household. Therefore, you may have to make some reasonable accommodations or modifications in order to make your application and verification process or the physical access to the project and units accessible to the handicapped/disabled. One thing to remember here is that just being



handicapped/disabled does not make every person or household eligible. Eligibility is based on income, student status and any other project requirements; which may include credit, previous landlord and criminal history.

Under section 504, federally funded projects bear the financial burden for reasonable modifications. All projects bear the financial burden for reasonable accommodations. The Tax Credit program is not considered a federally funded program as no funds come directly from the federal government. Therefore, an LIHTC project must allow for reasonable accommodations and modifications and must pay for accommodations but is not responsible for paying for modifications, the tenant bears the financial responsibility for modifications. However, it is important to remember that if your project has any HOME, RD, HUD, Bond, NSP, NHTF or other federal funding associated with it your entire project is considered to have federal funding, therefore, Section 504 applies to the entire project.

The Fair Housing Act and Section 504 allow **disabled** tenants or households with a disabled member to request reasonable accommodations and reasonable modifications. One reasonable accommodation that all projects must make is to provide everyone the equal opportunity and ability to apply for housing. Therefore, if an applicant or tenant cannot read or sign a consent form or lease document due to a disability, the owner must provide a reasonable alternative which could include, but is not limited to:

- Forms in larger print
- Someone to read for persons with visual disabilities
- Allow for a designated signatory
- Meet with the person off site if the applicant or tenant is unable to travel to your office to complete the forms
- Provide an interpreter if English is not the applicant's first language
- Have someone present who can explain the documents being signed

Such a reasonable accommodation should be fully documented and maintained as part of the tenant's record.

It is up to the Owner and Manager to know the differing requirements of each law when dealing with these requests. One common request for accommodation is the ability to have a companion/service animal. It is up to the Owner to understand there is a big difference between pets and companion/service animals. Remember, a tenant has to meet the federal definition of Disabled in order to be granted a request for modification or accommodation. Again, the HUD website explains the differences very well.

Although the Americans with Disabilities Act (ADA) does not apply to housing units, it does apply to any area of the property that may be used by the general public. This could include Playgrounds, Swimming pools, BBQ areas, Walkways, Parking Lots, Grassy areas, Handicap Accessible Parking and Offices. It is the Owner's responsibility to insure

that all areas open to the general public are ADA accessible.

#### **N. Violence Against Women Act (VAWA)**

The Violence Against Women Act of 2013 (VAWA) continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 and further expands these safeguards in several crucial ways.

1. VAWA prohibits the denial of housing or rental assistance strictly based on the fact that the applicant is/has been a victim of domestic violence, dating violence, sexual assault, or stalking.
2. VAWA continues to bar eviction and lease termination based strictly on a tenant's status as a survivor and requires landlords to maintain survivor-tenant confidentiality.
3. VAWA continues to allow lease bifurcation so a lessee who engages in criminal acts of physical violence against a co-lessee or others in the household may be evicted or removed from the lease without evicting or removing the victim(s). It also gives a victim a reasonable time period to establish eligibility or find new housing if necessary.
4. VAWA requires landlords to establish an emergency transfer plan if the victim reasonably believes that they are threatened with imminent harm if they remain in the unit.
5. VAWA requires that landlords notify every tenant of their rights if their application is denied, at time of entry to the project and at time of notice of eviction or termination of a lease.
6. If a victim is requesting a unit transfer or requesting to be released from their Lease, VAWA requires a victim to complete a certification form that a) states the applicant or tenant is/was a victim of domestic violence, dating violence, sexual assault or stalking and b) states that the incident meets the applicable definition of such incident under subsection 5.2003 and c) must include the name of the perpetrator of the offense. HUD has provided forms for these requests.
7. VAWA does allow a landlord to evict a victim if that person has engaged in criminal activity other than the domestic violence, dating violence, sexual assault or stalking that has been perpetrated upon them.

#### **O. Marketing Accessible and Special Needs Units**

At initial lease-up, accessible units and units designated as special need units should be marketed to persons requiring the unit due to their special need.

For ongoing leasing, the following order should be followed for marketing these units as they become vacant:

1. First offer accessible units to existing occupants that have requested a transfer to a

unit with accessibility features but are currently occupying a unit that does not offer such features.

