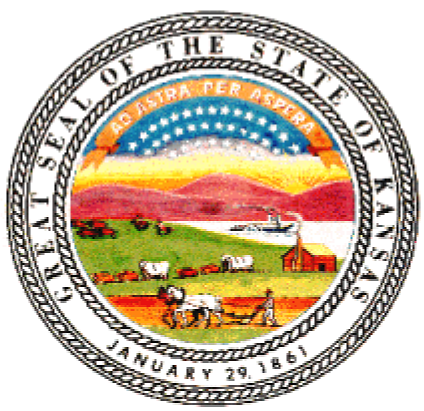
HOUSING TAX CREDIT PROGRAM

2024 COMPLIANCE POLICIES AND PROCEDURES MANUAL



Housing Compliance Division
Effective 2024

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INTRODUCTION

Congress delegated authority for administering the Low Income Housing Tax Credit Program to State Housing Finance Agencies instead of the federal government because it recognized that states are better equipped to address the housing needs unique to its citizens.

Within statutory and regulatory parameters set forth by Congress and the Internal Revenue Service, states develop a variety of practices for allocating housing tax credits and monitoring the resulting developments for compliance. Tailored to respond to specific state needs, compliance practices may vary considerably from state to state. In Kansas, the oversight agency is the Kansas Housing Resources Corporation.

Virtually every tax credit rule has a variation or exception for specific circumstances. It is the responsibility of owners to be aware of applicable rules and regulations affecting their housing developments and to ensure compliance with not only federal regulations but contractual agreements in place with the Kansas Housing Resources Corporation as well.

The Compliance Policy and Procedures Manual is intended to help owners of qualified housing developments achieve and maintain compliance by providing a basic description and explanation of the tax code (specifically IRC §42), and by directing owners concerning specific state requirements. This manual can be downloaded from the Kansas Housing Resources Corporation website at https://kshousingcorp.org/.

For additional information or clarification regarding housing tax credits administered in the State of Kansas, contact Kansas Housing Resources Corporation.

Disclaimer: The procedures and reporting forms herein have not been reviewed or approved by the Internal Revenue Service and should not be relied upon for interpretation of federal income tax legislation or regulations. KHRC makes no representation that complying with these procedures will satisfy all Internal Revenue Service requirements.

OVERVIEW

Established out of the 1986 Tax Reform Act and permanently extended in the 1993 Omnibus Budget Reconciliation Act, the Low Income Housing Tax Credit (LIHTC) program provides tax credits for owners and investors in low income rental housing. The credit offers a dollar-for-dollar reduction in the owner's income tax liability or tax bill. The amount of credit is subtracted from the amount of tax on the owner's federal income tax return after the amount of tax has been calculated. The benefit of the credit is realized when it is sold to investors who contribute equity to the development in exchange for an ownership position which allows them to use the credits. These equity contributions, which are substantial under the program, reduce the amount of other financing needed to develop the housing. They can also be used to add an income stream to the property's operations and thereby reduce the amount of rent tenants have to pay in order for the property to cash flow. The credit is taken annually over a credit period of ten or more years and begins in the year a building is placed-in-service, or at the owner's election, the following year.

The LIHTC program, hereinafter referred to as Housing Tax Credit (HTC) program, has a unique administrative structure in that it operates under Internal Revenue Code Subsection 42 (IRC §42); adopts some concepts and definitions from the U.S. Department of Housing and Urban Development (HUD), particularly Section 8; and is also governed by regulations and other IRS forms of administrative guidance by the Department of Treasury acting through the Internal Revenue Service (IRS).

Affordable housing developments are selected and allocated housing credits by state housing credit agencies in accordance with state priorities and needs that may shift from year to year. These priorities are set forth in each state's Qualified Allocation Plan (QAP). By using the Kansas QAP in conjunction with the Compliance Policy and Procedures Manual, program participants should be better prepared to confront administrative issues that may occur with their Kansas developments that are different from developments they have in other states.

Owners are ultimately responsible for compliance with IRC §42 and accountable to IRS, Kansas Housing Resources Corporation (KHRC), their investors and lenders. The importance of maintaining compliance cannot be underscored enough. Even if noncompliance is corrected shortly after discovery, credits may be lost, previously taken credits recaptured, and tax liability imposed for all or part of the period of noncompliance. Therefore, problems are easier and less costly to avoid than to resolve.

Any financial consequence to the owner as a result of noncompliance, whether identified by KHRC or IRS, is the responsibility of the owner. KHRC makes no representations that complying with our procedures will satisfy HUD, Treasury, Department of Justice, or the Internal Revenue Service.

CHAPTER 1: ALLOCATION

The amount of tax credits authorized for each state is set by population using current Census data and indexed for inflation. Periodically additional revenue is realized by way of new legislation. Interested developers are encouraged to review the current Qualified Allocation Plan (QAP) of record for information about available credits. Ten percent of each state's total allocation is reserved strictly for non-profit agencies. All types of structures from single family scattered sites to elderly high rises can be built as long as it is rental housing. In certain cases, conversion to homeownership is possible after 15 years.

The Kansas Housing Resources Corporation (KHRC) is the state allocating agency for Kansas. IRC §42 provides that each state can impose additional requirements over and above the federal standards to better address local housing needs, to serve special-need groups, and to extend the period of time for which a property is kept as affordable housing. To receive tax credits, an owner must apply to KHRC and be awarded an allocation from the state's available credit pool.

1.1 Federal Grants

Federal grants used as sources of financing for proposed or existing developments are no longer considered when computing Eligible Basis thus entitling the owner to the 9% credit {see the Housing and Economic Recovery Act (HERA), Section 3002(b)}. Federal grants may include Hope VI, USDA Rural Housing Services and HOME dollars. Further, HERA repeals the prohibition on the Section 8 Rehabilitation, Section 8 Moderate Rehabilitation Replacement, and Section 8 Preservation Programs.

Tax Exempt Bonds are another financing resource commonly used with housing tax credits to construct or rehabilitate property. Bond/Credit developments are restricted to the 4% credit (30% Present Value Credit). Changes outlined in the HERA have made compliance easier for these types of developments. The Next Available Unit, Student and Single Room Occupancy rules are now the same; Bond program rules have changed to match the Housing Tax Credit program rules. Bond properties will always use the Multifamily Tax Subsidy Projects (MTSP) income limits. Though bond properties generally follow the tax credit rules, owners should be fully aware of the bond provider issued Land Use Restriction Agreement (LURA), not to be mixed up with the LURA from KHRC. The bond LURA could be more restrictive requiring verification of all assets, how to handle zero income households, transferring households, etc. KHRC monitors to IRC 42 guidelines and not to bond issuer guidelines.

1.2 Eligible Basis

In general, the Eligible Basis of a building is equal to the building's Adjusted Basis for acquisition, rehabilitation or construction costs, subject to certain conditions and modifications set forth in IRC §42(d). Per IRC §42(d) (1) allowable costs include:

A. The adjusted basis of depreciable property subject to IRC §168 for properties that qualify as residential rental property under IRC §103; or

B. The adjusted basis of depreciable property subject to IRC §168 that is used in a common area or provided as a comparable amenity to all residential rental units in the building; or

C. The adjusted basis of depreciable property subject to IRC §168 (other than 1 or 2 above) that is used throughout the tax year in providing any community service facility, as described in IRC §42(d)(4)(C)(iii).

Eligible Basis may include the cost of facilities for use by tenants to the extent there is no separate fee for using the facilities and the facilities are available on a comparative basis to all tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

Example: Laundry Room and Coin Operated Washers and Dryers An owner included the cost of a building that housed a laundry facility in the Eligible Basis. For security reasons, the room is kept locked but every household has a key and access at any time. The owner installed coin operated washers and dryers within the laundry facility. The owner is compliant with IRC §42 because all tenants have access to the laundry facility. However, because the tenants must pay an additional fee to use the washers and dryers, the appliances should not be included in Eligible Basis.

1.2.1 Commercial Use

The cost of a mixed-use development (i.e. a property that includes both commercial and residential rental units) must be allocated according to any reasonable method that properly reflects the proportionate benefit to be derived directly or indirectly by the qualifying residential rental units and the non-qualifying commercial property. Treas. Reg. §1.103-8(b)(4)(v)(c) provides two examples of methods generally considered to be reasonable when allocating costs:

A. Allocating the cost of common elements based on the ratio of the total floor space in the building that is to be used for "non-qualifying property" to all other floor space in the building. For example, in the case of a mixed-use building where a part is to be used for commercial purposes, the cost of the building's foundation must be allocated between the commercial portion and residential rental units based on floor space.

B. In the event that an allocation of costs based on floor space does not reasonably reflect the relative benefits to be derived (directly or indirectly) by the residential rental units and the non-qualifying property, then another method must be used. For example, based on the floor space computation, a building is 50% residential rental property and 50% commercial space. However, only 25% of the parking lot space will be used to service tenants of the residential rental units. The cost of constructing the parking lot must be allocated based on the proportion of parking lot used by the tenants of the residential rental units (25%) and for the commercial portion of the building (75%).

1.3 Qualified Basis and Applicable Fraction

It is not sufficient simply to meet the federal minimum set-aside of low-income units. The amount of housing credits for which a development may qualify depends on the percentage of residential rental space in buildings and units actually occupied by low-income tenants for a particular year. This percentage is the Applicable Fraction. The Applicable Fraction is the lesser of the percentage of units occupied by low-income tenants (the unit fraction) as compared to the percentage of total residential space represented by such units (the floor space fraction). When a building's Eligible Basis is multiplied by the Applicable Fraction, the resultant figure is the Qualified Basis—the building's cost attributable to serving low-income tenants.

A building's Qualified Basis is initially set at the end of the first year of the credit period (i.e. initial qualified basis). Once the credit period has begun, if the Qualified Basis drops, the owner and investors will be subject to a loss or recapture of tax credits. In order to avoid a drop in Qualified Basis, owners must make sure the Applicable Fraction of restricted units for each building in the property, as determined on the last day of the year, does not drop below the fraction established in the first year of the credit period. Units taken off-line during the calendar year for failure to meet IRC §42 compliance regulations causes a reduction in the Applicable Fraction which subsequently affects the Qualified Basis.

If the fraction for a building is anything less than 100% at the end of the first year of the credit period, the value of credit for any additional units qualified in subsequent years will decrease to 2/3 value. In such cases, housing credits at the 2/3 value may be taken for a longer period of time (i.e. the 14 years remaining in the compliance period rather than the nine years remaining in the credit period). The opportunity to claim credits decreases each year the unit(s) fails to qualify under IRC §42 guidelines.

Managers should understand that a reduction in the amount of credit to be received each year also normally invokes "adjuster provisions" under a property's partnership or syndication agreement which in turn causes a further loss of money to the owner.

Example 1: By the end of the second year a 10-unit building has nine of its units rented to qualified tenants. The owner is therefore allowed to claim 100% of the credits on nine of the units but only 2/3 of the credit for the remaining unit after it is rented to a qualified low income household. Note: Each year the unit remains unqualified, the owner loses the opportunity to claim 2/3 of the credit for that year.
Example 2: By the end of the placed-in-service year the owner has eight of 10 units rented. Instead of taking tax credits on the 8 units in the in-service year, the owner elects to defer the credit to the year following placement in service in order to rent the remaining two units. This allows the owner

to claim 100% of the tax credits on all units in the development. (Note: Investor provisions could affect the owner's ability to defer.)

The amount of tax credits for which an owner is eligible depends in large part on the number of low income units assigned to the project. In other words, the higher the number of units set-aside for low income occupancy, the more credits awarded to the project. In many cases, owners set aside all of their units for low income use, thus making their buildings' applicable fraction 100%. Each building is tested at the end of the first year of the credit period to determine how many units are qualified low income units. Based on this number, the initial qualified basis is determined, and compliance or noncompliance with the LURA is documented.

An owner's failure to rent the appropriate number of units required to be set aside in each project can impact the treatment of the buildings with regard to other IRC §42 rules. A building treated as a separate project or buildings considered part of a multi-building project, for which all units are to be both income and rent restricted is eligible for exemption from the Next Available Unit Rule, Vacant Unit Rule, and Recertification Rule.

A. If the project is set up to be 100% low income and the owner is still attempting to rent vacant units to qualified low income residents after the end of the first credit year (commonly seen in new construction developments), the project is still deemed to be 100% low income. Exemption from the Next Available Unit Rule, Vacant Unit Rule and full Recertification Rule applies. The 2/3 Credit Rule is invoked for vacant units later rented to income qualified households.

B. If the project is set up to be 100% low income and the owner still has units occupied by ineligible households at the end of the first year of the credit period (as occasionally seen in Acquisition/Rehab or straight Rehab projects), the project is deemed to be mixed use and the Next Available Unit Rule, Vacant Unit Rule and full Recertification Rule do apply. Owners will be required to demonstrate due diligence in "replacing" ineligible households with qualified households. Once all units are both income and rent restricted the project type changes to 100% low income and the project is exempt from the Next Available Unit Rule, Vacant Unit Rule and full Recertification Rule. The 2/3 Credit Rule is invoked for units later rented to income qualified households after the end of the first credit year.

C. In all cases owner due diligence is required. The Restrictive Use Covenant dictates the project-type (i.e. mixed use or 100% low income). If KHRC determines that an owner is not exercising due diligence in renting all units to qualifying households, it may report a permanent drop in Qualified Basis after three years. Once this occurs, the owner cannot correct the noncompliance and the Next Available Unit, Vacant Unit and full Recertification Rules will always apply. Further, the owner could be required to pay a Violation Fee for failure to uphold commitments outlined in the Restrictive Use Covenant.

D. Owners of project-types determined to be mixed use may discuss converting market units to low income units in order to avoid the extra administrative burden connected with applying the Next Available Unit Rule, Vacant Unit Rule and full Recertification Rules of IRC §42 appropriately. If KHRC agrees, the owner will not be eligible for additional tax credits but would be able to take advantage of the exemptions.

Example #1: The owner has a project-type designated for 100% low income occupancy per the LURA. At the end of the first year of the credit period, 9 of 10 units have been appropriately rented to qualifying households; one unit remains vacant. KHRC determines the project-type is still 100% low income and the NAUR, VUR and Recertification exemptions apply. So long as the owner continues to demonstrate due diligence in finding a qualified household, KHRC will continue to treat the project as 100% low income. Once the owner rents the remaining unit to a qualifying household, the unit will be eligible for only 2/3 of its original value.
Example #2: The owner has a project-type designated for 100% low income occupancy per the LURA. At the end of the first year of the credit period, 9 of 10 units have been appropriately rented to qualifying households; one unit still houses an ineligible tenant. KHRC determines the project-type to be “mixed use” and the owner must apply the NAUR, VUR and Recertification requirements of IRC §42. Once the remaining unit is rented to a qualifying household, the project-type converts to 100% low income and is exempt from the NAUR, VUR and Recertification rules of the program. The last unit is only eligible for 2/3 of its original credit value.
Example #3: The owner has a project-type designated for 100% low income occupancy per the LURA. At the end of the first year of the credit period, 9 of 10 units have been rented to income qualifying households; one unit still houses an ineligible tenant. KHRC considers the project-type to be mixed use and reports the unit out of compliance with its LURA. The NAUR, VUR and Recertification Rules of IRC §42 apply. The owner is encouraged to rent the unit as quickly as possible to a qualifying household. The owner disregards KHRC’s request to meet the terms of its LURA and continues to allow the ineligible tenant to remain in the unit. After three years KHRC reports a drop in Qualified Basis to IRS. The project- type converts permanently to “mixed use.” In year 5 the ineligible household eventually moves out and the owner rents the unit to an income qualified household and desires to begin claiming 2/3 of the credit amount for the balance of the initial 15 year compliance period. The owner is not eligible to claim the 2/3 credit because KHRC has already reported a drop in Qualified Basis to IRS. The credit for the unit is forever lost.
Example #4: The owner has a project-type designated for mixed use per the LURA (nine low income units and one market rate unit). By the end of the first year of the credit period all 10 units have been rented to income qualifying households and the rent is restricted on all units. The owner discusses the situation with KHRC and asks permission to be treated as a 100% low income project even though tax credits are allocated to only 9 of the 10 units. The owner makes this request to avoid applying the NAUR, VUR and Recertification Rules of IRC §42. KHRC agrees to treat the project-type as a 100% restricted project. The owner must continually rent all 10 units to qualifying households.

1.4 Applicable Percentage

The amount of low income housing credits is based on certain costs associated with a building and the portion of the building that low income households occupy. The cost of acquiring and rehabilitating or constructing a building constitutes the building's Eligible Basis. The portion of the Eligible Basis attributable to low income units in the building is the Qualified Basis. The Qualified Basis is multiplied by a factor (Applicable Percentage) so that the credit is limited to 70% or 30% of the Qualified Basis. In summary, the annual credit is:

- Eligible Basis x Applicable Fraction = Qualified Basis
- Qualified Basis x Applicable Percentage = Annual Credit

IRC §42(b)(2)(B), as amended, provides that a new building without bond financing is eligible for an Applicable Percentage equal to a 70% present value credit (PVC) while a new building with bond financing is subject only to the 30% present value credit (PVC).

A new building is in compliance with IRS Form 8823, line (e) if it receives the 70% PVC and bond financing is not used for the building or its operation. The building is also in compliance if it uses bond financing but is qualifying only for the 30% PVC as indicated on IRS Form 8609, Part II. The "Acquisition" component of an Acquisition/Rehab development is also tied to the 4% credit (i.e. 30% PVC) while the "Rehab" component is still eligible for the 9% (i.e. 70% PVC).

1.5 Regulatory Agreements

The allocation process for an award of tax credits is competitive. Properties selected for an award are allocated credits using IRS Forms 8609 or a Carryover Agreement. A Carryover Agreement is issued for developments scheduled to be completed within the next two years.

Examples:

- IRS Forms 8609: ABC Apartments was allocated tax credits from the 2008 credit pool and able to complete rehabilitation activities by December 31, 2008. Buildings placed-in-service in 2008 will begin their first credit year in 2008 or 2009.
- Carryover Agreement: DEFG Apartments was allocated tax credits from the 2008 credit pool and given a Carryover Agreement. Construction must be completed no later than December 31, 2010. IRS Forms 8609 are issued and buildings placed-into-service in 2010. Tax Credits are subsequently claimed in either 2010 or 2011.

The state and federal commitments made by an owner to receive an allocation of credits are initially identified in a Reservation Agreement and then recorded against the land in a Restrictive Use Covenant. Following new construction or the completion of rehabilitation work, tax credits are issued on IRS Forms 8609 for each building based on the percentage of restricted units in the building. Properly documenting a building's low-income occupancy at the time the owner begins claiming credits for a building is very important. KHRC uses this occupancy figure for monitoring and reporting to IRS.

At the end of the tax year in which a building is placed-in-service owners are required to notify KHRC if they intend to wait until the following tax year to begin claiming credits. This information is gathered during the annual report when the owner submits the "Owner's Non-Credit Election Form". KHRC also obtains a copy of the completed IRS Forms 8609 and the Election Sheet for 8609 Part II, line 8(b), if not already submitted by the owner, which further documents the first year of the credit period (i.e. Forms with both Part I and Part II completed).

Part I of IRS Form 8609 is filled in by KHRC and sent to the owner when the development is placed-in-service after all documents required by KHRC have been received and approved. The original IRS Form 8609 goes to the owner for completion of Part II in the first taxable year for which the credit is claimed. KHRC does not issue an 8609 for each year of the credit period. Therefore, before signing and dating the form, the owner should make 15 copies—one for each year of the initial compliance period in the event the 2/3's credit rule is invoked.

The owner files a copy of the IRS Form 8609 with an original signature in Part II with his/her personal or partnership tax return for the first taxable year in which the credit is taken and each successive year thereafter for a period of 10 or more years. If the credit claimed on IRS Form 8586 is a flow-through credit from a partnership, S-corporation, estate, or trust, that entity will complete the IRS form and attach it to the return. See the instructions on IRS Form 8609 and Schedule A for details. Once the original Forms 8609 are filed, copies of the 8609s must be provided to KHRC. Completed and signed copies are maintained within the Procorem work center.

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

1.6 Restrictive and Extended Use Covenants

For all buildings allocated housing credits after 1989, no credit may be claimed on buildings where an extended use agreement is not in effect by the end of the first year of the credit, see IRC §42(h)(6)(A).

If it is determined that an extended use agreement was not in effect by the end of the first year of the credit, an IRS Form 8823 is filed, box 11(k), that prohibits the owner from claiming low-income housing credits on any building that does not have a properly executed extended use agreement.

IRC §42(h)(6)(J) allows a correction to this noncompliance without a tax penalty once the owner executes and records an extended use agreement with the caveat that such correction must occur within one year after being found noncompliant. Once the extended use agreement is in force, the owner becomes eligible to claim low-income housing credits for past taxable years. If noncompliance is not remedied within one year after the notification, the owner loses the credit for past taxable years up to the tax year in which the extended use agreement is properly executed. KHRC protects owners from facing this type of noncompliance as no IRS Forms 8609 will be executed until an Extended Use Agreement is filed (ref. Restrictive Use Covenant). All Extended Use Agreements are a minimum of 30 years, and some agreements may be longer.