2. Next offer accessible units to qualified applicants on the waiting list that require accessibility features or that qualify under the special need category for which the unit is set-aside.
3. Market the unit to attract new qualified applicants that require the accessibility features or that meet that special need category assigned to the unit.
4. Finally, offer the unit to a non-disabled/non-special needs household on the waiting list. If this is done, the household should understand and have an agreement in writing that they may be asked to transfer to another comparable but non-accessible unit if the accessible unit is needed by a person with a disability. While the household may have to transfer if there is a vacant unit, they will not be evicted or otherwise terminated to make room for a special need household, but they will have to pay any costs incurred in a transfer. This agreement should be incorporated into the lease.

## **P. Elderly Housing**

A property which includes a specific restriction for the elderly must conform to the federal Fair Housing Act Amendment and The Housing for Older Persons Act of 1995 rules pertaining to Elderly properties. For purposes of this manual regarding Tax Credit, Bond, HOME, NSP and NHTF units; The Fair Housing Act Amendment lists the following permissible exceptions for housing for the Elderly.

1. Housing intended for and solely occupied by residents who are 62 years of age or older, or
2. Housing intended for and operated for persons 55 or older, with required amenities, where, at all times, at least 80% of the total housing units are occupied by at least one resident who is 55 years of age or older.

55 and older housing: Although the Fair Housing Act stipulates that 80% of the total housing units are occupied by at least one 55 or over resident, the WCDA requires that for any new move-ins, 100% of the units will be leased to households with at least one 55 or over resident. The 20% stated in the Fair Housing Act may only be used for attrition. Thus, if the qualifying 55 year old moves out, you will probably not have to evict the rest of the residents in the unit without jeopardizing the Elderly status of the property. Owners may be more restrictive and require all tenants to be at least 55 years of age or older. LIHTC, Bond, HOME, NSP and NHTF programs do not have the same definition of Elderly Housing as some other HUD and RD programs which include the disabled in their definition of Elderly. However, if your project has other HUD or RD

funding you will use their broader definition of Elderly.

Therefore, be aware that you cannot rent to a household with someone "who is almost 55 years old", because you have now set a precedent and will have to rent to anyone that is "almost 55 years old" which may cause you to lose your "elderly" designation. Elderly properties must verify the age of the residents using acceptable forms of proof of age.

## **Q. Evictions**

Pursuant to Revenue Ruling 2004-82, an Owner may only evict residents for "Good Cause" as defined by the state or local jurisdiction. Non-renewal of a lease without good cause is also prohibited. Generally, good cause shall mean the serious or repeated violation of material terms of the lease or a condition that makes the resident's unit uninhabitable. The 2013 Final HOME Rule expressly states that an increase in a tenant's income does NOT constitute good cause for termination of, or refusal to renew, a lease. The IRS has always stated that an increase in a tenant's income is not good cause for termination of, or refusal to renew, a lease.

It is of the utmost importance that you document all violations perpetrated by any tenant or tenant's guest. This includes written documentation, taking pictures, saving phone messages, emails and texts that you receive from the tenant or any other source. It is also crucial that you promptly serve a written and dated notice of any violation. Follow up to make sure that any minor violation is remedied and take action to evict for any major violation. It is important to keep track of the number and frequency of violations in order to establish a pattern of behavior.

The circumstances for eviction should be clearly spelled out in all leases. All termination and non-renewal notices served upon residents must include a list of the specific violations constituting good cause. Under federal law, the resident has the right to receive this report, showing good cause, in order to prepare a defense to any eviction action brought against them. It is also important to note that violations by the resident of the Tax Credit, Bond, HOME, NSP and NHTF program regulations or their active lease requirements are considered good cause. Fraud and criminal activity are also considered good cause, and these activities should be addressed in the lease.

## **R. Swapping Set-asides**

In a project that has Tax Credit and HOME units it may be necessary to change a HOME unit into a higher income level Tax Credit unit if the HOME unit's household income increases above the 80% HOME income limit. It is important to remember that you cannot increase that new Tax Credit household's rent until you have replaced that

household with a lower income HOME qualified household at the HOME restricted rent level. You may find that one of your Tax Credit households has had a decrease in income and will now qualify for the HOME assistance. If so, you could swap the set-asides for these two units as long as they are living in units that have the same number of bedrooms. The goal is to constantly have the agreed upon number of HOME and Tax Credit units at the agreed upon bedroom size, income and rent levels. This requires that you pay constant attention to HOME tenant income levels and is one of the reasons that annual re-certifications for HOME units are required in Wyoming. This is also one of the reasons that WCDA requires all Tax Credit projects that also have HOME units to include the complete HUD verbiage in the lease or have the Affordable Housing Addendum and the Federal Privacy Act Statement in all tenant files.