To comply with IRC regulations, extended use agreements must:

A. Specify that the applicable fraction for the building for each year in the extended use period will not be less than the applicable fraction specified in the extended use agreement unless an amendment is approved by KHRC;

B. Include language that prohibits owners from evicting or terminating the leases of existing low-income tenants for the entire extended use period other than for good cause, or from increasing their gross rents above the federal allowed maximum; though:

   A lease to rent low-income housing is a contract. A lease contract expires at the end of the time period specified in the lease. At that time, the tenant surrenders the low-income housing unit to the owner and the owner accepts it back. The owner and tenant may renew the contract (or enter into a new contract), thereby allowing the tenant to continue occupying the low-income unit, but the owner is not obligated to renew a lease or enter into a new one, and failure to do so does not, per se, constitute an eviction without good cause. However, the owner must be prepared to demonstrate, if challenged in state court, that the nonrenewal of a lease is not a "termination of tenancy" for other than good cause under IRC §42.

C. Allow tenants (whether prospective, present, or former) who meet the income limit applicable to the building under IRC §42(g) the right to enforce in state court the requirements and prohibitions under IRC §42(h)(6)(B)(i), including both A and B above;

D. Not prohibit any tenant (whether prospective, present, or former) the use of any common area or amenity of the development;

E. Include language that prohibits owners from refusing to lease to Section 8 voucher holders based solely on their status as such a holder;

F. Provide that the agreement is binding on all successors of the owner(s); and

G. Must record the extended use agreement as a restrictive use covenant with respect to the property under state law.

These prohibitions apply for the entire extended use period (see Rev. Rul. 2004-82, 2004-35 I.R.B., Q&A #5).

1.7 Development Type

The owner's application and binding covenants establish the type of development to be built and maintained throughout the restricted use period. As stated earlier, owners receive additional points during the scoring process for agreeing to build developments that meet certain criteria. The property's records should accurately reflect these agreements and the due diligence applied to ensure compliance at both the federal and state levels.

If the low-income occupancy of a building (i.e. the percentage of units leased as low-income) for the first year of the credit period is less than the low-income occupancy documented in the building's Restrictive Use Covenant, the owner will be required to increase the building's low-income occupancy in later years and may be subject to state fines or penalties absent evidence of due diligence (see Chapter regarding Violation Fees).

1.8 Project Elections

IRC §42(g)(3)(D) clarifies the difference between credits claimed as single building projects versus credits claimed as multi-building projects. The owner decides which method will be used and verifies the election on IRS Forms 8609, line 8(b) and the Election Sheet for 8609 Building Election (Single or Multiple). Managers must know which election has been made for each building in the development in order to apply the rules of the program correctly and avoid noncompliance.

Caution: Notwithstanding a checked "Yes" box on line 8(b) but failure to attach a statement or State Form 40, the Election Sheet for 8609 Building Election (Single or Multiple), will result in each building being considered a separate project under IRC §42(g)(3)(D).

Two or more qualified low-income buildings may be included in a multiple building project if they:

- Are located on the same tract of land (including contiguous parcels), unless all of the dwelling units in all of the buildings being aggregated in the multiple building project are rent restricted (see section 42(g)(7)).
- Are owned by the same person for federal tax purposes;
- Are financed under a common plan of financing; and
- Have similarly constructed housing unit.

1.8.1 Single Building Projects

Taking tax credits on a "single building project basis" is achieved when owners check "no" on IRS Forms 8609, line 8(b). It is also the IRS default election when owners fail to make an election on their own. Owners desiring this election will have the tax credit amount for each building established at the time of allocation. Single building projects are considered without regard to other buildings in the development so they must satisfy IRC §42 regulations on a building by building basis. The federal minimum set-aside must be attained and maintained in each building separately; therefore, minimum set-asides can differ from building to building.

Under "single building project rules" tenants cannot transfer outside of the building in which they initially qualify to live unless they re-qualify using the applicable area median gross income limit at the time of transfer. This is equivalent to the initial qualification process for new tenants. Further, for single building projects that are mixed use (i.e. those that have both market and low income units), the Next Available Unit and Vacant Unit rules will apply separately to each building.

1.8.2 Multiple Building Projects

Owners desiring to take credit on a "multi-building project basis" must identify each building that is or will be part of the multiple building project before the close of the first calendar year of the credit. This is accomplished by checking "yes" on IRS Forms 8609 line 8(b) and attaching a statement or State Form 40, to the owner's tax return identifying each building that is to be part of the multiple building project. This information will be submitted to KHRC when returning signed copies of Forms 8609.

The Carryover Allocation will identify all buildings intended to be included in the multi-building project but will not assign basis or credit amounts to the buildings. Rather, the amount of housing credit associated with each particular building will be determined at the close of the year in which the owner places the buildings in-service. The federal minimum set-aside documented on IRS Forms 8609, line 10c must be the same for all buildings in the multiple building project. Further, each building need not meet the federal minimum set-aside independently so long as the project does as a whole.

Tenants desiring to transfer from one building to another may do so in multiple building projects without having to initially qualify again. However, if any building in a multi-building projects is mixed use (i.e. has both market and low income units), the Next Available Unit Rule applies to all buildings in the multiple building project. Therefore, households whose gross income exceeds 140% at recertification cannot be allowed to transfer into another building and still be considered a low-income (qualified) household.

Owner/Agents must be aware of the transfer policies of other programs when the property has multiple sources of funding.

If all units in the multiple building project are both income and rent restricted the owners must verify student status and complete Sample Form 18, Annual Household Certification Update on an annual basis (effective the anniversary of the original move in date). The Next Available Unit and Vacant Unit Rules will not apply.

Credit and compliance periods apply on a building basis. As a general rule, the credit period cannot begin for a building unless the project of which it is to be a part has met its federal minimum set-aside (ref. IRC §42(g)(3)(A)).

When buildings within a project are placed-in-service over a period of time, owners do not have to start the credit period for all buildings in the same year (i.e. commonly referred to as "staggering placed-in-service dates" (ref. IRC §42(f)(1), 42(f)(2), and (42(i)(1)). For example, an owner could start the credit period for half of the buildings in the placed-in-service year, and for the remaining buildings, defer the credit to the following year. As explained in IRC §42(g)(3)(A), if an owner opts to establish different credit periods, the project must meet its federal minimum set-aside at the time the owner claims credit on the first building or set of buildings.

1.8.3 Single and Multiple Building Projects

In rare instances an owner may elect to treat a project as multiple "single building projects" or multiple "multi-building projects" or other combinations therein. This is accomplished by checking "no" on IRS Forms 8609, line 8(b) for the buildings the owner wants addressed separately, and by checking "yes" on IRS Forms 8609, line 8(b) for buildings to be treated as a multiple building project and maintaining the Election Sheet for 8609 Building Election (Single or Multiple). When an election of this type is made, management must increase its due diligence towards recordkeeping in order to apply the rules of the program correctly for each building or project in the development. For example, tenants desiring to transfer from buildings taken as single building projects on IRS Form 8609 would need to initially qualify before being allowed to move into another building at the site. Tenants living in the multi-building project section of the development would be allowed to transfer into another building as long as the building to which they transfer is also part of the same multi-building project election.

The Vacant Unit Rule (a project rule) would apply individually to each building being treated as a single building project and would apply for all buildings that are deemed part of any multi building project if either had market rate units mixed with tax credit units.

The Next Available Unit Rule (building rule) applies individually to each building regardless of the building election made and applies to any building with market rate units mixed with tax credit units.

Note: Unit size must be considered when applying either the VUR and NAUR. Both rules specifically state "a low income unit of comparable or smaller size".

1.9 Non-profit Set-Aside

IRC §42(h)(5) requires that states set aside at least 10% of their total credit ceiling for developments that involve qualified non-profit organizations. A qualified non-profit organization is defined as one that:

A. Meets the tax exempt requirements of either a 501(c)(3) or 501(c)(4) organization;

B. Whose exempt purpose includes the fostering of affordable housing; and

C. Materially participates in the development and operation of the property throughout the compliance period, and is an organization that owns an interest in the property either directly or through a partnership.

For purposes of an allocation, a non-profit organization must have an ownership interest in the low income housing development throughout the initial 15-year compliance period. Whether a non-profit sponsor materially participates will depend on the application of IRC §469(h) to the facts and circumstances of the development.

1.9.1 Material Participation

"Material participation" means involvement in the development and operation of the property that is regular, continuous and substantial. Activity as a limited partner is not considered material participation. Material participation is to be established in an activity that constitutes the principal business or activity of the taxpayer. Involvement in the actual operations of the activity should occur; that is, the services provided must be integral to the operations of the activity. Simply consenting to someone else's decisions or periodic consultation with respect to general management decisions is not sufficient. A regular on-site presence at the operations is indicative of material participation where providing services as an independent contractor is not.

Taxpayers are subject to IRC §42 non-profit rules only if their credit allocation is from the state's set-aside for non-profit organizations. The entire IRC §42 credit will be disallowed for the period of time that a non-profit is not a qualified tax-exempt organization, does not meet the requirement of Rev. Proc. 96-32, does not have an ownership interest, was controlled by a for-profit entity, or did not materially participate in the development and the ongoing operations of the property.

Noncompliance is reported on IRS Forms 8823, line 11(q). To bring the property back into compliance, owners must modify their internal structure and demonstrate they are operating under the non-profit definitions cited above.

1.9.2 State Oversight of Non-profit Participation

KHRC has an obligation to monitor projects that received their allocation from the non-profit set-aside to ensure continued compliance with material participation rules. There are three events used to document compliance:

A. The owner, under penalty of perjury, checks "yes" to question 13 on the Owner's Certification of Continued Program Compliance document and signs the form.

B. State Form 1 is completed at the time the annual report is filed to document material participation activities that occurred during the prior year.

C. KHRC staff check for material participation during onsite inspections.

CHAPTER 2: QUALIFYING UNITS

The owner determines the first year of the credit period. As previously discussed, it will be the year of placement-in-service or the following year. The first year of the credit period is also the first year of the compliance period.

Under IRC §42(f)(2), the applicable fraction for the first year of the credit period is computed based on a month-by-month accounting of units or floor space occupied by income qualified households. Any balance remaining from the first year may be claimed in year eleven. Owners who expect to defer credit to the year following placement in service should complete the Owner's Non-Credit Election Form and submit in lieu of an annual report to KHRC.

2.1 Federal Minimum Set-Asides

Owners/agents should maintain rent-up logs at the site in order to ensure the appropriate set-asides are reached. There are potentially three federal set-asides that affect low income housing tax credit developments in Kansas (a fourth set-aside is specific to N.Y.C only). IRC §42 requires an owner to select a federal minimum set-aside during the application process. Once an award of credits has been made, the minimum set-aside election is irrevocable. The selection is recorded on IRS Forms 8609, line 10c.

The choice of federal minimum set-aside establishes the income and rent limits applicable to the project. The federal minimum set-aside will be one of the following:

A. No less than 20% of all rental units in the project are rented to households with incomes that do not exceed 50% of the Area Median Gross Income (AMGI), adjusted for family size; or

B. No less than 40% of all rental units in the project are rented to households with incomes that do not exceed 60% of the AMGI, adjusted for family size.

C. No less than 40% of all rental units in the project are rented to households with incomes that on average do not exceed 60% of the AMGI. This set-aside is commonly referred to as the Average Income Test (AIT).

The 20/50 or 40/60 election is made based upon numbers of units only and does not consider the square footage attributable to units.

Projects will not fail minimum set-aside as long as the elected set aside is met by the end of the first year of the credit period (which is also the first year of the compliance period) and maintained throughout the extended use period. HTC rental units counted toward the federal minimum set-aside must also be rent-restricted.

A project's failure to meet its federal minimum set-aside election by the end of the year following the year of placement-in-service is reported on IRS Form 8823, lines 11(f) and 11(p). The owner cannot correct this deficiency and the project is considered out of the program.

The failure of a project to maintain its federal minimum set-aside in any subsequent year of the program results in a recapture of previously claimed tax credits back to year one, and no allowable credit for the tax year the noncompliance was recorded for. Low income housing credits continue to be disallowed until the federal minimum set-aside is restored. Noncompliance is reported on IRS Form 8823, line 11(f).

2.1.1 Average Income Test (AIT)

Per Treasury Regulation 1.42-19, a project (as defined by Form 8609, Line 8b) with an Average Income Minimum Set-Aside election meets the Minimum Set-Aside test if:

- The owner identified a "qualified group" of 40% of the project's units having income limits averaging 60% or less,
- The qualified AIT group is identified timely each taxable year of the extended use period, and maintains these records in accordance with the record retention requirements (Treasury Regulation 1.42-5(b)(2)).
- The units in the qualified group are rent restricted
- The units in the qualified group are occupied by qualified households.

The owner must designate units at the various imputed income and rent limits in order to demonstrate that the unit mix will result in a qualifying group of units that meets the Minimum Set-Aside Test. The allowable income and rent designations are 20%, 30%, 40%, 50%, 60%, 70%, and 80% AMI. Other designations are not allowed, and a project is not required to have unit designations at each limit, as long as the average imputed income for the qualified group is at or below 60%. The average is calculated based on the AMI designation of the unit, not the actual income of the household residing in the unit. For example, if a unit is designated as a 40% AMI unit and the household moving into the unit is at 33% AMI, for purposes of calculating the average, this unit is considered a 40% unit.

Owners electing AIT must do so for all buildings where multiple buildings exist. All buildings must be part of the same multiple building project and the project must be 100% tax credit (i.e. applicable fraction for all buildings must be 100%).

For each taxable year in the extended use period, the owner must identify and report two separate "qualified groups" of units: one group for the AIT set aside and one group for the applicable fraction determination. Both groups must have an average imputed income designation that does not exceed 60% AMGI.

The differences between the applicable fraction and minimum set aside calculations are:

Applicable Fraction:	**Minimum Set-Aside:**
Lesser of units or square footage calculation	Unit only calculation
Calculated per BIN	Determined on a project basis (8609 & line 8b)
Used in credit calculation	Used to determine program compliance

KHRC will consider the owner to have "designated" a unit based on the AMI limit being (1) documented on the Kansas Tenant Income Certification (KTIC) kept in the tenant file and (2) reported through KHRC's web-based reporting system (Procorem Tenant Event Portal) as part of the annual reporting requirements.

The income and rent restriction must match on the unit designation. For example, a unit designated as 50% AMI must be rented to a household at or below 50% AMI limit and the gross rent must be at or below the 50% AMI rent limit.

KHRC does not require any special recertification requirements for AIT projects. A 100% tax credit project that has elected AIT is still exempt from full recertifications and can utilize Sample Form 18 (self-certification) annually. If a full recertification is required based on the project make up, other funding sources, or additional owner requirements, KHRC will continue to use the AMI level the household initially qualified under at the time of move in (initial cert) even if the household's income has increased at the time of recertification. The same applies if there is an increase in the self-reported income documented on Sample Form 18. The unit is not redesignated due to an increase in income as long as the unit continues to be rent restricted at the same rent level.

AIT Group vs. Applicable Fraction Group: It is not required to include all low-income units in the project when determining the AIT "qualified group".

Example #1 – **AIT** qualified group:

10 units, Single building project, all units are the same size.
40% Test: 10 units x 40% = 4 units
60 % Test: 80+80+40+40 = 240/4 units = 60% average is met

Average Income (AIT) Group

101 80%	106 40%
102 80%	107 40%
103 80%	108 40%
104 80%	109 40%
105 80%	110 40%

Example #2 – **AIT** qualified group:

20 units, 2 BINS in multi-building project election, all units are the same size
40% Test: 20 units x 40% = 8 units
60% Test: 80+80+40+40+80+80+40+40=480/8 units = 60% average is met

AIT Group

BIN KS8200001		BIN KS8200002	
Unit 101 - 80%	Unit 106 - 40%	Unit 201 - 80%	Unit 206 - 40%
Unit 102 - 80%	Unit 107 - 40%	Unit 202 - 80%	Unit 207 - 40%
Unit 103 - 80%	Unit 108 - 40%	Unit 203 - 80%	Unit 208 - 40%
Unit 104 - 80%	Unit 109 - 40%	Unit 204 - 80%	Unit 209 - 40%
Unit 105 - 80%	Unit 110 - 40%	Unit 205 - 80%	Unit 210 - 40%

Example #1 – **Applicable Fraction** Qualified group:

2 BINS in multi-building project election, 20 units, 100% tax credit (applicable fraction 100%)

AIT Group

BIN KS8200001		BIN KS8200002	
Unit 101 - 80%	Unit 106 - 40%	Unit 201 - 80%	Unit 206 - 40%
Unit 102 - 80%	Unit 107 - 40%	Unit 202 - 80%	Unit 207 - 40%
Unit 103 - 80%	Unit 108 - 40%	Unit 203 - 80%	Unit 208 - 40%
Unit 104 - 80%	Unit 109 - 40%	Unit 204 - 80%	Unit 209 - 40%
Unit 105 - 80%	Unit 110 - 40%	Unit 205 - 80%	Unit 210 - 40%

Applicable Fraction Group

Determine how many units are needed to make up the applicable fraction qualified group. The applicable fraction for each BIN is 100%, therefore the qualified group must include all units to be compliant with the applicable fraction. 80 + 80 + 80 + 80 + 80 + 80 + 80 + 80 + 80 + 80 + 40 + 40 + 40 +40 + 40 + 40 + 40 + 40 + 40 + 40 = 1200/20 units = 60% average is met. The applicable fraction is determined per BIN; however, when determining the applicable fraction qualified group, it is not limited to one building and can span multiple buildings within the same project.

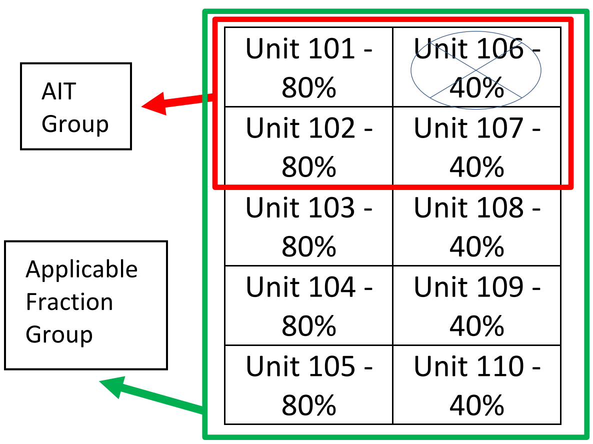
Addressing Noncompliance:

Example #1 –10 units, 1 BIN, 100% tax credit, all units same size

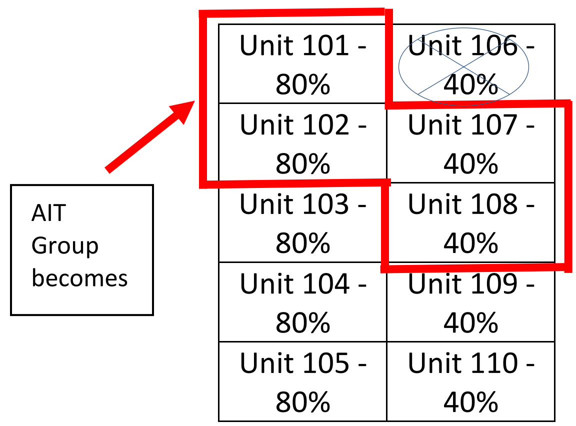
Unit 106 was destroyed by a fire and was not restored by the end of the year. The prior year Unit 106 was part of the AIT qualified group reported by the owner. A different 40% unit must be used to make up the AIT Group.

AIT Qualified Group violation:
40% Test: 10 units x 40% = 4 units
60% Test: Due to the fire in Unit 106, a different 40% unit becomes part of the AIT qualified group for the set aside to be met.

BIN KS8200001



BIN KS8200001

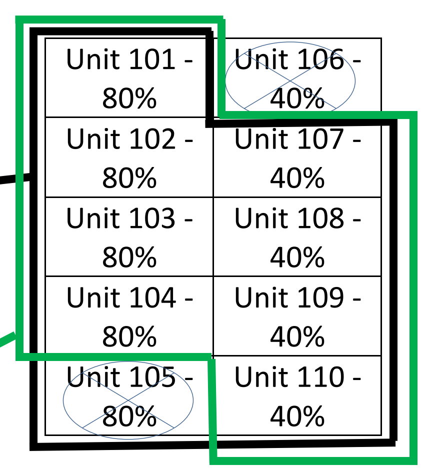


Applicable Fraction violation:
Since the project is 100% tax credit, Unit 106 being offline creates a decrease in the applicable fraction. Removing this unit from the applicable fraction group is not enough to mitigate the applicable fraction violation.

Removing Unit 106 reduces the applicable fraction to 90%, **BUT** this isn't sufficient because the AMI of the applicable fraction group exceeds 60%!
80+80+80+80+80+40+40+40+40= 560/9 = **62.22%**

A second unit that will bring the average below 60% must also be excluded from the applicable fraction group. When Unit 105 is excluded, the Applicable Fraction Qualified group average is back to 60%.

80+80+80+80+40+40+40+40=480/8=**60%**



This results in an applicable fraction reduction from 100% to 80%. An attempt to keep the applicable fraction at 90% (minimizing the reduction in qualified basis) could be made if another units' income can be re-designated so as long as the applicable fraction qualified group calculation averages 60% or less.

For example, if it can be determined that Unit 105 has a household income at 60% AMI or less, it can be re-designated. This would allow for an applicable fraction group calculation of:

80+80+80+80+60+40+40+40+40=540/9=**60%**

Note - The units included in the applicable fraction qualified group can include but are not required to include the units in the AIT qualified group.

Designating and Re-designating Units - Before a unit is occupied, the AMI designation must be determined. The designation is recorded on the Tenant Income Certification and in the Tenant Event Portal effective as of the date the unit is occupied. For an occupied unit that is subject to a re-designation, the household's income must be recorded by completing a Tenant Income Certification proving the household meets the new AMI for the re-designation. The unit's changed designation must be recorded no later than the end of the taxable year in which the change occurs.

Unit designations can change:

1. When a unit transfer is necessary under Violence Against Women Act (VAWA), Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973, other federal, state, or local laws affording tenant protections.

2. When an income-qualified household transfers to a different unit in the project. In this case, the units swap designations.

3. To restore compliance with AIT requirements.

-The unit designation on a vacant, previously qualified, low-income unit can be reduced to a lower income designation and then rented to a qualified household to restore AIT compliance.

-The unit designation on an occupied and qualified, low-income unit can be reduced to a lower income designation to restore AIT compliance, but only if the household of the unit meets the new, lower designated imputed income limitation. This is recorded by completing a Tenant Income Certification, documenting the re-designation effective date along with entering the re-designation in the Tenant Event Portal.

- A vacant market rate unit can be re-designated as a low-income unit. Determine the unit's designated imputed income limit, and then rent to a qualified household at that designation to restore AIT compliance. (Mixed use projects not allowed in KS)

- An occupied market rate unit can be re-designated as a low-income unit, but only if the household meets the designated imputed income limitation. This is recorded by completing a Tenant Income Certification, documenting the re-designation effective date along with entering the re-designation in the Tenant Event Portal. (Mixed use projects not allowed in KS)

The Next Available Unit Rule (NAUR) – Under AIT, the next available market unit used to satisfy the NAUR can be rented and re-designated to an income limit designation that will maintain compliance with AIT instead of the income limit that was designated to the over income unit that triggered the NAUR. Further, the NAUR does not have to be followed in any specific order when multiple low-income units are determined to be over income. Keeping in mind the order used could impact the qualified group of units used for the applicable fraction.

Note - KHRC's QAP disallows AIT on mixed-use developments, however the NAUR may apply should a project unintentionally become mixed-use due to uncorrected noncompliance during the initial lease up.

Waiver for failure to comply with procedural requirements – As specified under 26 CFR § 1.42-19(c)(4), on a case-by-case basis, KHRC has the discretion to waive in writing any failure to comply with AIT reporting requirements up to 180 days after discovery of the failure, whether by the owner or KHRC.

2.1.2 State Set-Asides (AKA state targets)

Oftentimes a property will have restrictions that surpass federal minimum set-aside. These restrictions are referred to as "state targets or state set-asides". For example, the Restrictive Use Covenant may outline state set-asides with 20% of the total units being targeted to qualifying households at 40% of the area median gross income and/or 50% of the area median gross income. The applicable maximum rent for that income designation also applies.

When more than one unit is vacant, and those units have multiple set asides, the owner/agent must make reasonable attempts to rent the lowest targeted income first. Further when the income of a current tenant designated as a state set-aside exceeds the lower targeted income level, the owner/agent must ensure the targeting mix is restored.

Example: An existing tenant meeting the 40% state set-aside now has income exceeding the 40% limit. This was determined either by full-recertification (KTIC) or by annual self-certification (Sample Form 18). At this point, the owner/agent must restore the set-aside mix by renting the next vacant unit to a household meeting the 40% limit. If the owner/agent chooses to increase the rent for the existing household due to the newly established unit designation, it is recommended a full recertification be completed to confirm the household's income via third party. The rent should not be increased without 30 days' notice and not until the current lease term allows. Please note, the same third-party verification process should

happen if the owner/agent has an "open spot" for the lower targeted income designation and wishes to certify an existing household. If the owner/agent plans to fill the lower targeted set aside with an existing household, there must be a written policy for how a household is selected for the process (i.e. start with oldest move-in, start with next effective recert, etc.)

2.2 IRS' "Bright Line" Definitions

There are three occasions where IRS refers to a "bright line." The term appears to apply to timelines IRS deems appropriate based on other federal tax laws. The occasions where the "bright line" terminology is used are:

A. When referring to three years as the length of time an owner has to correct noncompliance before the state is no longer obligated to report a correction. This appears to be due in part to tax returns having a three-year statute of limitation. The reference does not "mandate" that states refuse to report a correction; it only infers that it can.

B. When referring to the notification letter to the owner in advance of an inspection. Noncompliance issues identified and corrected by an owner prior to the date of the notification letter by the State is not deemed as noncompliance.

C. The effective date of the original tenant income certification when it is completed more than 120 days in advance of the beginning of the credit period on an Acquisition/Rehab property. For mixed use projects, the NAUR is first tested at the beginning of the credit period.

2.3 New Construction Developments

In new construction developments, all tenants are new and must be certified and qualified for occupancy upon move-in. For multi-building projects, the suggested method is to stagger the placed-in-service dates of buildings so that each building may be rented to full capacity before the next building is opened to the general public. The owner must attain the federal minimum set-aside before beginning to claim credits on the first set of buildings in the multi-building project.

In the following example, the owner receives an allocation of housing tax credits to newly construct a 10 building complex housing 10 low income units in each building. The federal minimum set-aside elected is 40/60, however all units in the complex are designated for low income occupancy to maximize the amount of housing credits available to the development making the applicable fraction 100% for each building. The buildings are treated as part of a multi-building project. Buildings 1-4 are placed-in-service in September 2009. The owner's agreement with the limited partnership indicates 2009 as the target for initially claiming the credit. The owner realizes it may be difficult to rent all 100 units before December 31, 2009;

therefore, the first set of five buildings is opened for occupancy. Units in the first four buildings are rented entirely to qualified households. Building 5 only has 3 qualified units by the end of the year.

The first four buildings equate to 40% of the total available units. Therefore, the federal minimum set-aside of 40/60 has been reached. Since building 5 only has three qualified units, the owner elects to defer the credit on it to the following year to allow additional time to rent it up. If the owner had included building 5 with buildings 1-4, seven of the 10 units in the building would only be eligible for 2/3 of their credit value for the balance of the initial 15 years because they were not occupied by qualified households at the end of the credit year in which housing tax credits were initially claimed.

Units	Bldg 1	Bldg 2	Bldg 3	Bldg 4	Bldg 5	Bldg 6	Bldg 7	Bldg 8	Bldg 9	Bldg 10
1	HTC	HTC	HTC	HTC						
2	HTC	HTC	HTC	HTC						
3	HTC	HTC	HTC	HTC						
4	HTC	HTC	HTC	HTC	HTC					
5	HTC	HTC	HTC	HTC						
6	HTC	HTC	HTC	HTC						
7	HTC	HTC	HTC	HTC	HTC					
8	HTC	HTC	HTC	HTC	HTC					
9	HTC	HTC	HTC	HTC						
10	HTC	HTC	HTC	HTC						

For new construction developments where an owner chooses to claim each building separately (as its own project), each building must meet and maintain the federal minimum set-aside to continue being eligible for housing tax credits. This is often the preferred method when buildings contain mixed-use households (e.g. those that have low income and market rate units). Under such a scenario, the Vacant Unit Rule and Next Available Unit Rule apply to each building individually. This eases the recordkeeping and tracking burden for management attempting to assure compliance with IRC §42.

Owners can also have some buildings included as multi-building projects while others are treated as single building projects. The IRS Forms 8609 and the Election Sheet for 8609 Building Election (Single or Multiple) or State Form 40 should appropriately identify all buildings considered in the multi-building project. Copies of the completed forms should be returned to KHRC as soon as they are available and no later than the first annual report due date. Completed forms are required so KHRC can apply auditing rules correctly.

2.4 Acquisition/Rehab Developments

In the case of buildings that are acquired and then rehabilitated, there are two separate allocations of credit documented on individual IRS Forms 8609; one for the acquisition credit and one for the rehabilitation credit. Under IRC §42(e)(4)(B), the applicable fraction for the substantial rehab credit will be the same as the applicable fraction for the acquisition credit. Households certified and qualified at the time of Acquisition need not be recertified again at the rehabilitation placed-in-service date.

To assist owners in determining and computing the applicable fraction under IRC §42(f)(2), the following units may be included:

A. Units that are occupied before the beginning of the credit period which are determined to be low income units at the beginning of the credit period under Rev. Proc. 2003-82 and Rev. Proc. 2003-2 C.B. 1097.

B. Units initially occupied after the beginning of the credit period by newly certified income qualified households (regardless of whether rehabilitation costs have been incurred for the unit).

C. Units occupied by income qualified households that moved from other units within the project. The household's income certification (with effective date) move with the household.

D. Vacant units that are suitable for occupancy under IRC §42(i)(3)(B)(ii) and were previously occupied by an income qualified household, regardless of whether rehabilitation costs have been incurred for the unit during the first year of the credit period.

Units are not included in the numerator of the computation of the applicable fraction if:

A. The unit is occupied by a non-qualified household;

B. The unit is vacant and was last occupied by a nonqualified household; or

C. The unit is not suitable for occupancy under IRC §42(i)(3)(B)(ii). These units, including units being rehabilitated, are considered "out of compliance." The noncompliance is corrected when the unit is again suitable for occupancy. The unit's character will be determined based on the household that occupied the unit immediately preceding the rehabilitation during the first year of the credit period. See "D" on the previous list.

2.4.1 Units Rehabilitated During the First Year of the Credit Period

For a unit to be included as a low income unit, documentation of the household's initial eligibility must be on file with the owner. Under IRC §6001, every taxpayer is required to maintain records sufficiently detailed to prepare a proper tax return. This requires the maintenance of such permanent books and records sufficient to establish the amount of gross income, deductions, credits, or other matters to be shown on the taxpayer's return. This requirement extends to the preparation and maintenance of tenant files sufficiently documented to support household eligibility for purposes of claiming the low income housing credit under IRC §42.

Example 1: Units Rehabilitated During the First Year of the Credit Period
An owner acquired a building with 10 units and determined that 6 of the units (1-6) were occupied by non-qualifying households at the beginning of the first year of the credit period on January 1, 2005. Four units (7-10) were occupied by income qualified households. The non-qualifying households moved out and the owner rehabilitated the six vacant units. Five of the rehabilitated vacant units (1-5) were rented to new households that moved into the units in August of 2005. The sixth rehabilitated vacant unit (unit 6) was rented in August to an existing tenant who transferred from unit 7, one of the four units qualifying on January 1, 2005. The owner may include units 1-5, the rehabilitated vacant units occupied by new low income tenants in the applicable fraction computation under IRC §42(f)(2) for August, September, October, November, and December of 2005. For the tenant who transferred between units within the building, the owner may include the un-rehabilitated unit 7 that the tenant occupied from January through July in the computation of the application fractions for those months, but the unit is no longer a low income unit when the household moves to the rehabilitated unit 6 in August; Unit 6 is a low income unit for August through December.

Therefore, for purposes of computing the applicable fraction for August 2005, there are three low income units that have not been rehabilitated (units 8, 9 and 10) and six low income units that have been rehabilitated (units 1-6). Unit 7 is not a low income unit because it was not rented to a new qualified low income household before the end of the year.

Example 2: Continuing the example above—
During September, unit 7 was rehabilitated and the tenant from unit 8 moves in; therefore, unit 8 is no longer a low income unit. To expedite completion of the rehabilitation of the remaining units, the owner also temporarily relocates the households in 9 and 10 to off-site quarters (and pays all expenses) and starts rehabilitation of units 8, 9 and 10. For purposes of determining the applicable fraction for September, units 1-7 are low income units and units 8, 9 and 10 are out of compliance. The owner completed the rehabilitation of the final three units (8, 9 and 10) in October and moved the two temporarily displaced households back into units 9 and 10 during October 2005. Unit 8 is a low income unit because it was previously occupied by an income qualified household. For purposes of computing the applicable fraction for October, units 1-10 are all low income units.

The following chart summarized the status of each unit for each month during 2005.

Unit	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
1								HTC	HTC	HTC	HTC	HTC
2								HTC	HTC	HTC	HTC	HTC
3								HTC	HTC	HTC	HTC	HTC
4								HTC	HTC	HTC	HTC	HTC
5								HTC	HTC	HTC	HTC	HTC
6								HTC	HTC	HTC	HTC	HTC
7	HTC	HTC	HTC	HTC	HTC	HTC	HTC		HTC	HTC	HTC	HTC
8	HTC	HTC	HTC	HTC	HTC	HTC	HTC	HTC		HTC	HTC	HTC
9	HTC	HTC	HTC	HTC	HTC	HTC	HTC	HTC		HTC	HTC	HTC
10	HTC	HTC	HTC	HTC	HTC	HTC	HTC	HTC		HTC	HTC	HTC

2.4.2 Income Qualifying Households before the Beginning of the 10-Year Credit Period

Under Rev. Proc. 2003-82, a unit occupied before the beginning of the credit period will be considered a low income unit at the beginning of the credit period, even if the household's income exceeds the income limit at the beginning of the first year of the credit period as often seen with Section 8 tenants. These households qualify for a safe harbor under which, if certain conditions are met, will be treated as low income units even though the total gross income of the household exceeds the income limit at the beginning of the building's 10-year credit period. In order to qualify, the household must have been income qualified at the time the owner acquired the building or at the date the household started occupying the unit, whichever is later. The owner must maintain documentation of the income qualification and the unit must be rent restricted.

For households occupying a unit at the time of acquisition (e.g., the date the building is acquired by purchase under IRC §179(d)(2)), the tenant income certification is completed within 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the tenant income certification is the date of acquisition since there is no move-in date. It is important to remember this when entering data into Procorem. If a date is input that is prior to the start of the 10-year credit period, Procorem will not allow the user to move the tenant into the unit.

It is important to note, existing low income projects (tenants already in Procorem) that are acquired and/or rehabbed must have initial certifications completed for existing tenants for the new credit as described above. Further, the tenant data reported in Procorem should reflect a move-out and then a move-in event which captures the newly certified income for the household based on the applicable certification effective date. The new "move in" becomes the initial certification for the existing household and subsequent recertifications must be effective on the anniversary date.

In the event the household occupies a unit at the time of acquisition but the tenant income certification is completed more than 120 days after the date of acquisition, the household is treated as a new move-in. Owners use the income limits in effect at the time the tenant income certification is finalized and the effective date is the date the last adult member of the household signs the certification.

When the household moves into a unit after the building is acquired but before the beginning of the first year of the compliance period, the tenant income certification is completed using the income limits in effect at the time of the certification and the effective date is the date the household moves into the unit.

Acquisition Placed In Service Date

120 Days	120 Days	After 120 Days
←	→	→
Effective date and applicable income limits used will be based on the acquisition placed in service date.	Effective date and applicable income limits used will be based on the acquisition placed in service date.	Effective date and applicable income limits used will be the date the last adult signs the TIC.

2.4.3 Testing for Purposes of the Next Available Unit Rule

For purposes of Rev. Proc. 2003-82, the incomes of households occupying units before the beginning of the first credit year are first tested for purposes of the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period. This affects buildings that are not entirely 100% low income, referred to as "mixed use" developments (e.g. market and low income units combined). A project designated as 100% low income but for which not all units have been initially income qualified is determined to be "mixed-use" if any of the units are occupied by ineligible tenants. The following applies:

A. The test must be completed within 120 days before the beginning of the first year of the credit period.

B. The test consists of confirming with the household that sources and amounts of anticipated income included on the tenant income certification are still current. If additional sources or amounts of income are identified, the tenant income certification will be updated based on the household's self-certification. It is not necessary to complete third party verifications.

C. If the household is over-income (e.g. exceeds 140% of the current income limits as adjusted for family size), the Next Available Unit Rule is applied.

If the household's income qualification is determined 120 days or less before the required "test," it is not necessary to "test" for purposes of the Next Available Unit Rule because the time period for completing the initial tenant income certification and the time period for completing the "test" is the same.

Example: An owner purchased an existing building on September 1, 2004 that included 48 low income units and two market rate units. The owner anticipated beginning the credit period on January 1, 2005. Household A occupied a unit at the time of the purchase and was determined to be income qualified on September 22, 2004. Since the household was determined to be income qualified within 120 days of January 1, 2005, it is not necessary to "test" for the purposes of the Next Available Unit Rule. *The effective date of the household's initial certification (move in) as reported in Procorem should be September 1, 2004.

The income "test" will need to be completed on any existing in-place households who have been residing at the property more than 120 days before the start of the first year of the credit period (January 1st).

Example: An owner purchased an existing building on March 1, 2004 that included 48 low income units and 2 market rate units. She anticipated beginning the credit period on January 1, 2005. Household A, an income qualified household, moved into a rent-restricted unit on April 1, 2004. The household was determined to be income qualified more than 120 days before the beginning of the credit period (January 1, 2005) so the household's income must be "tested" no earlier than 120 days before January 1, 2005 to determine whether the Next Available Unit Rule should be applied. The "test" is a household self-certification of whether their income has changed since the household initially qualified. The date used for initial qualification is January 1, 2005. *The effective date of the household's initial certification (move in) as reported in Procorem should be April 1, 2004.

Existing or in-place tenants in a newly acquired or rehabbed property that do not meet the owner's resident selection criteria or income eligibility test should not be terminated/non-renewed until their existing leases expire (exception: material noncompliance with the lease). Managers must allow existing tenants the opportunity to complete their lease or offer to buy them out of their lease.

2.5 Special Set-Aside Units

Residential rental property for HTC purposes includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. Under Treas. Reg. §1.103-8(b)(4), facilities that are functionally related and subordinate to residential rental projects are considered residential rental property. Treas. Reg. §1.103-8(b)(4)(iii) provides that facilities functionally related and subordinate to residential rental projects includes facilities for use by the tenants such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples included in Treas. Reg. §1.103-8(b)(4)(iii) of facilities reasonably required by a project specifically include units for resident managers (or assistant managers) and maintenance personnel.

2.5.1 Set-Aside Units for Manager and Maintenance Personnel

Rev. Rul. 92-61 holds that the adjusted basis of a unit occupied by a full-time resident manager is included in the Eligible Basis of a qualified low income building under IRC §42(d)(1), but the unit is excluded from the applicable fraction under IRC §42(c)(1)(B) for purposes of determining the building's Qualified Basis. The unit is considered a facility reasonably required for the benefit of the project and resident managers and/or maintenance personnel are not required to be income qualified.

IRS Memorandum dated June 2, 2015, Units for Resident Managers or Maintenance Personnel in a Building Eligible for Low-Income Housing Credit states, "Charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building does not make the units residential rental units and not facilities reasonably required for the project under §1.1103-8(b)(4)(iii)". The memorandum further states, "The general public use requirement of §1.42-9 does not apply in the case of units for resident managers or maintenance personnel in a qualified low-income building because the units are not residential rental units but facilities reasonably required for the project."

If an owner decided to provide a free or reduced rent and utilities, the rent value of the housing provided to a full-time resident manager required to live onsite as a condition of employment may be considered wages. In this situation wages are not considered as taxable income and are not subject to employment taxes. Later conversion of the unit to a residential rental unit will not change the Eligible Basis.

If the owner determines that a full-time resident manager is in the best interest of the property and a low income residential rental unit was not previously set aside during the application process, it will be necessary for the owner to obtain approval from KHRC first. The owner should submit State Form 13 and documentation to support the need for the set-aside unit. If at a later date the owner determines it is not necessary for the manager to live onsite, the unit should be returned to its low income status and rented to a qualifying household.

2.5.2 Set-Aside Unit for Security Personnel

To deter crime in and around the property, it may be necessary and reasonable for the owner to house a security officer at the site. In return for performing safety and security services that contributes to the management and control of the property, the security officer may be provided an on-site unit.

Typically, a security officer provides on-site presence during the evening and nighttime hours to respond to emergencies and disturbances, and to respond to resident requests for assistance, including complaints, unauthorized visitors, improper parking, and unauthorized use of community facilities. Other encouraged activities may include neighborhood watch programs and educational activities for primary school-age residents.

The adjusted basis of the unit occupied by the security officer is included in the Eligible Basis of the building under IRC §42(d)(1) as a facility reasonably required for the benefit of the project. However, the unit is excluded from the Applicable Fraction of the building under IRC §42(c)(1)(B). The security officer is not required to be income qualified. IRS Memorandum dated June 2, 2015, for the manager's units also apply and the owner/agent can charge rent and utilities for units in a qualified low-income building. This does not make the units residential rental units and not facilities reasonably required for the project under §1.1103-8(b)(4)(iii)".

The rent value of the housing provided to a security officer required to live onsite as a condition of employment is considered to be wages. In this situation wages are not considered as taxable income and are not subject to employment taxes. Later conversion of the unit to a residential rental unit will not change the Eligible Basis.

If the owner determines onsite security is necessary for the safety of the residents and a low income residential rental unit was not previously set aside during the application process, it will be necessary for the owner to obtain approval from KHRC first. The owner should submit State Form 13 and documentation to support the need for the set-aside unit. If at a later date onsite security is no longer required, the unit should be returned to its low income status and rented to a qualifying household.

2.5.3 Model Units

Model units are generally maintained during the development's lease up period to show prospective tenants the desirability of the rental units. If the property maintains full occupancy thereafter, the model can be dismantled, and the unit rented. This makes economic sense because model units do not generate rental income for the owner. However, at a large apartment complex it is standard industry practice to continuously maintain a model unit for marketing purposes in order to maintain a competitive edge. The unit can be shown immediately to prospective tenants at any time without disturbing tenants in occupied units. By increasing competitiveness, model units contribute to the economic viability of the HTC development.