## **S. Uniform Physical Condition Standards**

Section 42 states that housing finance agencies must use the HUD Uniform Physical Condition Standards (UPCS) or local and state codes for inspection of Tax Credit and Bond properties; whichever is stricter. The HOME, NSP and NHTF programs also require that we monitor to these same standards. Owners are required to abide by all local and state codes, but WCDA monitoring staff will inspect to local and state codes and UPCS regulations. A copy of the UPCS Dictionary of Deficiency Definitions can be obtained at <http://www.wyomingcda.com/index.php/multifamily/C92>

This document provides the level of severity for each infraction. WCDA will inspect the site, building exterior, all major systems, common areas and individual units. All level 1, 2 and 3 infractions will be reported to the IRS on form 8823. WCDA will also inspect for health and safety concerns and all life threatening incidents will be reported to the IRS on form 8823. Health and Safety issues identified during an inspection visit must be corrected within 24 hours of the finding and HUD requires the inspector to inspect a property more often when Health and Safety issues are discovered.

The WCDA advocates aggressive maintenance procedures and policies. It is much less costly to repair and maintain systems, sites, exteriors and units on a regular basis than to allow situations to get out of hand. WCDA is responsible for monitoring the physical condition of projects and we promote good curb appeal, among other things, as we want the public to have a desire to live in your project.

## **T. On-Line Reporting Requirements**

All Project Owners/Management Companies will be required to use the WCDA's Procorem Compliance Application On-Line system. Procorem is an internet-based reporting system that enables Project Owners/Management Companies to upload the

Tenant Income Certifications and Re-certifications, for all properties that need to be submitted to the WCDA on or before February 28<sup>th</sup> each year.

The Procorem Compliance Application On-Line system automates and replaces the annual reporting requirements, with the exception of the Annual Owner's Certification of Continuing Compliance, the Contact Information Form and the Audited Financial Statements. The Annual Owner's Certification of Continuing Compliance and Contact Information Form are required to be submitted to the WCDA on or before February 28<sup>th</sup> each year and the Audited Financial Statements are required to be submitted to WCDA annually on or before March 31<sup>st</sup>.

#### **Tenant and Project Data Input**

Project Owners/Management Companies are required to enter unit occupancy and tenant information for each Tax Credit, Bond, HOME, NSP and NHTF unit into the Procorem Compliance Application On-Line system. Project Owners/Management Companies are responsible for ensuring the accuracy of information entered into Procorem Compliance Application On-Line. Information will be added to the Procorem Compliance Application On-Line system at the time of move-in, any change in household composition, any change in rent amount and re-certification of household. After December 31<sup>st</sup> of each year Project Owners/Management Companies are responsible for uploading the previous year's information.

### **U. Compliance Training Requirements**

All Project Owners must attend and pass the required testing to obtain a Compliance Certification by a nationally recognized firm in the Affordable Housing Industry as approved by WCDA, prior to the project being placed in service or provide a Certification showing they have completed the training successfully in the past 5 years. Each Owner must also successfully complete compliance training at least once every 5 years during the compliance period. This training could be accomplished by attending WCDA's annual Compliance training seminar.

A Representative of the Management Company must attend and pass the required testing to obtain a Compliance Certification by a nationally recognized firm in the Affordable Housing Industry as approved by WCDA, prior to the project being placed in service or provide a Certification showing they have completed the training successfully in the past 3 years. Each Manager or Management Company representative must also successfully complete compliance training at least once every 3 years during the compliance period. This training could be accomplished by attending WCDA's annual Compliance training seminar.

For HOME and/or NHTF only projects, all new management staff will be required to

attend one-on-one training with the WCDA Compliance Officer. This training will take place at the WCDA office, will be project specific and tailored to the knowledge level of the new management staff.

Due to lack of entities offering testing on HOME and/or NHTF only projects, testing is not a requirement for projects which only contain HOME and/or NHTF funding. However if any project has a history of chronic non-compliance, WCDA may require successful completion of a Compliance Seminar/Schooling etc. which may include passing the required testing for Certification.

## **V. Change of Property Ownership or Management**

An Owner may not sell a property or transfer its interest in a Tax Credit, Bond, HOME, NSP or NHTF funded property without prior notice to the WCDA and prior written consent by the WCDA. Detailed information on ownership transfers can be obtained by contacting WCDA.

An Owner may not change Management Companies for a Tax Credit, Bond, HOME, NSP or NHTF funded property without prior notice to the WCDA and prior written consent by the WCDA. WCDA may want detailed information on the experience of the new company and contact information for other states where they are managing affordable housing projects.

## 6. HOME, NSP and NHTF Compliance

### A. Origination and Purpose

The HOME Program was created under Title II (the Home Investment Partnerships Act) of the National Affordable Housing Act of 1990. The general purposes of HOME include:

- Expansion of the supply of decent and affordable housing, particularly rental housing, for low and very-low-income Americans.
- Strengthening the abilities of State and local governments to design and implement strategies for achieving adequate supplies of decent and affordable housing.
- Extending and strengthening partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of affordable housing.

The Neighborhood Stabilization Program (NSP) was created by the Housing and Economic Recovery Act of 2008. All of the funding from this program has been allocated, but in Wyoming we do have 2 multi-family projects and 4 single-family homes that fall under the rules and regulations for NSP. These rules and regulations can be found at 24 CFR Part 570. WCDA will be enforcing compliance requirements for NSP which are almost exactly the same as the HOME program requirements. The one major difference is that the NSP program does not have any student restrictions.

The National Housing Trust Fund Program (NHTF) was created by the Housing and Economic Recovery Act section 1131 and is governed by the regulations found at 24 CFR Part 93. To date, the State of Wyoming has not allocated any funds under this program, but expects to receive applications for this funding beginning in 2017. The compliance requirements for NHTF will be almost exactly the same as the HOME program requirements. The major differences being that all NHTF units must be occupied by households with incomes that do not exceed 30% of the HUD-area median income, rents cannot exceed the 30%, extremely Low level, the NHTF program has its own set of rent and income limits, the minimum affordability period for NHTF is 30 years and the NHTF program does not have any student restrictions.

### B. Placed in Service Date

For HOME, NSP and NHTF funded properties the placed in service date is the date that the PJ (WCDA) is able to close out the funding information in HUD's Integrated Disbursement Information System (IDIS). Close out in IDIS cannot occur until the



Owner/Developer has provided all required documentation, including initial tenant information, to implement payment of the final draw. The Compliance period also known as the Affordability period cannot begin until the project has been closed in the IDIS. Thus, it is to the benefit of the Owner/Developer to provide WCDA with all required documentation in a timely manner. This also means that in a combination HOME, NSP or NHTF and Tax Credit project, the Placed in Service date for each program will begin at different times.

### **C. Record Keeping, Retention and Submission Requirements**

Reports and records are the key way that owners demonstrate that they are in compliance with HOME, NSP and NHTF requirements, including applicable property standards and affordability and occupancy requirements. The WCDA and/or HUD may specify data, reporting frequency and submission timeframes in its requirements. The owner should ensure that the property manager has systems in place to track rents, incomes, vacancies, marketing, property repairs and property maintenance.

1. Projects should have a complete **tenant file** for every household which includes at the very least; an application for tenancy, income and asset calculation forms, source documentation, Interview Checklist, TIC, a 12 month Lease (no less than 365 days) and all other 3rd party source documentation necessary to prove eligibility. As all HOME, NSP and NHTF tenants must be re-certified annually, this documentation will also be included in the file. Tenant files must be retained by the owner for the most recent five years throughout the period of affordability, until five years after the end of the affordability period.
2. Projects will maintain a **general administrative file** which will include documentation necessary to the administration of the project; such as marketing activities, rent and occupancy reports and policies and procedures.
3. Projects will maintain **rent rolls** which will reflect which units are HOME, NSP or NHTF-assisted units at any given point in time. At a minimum a rent roll should denote the unit number, name of tenant, move-in date, amount of rent paid by tenant, amount of rental assistance the household receives and the set-aside for the unit.
4. Projects will maintain **maintenance files** which will document all physical improvements, work orders and outside inspection reports.
5. Projects must also keep a file containing all **wait listed applications** for tenancy, filed in order of receipt.
6. Projects must also keep a file containing all **rejected applications** accompanied by written notification to rejected applicants stating the reason for rejection. Remember a copy of the VAWA notification of a victim's rights must be included with all denied application letters.

**All of these files will be made available for inspection by the WCDA**

**monitor at time of on-site inspections, or as otherwise required.**

If there are any litigation, claim, negotiation, audit, monitoring, inspection, or other actions started before the expiration of the required retention period, the owner must retain the records until these issues have been resolved.

Annual tenant certification reporting will be done via Procorem Compliance Application On-Line System and submitted to the WCDA on or before February 28th of each year. It is important to remember that the reporting done via Procorem Compliance Application On-Line System is for units and tenants only from the previous year. For example: the form remitted on or before February 28, 2019 will only have the information on it for the time period running from January 1, 2018 through December 31, 2018. Owners that have not submitted these reports or have submitted reports that are incomplete by February 28th will be charged a late fee of \$25 per day.