A model unit is considered a residential rental unit under IRC §42 (ref. PLR 9330013, issue #3, dated 7/30/93). Therefore, a model unit's cost is included in the building's eligible basis and in the denominator of the applicable fraction when determining a building's qualified basis. Depending on how the model unit is set up and used, it may also be included in the numerator of the applicable fraction.

Example 1: Model Unit Never Rented as a HTC Unit: An owner includes the cost of a model unit in the eligible basis of a 100% HTC building with 50 units (49 low income rental units and one model unit). The owner anticipates the model unit will be maintained throughout the compliance period and will never be rented to an income qualified household. The cost of the unit should be included in the building's eligible basis, but the maximum applicable fraction the owner can ever claim is 49/50 or 98%. Since the unit will never be rented, it is considered residential rental property instead of a residential rental unit and the property-type remains 100% low income. If the owner never rents this unit to a qualified tax credit tenant the IRS could view this building as mixed use.
Example 2: Model Unit Converted to a HTC Unit: An owner includes the cost of a model unit in the eligible basis for a 100% HTC building with 50 units (49 rental units and one model unit). The owner withholds the model unit for the first two years of the credit period then rents it to a qualified low income household in the third year. The cost of the unit should be included in the building's eligible basis. In Years 1 and 2 of the credit period, the maximum applicable fraction is 49/50, or 98%. Beginning in year 3 the owner will follow the rules outlined in IRC§42(f)(3) concerning increases in qualified basis (i.e. the 2/3's credit rule). Since the Owner withheld the unit in the first two years, the project-type was determined to be mixed-use and later converted to 100% low income.
Example 3: Model Unit Available for Rent: An owner includes the cost of a model unit in the eligible basis for a 100% HTC building. The model is initially rented to a qualified low income household. One year later there is a 20% vacancy rate at the development. As a marketing tool, management staff assembles a model unit for public tours. Applicants are informed of the model unit's availability and signs are posted advertising it for rent. The unit will be considered in both the numerator and denominator of the applicable fraction and count as a qualified low income unit for credit purposes. The project-type remains 100% low income. If the project continues to have a high vacancy rate over a long period of time the owner/agent must move the model periodically.

CHAPTER 3: GENERAL PUBLIC USE REQUIREMENTS

Housing Tax Credit properties must conform to Treas. Reg. §1.42-9(b), as amended, concerning General Public Use requirements. Units are in violation any time they are not made available to the general public. This includes units designated for a single occupational group or through a preference for an occupational group. It also refers to units that are part of a hospital, nursing home, sanitarium, life care facility, a retirement home that provides significant services other than housing, dormitory, trailer park or intermediate care facility for the mentally and physically disabled.

Exceptions identified in the Housing and Economic Recovery Act (HERA) allow for occupancy restrictions that favor tenants with special needs, those who are members of a specified group under a Federal or State program or policy that supports such housing, and those who are involved in artistic or literary activities.

KHRC monitors developments for compliance with Fair Housing on a continual basis. The following has been designed to assist owners and managers in establishing sound business practices. Depending on the type of housing, owners may need to incorporate additional written criteria beyond what has been provided here.

Each property should have a Management Plan (including maintenance procedures), Grievance Procedures, Resident Selection Criteria, and a Fair Housing Marketing Plan. These plans should be reviewed annually for potential changes and updates. A strong internal structure is necessary to ensure properties maintain compliance with General Public Use Requirements. The plans will be reviewed during the files inspections, and KHRC will collect copies of these plans any time a change is made or at least every five years as part of the inspection cycle. Please keep in mind KHRC is not “approving” what is written in a property’s plans and procedures. We obtain copies to ensure plans are being maintained and updated. Further, during tenant file reviews, the screening documents provided should align with the current resident selection criteria.

3.1 Management Plan

Owners commonly hire management companies to handle the daily operations of their tax credit developments. A management plan should detail the authority the management agent has been given to operate the property. Such authority may include: responsibility for leasing units and accepting rent, marketing and advertising, hiring contractors and other vendors for special projects, paying bills and other budgetary work, ensuring the reserve for replacement is funded and used in accordance with the Restrictive Use Covenant, signing authority on behalf of the owner, Procorem access and responsibilities, completing the annual report and paying the annual compliance fee, evictions and/or terminations, security deposit dispositions, and providing maintenance support for the property.

The Plan should also include the maintenance portion of operations. The Maintenance Plan should include such information as inventory sheets that itemize tools and equipment (including serial numbers) that belongs to the property; a timeline for turning units; procedures for responding to and documenting tenant requests for services, including emergencies; extermination and HVAC filter change schedules; maintenance procedures that address building systems including domestic water, electrical system, elevators, emergency power, fire protection, HVAC, sanitary system, lawn care service, etc.

Management Plans must clearly state that Section 8 voucher holders are welcome and that they will be provided the same consideration for occupancy as any other applicant. A minimum income standard should not be applied to a Section 8 Housing Choice voucher holder since their rent is subsidized.

Last, the management plan should identify the staff assigned to run the property, their position titles, basic employee functions, and training they have received. KHRC may review this information to determine if staffing is adequate, especially when inspections reveal systemic issues of concern, or the property's rating has fallen from prior years.

Other plans or policies that management should consider include:

A. Unit Transfer Policies:

1. Preferences for transferring existing tenants to vacant units or special set-aside units versus selecting new tenants from the waiting list
2. Preferences/mandates required by the LURA
3. Criteria for transfers relating to single building project elections versus multi-building project elections on IRS Forms 8609
4. Transfers relating to reasonable accommodation requests
5. Guidelines for signing or amending leases and disposing of the security deposit

B. Move-out Procedures:

1. Proper notices
2. Mandatory charges
3. Move-out inspections
4. Disposition of the security deposit

C. Storm/Security Plan

1. What to do in a tornado, fire or other emergency
2. Terroristic threats or guidance on when to call the police
3. Locked building policy, key issuance/replacement, and changing locks
4. Security lighting

3.2 Grievance Procedure

Each owner should have a documented procedure for how they intend to deal with tenant complaints and other grievances. The procedure should be on file at the property and posted or provided to each household at move-in along with a copy of the lease. Owners are encouraged to take part in their grievance process, especially when concerns are so great as to affect a significant portion of their tenant population. Without first-hand knowledge of tenant concerns, a property could become distressed before the owner is aware the relationship between management and tenants has deteriorated.

On occasion KHRC is contacted by tenants with concerns or complaints. It is the policy of KHRC to listen to tenant concerns and then contact management staff via Procorem. KHRC must remain impartial, provide information, and attempt to bring the parties together. KHRC will request via post in Procorem that management contact the tenant and notify us once resolved. KHRC makes no judgements as to the validity of the claims or statements of either party, we are not lawyers, and will not present evidence for either party in a court of law.

3.3 Resident Selection Criteria

Owners must develop and make public written resident selection criteria that includes a description of the eligibility requirements and income limits for admission. Resident selection criteria must include whether there are elderly or disabled tenant restrictions or deeper income preferences and cite supporting documentation to ensure nondiscrimination in the selection of tenants.

Resident selection criteria approved for use by one federal program will be accepted by other federal programs so long as the appropriate program requirements are included therein. At a minimum, resident selection criteria should include:

Property Eligibility Requirements:

A. Property type (example: housing for the elderly or disabled including verification requirements)
B. Citizenship requirements
C. Income restrictions (including minimums, maximums and targets)
D. Occupancy standards
E. Minimum lease terms (compliance with IRC §42 Non-Transient Use Clause)
F. Pet policy

Applicant Screening Criteria:

Applications should be processed based on an established criterion. Specifically, if the owner has implemented criminal background checks, rental history reference checks, and/or credit checks, the standard for admission must be applied in a uniform and consistent manner. The grounds for rejection should be clear.

Owner established screening criteria may also be applied to live-in aides, except for the criterion regarding the ability to pay rent on time because live-in aides are not responsible for rental payments.

3.4 Application Requirements

KHRC requires all projects to provide a written or electronic application to prospective applicants. If the owner/agent has not created an application, Sample Form 1 may be used. The KTIC is NOT an application and should not be used as one. Before leasing commences, owners will have a process in place for receiving and reviewing applications. These procedures should be shared with applicants before they pay an application fee. Such procedures may include, but not be limited to:

A. Procedures for accepting applications and pre-applications
B. How much the application fee is and whether or not is it refundable
C. Waiting list procedures
D. Special rent concessions that may be offered at the time of application
E. Procedures for applying preferences (including deeper income targets)
F. Applicant screening criteria (criminal, credit, rental history, etc.)
G. Drug and crime free enforcements
H. Procedures for rejecting applicants
I. Any other fees the applicant would be liable for in order to process their application
J. Ability to reserve a unit by paying a deposit
K. Mandatory charges in addition to the lease (i.e. cable TV, internet, renter's insurance)

Individuals applying to live in a restricted unit should be advised early in their initial visit to the property that there are maximum income limits that apply to the units.

A fully completed application is a critical component to accurately determining eligibility. At a minimum, the application should collect personal information such as names and contact information for those expecting to occupy the unit, household size (bedroom and square footage needed) and type (elderly unit, handicap equipped or ground floor unit), date available to move in, past rental and criminal history, number of vehicles, and any other relevant rental information required by the property's occupancy standards.

Applicants should be supplied with rental information about the property including but not limited to: admission criteria, rental rates, deposit rates, pool rules, guest rules, pet rules, use of the common areas and other renter privileges, rules regarding loud noise or how to be a good neighbor, parking rules, cable/internet capability, availability of storage or garages, etc. This will aid the applicant in making an informed decision as to whether the property is a good fit for their household before they pay an application fee.

Once a unit becomes available, applicant(s) should be contacted on a first come, first serve basis, and informed of the available unit. If a waiting list is maintained, it should be consulted. If preferences are part of the property's rental process, the preference list should be examined. It is sound business practice to invite the applicant(s) back to the property to view the available unit(s) to see if the household members like the location and layout of the apartments, or desire to wait for another unit on a different floor or in another building to become available. Sometimes applicants have only been shown a model unit and their decision to rent is based solely on what they observed with the model. Applicants should also be made aware of the qualification process (completion of Kansas Tenant Income Certification and verification of income and assets from allowable sources and the need to annually recertify or verify student status via Sample Form 18).

3.5 Kansas Tenant Income Certification (KTIC)

The Kansas Tenant Income Certification (KTIC/Sample Form 2) and the Annual Household Certification Update (Sample Form 18) are mandatory KHRC forms. This is true even for properties that have other sources of funding that also require specific tenant income certifications.

Owners should explain to applicants that the anticipated income of the household within the 12-month certification period must be verified and included on the income certification form PRIOR to occupancy, and that they will be required to annually provide household income and student status information to the owner/agent for review. Failure to identify all persons who may live in the unit during the certification period could be construed as fraud by the tenant or owner/agent and reported to the IRS via Form 8823 line 11q, Other Noncompliance issues and/or line 11a, Tenant Income above the Applicable Income Limit.

KHRC highly recommends the completion of the KTIC be a joint process between the owner/agent and the applicant/household. The form can be handwritten or completed electronically. The income and asset charts under Sections E and F must be completed by owners or their agents once the verifications are returned from third party sources. At that time, the applicant(s) and management will review and sign the KTIC.

KHRC discourages the practice of many owner/agents who believe the application and KTIC should match entry for entry. KHRC will note differences since applicants normally do not carry specific information on their current income and assets. Large discrepancies and missing income and asset information could be questioned. The KTIC should not be included as pages of the application. Again, completing the TIC should be a joint process. Questions to complete the form should be asked by the owner/agent such as an interview so any necessary clarifying questions can be asked during the process.

The "effective date" is the date the tenant will take possession of the unit. Owners should check the "initial certification" box and type/write in the "effective date" on page one of the KTIC. KHRC recommends the initial KTIC should be signed (page 5) by the parties no more than five (5) days prior to its' effective date. Verifications cannot be over 240 days old and cannot be received by owners and managers more than 120 days prior to the "effective move in, recertification or student update date." KHRC recommends date stamping verifications upon receipt.

Example: John, on July 1, 2015, has made an inquiry about moving onto your property on March 1, 2016 after his current lease has expired. The owner/agent explains to John that he can be put on a waiting list and that he can start his application and qualification paperwork on November 2, 2015. John arrives on November 2 to apply and has pension and money market fund statements dated June 4, 2015 and July 7, 2015 respectively. The owner/agent accepts the money market fund statements and date stamps them November 2, 2015 to verify receipt. The owner/agent must inform John that a more recent copy of the pension must be provided since the pension statement is over 240 days from the projected move in date.

Owners and managers can help ensure that applicants are treated fairly and in a manner consistent with applicable rules and regulations by outlining and keeping a record of all instances where an applicant is denied housing and the acceptable reasons for turning away prospective tenants. Any applicant denied housing must receive written notification that provides the reason(s) for denial. It is highly recommended that all denials be maintained for a minimum of three years.

Owners that maintain a waiting list should date and time stamp when prospective tenants are added to the list and/or date and time stamp each application submitted (if application submission is part of the waiting list process). Preferences can be given when written company policies establish such preferences. Management should always follow their policy when renting units. Common preferences include households that qualify as elderly for senior properties, disabled applicants who need a unit that is accessible, households that income qualify at deeper targets per the Restrictive Use Covenant, and in some cases existing tenants wishing to move to a larger/smaller unit or a unit with accessible features.

Example: The owner of LMN Apartments has a 40/60 federal minimum set-aside, a 20/40 state set-aside (target), and is a 100% tax credit property. Of the 10 units at the property, 9 have been rented to households qualifying at or below 60% of AMGI. One household has been qualified at 40% or less of AMGI. One of the 60% renters moves out. The owner consults his waiting list and the person at the top was pre-qualified at 55% of AMGI. The second person was pre-qualified at 39% of AMGI. Without "preferences" built into the waiting list, the owner is technically obligated to rent the vacant unit to the first name on the waiting list. However, in doing so, the owner remains in violation of his Restrictive Use Covenant with regard to the 20/40 targeting. Owners with deeper income targets should maintain two separate waiting lists; one for their regular low income units, and one list for the special set-asides.

3.6 Citizenship Requirements

The IRS does not impose any citizenship requirements for the tax credit program. Projects that layer LIHTC with federal programs that carry citizenship requirements may need to verify citizenship status for those programs. Some owners may also incorporate citizenship or Social Security number requirements into their tenant selection criteria, for example to facilitate background checks. Owners who choose to do so must take care in applying any and all verification requirements consistently. The Fair Housing Act does not prohibit discrimination based solely on a person's citizenship status. Therefore, asking applicants to provide documentation of their citizenship or immigration status during the screening process would not violate the Fair Housing Act. Again, owners implementing citizenship or immigration status screening measures must make sure they are carried out in a uniform, nondiscriminatory fashion. Inconsistent implementation of screening criteria can violate fair housing laws. Fair housing violations put a project out of compliance with the LIHTC Program requirement that project units be available to the general public.

An owner/agent that elects to deny non-citizens should have language in their resident selection criteria outlining the verification requirements. To assist owner/agents with citizenship certification and verification, the following information is provided:

3.6.1 Definitions (as presented on Sample Form 23)

A citizen is: 1) a person who is a citizen or national of the United States, or 2) a non-citizen with eligible immigration status in one of the following categories:

A. A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101 (a)(15), respectively (immigrants). This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status;

B. A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

C. A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum which has not been terminated under section 208 of the INA (8 U.S.C. 1158) asylum status; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7) before April 1, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

D. A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5) (parole status);

E. A noncitizen who is lawfully present in the United States as a result of the Attorney General withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

F. A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

3.7 Same Sex Marriages

Revenue Ruling 2013-17 provides guidance for the treatment of same sex marriages.

A. The terms "spouse," "husband," and "wife" include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex.

A. The IRS has adopted the general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

B. This provision is used specifically for students who are married and can file a joint tax return.

3.8 Leases and Lease Terminations

All tenants occupying low-income units are required to be certified and to execute an initial six-month lease (exceptions include housing for the homeless and single room occupancy units). The lease must reflect the date of move-in/the date the tenant takes possession of the unit. At a minimum, the lease should include:

A. The legal names of the parties to the agreement and all other occupants;
B. A description of the unit to be rented;
C. The date the lease becomes effective;
D. The term of the lease;
E. The amount of rent, including concessions and other mandatory charges;
F. The use of the premises;

G. The rights and obligations of the parties, including the obligation of the household to annually recertify;
H. The signatures of all household members 18 years of age or older (see exception for emancipated minors); and
I. A statement explaining the development is participating in the Housing Tax Credit Program and certain federal rules apply for continued occupancy.

Tenants desiring to terminate their lease prior to six months of occupancy should be discouraged. However, there are times when terminating the lease is in the best interest of the tenant and the owner (i.e., when a tenant obtains employment in another city, is called to service by the military, tenants moving to nursing home facilities, a loss of employment, etc.). When a lease is terminated early, owners should fully document the event so that if the issue becomes a reportable finding there is back-up paperwork to support the owner's decision. Owners are not relieved, however, from showing good faith to comply with the Non-Transient Use Rule. Leases that allow either party to terminate with a 30 day notice, without regard to the Non-Transient Use Clause, are discouraged and the owner will be counseled by KHRC and reported to IRS. Tenants who pass away should not be required to have family members provide a 30 day notice of intent to vacate.

Tenants should not be expected to sign two leases; it is not good business practice (i.e. one provided by the owner and another supplied by the Public Housing Authority). Only one lease is enforceable in a Court of law, and if two leases exist, a Judge will decide which one is valid. Rather, the two leases should be combined into one. Either use the Public Housing Authority lease with additional rules owners may have as an addendum or use the owner's lease with additional PHA rules carried as the addendum. The signing of a second lease from a Public Housing Authority (generally required in order to match the term of the rental assistance agreement) does not change the effective date of tax credit recertifications or student status updates which must be the anniversary date of move in for IRC 42.

Owners should be cognizant of special Section 8, Rural Development, HOME, and HTF rules affecting tenant occupancy in IRC §42 housing. Some items include:

A. A mandatory initial 12-month lease (some PHAs are doing 6-month leases) or changes to the initial effective date (which is not allowed under IRC §42);
B. Special terms or conditions that must be in the lease;
C. A unit inspection prior to signing the lease;
D. Established timelines tied to rent increases; and
E. Automatic lease renewals or month-to-month conversions.

As stated above, the LIHTC recertification effective date remains the anniversary of the original move-in date regardless of other programs' recertification dates (i.e., Section 8, Rural Development, HOME, etc.)

Live-in aides should not be required to sign the same lease as members of the household responsible for paying rent. Owners are encouraged to establish a lease addendum for live-in aides. The addendum can indicate community rules must be followed which allow for peaceful enjoyment of the property by all residents. The addendum can deny occupancy of the unit to the live-in aide after the tenant, for whatever reason, is no longer living in the unit. The lease addendum should also give the owner the right to evict the live-in aide if house/community rules are violated.

3.8.1 Certification of Continued Program Compliance

The Certification of Continued Program Compliance statement is on the KTIC and should be language found in every IRC §42 lease. This statement documents the household's understanding of the need to recertify annually and allows owners the authority to evict for noncompliance. Best practice policies endorse 120, 90, 60, and 30-day notices for recertifying. Informal guidance from IRS supports that these notices can be evidence of due diligence. KHRC requires no less than one notice given at least 30 days in advance of recertification to document due diligence. Failure to provide written notices and of the need to recertify/update student status and subsequent failure of the tenant to execute such would be reported to the IRS on Form 8823. For mixed projects, line 11b, Owner failed to correctly complete or document tenant's annual income recertification and for 100% tax credit projects, line 11l, Low-income units occupied by nonqualified full time students.

3.8.2 Evictions and Terminations

Owners desiring to terminate the existing lease or evict a tenant household under an existing lease should do so only with "good cause." Revenue Rule 2004-82 states that the extended low-income housing commitment must prohibit the eviction or termination of tenancy (other than for good cause) of an existing tenant of a low-income unit, and prohibits an increase in the gross rent inconsistent with the rent restrictions of the unit. Further, the Revenue Procedure clarifies that the extended use agreement covers the period of time beginning with the first year of the credit period throughout the end of the extended use agreement. Therefore, owners should maintain thorough documentation on tenant households where lease/house rule violations have occurred in order to show proper cause for lease terminations or evictions.

Lease non-renewals do not require good cause. At the expiration of a lease the contract between landlord and tenant is complete. All lease renewals are subject to re-negotiation and therefore do not constitute a "termination or eviction" under Revenue Rule 2004-82. However, Kansas Residential Landlord and Tenant Act laws do apply. Therefore, both landlord and tenant should deliver, in writing, at least a 30 day notice of intent to not renew the lease.

3.8.3 Non-transient Use

In general, a unit shall not be treated as a qualified low income unit unless the unit is suitable for occupancy and used other than on a transient basis. Suitability is determined taking into account local health, safety and building codes. To satisfy the non-transient requirement, industry standards indicate that an initial lease of no less than six (6) months is sufficient to satisfy the law.

Upon initial occupancy a tenant household qualifying a tax credit unit must sign a lease illustrating their intent to live at the property for at least six months. So long as the original lease term is for six months or longer, leases may convert to a month-to-month tenancy after six months.

Applicants participating in the Section 8 Housing Choice Voucher Program are required to follow HUD rules in order to obtain/retain the housing subsidy. Applicants should not be barred from tax credit properties merely because they are required to sign an initial one-year lease to comply with HUD rules. IRC §42, General Public Use regulations are violated when owners deny occupancy to Section 8 applicants based solely on their Section 8 status.

Existing tenants in an acquisition/rehab development where management retains the original files and such files demonstrate the household has already lived at the property for more than six months and has converted to monthly tenancy need not be required to sign another six month lease merely to document compliance with the Non-Transient Use Clause of IRC §42. Compliance with the law is already established in the contents of the tenant records.

In situations where a tenant signs an initial six month lease but later terminates their occupancy under the lease's Termination Clause or "skips" out of their lease, the unit shall not lose its status as a qualified low income unit. Leases should be written in a manner to encourage non-transient use; however, there are special circumstances or events that may occur that require special consideration. Examples include: employment obtained in another city, tenants called to military duty, medical reasons, and reasonable accommodations under Fair Housing laws, etc. Tenants who "skip" on their leases are considered to be out of the control of the owner. In such cases, the owner is not held liable and the unit continues to be treated as a qualified low income unit.

Non-Transient Use Exceptions - There are two exceptions to the general rule that initial lease terms must be 6 months or longer:

A. Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building:

   1. Used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and
   2. In which a government entity or qualified non-profit organization provided such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

B. Single Room Occupancy (SRO) units which permit the sharing of kitchens, bathrooms, and dining facilities shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

Compliance Reporting - Noncompliance with the transient use rule of IRC §42 will be reported on IRS Form 8823, line 11(o).

3.9 Fair Housing Plans

The basic principle for having a Fair Housing Plan is to avoid lawsuits. Lawsuits are costly to defend, give the property a bad name and may lead to the disallowance or recapture of housing credits.

The key to avoiding lawsuits is education. All staff should be trained in all matters of Fair Housing including: tenant relationships, responding appropriately to requests for reasonable accommodations or modifications, adequate oversight of the property to ensure it continually meets ADA standards, appropriate marketing and advertising strategies, and knowledge of IRC §42 rules and regulations. Any staff member who comes into contact with the general public should be trained (including maintenance personnel).

Findings of discrimination in violation of the federal Fair Housing Act by an owner of a tax credit property is an act of noncompliance under IRC §42 that can lead to a loss of credit. This includes any adverse final decision related to fair housing by the Secretary of HUD, a recognized state or local fair housing agency, or by a federal court, as well as any judgment enforcing the terms of a settlement agreement or consent decree arising out of any complaint of discrimination.

3.9.1 Memorandum of Understanding

The Departments of Treasury, HUD and Justice have entered into a Memorandum of Understanding (MOU) in a cooperative effort to promote enhanced compliance with the Fair Housing Act. This effort is designed to benefit residents of HTC properties and the general public. Key points of the MOU include coordinated procedures for notifying IRS and state HFAs of charges, lawsuits or other actions under the Fair Housing Act involving tax credit developments.

The Departments of HUD and Justice are to notify KHRC of any charge by the Secretary of HUD for a violation of the Fair Housing Act, a probable cause finding under a substantially equivalent fair housing state law or local ordinance, a lawsuit filed by the Department of Justice, or a settlement agreement or consent decree entered into between HUD or DOJ and an owner of a HTC property. Other non-FHA civil rights actions and lawsuits, such as Section 504 of the Rehabilitation Act, are not covered under the terms of the MOU and will not be reported to IRS.

Once KHRC receives notice from either the Department of Justice or HUD of a discriminatory action, a Form 8823 is filed with IRS noting the "potential" violation using the "out of compliance" box. IRS has complete administrative discretion with regard to denying tax credits in the event of a Fair Housing Violation. IRS bases its determination on the findings outlined in court proceedings.

3.9.2 The Protected Classes

Title VIII of the Civil Rights Act of 1968, as amended, makes it unlawful to discriminate in the sale, rental or financing of dwellings based solely on a protected class. The "Act" covers seven protected classes at the Federal level. The Kansas Act Against Discrimination is substantially equivalent to the federal law, but includes one additional "protected class."

A. Race: A local geographic or global human population distinguished more or less by genetically transmitted physical characteristics.

B. Color: The color of a person's skin (dark brown, light brown, reddish brown, pale, etc.)

C. National Origin: A person's birthplace.

D. Sex: A person's gender (male or female).

E. Religion: Spiritual belief or practice (or lack thereof).

F. Familial Status: One or more individuals who have not attained age 18 domiciled with (a) a parent or other person having legal custody of such individual or individuals; or (b) the designee of such parent or other person having such custody with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

G. Disability/Handicap: A physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such an impairment, or being regarded as having such an impairment.

Note: Such term does not include current illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act 21 U.S.C. 802), and it does not include discrimination based solely on the fact an individual is a transvestite as illustrated in 42 U.S.C. 3602.

H. Ancestry: The birthplace of an individual's ancestors. (Kansas only)

3.9.3 Fair Housing Law References

A. Civil Rights Act of 1866 (Codified as 42 U.S.C., Section 1981): Provides that "all persons within the United States shall have the same right to make and enforce contracts as is enjoyed by white persons." The Act implements the Thirteenth Amendment of the Constitution by providing direct remedy through the federal courts.

B. Civil Rights Act of 1871 (Codified as 42 U.S.C., Section 1983): Provides that every person who, under color of any statute (law)...causes...the deprivation of any rights...secured by federal laws, shall be liable to the person injured.

C. Executive Order 11063 (Equal Opportunity in Housing): On November 20, 1962, the first Presidential Executive Order, pertaining specifically to fair housing, was signed. It covers all properties owned by the federal government, including properties developed with federal government assistance.

D. Title VI of the Civil Rights Act of 1964 (Codified as 42 U.S.C. 2000(d): Prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance.

E. Title VIII of the Civil Rights Act of 1968: Prohibits discrimination in housing on the basis of race, color, religion, and national origin. Congress amended the law in 1974 to prohibit discrimination on the basis of sex and amended it again in 1988 to prohibit discrimination on the basis of disability and familial status.

F. Title IX of the Civil Rights Act of 1968: Prohibits the willful or attempted injury, intimidation or interference with any person because of his or her race, color, religion, sex, or national origin who is involved in a real estate transaction. Please note that this provision is distinguished from Title IX of the Educational Amendments of 1972 (86 Statute 373).

G. Kansas Act Against Discrimination (as amended): Following passage of the Federal Fair Housing Act, the Kansas Legislature adopted a fair housing law in 1970. The law prohibits discrimination in housing.

H. The Home Mortgage Disclosure Act (HMDA): HMDA was enacted in 1975 and amended in 1988 and 1991. The Act requires lending institutions to report mortgage-lending data to determine if the institutions are serving the housing needs of all community residents. The Act was enacted to assist in identifying possible discriminatory practices in lending and to assist public officials in distributing public sector investments.

I. Community Reinvestment Act (CRA): This Act was established in 1977 to encourage financial institutions to help low and moderate families meet their credit needs by requiring federal financial regulatory agencies to monitor lending institutions.

J. Executive Order 12259: Signed December 31, 1980 giving the Secretary of the U.S. Department of Housing and Urban Development the responsibility of ensuring all federal programs and activities related to housing and urban development are "administered in a manner to affirmatively further fair housing."

K. Fair Housing Amendments Act of 1988: The Fair Housing Amendments Act was signed on September 13, 1988. The major provisions include:

1. Protection against discrimination for persons with disabilities and families with children under the age of 18.
2. Extension of the timeline for filing a complaint from 180 days to two years.
3. Provides stronger administrative remedies for individuals.
4. HUD was given greater authority and discretion for administering and resolving complaints.
5. Removal of restrictions on monetary and punitive damages in civil actions.
6. Handicapped access must be provided in all new buildings with four or more units.
7. The right to modify dwellings was guaranteed to disabled tenants.
8. Housing for the elderly was re-defined to be a facility constituting 80% residency by those 55 years of age or older.

L. The Americans with Disabilities Act: The ADA was signed into federal law on July 26, 1990, extending civil rights protection to people who are considered disabled. ADA is modeled after the 1973 Rehabilitation Act, which mandates that accessibility may be extended to any program, service, activity, or facility receiving federal money.

M. Housing for Older Persons Act (HOPA): HOPA was enacted in December 1995 and basically amended the elderly exception to the familial status protections under the Fair Housing Act. HOPA made it easier for housing developments to qualify as housing for older persons and exclude children.

O. Notice H 2015-01 Notice of Program Eligibility for HUD Assisted and Insured Housing Programs for All People Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule protects any recipient or sub-recipient of HUD funds to inquire about the sexual orientation or gender identity of an applicant for purposes of determining eligibility or otherwise making housing available. However, permissible inquiries into sex are permissible for temporary, emergency shelter with shared sleeping areas or bathrooms or to determine the number of bedrooms to which a household may be entitled.

The rule also revises HUD's generally applicable definitions at 24 CFR 5.100. The term "family" includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

1. A single person, who may be an elder person, displaced person, disabled person, near-elderly person or any other single person, or
2. A group of person residing together and such a group includes, but is not limited to:

- A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
- An elderly family:
- A near-elderly family;
- A disabled family;
- A displaced family; and
- The remaining member of a tenant family

3. The term “gender identity” means actual or perceived gender–related characteristics.
4. The term “sexual orientation” means homosexuality, heterosexuality or bisexuality.

3.10 Elderly Housing Exception

The Housing for Older Persons Act of 1995 (HOPA) amended the requirements for qualifying certain housing developments for older persons. The Act exempts housing for older persons from liability for familial status discrimination. Generally, housing that fits this definition includes the following:

A. Rules and regulations that demonstrate the housing is intended for persons 55 years of age or older,

B. At least 80% of the occupied units are reserved for households where at least one person is 55 years of age or older, and

C. The ability of the development to continually qualify for the elderly housing exemption.

There continues to be confusion concerning what is often referred to as the 80/20 split. HOPA states that the minimum standard to comply with housing for persons who are 55 years of age or older is that “at least 80%” of the units be occupied by at least one person 55 years of age or older. There is no requirement that the remaining 20% of units be occupied by persons under the age of 55, nor should communities set aside 20% of their units for those who do not meet the age restriction.

Property managers should always consult the property’s Land Use Restriction Agreement (LURA) first to determine what the owner agreed to. If the LURA specifically states the property shall house elderly households in 100% of the units, deviating from that makes the owner non-compliant with the LURA.

HOPA states that a unit occupied by a person or persons (under 55) with disabilities is not counted in meeting the 80% requirement since disability status is not an exemption from the age requirement. The provision to house the disabled creates some confusion under the Act’s requirement that reasonable accommodations be provided to persons with disabilities; KHRC recommends this be discussed with your attorney prior to denial.

Finally, no public housing development funded by HUD may exclude families with children, even if at least 80% of the units are occupied by at least one person who is 55 years of age or older.

In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce verification of compliance with Section 100.305 through reliable surveys and affidavits. Such documentation of the age of the occupants of the housing facility or community may include: driver's license; birth certificate; passport; immigration card; military identification card or any other state, local or international official documents containing a birth date of comparable reliability, or a certification in a lease, application, affidavit or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older. The overall practices on the owner/agent uses to enforce these rules may also include advertising and responses to familial status complaints.

3.11 Violence Against Women's Act (VAWA)

The Violence Against Women Reauthorization Act of 2013 was signed into law March 7, 2013. The law significantly expanded housing protections to victims of domestic violence, sexual assault, and stalking. To implement the new law's provisions, HUD issued a final rule, which took effect on December 16, 2016.

The final rule stated properties funded with Low Income Housing Tax Credits are also subject to VAWA requirements, and housing providers should look to the regulatory agency responsible for LIHTCs (the Department of Treasury) for how to implement VAWA protections in those properties.

VAWA provides legal protections to victims of domestic violence, dating violence, sexual assault, or stalking. These protections could prohibit owner/agents from evicting or terminating individuals being assisted by the LIHTC program if it is asserted that there have been instances of domestic violence, dating violence, sexual assault, or stalking against an applicant or tenant.

The Law:

The law offers the following protections against eviction or denial of housing based on domestic violence, dating violence, sexual assault, or stalking

A. An applicant's or program participant's status as a victim of domestic violence, dating violence, sexual assault, or stalking is not a basis for denial of admission, if the applicant otherwise qualifies for admission.

B. An incident or incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as serious or repeated violations of the lease or other "good cause" for terminating the tenancy or occupancy rights of a victim of abuse.

C. Criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy or occupancy rights of the victim of the criminal acts.

D. A lease may be "bifurcated" in order to remove an offending household member from the home. Whether or not the individual is a signatory to the lease and lawful tenant, if he/she engages in a criminal act of physical violence against family members or others, he/she stands to be evicted, removed, or have his/her occupancy rights terminated. This action is taken while allowing the victim, who is a tenant or a lawful occupant, to remain.

E. The provisions protecting victims of domestic violence, dating violence, sexual assault, or stalking engaged in by a member of the household, may not be construed to limit the O/A, when notified, from honoring various court orders issued to either protect the victim or address the distribution of property in case a family breaks up.

F. The authority to evict or terminate a lease is not limited with respect to a victim that commits unrelated criminal activity. Furthermore, if an O/A can show an actual and imminent threat to other tenants or those employed at or providing service to the property if an unlawful tenant's residency is not terminated, then evicting a victim is an option, the VAWA notwithstanding. Ultimately, O/A may not subject victims to more demanding standards than other tenants.

G. The VAWA protections shall not supersede any provision of any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. The laws offering greater protection are applied in instances of domestic violence, dating violence, sexual assault, or stalking.

Owners/Agents Rights and Responsibilities:

The IRS has not issued guidance on implementing VAWA. The information provided in this manual does not replace the owner/agent's obligations to follow the Act in its entirety but provides a VAWA Summary.

Notification of Occupancy Rights Under the Violence Against Women Act (HUD Form 5380) should be provided to both applicants and tenants as follows:

- At the time an applicant is denied tenancy;
- At the time of move-in;
- With any notification of eviction or notification of the termination of lease/assistance;
- In multiple languages, consistent with the guidance issued by the Secretary of HUD by Executive Order 13166

A. Tenant Selection Plans and Policies and Procedures

Owner/agents should update their Tenant Selection Plans and/or House Rules, as applicable, to incorporate the VAWA policies and protections. Amending these documents will ensure uniformity in spreading awareness of the VAWA and avoid improper evictions.

B. Certification and Confidentiality

Owner/agents responding to an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking that could potentially have an impact on a tenant's participation in the housing program may request in writing that an individual complete, sign, and submit within 14 business days of the request, a Certification of Domestic Violence, Dating Violence, or Stalking (HUD-5382 may be used). The certification form may be made available to all eligible families at the time of admission or, in the event of a termination or start of an eviction for cause proceeding, the certification may be enclosed with the appropriate notice, directing the family to complete, sign and return the form within fourteen (14) business days. The O/A may extend this time period at his/her discretion.

If an applicant or tenant requests protections under VAWA, the owner/agent may request in writing the applicant or tenant submit any **one** form of certification:

- The applicant/tenant can provide a self-certification or third party documentation to document an occurrence of a VAWA covered crime (Examples: a federal, state, tribal, territorial, or local police record or court record or documentation signed and attested to by a professional (employee, agent or volunteer of a victim service provider, an attorney, medical personnel, etc.) from whom the victim has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking or the effects of the abuse).
- Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation (HUD Form 5382)

It should be noted the final rule clarified that owner/agents are not required to obtain documentation when an individual requests VAWA protections. The owner/agent may choose to provide VAWA protections based solely on the individual's verbal statement or other corroborating evidence. O/As are encouraged to carefully evaluate abuse claims as to avoid conducting an eviction based on false or unsubstantiated accusations.

Owner/agents should be mindful that the delivery of the certification form to the tenant via mail may place the victim at risk, e.g., the abuser may monitor the mail. Therefore, in order to mitigate risks, O/As are encouraged to work with the tenant in making acceptable delivery arrangements, such as inviting them into the office to pick up the certification form or making other discreet arrangements.

The identity of the victim and all information provided to O/As relating to the incident(s) of domestic violence must be retained in confidence by the O/A and must neither be entered into any shared database nor provided to a related entity, except to the extent that the disclosure is a) requested or consented to by the individual in writing; b) required for use in an eviction proceeding or termination of assistance; or c) otherwise required by applicable law. The HUD-approved certification form provides notice to the tenant of the confidentiality of the form and the limits thereof.

Owner/agents must retain all documentation relating to an individual's domestic violence, dating violence, sexual assault, or stalking in a separate file that is kept in a separate secure location from other tenant files.

Lease:

A. Lease Addendum

Owner/Agents should attach a VAWA Lease Addendum (HUD-91067 may be used), which includes the VAWA provisions, to each existing or new lease.

1. New admissions. O/As should provide the tenant with the applicable lease along with the Lease Addendum. HUD-91067 Lease Addendum may be used but it should be noted the form (9/2008) references HUD-91066 which is now obsolete and has been replaced by HUD-5382. Owner/agents may use the HUD form as a guide to create their own lease addendum.
2. Existing tenants. O/As should expeditiously begin to notify existing tenants of the modification to the lease. Notification is accomplished by forwarding to each tenant a copy of the addendum that revises the existing lease agreement. O/As must also include a letter clearly stating that the tenant can either accept the modification or move but that a response is due within 30 days.

B. Lease Bifurcation

Should it be determined that physical abuse caused by a tenant is clear and present, the law provides owner/agents the authority to bifurcate a lease i.e., remove, evict, or terminate housing to that individual, while allowing the victim, who lawfully occupies the home, to maintain tenancy. Owner/agents must keep in mind that the eviction of or the termination action against the individual must be in accordance with the procedures prescribed by federal, state, and local law.

In the event that one household member is removed from the unit because of engaging in acts of domestic violence, dating violence, sexual assault, or stalking against another household member, the O/A must document the change on either the initial KTIC or most recently completed recert TIC/Annual Household Update (Sample Form 18), whichever is applicable. The change should be initialed by management and include an "as of" date.

Tenants' Rights and Responsibilities:

Tenants and family members of tenants who are victims of domestic violence, dating violence, sexual assault, or stalking are protected by the VAWA from being evicted or from housing assistance being terminated because of the acts of violence against them.

If requested, tenants are required to submit to the owner/agent a completed Certification of Domestic Violence, Dating violence, sexual assault, or Stalking, (HUD-5382), or other supporting documentation within 14 business days of the owner/agent's request, or any extension of that date provided by the owner/agent. If the certification or other supporting documentation is not provided within the specified timeframe, the landlord may begin eviction proceedings.

If the tenant has sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking from a federal, state, tribal, territorial jurisdiction, local police or court, the tenant may submit written proof of this outreach.

It is possible for someone lawfully occupying the unit, who is also a victim, to be evicted or removed from the home. If the victim commits separate criminal activity, a landlord may evict them for engaging in crime. Furthermore, if a victim poses "an actual and imminent threat to other tenants or those employed at or providing service to the property," they could be evicted, despite the VAWA. Of paramount consideration within the VAWA is that the landlord may not hold the victim to a more demanding standard than other tenants.

HUD Forms referenced in this section are available on HUD's website at: https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act

CHAPTER 4: LEASING TO STUDENTS

Generally, tax credits are not available for all-student housing. Strict rules apply to units comprised entirely of full-time students, especially when the student is full time during five or more months out of a calendar year. It is the educational institution that determines whether or not a student is considered full-time.

4.1 Full-Time Student Definition

IRC §151(c)(4) defines, in part, a student as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii). Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive months. The IRS has defined a full-time student month as a person who attends school for at least one day during a month.

Example 1 Carrie, age 18, has applied at your apartment complex and wants to move in on September 1. Carrie discloses that she is planning on starting college on September 15. The property application requests student status for the last calendar year and Carrie discloses that she was a high school student from January to May. Carrie is ineligible for low income housing; Carrie was a fulltime student for more than five months during the last calendar year.
Example 2 Leo, age 23, received his bachelor's degree on June 15; he attended his last semester of college from January 12 to May 3. Leo has applied to move into your complex in October of the same year. The owner/agent would have to deny Leo's application. Without a qualifying exemption Leo has attended school for five months during the calendar year even though it is not five full months. The IRS considers one day as a month.

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

4.2 Student Exceptions

A household comprised entirely of full-time students is not eligible to reside in a low-income housing tax credit unit; however, they may reside in market rate units within a qualified low income housing tax credit project. There are five exceptions to the full-time student rule as outlined in IRC §42(i)(3)(D). The five exceptions that would allow a household comprised entirely of full-time students to qualify a low income housing tax credit unit are:

A. AT LEAST ONE member of the household is married and eligible to file a joint income tax return. Members of the household do not need to be married to each other.

A copy of a marriage certificate/license is appropriate for verification to demonstrate the household meets this exception, or a copy of the federal income tax return that illustrates the couple filed jointly. Common law marriages are also acceptable if evidence is available to support the claim. The household does not need to file a joint income tax return, only be eligible to do so.

B. AT LEAST ONE member of the household is a single parent(s) and their minor child(ren), and such parents are not dependents of another individual and such children are not dependents of another individual (other than a parent of such children). This regulation began effective in 2007 under HR 3648-4.

A copy of the signed federal income tax return must be obtained to prove that all tenants in the unit are not dependents of a third party. The student may also sign a statement attesting to the fact that a federal income tax return will be filed for the current year that documents his/her dependents are not dependents of another individual and that a signed copy will be provided after filing. The manager should ensure this copy is retrieved. Single parents not earning enough income to file a tax return may sign a statement indicating such.

The benefit of HR3658-4 is that in cases of divorce where one parent claims one child and the other parent claims the other child (but both children are living with one parent in a tax credit unit), or when parents trade off annually on who is eligible to claim a child(ren) on the tax return, this is no longer an issue for qualification with the IRC §42's Student Rule.