HUD's Latest Final Rule requires that Owners attest that certain compliance requirements are being adhered to at each property. WCDA has created a HOME, NSP and NHTF Annual Owner's Certification form that must be submitted on or before February 28th of each year. These certifications will be completed by the Owner, signed by the Owner, the Owner's signature will be notarized and the Original Certification will be mailed to the Compliance Officer at WCDA. These forms can be accessed on the WCDA website at: <http://www.wyomingcda.com/index.php/multifamily/C92>

A copy of the current utility allowance being used and an updated project contact sheet are also required to be submitted on or before February 28<sup>th</sup> of each year.

Projects are also required to submit, on an annual basis, their financial audit for the most previous audit period on or before March 31st. HUD now requires any project with 10 or more HOME, NSP or NHTF assisted units to provide to WCDA an Audited Financial Statement on an annual basis. Tax Credit projects with HOME units have already been submitting these statements, but now HUD's requirement will affect any HOME, NSP or NHTF only project with 10 or more units.

**D. HUD Requirements regarding Utility Allowances**

Projects with HOME or NHTF funding that was committed to the project before August 23, 2013 may use Utility Allowances provided by a Public Housing Authority or may use any of the methodologies listed below.

In May 2016 HUD set the date for projects with HOME or NHTF funding committed on or after August 23, 2013 that will change the requirement for calculating utility allowances for projects with HOME or NHTF units. At that point, utility allowances submitted with funding

applications and used by those projects awarded funding after that date must be calculated using one of the following methods.

The following five methodologies used in other Federal housing programs will meet the HOME and NHTF regulatory requirement that the utility allowance for a specific project be based upon the utilities used at the project. An Owner may adopt one or more of these options across its HOME or NHTF rental program or may limit their use to a single method. However, a project must use the same UA methodology for all HOME and NHTF units within a single project. HUD encourages Owners to align with other funders, to the extent feasible, when determining the UA for a project with multiple funding sources. The acceptable methods include, but are not limited to:

1. HUD Utility Schedule Model -

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

2. Multifamily Housing Utility Analysis -

In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). HOME 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.

3. Utility Company Estimate (26 CFR 1.42-10(b)(4)(B)) –

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

4. LIHTC Agency Estimate (26 CFR 1.42-10(b)(4)(C)) –

Under IRS regulations, the tax credit allocating agency estimate entails two options: 1) an agency estimate that is a prospective projection of utility costs based on site and building characteristics, and 2) an actual usage methodology. If a project is receiving both HOME and LIHTC funding, a PJ may coordinate with the LIHTC agency to obtain a project-specific agency estimate or may accept a UA approved by the LIHTC agency based on its actual usage methodology. The WCDA will not be providing agency estimates.

5. Energy Consumption Model (Engineer Model) (26 CFR 1.42-10(b)(4)(E)) –

A PJ may approve a UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

More information regarding the new Utility Allowance regulations for the HOME and NHTF programs can be located at:

<https://www.hudexchange.info/resources/documents/HOMEfires-Vol13-No2-Guidance-on-How-to-Establish-Utility-Allowances-for-HOME-Assisted-Rental-Units.pdf>

# 7. Special HOME, NSP and NHTF Rules

## A. Income Limits

All of WCDA's HOME and NSP Agreements are written with a maximum gross income limit at or below Very Low Income or 50% of Area Median Income (AMI). All of WCDA's NHTF Agreements will be written with a maximum gross income limit at or below Extremely Low Income or 30% of Area Median Income (AMI). Thus, a household must qualify at the stated AMI or below. HUD issues these income limits on an annual basis and again, these limits are now different than the published limits for the LIHTC program. Some projects have stricter income limits or multiple limits that an owner has agreed to and these limits must be adhered to. It is up to the owner to know what the income limits are for their HOME, NSP or NHTF units. Home and NSP will use the same income limits but HUD does provide a separate set of income limits for NHTF.

## B. Rent Limits

All initial rent limits for HOME, NSP and NHTF units are set forth in the restrictive Agreement. These rent amounts include any applicable utility allowance. According to HUD, Wyoming cannot allow owners to increase HOME, NSP or NHTF unit rents without WCDA written approval. However, Owners may decrease HOME, NSP or NHTF unit rents, at any time, as sometimes, due to market conditions, this may be necessary.