C. AT LEAST ONE member of the household receives assistance under Title IV of the Social Security Act (i.e., AFDC). Temporary Assistance for Needy Families (TANF) is acceptable in Kansas.

Documentation must be obtained to prove the student is receiving this type of assistance. TANF is currently being administered in Kansas by the Department of Child & Family Services.

D. AT LEAST ONE member of the household is enrolled in a job-training program receiving assistance under the Job Training Partnership Act, or similar federal, state, or local laws.

Documentation must be obtained to prove the student is receiving this type of assistance and that the program's mission and/or purpose is similar to that of the JTPA. Documentation must be from the source providing the assistance and not from the institute of learning.

> Definition: JTPA is a program of the Department of Labor Employment and Training Administration. The JTPA's mission and/or purpose is "...to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of work force and enhancing the productivity and competitiveness of the Nation." The programs cover everything from summer youth programs, job corps, adult welfare to work, migrant and seasonal farmer workers, etc.

E. AT LEAST ONE member of the household was previously in Foster Care.

Documentation must be obtained from the State to prove the student was in Foster Care at some point during their life. If proof/documentation cannot be provided the applicant must be denied.

Note: This last exemption was part of the HERA legislation. There was no stipulation given by Congress to indicate they expected a timeline to be applied, such as "within the last five years." Therefore, so long as a student was previously in Foster Care at some point during their life, they will qualify under this exception in Kansas.

Please note that HUD, HOME, and RD have different student rules that owner/agents may have to apply when the property has multiple funding sources. One program's rules do not supersede another. The owner/agent must maintain compliance for each program.

4.3 Student Certifications

Before leasing a low income tax credit unit to a household of full-time students, owners should have the household, preferably the Head of Household, complete the Student Status Affidavit (Sample Form 19), establishing that one of the five exceptions has been met and collect the appropriate supporting documentation.

If at any time during the certification year the status of the household changes, the owner should re-verify the student status of all remaining tenants to ensure they can still meet one of the five exceptions, or document that the household will no longer be comprised entirely of full-time students. An example would be a situation where four full-time students are sharing the same low income housing unit and qualify because one of the students participates in JTPA. The owner becomes aware that one of the household members wishes to terminate their tenancy but the rest of the household members desire to continue occupancy. So long as the tenant desiring to leave is not the tenant participating in JTPA the household will continue to meet the student exception. However, if the tenant who desires to leave is the one participating in JTPA, the household would no longer qualify without that tenant. In such cases the owner would need to advise all tenants in the household of the need to terminate their tenancy or risk being in noncompliance with the tax code. KHRC recommends that language be built into the lease that allows for termination in the event a household fails to qualify due to its full-time student status.

In cases where at least one of the household members is a non-student or part-time student, the household is not considered a full-time student household. However, if a part-time student is the only household member qualifying the otherwise full-time student household, the part-time student's "part time" status needs to be verified (Sample Form 19A).

In a household where all members are full-time students except for a child under the age of five, the household is deemed not to be a full-time student household because at least one member is not in school. The same applies for kindergarten students going to school half days; they are considered part-time students (see preceding paragraph concerning part-time students qualifying units).

In a household where all members are full-time students except that one student is pregnant, the unborn child is considered a member of the household who is a non-student. The household is deemed to not be entirely comprised of full-time students.

Compliance Reporting

Noncompliance with the student rule is reported to IRS on Form 8823, line 11(l). The out of compliance date is the first day of the fifth month during the calendar year that the full-time student attended a qualifying educational organization, or the date in which the unit ceased to qualify for one of the five exceptions.

To return the household to compliant status, the household must meet one of the exceptions outlined above.

CHAPTER 5: LIMITS AND HOUSEHOLD COMPOSITION

5.1 HUD-Published Income Tables

To determine the appropriate household income limit, IRC §42 uses HUD-published income limits. HUD prepares tables and provides income figures for family sizes ranging from one to eight persons.

When determining eligibility, owners must use the income limits in effect on the date a tenant moves in. HUD-published income limits will normally indicate the effective date of the new limits. IRS Rev. Rul. 94-57 requires that owners begin applying the new limits by the later of: (i) the effective date provided by HUD for the new limits or (ii) 45 days after HUD publishes the new limits. Owners must determine the amount of household income before the family is allowed to move into a HTC unit.

Once KHRC is aware new income and rent limits have been published, an email is sent to owners generally within a week. The email will contain links to the KHRC formatted income and rent limits which are maintained on the Housing Compliance page of KHRC's website. To ensure the appropriate email addresses receive notifications, please subscribe via our website.

For projects that have multiple sources of funding, including HUD (Project Based Assistance), RD, HOME, or HTF the most restrictive income limits apply.

5.2 Treatment of Rural Properties

Tax Credit developments constructed or rehabilitated in rural counties are eligible for special consideration. Per new legislation enacted in the 2008 Housing and Economic Recovery Act, rural tax credit developments may use the greater of the state area median gross income limits by county or the national non-metropolitan median income. In such cases the definition for "rural" is the same definition used by USDA Rural Housing Services. Note: The national non-metro limits are very low.

5.3 HUD Hold Harmless Policy

Multifamily Tax Subsidy Projects (MTSP) are projects financed with tax exempt housing bonds and/or low income housing tax credits issued to provide qualified residential rental developments under IRC §142 and IRC §42 respectively. MTSPs exclude qualified mortgage bonds issued under IRC §143.

Section 3009a of HERA, the new subpart (E) of §142(d)(2) provides for immediate holding harmless of AMGIs for MTSPs. Beginning in 2010 HUD will no longer hold harmless its Section 8 income limits. HERA has created a special class of MTSPs labeled "HUD hold harmless impacted projects" for which an additional set of income limits is required. An impacted MTSP is defined as any project with respect to which AMGIs were determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy. Income limits for these projects are the greater of the regular MTSP income limits or the FY 2008 very low income limits multiplied by the growth in median incomes between the current year and fiscal year 2008. In the case of a HUD hold harmless impacted project, the AMGI with respect to such project for any year after 2008 shall be the greater of the current AMGI by county or the AMGI determined under HUD's hold harmless policy. HUD shall publish two sets of income limits beginning with 2009.

Since a HUD hold harmless impacted project is one that for calendar years 2007 or 2008 would have suffered a reduction to the income limits but for the HUD hold harmless policy, not all counties were impacted. For impacted counties, the adjustment insures that impacted MTSPs see an increase in their FY 2009 income limits even if their FY 2009 income limit would otherwise be constant from last year due to having been held harmless in 2007 or 2008. Owners with projects placed in service prior to December 31, 2008 shall use the HUD Hold Harmless income limits or the current published income limits; if there was no "hold harmless" provision for the county in which the project was built, the owner shall use the current published income limits.

1. The HUD Hold Harmless rule applies at the project level. IRC §42(g)(3)(D) states that every building is a separate project unless the owner elects to include the building in a multi-building project.
2. For multiple building projects where at least one building was placed into service no later than December 31, 2008, all buildings in the project are subject to the HERA Hold Harmless Income Limits.
3. Owners who bought existing buildings in 2008 with tenants in place and are currently rehabilitating them may still use the HUD Hold Harmless income limits because the owner relied on HUD income limits in 2008 to determine eligibility for income qualification purposes.
4. Owners who elect to treat each building separately may use the HUD Hold Harmless income limits for impacted projects (buildings) that were placed into service no later than December 31, 2008. If any "separate" building was placed into service in 2009, those buildings are subject to the 2009 published income limits. Therefore, a property comprised of several buildings treated "separately" could potentially have two different income limit standards being applied simultaneously.
5. An owner need not have begun the first year of the credit in 2008 so long as the building(s) were placed into service before December 31, 2008.

5.4 Households and Family Size

Since income limits for each county are adjusted for household size, owners must determine the appropriate number of individuals in a household to apply the correct income limit. Certain considerations for instance are given to individuals that are temporarily absent, a live-in aide, or dependents away at school to determine if they are counted for purposes of determining income. The following information will help owners determine who should be counted and who should not.

5.5 Exclusions from Household Size

The general rule of thumb is that all persons residing in a unit are included as a household member, unless specifically excluded. Exclusions include:

A. Live-in Aides. A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who is determined to be essential to the care and well-being of the person(s); is not obligated for the support of the person(s); and would not be living in the unit except to provide the necessary supportive services. While a relative may be considered to be a live-in aide, they must meet the above requirements. The income of live-in aides is not included in the household's income.

B. Guests.

C. A temporarily absent individual on active military duty unless they are the head of household, co-head or spouse.

Except for "guests," the above are excluded for purposes of determining income limits but would be considered for purposes of determining the correct unit size.

5.6 Individuals Not Living in the Unit on a Full-Time Basis

The following household members not living in the unit on a full-time basis are included:

A. Children temporarily absent due to placement in a foster home,
B. Children in joint custody arrangements who are present in the household 50% or more of the time (proven via proper legal documentation),
C. Children who are away at school but who live with the family during school recesses,
D. Unborn children as certified by the applicant (Sample Form 35), and
E. Children who are in the process of being adopted.

5.7 Temporarily Absent Family Members

Temporarily absent family members are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent.

A temporarily absent individual on active military duty must be removed from the lease and his/her income excluded unless they are the head of household, co-head or spouse.

Examples – Income of Temporarily Absent Family Members
• John Rouse works as an accountant. He suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income. During the time he is not

in the unit, John will continue to be considered a family member. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.

- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.
- Charlotte Paul is on active military duty. Her permanent residence is her parents' apartment located at an IRC §42 complex. Charlotte's husband and children also reside in the unit. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the low-income unit, her military pay must be included in annual income. (If her husband and dependents were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

5.8 Permanently Confined Family Members

An individual permanently confined to a nursing home or hospital may not be named as family head or spouse, even when the permanently confined family member is married to the person who is or will become the head of the family. They may, however, continue as a family member at the family's discretion. The family's decision determines whether the permanently absent member's income will be counted into total gross income for the household.

Note: The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the tenant income certification. If the owner determines the confined member is not able to sign the tenant income certification, the owner must document the file why the signature was not obtained.

A. Include the individual as a family member and include the gross income attributable to the permanently confined individual; or

B. Exclude the individual as a family member and exclude the gross income attributable to the permanently confined individual. Family members who are in a hospital or rehabilitation facility for periods of limited or fixed duration are considered family members. These people are considered "temporarily absent."

If the applicant decides to not count the income of a permanently confined family member, it is reasonable to believe that the owner/agent will ask for verification from a qualified health professional that the absent family member is not expected to return.

C. When a permanently absent family member is being considered as such because of a legal separation (not a divorce), owners should ask for proof of the separation. This can be in the following forms:

1. A copy of official documentation from a court or agency providing legal aid indicating that a divorce is in process.

2. A copy of the legal separation agreement or official documentation that such is in process.
3. A statement from the tenant and one of the following:
   - A statement from a person who provided counseling to the tenant in an official capacity as part of his or her occupation (i.e. attorney, therapist, marriage counselor or clergy). The statement must be prepared on the "counselor's" business letterhead. The statement should include language that the counselor has conversed with the prospective tenant regarding their marriage within the past 30 days and that the separation appears to be permanent.

Prepared statements by family members, friends, acquaintances, etc. about informal counsels are specifically excluded as acceptable documentation.

   - A copy of a legal restraining order or documentation that the tenant has experienced domestic violence. The tenant must include his/her own statement that the spouse will not be allowed to move in, that they do not intend to file a joint tax return, and the separation is permanent.
   - If neither option above is available or applicable, the owner can still qualify the household if the applicant is willing to self-certify to their non-court ordered separation and explain why they have not pursued a formal separation or divorce (e.g., financial problems or religious beliefs). If there is no credible reason to doubt the applicant, the household should be allowed to move in with the understanding that fraud can be prosecuted. When there is no court ordered separation owner/agents must remember that there are possible assets that must be equally divided.

5.9 Other Individuals

A. Adults: Count the annual income of the head, spouse or co-head, and other adult members of the family (age 18 or over). In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

Note: If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income would be handled as such.
Note: If a family member is 17 years old and will be turning 18 years old during the certification period, owners should count all earned income as of the date the dependent turns 18, unless the dependent is a student. (See Income from Students.)

B. Dependents: A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student. The head of the family, spouse, co-head, foster adult/child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

5.10 Changes in Household Size/Adding Member

Changes in the size of an existing household after initial certification must also be addressed. Tenants who reasonably believe they will be adding members to their household are required to disclose this information at the initial certification so that all relevant income sources can be considered. For other additions to the household, the income of the new member is added to the income previously disclosed on the existing household's last full tenant income certification (KTIC) or full recertification (KTIC) and reflected on the recertification paperwork. The new household member's income must be verified. The household will continue to qualify and be tested for purposes of the Next Available Unit Rule under IRC §42(g)(2)(D) if the project is a mixed-use development.

> Example 1: Household Adds a New Member
> Jim and his two children initially income qualified and moved into a mixed-use HTC project on March 1, 2001. The household continued to qualify at recertifications completed in 2002, 2003 and 2004. Jim then met Jane and they married in October 2004. Jane completes a tenant income certification and her income is considered along with the previously disclosed income Jim did effective March 1, 2004. The recertification date continues to be March 1 and the next recertification for the household (including Jane) is due no later than March 1, 2005.
> If the household's income, when Jane's income is added, exceeds 140% of the income limit, the Next Available Unit Rule shall be applied.

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, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants income qualified at the applicable AMGI limit at the time they were added to the unit.

There is no established safe harbor for adding household members. KHRC highly recommends 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 KHRC determines that tenants manipulated the income limitation requirements, the unit will not be treated as a low income unit as of the date the household initially occupied the unit. KHRC may arrive at this conclusion when owners fail to demonstrate ordinary business care in the administration of their duties, or if there appears to be a systemic pattern of practice identified during the annual report review or files inspection.

> Example 2: New tenants manipulate Income Limitations
> An income qualified household consisting of one person moved into a two-bedroom unit on 3/15/05. A second tenant completed an initial income certification and joined the household 15 days later. The combined income of the two tenants is above the income limit for a household of two members. A reasonable person would conclude the household members knew each other and planned to reside with each other prior to the first household member moving in. The unit is out of compliance as of 3/15/05.

5.11 Decreases in Household Size

A decrease in family size does not automatically trigger the need to recertify. Subsequent annual recertifications will be based on the income of the remaining household member(s). If the remaining household's income is more than 140% of the income limit at the time of the annual recertification, the Available Unit Rule applies in mixed use developments.

Example 1: A married couple with their two children initially income qualify and occupy a three bedroom unit in a mixed use development. After four years, the oldest child, now 18 years old, moves out of the unit. It is not necessary to certify the remaining household members as a new household. If the household's income exceeds 140% of the current income limit for a family of three at the next recertification, the Available Unit Rule is applied.
Example 2: A household was originally income qualified based on the inclusion of an unborn child in a mixed use development. Four months later the pregnancy ends in a miscarriage. It is not necessary to certify the remaining household members as a new household. If the income of the remaining household members exceeds 140% of the current income limits at the next recertification, the Available Unit Rule is applied.

Owner/Agents that have multiple sources of funding must comply with other program requirements when adding or deleting household members.

CHAPTER 6: INCOME AND ASSETS

IRC §42 provides direction for determining tenant income and refers HTC owners to HUD's definition of income and assets rather than the method taxpayers use to determine gross income for purposes of filing a federal income tax return. Per Treas. Reg. § 1.42-5(b)(1)(vii), "…tenant income is calculated in a manner consistent with determination of annual income under Section 8 of the United States Housing Act of 1937." Further, IRS Notice 88-80 states, "…the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under Section 8 of the United States Housing Act of 1937." HUD Handbook 4350.3, Change 4 contains the general guidance for income and asset information. However, IRC §42 is different from Section 8 in many ways so careful consideration must be given to the proper application of rules. Therefore, use this manual in conjunction with HUD Handbook 4350.3, Change 4 to help in clarifying the differences between the two programs.

Annual Household Income is the gross income (with no adjustments or deductions) the household anticipates it will receive in the 12-month period following the effective date of the income certification and for which verifications can be obtained. It is a snapshot in time. If information is available on changes expected to occur during the year, that information must be included to most accurately anticipate income from all known sources during the year. This could be new employment secured at time of application, raises and bonuses not based on performance, or dependents that will be turning 18 years of age during the initial certification year.

6.1 Income includes (24 CFR 5.609(a)): [2024]

1. All amounts, not specifically excluded in paragraph (b) of CFR §5.609, received from all sources by each member of the family who is 18 years of age or older or is the head of household, spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and
2. When the value of net family assets exceeds $50,000 (which amount HUD will adjust annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

When anticipating income there will be instances where known possible income cannot be verified or when the said income may terminate prior to the end of a 12-month period. The owner/agent can elect to only use the full amount of the verifiable income. The owner/agent must provide proof of exceptional due diligence in their third party attempts to provide support for the final finding/calculation. Due diligence will include but is not limited to:

- written documentation from an employer indicating known irrevocable termination or retirement dates,
- unemployment compensation reports with associated documentation proving termination of benefits,

- letters from the social security office indicating that a case is under review and amount and date of the first payment is unknown, etc.

Annual income includes all amounts that are not specifically excluded by regulation, and income derived from assets to which any member of the family has access.

6.2 Exclusions from Income (24 CFR 5.609(b)): [2024]

1. Any imputed return on an asset when net family assets total $50,000 or less (which amount will be adjusted by HUD annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

2. The following types of trust distributions:

   A. For an irrevocable trust or a trust outside the control of the family or household excluded from the definition of net family assets in the HUD regulation § 5.603(b):

      i. Distributions of the principal or corpus of the trust; and

      ii. Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

   B. For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

3. Earned income of children under 18 years of age.

4. Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

5. Insurance payments and settlements for personal property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation. However, period payments paid at regular intervals for a period of greater than one year that are received in lien of wages for workers' compensation are included.

6. Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

7. Any amounts recovered in any civil action settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

8. Income of a live-in aide, foster child, or foster adult as defined in §5.403 and §5.603, respectively.

9. Student Financial Assistance: Any assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA), as amended, is excluded from income. See list at the end of this section.

Treatment of student financial assistance depends on whether a household is receiving Section 8 assistance (HCV, PBV, or PBRA). To properly calculate student financial assistance, verify (1) actual covered costs, (2) student financial assistance received under the HEA, and (3) other student financial assistance.

(1) Actual covered costs - Includes tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965) and, for a student who is not the head of the household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(2) Student financial assistance received under Section 479B of the HEA – Programs are listed below, however there may be sub-programs.

-Grants to Students in Attendance at Institutions of Higher Education
-Federal Pell Grants
-Federal early outreach and student services programs
    Federal TRIO Programs
    Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)
    Model Program Community Partnership and Counseling Grants
    National Student Savings Demonstration Program
-Federal Supplemental Educational Opportunity Grants
-Leveraging Educational Assistance Partnership Program
-Special Programs for Students Whose Families are Engaged in Migrant and Seasonal Farmwork
-Robert C. Byrd Honors Scholarship Program
-Child Care Access Means Parents in School
-TEACH Grants
-Scholarships for Veteran's Dependents
-Federal Family Education Loan Programs
-Federal Work-Study Programs
-William D. Ford Federal Direct Loan Program
-Federal Perkins Loans
-Higher Education Relief Opportunities for Students

(3) Other student financial assistance - Means a grant or scholarship received from sources such as The Federal Government; a state, territory, Tribe, or local government; a private

foundation registered as a 501(c)(3) nonprofit; a business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a public benefit corporation, or nonprofit entity), or an institution of higher education.

Other financial assistance does not include financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to the HEA Title IV 479B); gifts, including gifts from family or friends.

Other student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance.

Determining Student Financial Assistance Income for Housing without Section 8 Assistance

The amount of student financial assistance to include as income is calculated as follows:

1. Actual covered costs MINUS amount of HEA Assistance = amount of actual covered costs exceeding HEA assistance ("X")
   - If "X" is negative, count the full amount of other student financial assistance as income, otherwise, go to 2 below.
2. Amount of other student financial assistance MINUS "X" = student financial assistance counted in income ("Y")
   - If "Y" is negative, student financial assistance = $0

Determining Student Financial Assistance Income for Housing with Section 8 Assistance

If the household is receiving Section 8 assistance and the student is the head, co-head, or spouse and is over the age of 23 with dependent children, follow the rule above for non-Section 8 households.

If the student is the head, co-head, or spouse but is age 23 or younger or does not have dependent children, include any amount of the student financial assistance (sum of amounts received under the HEA and other student financial assistance) in excess of actual covered costs.

10. Income and distributions from and Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

11. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

12. A. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

    B. Amounts received by a participant in other publicly assigned programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

    C. Amounts received under a resident service stipend not to exceed $200 per month. A resident stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

Example - Stipend: Rich Fuller receives $50 a month for distributing flyers for management. This amount is excluded from annual income.

    D. Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i).

13. Reparation payments paid by a foreign government pursuant to claims filed under the law of that government by persons who were persecuted during the Nazi era.

14. Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.

15. Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

Note: The amount for #14 and #15 will be $480 through 2024. Starting in 2025 the amount will be adjusted annually for inflation.

16. Deferred period amounts from Supplement Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any

deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

Example – Deferred periodic payments: Germaine Johnson received $32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.

17. Payments related to aid and attendance under 38 U.S.C 1521 to veterans in need of regular aid and attendance.

18. Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

19. Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid Agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

20. Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

21. Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

22. Amounts that HUD is required by Federal statue to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in the exclusions in the HUD regulations apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

23. Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out-of-pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of

rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

24. Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

A. Payments from the U.S. Census Bureau for employment (relating to the decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

B. Direct Federal or State payments intended for economic stimulus or recovery.

C. Amounts directly received by the family as a result of the State refundable tax credits and State tax refunds at the time they are received.

D. Amounts directly received by the family as a result of the Federal refundable tax credits and Federal tax refunds at the time they are received.

E. Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

F. Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

Examples – Income Exclusions

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
- Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
- Amounts received under WIC or the School Lunch Program. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.

G. Lump-sum additions to net family assets, including but not limited to lottery or contest winnings.

25. Civil rights settlements or judgements, including settlements or judgements for back pay.

26. Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

27. Income earned on amounts placed in a Family Self Sufficiency Account.

28. Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

    A. Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and
    B. Any withdrawal of cash assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

6.3 Types of Income

The list of income sources in this section is not intended to be an exhaustive list. If an income source is not specifically excluded (see Section 6.2 Exclusions from Income), then it is to be included.

Earned income means income or earnings from wages tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

Unearned income means any annual income, as calculated under §5.609, that is not earned income.

Day laborer is an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

Independent contractor is an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

Seasonal worker is an individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry.

1. Employment Income

The gross amount (before any payroll deductions) of wages, salaries, overtime pay, commissions, fees, tips, bonuses and any other compensation for personal services received by all adult members of the household (including income from persons under the age of 18 who are the head, spouse or co-head and/or anticipated income from household members who will be turning 18 during the certification year). Hazard pay or an extra pay essential employees receive for working during the COVID-19 pandemic is included through verified end date. Include salaries of adults received from a family-owned business. All income from roommates will be combined for the total income per family size expected to occupy the unit.

Earned income can be full-time, part-time, self-employment, temporary and seasonal sources. In order to match verification methodologies with Section 8 and Rural Development, KHRC will allow an owner to use averages when necessary, to obtain the closest approximation with respect to employment verifications. For wide-range averages, owners should attempt due diligence to encourage the employer to be more specific or use a second verification method to assist in determining approximate income.

Example 1: Close Approximation (Acceptable) The employer provides an employment verification indicating that Sam Adams works between 25-30 hours per week. The owner uses an average of 27.5 hours. This is acceptable providing no other documentation in the tenant file conflicts with the employer's verification.
Example 2: Wide Range Average (Not Preferred) The employer provides an employment verification indicating that Sam Adams works between 20-40 hours per week. Rather than average for 30 hours, the owner should utilize due diligence and ask the employer to narrow the average to something more reasonable. If the owner is not willing, copies of pay stubs should be utilized in addition to the employer's verification

If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year and divide that total by 12 months. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the owner may add the total income for the months before and the total for the months after the increase.

Example 3: Calculating Anticipated Annual Income A teacher's assistant works nine months annually and receives $1,300/month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for $600/month. Calculate annual income as follows: $11,700 ($1,300 x 9 months) + 1,800 ($600 x 3 months) $13,500 (total annual income)
Example 4: Employed Teenager Turning 18 During the Certification Year Julie Andrews has a dependent 17 year old son, Alex, who is 17 years old and currently working part-time at McDonalds. Alex will turn 18 years old halfway through the initial certification year. In order to appropriately calculate the total anticipated household income, the owner must count Alex' earned income from the point he turns 18 years of age and his unearned income for the entire 12 months.

All employees that receive wage compensation on an hourly basis are entitled to over-time whenever they work in excess of 40 actual work hours per week. Overtime, according to the Fair Labor Standards Act (FLSA) shall be compensated at the rate of 1.5 or time and a half. For employees that are paid every two weeks, employers cannot move overtime hours from one week to the next. Salaried employees are paid a flat rate regardless of the number of hours they work in a week. They are not entitled to over-time compensation.

Example 5: Claire works for Walmart and is paid an hourly wage. There are several times during the year she works in excess of 40 hours a week. During those weeks, Claire receives time and a half for every hour worked over 40. Claire's normal salary is $10 per hour. For every hour worked in excess of 40 hours per week, Claire's hourly salary will increase to $15 per hour ($10 x 1.5).
Example 6: Jim has a salaried job working for a local Collections Agency. His salary has been set at $30,000 per year. Some weeks Jim works more than 40 hours and other weeks he works less than 40 hours. Jim's earned income for purposes of determining income qualification is figured at $30,000 regardless of the number of hours he actually works in a year.

Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

- Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);
- Weekly wages by 52;
- Bi-weekly wages (paid every other week) by 26;
- Semi-monthly wages (paid twice each month) by 24; and
- Monthly wages by 12.

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Example 7: Anticipated Increase in Hourly Rate	
February 1 Certification effective date	
$7.50/hour Current hourly rate	
$8.00/hour New rate to be effective March 15	
(40 hours per week x 52 weeks = 2,080 hours per year)	
February 1 through March 15 =	6 weeks
6 weeks x 40 hours =	240 hours
2,080 hours minus 240 hours =	1,840 hours
(check: 240 hours + 1,840 hours =	2,080 hours)
Annual Income is calculated as follows:	
240 hours x $7.50 =	$ 1,800
1,840 hours x $8.00 =	$14,720
Annual Income	$16,520

Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimate what the tenant will receive during the year.

Example 8: Example of Sporadic and Irregular Employment
Seasonal work: Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

Sporadic work: Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment.

Sporadic work: Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes at recertification.

Self-employment income: Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS

Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

Due Diligence: In all cases of temporary or sporadic employment, owner/agents must first attempt to annualize current circumstances, use income history if the history is with the same company (minimum of the last twelve (12) months), or deny until history is established.

Income Guide

<u>Members</u>	Employment Income	Other Income (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult Dependents	Yes	Yes
Child under 18	No	Yes
Full-time student over 18	See Note	Yes
<u>Nonmembers</u>		
Foster child	No	No
Foster adult	No	No
Live-in aide	No	No

Note: The earned income of a full-time student 18 years old or older who is not the head, co-head, or spouse is excluded to the extent that it exceeds $480.

Verifications

A. Third party verification between the owner and the employer (Sample Form 10) or pay stubs/tax return provided by the tenant.

B. Minimum of two current and consecutive pay stubs regardless of pay frequency (HOME tenants must have a minimum of two months proof). Owner/agents must ensure that the paystubs provided give an accurate accounting of raises, bonuses, overtime, or any additional allowances. This source of verification should include information that reveals the gross year-to-date earnings and pay per period and frequency. The applicant must confirm a start date if it is not noted on the paystub. Copies of actual paychecks are not an acceptable form of verification since they do not include specifics or provide the gross pay. If the applicant was recently employed, and does not have the required two pay stubs, the owner/agent must attempt to obtain verification directly from the employer.

Third party verifications include verification from the employer or two paystubs directly from the applicant. It is usually not necessary to collect both. If the owner/agent is strictly using paystubs, attempts should be made to document income information that is typically captured on the employment verification. For example, if the work is seasonal or sporadic, layoff periods, and future changes to pay (i.e. guaranteed pay increases/decreases, bonuses, etc.). When calculating YTD using paystubs, it is important to determine when the first pay period of the year started. An exception to this date would be the employee's start date. The same applies when calculating the YTD provided on an employment verification form. It is important to note it is not required to obtain both the anticipated hourly rate and the current YTD. However, if both are requested and/or obtained through use of Sample Form 10 and/or paystubs, a comparison of the two should be completed.

If third party sources or pay stubs cannot be obtained, tenant files should be documented to show reasonable effort. If a tenant's eligibility cannot be determined by the two methods above, a copy of the previous year's tax return may be used. A statement from the tenant reasonably assuring that his/her income is not expected to change significantly in the next 12 months from that identified on the tax return.

C. Telephone contacts to the employer can be used to clarify information on the verification and not to change existing information (i.e., taking an ineligible household to eligible status). This can be documented using Sample Form 21. The person contacted should be the same person who completed the form needing clarified. If the eligibility status changes from over income to qualified, the owner/agent must request a new written verification. Sample Form 21 should not be used as a self-affidavit.

D. Households claiming zero income will be reviewed to assure that rent, utilities, and living expenses can be paid. Most households will be eligible for federal and state assistance, gift income, or grants that will need to be verified. The owner/agent will verify with the household, in writing, all forms of additional assistance and make the household aware that periodic payments made on their behalf for basic needs, utilities, phone bills, cable, etc. are considered income. Owner/agents may require the Certification of Zero Income (Sample Form 25) to be completed. A household is not considered "zero income" just because one person in the household is not earning wages when other people in the household are.

Owners cannot refuse to lease units to Section 8 recipients based solely on their Section 8 status. Based on the property resident selection criteria, Section 8 recipients should be refused occupancy if they fail to meet any other reasonably applied criteria such as past rental history or criminal/credit checks. KHRC does not allow a minimum income requirement on Section 8 recipients since their rent and possibly utility payments are subsidized by the federal government.

E. Contradictory information in the file should be cleared up before moving a household in. Such contradictions occur when multiple sources have been used for due diligence sake, such as employer verifications and pay stubs. Year-to-date earnings on pay stubs that illustrate a fairly significant difference from the third party verification of the employer must be further scrutinized and clarified. If YTD information takes an applicant over income, the owner/agent will address the discrepancy with the employer and obtain an affidavit confirming that the YTD income, due to a decrease/change in pay, overtime, etc., is not a good indicator of future earnings. Such clarification could be that the employer's verification is projecting forward to the next 12 months, where the pay stub's year-to-date earnings is based on historical data.

2. Income from a Business/Self Employment

The net income from the operation of a business, profession, or sole proprietorship business is included in income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.

When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, or other expenses for business expansion or outlays for capital improvements.

If the net income from a business is negative, it must be counted as zero income. A negative amount cannot be used to offset other family income.

Example 1: John and Mary, a married couple, apply for HTC housing. John operates a sole proprietorship business; the net income from the business after expenses last year was -$3,500. Mary earns $27,000 each year as an employee as shown on the W-2 from her employer. The household's income is $27,000. The $3,500 loss generated by John's business cannot be used to offset Mary's wages.

Income from a sole proprietorship can be estimated by reviewing the individual's prior year tax returns and Schedule C. If necessary, the owner can ask the potential tenant to provide a signed IRS Form 8821 which will allow the owner to verify the information with the IRS.

Example 2: Using the Prior Year Tax Return. An applicant is self-employed and expects the business to continue indefinitely. The applicant submitted the tax return for the prior year. The net income from the sole proprietorship was $13,000. The $13,000 figure can be used as income anticipated for the next 12 months.

Alternatively, the applicant can annualize income from self-employment for the current year business activity based on the number of full months they have been in business. The formula is: (Net income Year to Date) x 12 months divided by number of months in business during the current year.

Example 3: Annualized Current Year Self-Employment Income. In September, an applicant prepared a Schedule C showing the income and expenses for the current year from January 1 through August 31 using the tax form from the prior year. To date, the applicant has net income of $24,000. The anticipated income is determined by multiplying $24,000 by 12/8 which equals $36,000. This is an acceptable estimate for future earnings.

Verifications

A. Annualized income computed for new companies in business for a partial year as illustrated in Example 3 above.

B. Copy of individual federal income tax return (IRS Form 1040) including any: Schedule C (Small Business), Schedule E (Rental Property Income), or Schedule F (Farm Income). Owner/agents may utilize Sample Form 32; however, the form alone is not sufficient. The tax return with the appropriate Schedule is required.

(Note: If a member of the household is employed by a business owned by the household, a copy of a recent pay stub verifying gross year-to-date earnings is also required.)

C. Copy of Corporate or Partnership tax return.

D. Audited or unaudited financial statement(s) of the business such as a recent profit and loss statement.

(Note: For all persons who have been self-employed for more than one year, the owner/agents must obtain the full tax return and all related documents must be signed and dated by the taxpayer.)

When a self-employed applicant, who was not self-employed the previous year applies for housing, they should submit an unaudited financial statement identifying their anticipated amount of income based on logical research into their occupation as well as anticipated expenses.

E. A loan application listing business income from the preceding 12 months.

F. A statement or affidavit as to net income realized during the previous year, only if a tax return has never been filed and the business is less than one year old (Sample Form 33). Personal affidavits must still include the applicants' opinion on the amount she/he believes she/he will earn including all income and possible deductions.

3. Digital Age Income

Alternative means of employment, such as "gig" work is an emerging field. Digital Age income should be treated as self-employment. Gig work includes income from sources such as Uber,

Uber Eats, and Lyft. Other sources may include: Fiverr, Foap, In-Game Economics/Sale of Virtual Goods, E-commerce sites (e.g., Shopify, Ebay, Etsy, Poshmark), App based services (e.g., Grubhub, Doordash, Instacart), Social Media Influencers (e.g., YouTube, Instagram)

Verifications

A. Treat as self-employment and verify using federal tax return (IRS Form 1040 including Schedule C)

B. If a tax return has never been filed and the business is less than one year old, owner/agents must obtain a self-affidavit and profit/loss statement. Owner/agents may utilize Sample Form 33 for this purpose. Printouts from the "gig" work website or app as a basis for income, and receipts as a basis for expenses is best practice, but not required by KHRC. If a policy is implemented regarding supporting documentation for gig income, it must be applied consistently.

C. Uber and Lyft can access the IRS 1099 through their online driver accounts and a tax summary that will provide information on expenses and mileage.

   Note: Units are not to be used an Airbnb. It is recommended the lease prohibit the use of units as an Airbnb, which the IRS would consider commercial space.

4. Other Income from Net Family Assets

Rental property may be real estate (house or land) or personal property (equipment or vehicles). The tenant may have income from enterprises doing business as partnerships or S-corporations or receive royalties for copyrights or patents. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation may be deducted on a straight-line accounting basis as provided in IRS regulations.

For tenants who own homes and rent them to a third party, the house rent (minus allowable expenses) is considered income while the value of the house (minus expenses) is considered an asset.

When tenants hold a mortgage or "Deed of Trust" the interest that accrues is counted as income while the principal of the house is considered an asset.

Withdrawal of Cash or Assets from an Investment

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. Withdrawals from investments will be treated as income only when the withdrawals are made on a regular basis, as in the monthly payments received from an annuity.

5. Payments in Lieu of Earnings (aka Unearned Income)

Payments in lieu of earnings such as unemployment, disability compensation, and severance pay, (except lump-sum additions to family assets). Periodic social security payments are included in annual income for the applicant/tenant receiving the funds. Payments received by adults on behalf of individuals younger than age 18 or by individuals younger than age 18 for their own support are also counted in annual income.

Any unearned income of children under the age of 18 is included as income. This is any income other than employment income; e.g., interest income from bank accounts or dividends from mutual funds held in their name. Unearned income of minor children should be included, even if the child is temporarily absent. When more than one family member shares custody of a child, and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.

Include all payments due to begin during the 12-month certification period. If it is not clear when benefits are due to begin, document due diligence efforts in the tenant's record. Consider only the "maximum benefit level." If the third party does not indicate the length of time for which the tenant will be receiving a certain income, the income should be annualized. In the event that a family cannot provide documentation that access to a specific source of income is for a limited and determined period of time, the benefits should be considered to be available for an indefinite time period and annualized.

Note: Also see below for information on how to treat delayed periodic payments, adjustments for prior overpayments, etc.

Verifications

A. Third party written verification or telephone/in-person contact with source identifying gross amount of payment.

B. Copy of check showing gross amount received and frequency of payments.

6. Periodic Payments

Count the full amount of periodic payments from annuities, insurance policies, retirement funds, unemployment, lottery payments, pensions, and disability or death benefits as income. Payments such as Black Lung Sick Benefits, Veteran's Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.

Example 1: Withdrawals from IRAs or 401K Accounts Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn $2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

If the tenant is receiving long-term care insurance payments directly, any payment in excess of $180 per day must be counted toward the gross annual income.

Delayed periodic payments received due to delays in processing unemployment, social security, welfare or other benefits. These are payments that would have been paid periodically, but were paid in lump-sum because of circumstances such as processing delays.

Adjustments for Prior Overpayment of Benefits. If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

Example 1: Adjustment for Prior Overpayment of Benefits Lee Park's social security payment of $250 per month is being reduced by $25 per month for a period of six months to make up for a prior overpayment. Count his social security income as $225 per month for the next six months and as $250 per month for the remaining six months.

Note: Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K Accounts that are not periodic payments do not fall in this category and are NOT counted in annual income.

Lump Sum Payments for Delayed Start of Benefits. How lump sum payments for delayed start of benefits are counted depends upon the following:

1. When the information becomes available (e.g., is it known at the time of initial certification or recertification, and can it be verified);
2. The anticipated duration of change in benefit receipt; and
3. Whether the family's income will increase or decrease as a result.

Lottery winnings paid in periodic payments must be counted as income.

Per regulations contained in the HERA, do not count deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or deferred Department of Veterans Affairs disability benefits now being received in monthly installments.

Required Minimum Withdrawals are federally mandated withdrawals from retirement accounts. The SECURE Act stipulated that if your 70th birthday was on July 1, 2019 or later, you do not have to take withdrawals until age 72.

Verifications

A. Third party verification from the Social Security Administration or other third party source with accurate and current information on file. For Social Security *retirement benefits*, the award letter need not be within 120 days of the certification date, but it must be the most current annual award letter. Supplemental Security Income (SSI) and Social Security Disability Income verifications are valid for 120 days from the date of receipt by the owner.

Note: Certifications made or in process after the Social Security Administration has announced a COLA for the coming year must adjust anticipated income to include the COLA for that portion of the certification year. It is recommended to include a printout of the COLA announcement (available at www.ssn.gov) in the file to support the percentage calculated. This only applies if the award letter accounting for the COLA has yet to be received by the household.

B. A copy of the current award or benefit statement. This statement is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living adjustment (COLA).

C. Copy of award or benefit verification form completed by the agency or company providing the benefit. Sample Form 8 may be used.

Note: Copies of checks or bank statements show “net” amounts (after Medicare deductions are taken out). These are acceptable verifications so long as documentation of the amount deducted for Medicare is also verified and included in the total calculation.

7. Income from Students

Full-time adult students who are head, co-head or spouse must have all of their earned income considered for purposes of determining income. However, students who are still dependents of a third party will only include the amount of the deduction for a dependent in §5.611 ($480 through 2024 and adjusted for inflation starting in 2025). The income of full-time adult students who are members of the household but away at school is counted the same as other full-time students (i.e. either as head, co-head or spouse or as a dependent).

8. Regular Cash Contributions and Gifts

Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

To determine whether cash contributions should be considered, the key is determining whether the gift is continuous and regular. One-time gifts or sporadic cash contributions are not considered as income.

Example 1: Regular Cash Contributions

- The father of a young single parent pays her monthly utility bills. On average he provides \$100 each month. The \$100 per month must be included in the family's annual income.
- The daughter of an elderly tenant pays her mother's \$175 share of rent each month. The \$175 value must be included in the tenant's annual income.
- The aunt of a tenant gives her niece money every now and then to buy something new. The income is sporadic and not included in the tenant's annual income.

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

Verifications

A. A certification signed by the person providing the assistance giving the purpose, dates and values of the gifts.

B. A verification letter from the bank, attorney or trustee administering the contribution.

C. A statement or affidavit from the resident stating the purpose, dates and value of the gifts.

9. Public Assistance Income in As-Paid Localities

Amounts specified for shelter and utilities should be separately stated. They may be excluded from income. Special computations are needed; consult the HUD Handbook 4350.3, Change 4 for details. Payments, rebates, or credits received under the Federal Low Income Home Energy Assistance Program are excluded from income. Also exclude any winter differentials given to the elderly.

Special calculations of public assistance income are required for as-paid state, county or local public assistance programs. An "as-paid" system is one:

1. In which the family receives an amount from a public agency specifically for shelter and utilities; and
2. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.

The public assistance amount specifically designated for rent and utilities is called the "welfare rent."

To determine annual income for public assistance recipients in "as-paid" localities, include the following:

1. The amount of the family's grant for other than shelter and utilities; and

2. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.

Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy.

Example – Welfare Income in "As Paid" Localities
At application, a family's welfare grant is $300, which includes $125 for basic needs and $175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is $190.
Count the following as income:
$125 Amount family receives for basic needs
$190 Maximum for shelter and utilities
$315 Monthly public assistance income

10. Alimony or Child Support

Alimony and/or child support will be included based on payments received, not the amounts to which the family is entitled to by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by the family.

A signed, sworn self-certification by a tenant is sufficient documentation, for court ordered and non-court ordered alike, under Treas. Reg. 1.42-5(b)(1)(vii) to show that a tenant is not receiving child support payments and is consistent with the documentation requirements in Rev. Proc. 94-65. If the tenant possesses a child support or alimony agreement, but is not presently receiving any payments, nothing is included.

When no documentation of court ordered child support or alimony stipulated in a divorce decree or legal separation is available due to loss of the documentation or unavailability due to other reasons, the owner may require the applicant to sign a certification stating the amount received and the reason why the documentation is not available.

If the applicant/tenant declares he/she never filed for court ordered or requested voluntary child support or alimony on the owner/agent's application and the Kansas Tenant Income Certification and there is no reason to dispute the fact, KHRC will not require any further documentation.

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

Child support paid to the custodial parent through the 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 "pass-through" payments. These amounts must be counted as annual income.

In Kansas if a parent has applied for or is receiving monetary welfare benefits through the Department of Child and Family Services (DCF), food stamps are not included, it is generally believed that the applicant/tenant is not receiving child support since any child support would be held by DCF as repayment.

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

Verifications

A. Copy of a separation or settlement agreement or copy of a divorce decree stating the amount and type of support and payment schedule.