HUD's definition of gross monthly rent is equal to the tenant paid portion plus any housing assistance plus any applicable utility allowance plus any non-optional charges. HUD sets the maximum gross limits and WCDA will tell you the maximum that you can collect which includes the tenant paid portion, any rental assistance and non-optional charges. Collecting more than the maximum amount approved by HUD or WCDA is non-compliance. The utility allowance has been taken into consideration in all HOME, NSP & NHTF rents approved by WCDA; phone, cable and internet are not considered utilities, so the amount allowed by WCDA is the maximum amount that you can collect which includes the tenant paid portion, any rental assistance and non-optional charges.

HOME, NSP and NHTF rent increases must be requested in writing. Rent increase requests will be sent to the Compliance Officer at WCDA. A rent increase request should define the need for the increase, be specific in the amount of the increase, and must be accompanied by the latest financial statement for the property.

Rent increases will only be reviewed once a year and only for projects that have no outstanding compliance issues. Should an increase be approved or denied the owner will receive written confirmation from WCDA. WCDA and HUD prefer that projects

request small increases on an annual basis rather than waiting several years and requesting a large increase. WCDA considers a small increase to be about \$5.00 to \$20.00 per month. WCDA will not approve any large increase that would cause a financial hardship to the tenants.

### **C. Annual Re-certification of HOME, NSP and NHTF Units**

HUD requires that all tenants in HOME, NSP and NHTF assisted units must be income re-certified on an annual basis. WCDA requires for all HOME, NSP and NHTF that a full third-party certification be done for each household every year. This needs to be done by the anniversary date of the tenant's move-in, or for projects with 10 or less total units, HUD and WCDA allow that all tenant re-certifications may be done at the same time each year. Re-certifications must be completed no later than the anniversary of the effective date of the tenants' original certification. If your project has 10 or less total units, and you choose to re-certify all units at the same time, this means that all households must be re-certified at whatever time you decide upon. This may mean that you are re-certifying a household that just recently moved in.

### **D. Floating or Fixed HOME/NHTF Units**

WCDA considers all HOME and NHTF units to be "floating". In a Tax Credit project with HOME or NHTF units these units are initially designated as HOME or NHTF assisted, but the designation changes, or "floats" among all comparable units within the same HOME or NHTF assisted rental project as units are vacated and/or household's incomes go over the HOME or NHTF limit. In a property with only HOME or NHTF units, the HOME or NHTF unit designation will never change.

As per HUD requirements, at time of re-certification, HOME households found to have an income over 80% of AMI must have their rent increased to 30% of 1/12<sup>th</sup> of their adjusted gross annual income or if they are part of the Tax Credit project, they will become a Tax Credit unit at the highest income and rent level and will be replaced with another HOME unit (must be same bedroom size). This is information that must be included in all Leases. Questions regarding calculating adjusted annual income should be directed to the Compliance Officer at WCDA.

As per HUD requirements, at time of re-certification, NHTF households found to have exceed the allowable NHTF income limit, as published by HUD, will continue to qualify as an NHTF eligible unit until a comparable vacant unit (must be same bedroom size) is rented to an NHTF income qualified household. Once the unit is replaced, the over income unit is no longer treated as an NHTF unit, and must now be considered a HOME or LIHTC unit.

It is important to remember that you cannot increase the newly designated household's rent until you have replaced that household with a lower income HOME or NHTF qualified household. The goal is to constantly have the agreed upon number of HOME, NHTF and Tax Credit units at the agreed upon income and rent levels. This requires that you pay constant attention to tenant income levels and is one of the reasons that annual re-certifications are required in Wyoming for HOME and NHTF units.

#### **E. Student Rule for HOME Assisted Units**

*(Currently this rule does not apply to NSP or NHTF Units)*

**Basically, from now on, you cannot extend the benefits of HOME funding to any Household that has anyone in the household who is either a part-time or full-time student at an institution of higher education, is pursuing a degree or certification and is under the age of 24 unless they meet one of a few specific exceptions.**

So, the key things in that last paragraph are:

You cannot rent a HOME unit to any household that has even one person in the household who:

- a. Is either a part-time or full-time student at any institution of higher learning and is pursuing a degree or certification
- b. And is under age 24

**Unless, the student meets one of the following exceptions:**

- Is a veteran
- Is married (and living with spouse)
- Has a dependent child living with them
- Is not claimed on a parents' tax return, AND is of legal contract age AND has parents who will certify as to whether they provide any financial assistance AND the student has lived separate from their parents for at least a year OR meets the US Department of Education's definition of an independent student.
- Is eligible to receive Section 8 assistance themselves and has parents who are eligible to receive Section 8 assistance
- Lives with a parent who is receiving Section 8 assistance

Owners and managers must adjust tenant certification procedures to consider student status according to this interpretation. Wording to this affect should be included in all leases. Most comprehensive leases include the requirement that the household

immediately alert management to any change in student status. In addition, household student status must be re-verified annually to confirm the continuing eligibility of the household. Failure to verify student status is noncompliance.

A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. A household that was eligible at move-in can later become ineligible based on student status.

As noted above, there are exceptions that allow students under age 24 to qualify for HOME assistance. Documentation verifying the exception being claimed must be included in the tenant file and it should be verified to be true and pertinent on an annual basis.



# 8. Noncompliance

## A. Types of Noncompliance

Noncompliance may be defined as a period of time the development, specific building, or unit has failed to adhere to required regulations and procedures. These procedures may be IRS Section 42 requirements, Bond Requirements, HOME regulations, NSP regulations, NHTF regulations or WCDA requirements. Noncompliance can lead to recapture or loss of credits for an LIHTC project or the requirement to repay all HOME, NSP or NHTF funding or fines imposed by WCDA.

All noncompliance found at an LIHTC project still within its initial 15 year credit period, will generate a form 8823 to be forwarded to the IRS. Only the IRS has the ability to determine the next course of action.

Noncompliance for a HOME project means that the project is not meeting its affordability requirements and the affordability period will be extended and/or penalty fines may be levied and continued noncompliance could result in legal action.

Uncorrected noncompliance at an LIHTC, Bond, HOME, NSP or NHTF project could result in penalty fines being charged to the owner. In general, noncompliance can occur for the following reasons; although this is not an all-inclusive list:

- Inadequate certification documents
- Failure to obtain and retain proper income verifications
- Initial Lease terms that don't meet the program requirements
- Missing signatures
- Late initial certification or re-certification
- Lease issues
- Violations of UPCS or local inspection standards
- Failure to submit year end documentation on time
- Failure to respond to requests for additional information
- Incomplete record-keeping
- Failure to properly identify full time students in an LIHTC unit
- Failure to properly qualify students according to the HOME rule
- Failure to maintain and update utility allowance documentation
- Charging rents over the maximum limit
- Failure to maintain the minimum set-aside
- Any change in the applicable fraction or eligible basis that results in a decrease in the qualified basis
- Housing a non-eligible tenant
- Failure to use the WCDA required forms

Currently, the Wyoming Affordable Housing Plan notes noncompliance fees to be \$25.00 per day that the project is out of compliance or days that reports are past due. Thus, correcting noncompliance expediently is to the benefit of the project.

## **B. Liability**

**COMPLIANCE WITH THE REQUIREMENTS OF THE HOME PROGRAM, NSP PROGRAM, NHTF PROGRAM, BOND PROGRAM AND/OR THE TAX CREDIT PROGRAM IS THE RESPONSIBILITY OF THE OWNER OF THE BUILDING FOR WHICH THE FUNDING AND/OR CREDIT IS ALLOWABLE. WCDA'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS DOES NOT MAKE WCDA LIABLE FOR THE OWNER'S NONCOMPLIANCE.**

**AS WCDA IS ALWAYS IN THE PROCESS OF MAKING UPDATES TO OUR COMPLIANCE MONITORING PROCESS, THIS MANUAL IS SUBJECT TO CHANGES AND UPDATES AT ANY TIME. PROJECTS WILL RECEIVE NOTICE OF ANY CHANGES OR UPDATES AS SOON AS POSSIBLE.**

## 9. Forms & Reporting Requirements

This section contains a list of required and recommended forms to be used for tenant certification, clarification and annual report submissions. These forms will help each project to clearly and concisely reach a standard that sufficiently meets the requirements of the Section 42 code requirements and HUD's record keeping requirements. Each of these forms can be accessed on the WCDA website at: <http://www.wyomingcda.com/index.php/multifamily/C92>

When filling out any form, it is mandatory that every line and every question be addressed. Make certain that every form is filled out in its entirety. This includes forms that you have asked a third party to complete. Unanswered questions must be followed up on by a phone, email or fax clarification.

### A. Required Wyoming Forms

The following is a list of forms that are Wyoming specific format required. Forms not listed as required in Wyoming, may be forms currently supplied by your company. Wyoming's only requirement is that the forms your company uses are detailed enough to adequately meet the LIHTC and HUD certification or verification requirements.

- LIHTC Tenant Income Certification (TIC)
- HOME Tenant Income Certification (TIC) – for HOME only projects
- LIHTC First Year Qualified Basis Certification
- Owner's Certification of Continuing LIHTC Program Compliance
- Owner's Certification of Continuing HOME, NSP or NHTF Program Compliance
- Current Contact Information Sheet
- Federal Privacy Act Statement

### B. Forms Available for your convenience

The following list of forms is available for your convenience. These specific formats are not required and WCDA will accept comparable forms currently in use by your company. However, noncompliance will occur if the forms that you are using do not adequately meet the LIHTC and HUD certification or verification requirements. Each of these forms can now be accessed individually on the WCDA website at: <http://www.wyomingcda.com/index.php/multifamily/C94>

## **Other Forms**

- Affidavit of Estrangement
- Affordable Housing Lease Addendum
- Annuity or Stock Verification
- Application to Rent
- Asset Calculation Worksheet
- Checking, Savings, CD, IRA, Keogh & 401K Income Verification
- Child Support Not Received Affidavit
- Child Support or Alimony Verification
- Disability Certification
- Estrangement Certification
- Full-time Student Job Training Exception Verification
- Income Calculation Worksheet
- Life Insurance Verification
- Live-in Aide Agreement
- Need for Live-in Aide Verification
- Pension Verification
- Public Assistance Verification
- Real Estate Evaluation Worksheet
- Real Estate Verification
- Re-certification Update
- Regular Contributions Verification
- Release of Confidential Information Authorization
- Request for Reasonable Accommodations & Reasonable Modifications
- Self-Employment Affidavit for an existing Business
- Self-Employment Certification for a new Business
- Student Questionnaire
- Student Status Certification
- Student Verification
- Telephone Clarification
- Tip Income Certification
- Unborn Child or Adoption Self-certification
- Under \$5000 Asset Verification (for LIHTC Only)
- Unemployed/Non-employed Applicant Affidavit
- Verification Cover Letter
- Verification of Employment
- Zero Income Certification

## C. File and Reporting Requirements

### Tenant Files

At a minimum, the following documentation must be present in a tenant file:

- Application for Housing
- Tenant Consent for Release of Information
- Income & Asset Calculation Worksheets
- 3rd Party Source Verifications
- Tenant Income Certification (TIC)
- Certification of Zero Income (if applicable)
- Under \$5,000 Asset Certification (if applicable)(not accepted by the HOME, NSP or NHTF programs)
- Lease (including any addendums)
- Federal Privacy Act Statement – required for all LIHTC Only projects
- Affordable Housing Lease Addendum – required for all units in projects with any HOME funding
- Utility Allowance documentation
- Re-certification documentation (if applicable)
- Proof of age for Senior Projects

### Annual Reporting for LIHTC Projects

The following forms and information are required to be submitted to WCDA on or before February 28th of each year

- Owner's **Original** Certification of Continuing LIHTC Program Compliance – now available on the WCDA website
- Current Utility Allowance Schedule
- Demographic/Economic Information by Household (via Procorem Compliance Application On-line system)
- Current Contact Information Sheet (**also updated upon any change in staff**)

The project's most recent audited financial statement must be submitted to WCDA on or before March 31<sup>st</sup> of each year.

### Annual Reporting for HOME, NSP and NHTF Projects

The following forms and information are required to be submitted to WCDA on or before February 28th of each year

- Owner's **Original** Certification of Continuing HOME/NSP Program Compliance - now available on the WCDA website
- Current Utility Allowance Schedule
- Demographic/Economic Information by Household (via Procorem Compliance Application On-line system)
- Current Contact Information Sheet (**also updated upon any change in staff**)

For HOME, NSP and NHTF projects with 10 or more federally funded units the project's most recent audited financial statement must be submitted to WCDA on or before March 31<sup>st</sup> of each year.

# Required in Wyoming Forms

- LIHTC Tenant Income Certification (TIC)
- HOME Tenant Income Certification (TIC)
- Owner's Certification of Continuing LIHTC Program Compliance
- Owner's Certification of Continuing HOME Program Compliance
- Current Contact Information Sheet
- Federal Privacy Act Statement

These forms can be accessed in full through this link on the WCDA website.

<http://www.wyomingcda.com/index.php/multifamily/C92>



# Forms Available for your Convenience

A list of these forms is provided on page 68 of this manual or  
These forms can be accessed in full through this link on the WCDA website.  
Click on Other Forms

<http://www.wyomingcda.com/index.php/multifamily/C92>

## (Other Forms)

## **10. HUD Handbook 4350.3 Chapter 5**

### HUD Income Qualifying Requirements And Income Inclusions and Exclusions

This information can be accessed in full through a link on the WCDA website.

<http://www.wyomingcda.com/index.php/multifamily/C92>