B. A copy of the latest support check and schedule identifying frequency of payments, including online verifications from the Kansas Payment Center, etc.

C. An Affidavit of Estrangement completed by applicant/tenant with required attachments.

D. A certification statement completed by both parents stating the amount of child support and/or alimony being paid/received.

E. A signed, sworn self-certification by a tenant to show that a tenant is not receiving child support payments.

KHRC provides sample Child Support and/or Alimony Verification forms (Sample Forms 16, 16A, and 16B) on our website. Owner/agents must be fully aware that unequal application of the documentation for proof of alimony or child support could be construed as a fair housing violation for familial status. Requests for documentation and certifications (in addition to what is certified on the KTIC) must be applied consistently.

Alimony or child support paid by a member of the household is counted as income even if it is garnished from wages.

Example: Mr. Smith makes income of $900/month from employment. $150/month is garnished from his wages for child support/alimony payments. To determine Mr. Smith's annual income for the purposes of certifying his eligibility, the leasing agency would use $900 x 12 or $10,800.

Note: Pursuant to the Privacy Act, owners of housing tax credit developments are only entitled to applicant/ tenant information necessary to prove eligibility. Divorce decrees are generally needed to prove a division of assets, amount of child support, and amount of alimony granted by the Court. For individuals that have been divorced for multiple years (generally over five) and where there are no minors, it may not be necessary to obtain a copy of the divorce decree since division of assets would have occurred years earlier, and alimony is only stipulated for a short period of time.

11. Resident Services Stipend Exceeding $200 per Month

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

Stipends are considered on a per-person basis, meaning that both a husband and wife could be receiving a stipend. So long as each person is receiving $200 or less per month, both are excluded. If the stipend exceeds $200 per month, the entire amount is included in annual income.

Verifications

A. Third party verification from the owner/management company employing the resident to perform tasks for the property.

12. Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Developments

An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term “intermediate care facility” is one used by state mental health departments for group homes serving these residents.

Assisted living units are units in properties developed for elderly residents with project-based Section 8 assistance or straight tax credits.

The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.

Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:

1. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus
2. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Section 9.6, Excluded Income). Examples of

other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.

3. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use $30.

Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services.

13. Actual Income Earned from Trust Funds that are Revocable and Under the Control of Any Member of the Household

A trust can be either revocable or non-revocable. Actual income earned regardless of whether it is distributed should be considered income to the beneficiary at the time it is received by the trust.

When a tenant places an asset in a non-revocable trust it is counted as an asset disposed of for less than market value for two years.

Special Needs Trust: A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

If the beneficiary does not have access to income from the trust, then it is not counted as part of income.

If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

14. Relocation Payments Made Pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970

An individual who receives relocation payments pursuant to Title II must count the payments as income. Lump sum payments are considered assets and periodic payments are income.

Verifications

A. Third party written verification or telephone/in-person contact identifying the gross amount of the relocation payment.

B. Copy of check showing gross amount received and frequency of payments.

15. Military Housing Allowance for Members of the Military

The following entitlements should be used to determine income for enlisted personnel (generally, officers/warrant officers would never qualify for low income housing):

- Base Pay
- BAQ (Basic Allowance Quarters), also referred to as BAH (Basic allowance for housing)
- BAS (Basic Allowance for Subsistence, i.e., food)
- VHA (Variable Housing Allowance)
- CA (Clothing Allowance)
- FDP (Foreign Duty Pay)
- Reserve Active Duty Pay
- Separation Pay
- Cost of Living Allowance
- Station Housing Allowance
- Station Housing Allowance II
- Summer Camp Pay
- Special Duty Pay (Recruiter, Airborne, Submarine, Flight)
- IDP (Imminent Danger Pay)
- HDP (Hazardous Duty Pay)

The following sources of Military income are NOT included in determining annual income:

- One-time payments such as a re-enlistment bonus. (Note: this likely will be a lump sum received and treated as an asset.)
- Hostile Fire Pay (HFP) is defined as combat in a hostile fire zone. (Note: this is different that Hazardous Duty Pay.)

The 2015 Omnibus Bill and Extenders package gave permanent exemption to the Basic Allowance for Housing (BAH/BAQ) for the following counties: Riley, Geary, Dickinson, Morris, Wabaunsee, Pottawatomie, Marshall, Washington, and Clay.

Verifications

A. Third party written verification or telephone/in-person contact identifying enlistee's income. (Management may want to contact the local finance officer and/or the commander of the unit.)

B. Four to six copies of the enlistee's recent Leave and Earnings Statement, also known as L.E.S. The L.E.S. may not always provide information of all benefits if the soldier was recently living in quarters or billets and was recently married or obtained custody of a child.

Example: A military member has recently moved from another duty station, which causes his benefits information to be skewed. If in doubt, use Sample Form 15 to provide further clarification.

C. Telephone or in-person contact. This is the least recommended.

16. Federal Pensions Lost in a Divorce

Federal government pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. The portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM)) to be paid to the applicant/tenant's former spouse is no longer an asset of the applicant/tenant and therefore not counted as income. However, any pension funds authorized by OPM pursuant to a court order to be paid to the former spouse of a Federal government employee is counted as income for the tenant/applicant receiving such benefits.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits.

Once payments have been authorized by OPM, the reduced pension amount paid to the retired Federal employee will be reflected in the tenant's/applicant's statement from OPM.

Verifications

A. Third party written verification through the Office of Personnel Management or Defense Finance and Accounting Services (DFAS).

B. A copy of the statement benefit letter that verifies the pension benefits paid, including any deductions ordered, as well as any evidence of survivor benefits, pensions or annuities received by any federal employee.

6.4 Assets

Annual income also includes all actual anticipated income from assets even if the asset is excluded from net family assets but the income from the asset is not otherwise excluded. Imputed returns on net family assets are included in annual income only when net family assets exceeds $50,000 (a figure that is annually adjusted for inflation) and actual asset income cannot be calculated for all assets. (See examples on the following pages of scenarios where income can be calculated for some but not all assets). Owners will not impute income from assets if the total value of the net family assets is equal to or less than $50,000 (as adjusted by inflation).

Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of investment, except as excluded. Asset exclusions are listed in Section 6.5 below.

Owners may allow self-certification of assets if the total value of the household's assets is **$5,000** or less. Until further guidance is received from the IRS, this will remain $5,000.

6.5 Exclusions from Net Family Assets

1. The value of necessary personal property (See necessary vs. non-necessary table at the end of this section)

2. The combined value of all non-necessary items of personal property if the combined total value does not exceed $50,000 (

3. The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals

Types of retirement accounts recognized by the IRS:
- Individual Retirement Arrangements (IRAs)
- Roth IRAs
- 401(k) Plans
- SIMPLE 401(k) Plans
- SIMPLE IRA Plans (Savings Incentive Match Plans for Employees)
- SEP Plans (Simplified Employee Pension)
- Payroll Deduction IRAs
- Profit-Sharing Plans
- Defined Benefit Plans
- Money Purchase Plans
- Employee Stock Ownership Plans (ESOPs)
- 457 Plans
- Multiple Employer Plans

4. The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located

5. Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability

6. The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, of local government.

7. Interests in Indian trust land

8. Equity in a manufactured home where the family receives assistance under 24 CFR part 982.

9. Equity in property under Homeownership Option for which a family receives assistance under 24 CFR part 982

10. Family Self-Sufficiency Accounts

11. Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family

12. The full amount of assets held in an irrevocable trust.

13. The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household.

6.6 Necessary and Non-necessary Personal Property

Necessary personal property is excluded from net family assets. Non-necessary personal property with a combined value greater than $50,000 as adjust by inflation, is considered part of net family assets. When the combined value of all non-necessary personal property does not exceed $50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

All assets are either categorized as either real property (e.g., land, a home) or personal property. Personal property includes tangible items, like boats as well as intangible items, like bank accounts. For example, a family could have non-necessary personal property with a combined value that does not exceed $50,000 but also own real property such as a parcel of land. Even though the non-necessary personal property would be excluded from net family assets, the real property would be included in net family assets regardless of its value (unless the real property meets a different exclusion under 24 CFR § 5.603.

Necessary personal property are items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items.

Determining what is a necessary items of personal property is a highly fact-specific determination. It is important owner/agents gather enough facts to determine whether an asset is necessary or non-necessary personal property. The following table lists examples of necessary and non-necessary personal property and is **not an exhaustive list.**

Necessary Personal Property	Non-Necessary Personal Property
- Car(s)/vehicles that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) - Furniture, carpets, linens, kitchenware - Common appliances - Common electronics (e.g., radio, television, DVD player, gaming system) - Clothing - Personal effects that are not luxury items (e.g., toys, books) - Wedding and engagement rings - Jewelry used in religious/cultural celebrations and ceremonies - Religious and cultural items - Medical equipment and supplies - Health care related supplies - Musical instruments used by the family - Personal computers, phones, tablets, and related equipment - Professional tools of trade of the family, for example professional books - Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities - Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	- Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs)) - Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) - Recreational boat/watercraft - Expensive jewelry without religious or cultural value, or which does not hold family significance - Collectibles (e.g., coins/stamps) - Equipment/machinery that is not used to generate income for a business - Items such as gems/precious metals, antique cars, artwork, etc.

6.7 Types of Assets

1. Cash held in savings, checking accounts, safe deposit boxes, certificates of deposits, and Health Savings Accounts are considered an asset.

For verification, a minimum of one statement that reflects the current balance of banking/financial accounts is sufficient. Assets held in foreign countries are also considered assets.

2. Prepaid Debit Cards

Any income deposited into a prepaid debit card is considered an asset. The current balance must be used for the value of the asset. There is no interest earned on prepaid debit cards. Acceptable proof of verification is the last receipt from an ATM, printout from online account service or through paper statement. The owner/agent should verify the last four numbers on the actual card are the same as the receipt. The owner/agent should not photocopy the card.

Note: Deposits into prepaid debit card accounts could include Social Security, Social Security Disability, Welfare Payments, Employment Checks, etc. If the applicant receives income from any of the abovementioned sources, but does not disclose any assets, management should ask how this income is received.

3. Trusts

Include the cash value of any revocable trust available to the family.

A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.

Trusts may be revocable or non-revocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a non-revocable trust, the creator has no access to the funds in the account.

The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., beneficiary's 21st Birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

How to Treat Trusts

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.

A. Revocable trusts. If any member of the household has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset.

Example: A Trust Accessible to Family Members Assez Charaf lives alone. He has placed $20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has the control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the $20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

B. Non-revocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

C. Non-revocable trust as an asset disposed of for less than fair market value. If a tenant sets up a non-revocable trust for the benefit of another person while residing in HTC housing, the trust is considered an asset disposed of for less than fair market value.
If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

Example: Non-revocable Trust as an Asset Disposed of for Less than Fair Market Value Sarah Gordy placed $100,000 in a non-revocable trust for her grandson. Last year, the trust produced $8,000 which was reinvested into the trust. The trust is treated as an asset disposed of for less than fair market value for two years. No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, $100,000, is included in net family assets for two years from the date the trust was established.

D. Non-revocable trust distributing income. When a tenant places an asset in a non revocable trust but continues to receive interest income from the trust, the income is added to annual income and the trust is counted as an asset disposed of for less than fair market value for two years.

Example: Non-revocable Trust Distributing Income to the Creator/Tenant
Reggie Bouchard has established a non-revocable trust in the amount of $35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received $3,500. The owner will count Reggie's actual anticipated income from the trust in next year's annual income, and continue to count it thereafter. Because the asset was disposed of for less than fair market value, the value of the asset given away, $35,000, is counted as an asset disposed of for less than fair market value for two years.

E. Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance, the funds would be considered a lump sum receipt and would be treated as an asset.

F. Special Needs trusts. A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

If the beneficiary does not have access to the income from the trust, then it is not counted as part of income. If income from the trust is paid to the beneficiary regularly, those payments are counted as annual income. Since the beneficiary in this scenario does not have control over the principal, the principal is not considered an asset.

Example: Special Needs Trust
Daryl Rockland is a 55-year old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

G. Funeral Trust. A funeral trust is a trust that may be created to cover funeral expenses and prepaid cemetery/cremation costs at the time of passing. If this trust is set up as non-revocable, the assets within the trust are only accessible to the funeral home. If the trust is created as revocable, the assets within the trust must be counted as an asset. Owner/agents must ensure that the trust beneficiary in a revocable trust is not someone other than a funeral home/cemetery. Prior non-written guidance had allowed payments made into funeral trusts not be counted as income. This policy has been redacted.

Additional guidance regarding Trusts can be found in HUD Notice H 2023-10, F.4.d

4. Lump sum receipts

Examples of lump sum payments include the following:

1. Inheritances

2. Capital gains
3. Lottery winnings paid in one payment
4. Cash from the sale of assets
5. Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses)
6. Economic Impact/Stimulus Payments
7. Any other amounts that are received in one-time lump sum payments.

Lump sum payments are counted as an asset as long as the family continues to possess it and the payment is held in an account that as part of asset inclusions. If the family uses the money for something that is not an asset (e.g., a car, vacation or education), the lump sum must not be counted.

Example: Lump Sum Additions to Family Assets (One-time Payment) JoAnn Wettig won $500 in the lottery and received it in one payment. Do not count the $500 as income. At JoAnn's recertification, she will report all of her assets. The money from the lottery will appear in the assets (possibly checking, savings, CD, etc.). If JoAnn spent the money, it is already gone.

5. Mortgage or Deed of Trust, Reverse Mortgages

Occasionally when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a "contract for sale."

A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment which includes interest and principal. The value of the asset is determined by calculating the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income, while the principal portion (calculated for the 12-month period) is considered an asset.

Reverse Mortgage is a loan that provides home equity in the form of cash to qualified borrowers (lump sum, line of credit, monthly/tenured payments). Because the loan must be repaid, cash provided to the borrower(s) would not be counted as income, but rather the home should be considered as an asset. According to HUD's requirements and definitions for Reverse Mortgage eligibility, all borrowers listed on the loan must be eligible, must be 62 years old, and at least one borrower must use the home as a principal residence.

6. Assets Disposed of For Less than Fair Market Value

Applicants and tenants must declare whether an asset has been disposed of for less than fair market value (FMV) at each certification and recertification. Owners must count assets disposed of for less than FMV value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received.

Any asset that is disposed of for less than FMV is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation. (However, the rule applies only when the FMV of ALL assets given away during the past two years exceeds the gross amount received by more than $1,000).

When the two-year period expires, the income assigned to the disposed asset also expires.

Examples: Assets of More or Less than $1,000 Disposed of for Less than FMV

- During the past two year, Alexis Turner donated $300 to the local food bank, $150 to a camp program, and $200 to her church. The total amount she disposed of for less than FMV is $650. Since the total is less than $1,000 the donations are not treated as assets disposed of for less than FMV.
- Jackson Jones gave each of his three children $500. Because the total given away to all sources during the past two years exceeds $1,000 the gifts are treated as assets disposed of for less than FMV.

Assets disposed of for less than FMV as a result of foreclosure, bankruptcy, divorce, or documented legal separation is NOT counted.

Assets placed in non-revocable trusts are considered as assets disposed of for less than FMV except when the assets placed in trust were received through settlements or judgments.

Applicants and tenants must sign a self-verification form at their initial certification identifying all assets that have been disposed of for less than FMV (or certify that no assets have been disposed of for less than FMV which is done using the KTIC).

Owners need to verify the tenant self-certification only if the information does not appear to agree with other information reported by the tenant/applicant.

Examples: Asset Disposed of for Less than FMV

An applicant "sold" her home to her daughter for $10,000. The home was valued at $89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at $1,800.

$89,000	Market value
- 1,800	Fees
$87,200	Cash value
- 10,000	Sales price to daughter
$77,200	Asset disposed of for less than FMV

In this example, the asset disposed of for less than FMV is $77,200. That amount is counted as the resident's asset for two years from the date the sale took place.

The $10,000 received from the daughter may currently be in a savings account or other asset, or may have been spent.
A resident contributed $10,000 to her grandson's college tuition and gave her two granddaughters $4,000 each to save for college. $10,000 College tuition gift + 8,000 Gift to Granddaughters $18,000 Asset disposed of for less than FMV The $18,000 disposed of for less than FMV is counted as the tenant's asset for two years from the date each asset was given away.

7. Life Insurance

Cash value of life insurance policies available to the individual before death (e.g., the surrender value of the whole life policy or universal life policy).

Funeral funds come in many forms, sometimes in the form of an insurance policy. Owners must ensure the beneficiary of an insurance policy is the funeral home/cemetery. Other types of funeral funds, such as trusts, could be in effect. Owners must review and maintain as proof pertinent documents.

8. Federal Government Pensions

In instances where the applicant/tenant is a retired Federal government employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal government employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation is counted as income for the applicant/tenant.

9. Foreign Assets

All foreign assets must be verified prior to occupancy. Failure by the applicant to provide proof of any foreign asset is considered reason for denial. The verification documents must be translated and any value/income from that asset must be calculated in a dollar amount.

10. Mobile Homes

Mobile or manufactured homes are built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation. Kansas law states that all mobile and manufactured homes are considered personal property unless:

A. The title to the home is in the same name of the person (or spouse of the person) who holds title to the land is located on, AND
B. The home is on a permanent foundation.

When both A and B apply, the mobile home is part of the land and considered real estate and must be counted as an asset.

11. Mineral Rights/Royalties

Payments from mineral rights do not always come on a regular basis nor are they a guaranteed source of income. Mineral rights are paid to applicants/tenant when the tenant leases out the land for someone else to mine minerals without owning the land. Mining includes actual minerals, oil, and gas and can include the right to explore. To verify income from mineral rights the owner/agent must obtain a copy of the last four periodic payment statements or obtain multiple years of tax returns to establish a baseline.

6.8 Determining the cash value of assets

The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:

- Penalties for premature withdrawal;
- Broker and legal fees; and
- Settlement costs for real estate transactions.

The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

Example: Calculating the Cash Value of an Asset A family has a certificate of deposit in the amount of $5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest. $5,000 x .04 = $200 in annual income $200/12 months = $16.57 in interest per month $16.67 x 3 = $50.01 is the penalty for early withdrawal $5,000 - $50 = $4,950 cash value of CD

It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step in determining the household's total net assets.

Assets Owned Jointly

If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners. The owner/agent must obtain proof of the proration (county assessors' statement/bank statement with two or more names) or count the full amount of the asset.

If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets. Documentation, possibly including tax returns, may be required to prove the applicant/tenant is not an owner.

Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

Example: Determining the Cash Value of an Asset

The "cash value" of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family's equity in the property as well as the expense to sell the property.

To determine the family's equity, subtract amounts owed on the property from its market value:

Market value
\- <u>Mortgage amount owed</u>
Equity in the property

Calculate the cash value by subtracting the expense of selling the property:

Equity
\- <u>Expense of selling</u>
Cash Value

Juanita Player owns a rental house. The market value is $100,000. She owes $60,000. The cost to dispose this house would be $8,000. The owner would determine the cash value as follows:

Market Value	$100,000
Mortgage amount	- $<u>60,000</u>
	40,000
Cost of disposing the asset (real estate commission, and other costs of sale)	- $<u>8,000</u>
Cash Value	$32,000

Typically, there is no actual income derived from real estate because it does not yield any interest. However, in this example it is stated the home is used as rental property. The net rental income would be considered the asset's actual income. To determine the net rental income, calculate the annual rent amount received minus the mortgage interest payments and annual upkeep expenses.

Annual rent ($500/month)	$6,000
Mortgage interest payments	- $1,900
Annual Upkeep	- $1,000
Income from Asset	$3,100

*Note: If the household member's main business is real estate, net rental income is counted as business income and should be reported on Schedule E of the tax return. When this is the case, disregard the real estate when determining the household's net assets.

In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.

Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

Example: Jointly Owned Assets

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.
- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

Assets that are not accessible to the applicant and provide no income to the applicant are excluded from net family assets. Do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

Example: Assets Not Effectively Owned by the Applicant

- Alexander Cumbow and his daughter, Emily Bornscheuer, have a bank account with both names on the account. Emily's name is on that account for the convenience of her father in case an emergency arises that would result in Emily handling payments for her father. Emily has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Emily does not own this account. This

asset belongs to Alexander and would be counted entirely as the father's asset should he apply for assisted housing. • A victim of domestic violence owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash; therefore, it can be excluded.

6.9 Calculating Income from Assets

The calculation to determine the amount of income from assets to include in annual income considers the following:

- Any asset where the actual income can be calculated,
- Whether the family's total net assets exceed $50,000.

All actual income from assets that can be calculated must be included in the household's income regardless of the net value of the household assets.

When the net household assets is $50,000 or less (as adjusted by inflation), include the actual income from assets where it can be determined. For specific assets where the income cannot be determined, no income is included for those assets.

When the net household assets exceed $50,000, include the actual income from assets where it can be determined and imputed income from assets where it cannot. Asset income will be a combination of actual and imputed.

To impute income from assets, the HUD passbook rate is used. HUD has indicated that the passbook savings rate will be reviewed annually.

In the following examples, management has already determined what assets are considered non-necessary. Only non-necessary assets are to be listed on the income certification.

Example 1 – When net family assets total $50,000 or less

Type of Asset	**Cash Value**	**Actual or Imputed**	**Annual % Rate**	**Annual Income from Asset**
Certificate of Deposit $1,000 (withdrawal fee of $50)	$950	Actual	4%	$40
Savings account	$500	Actual	2.5%	$12.50
Stock (Not paying dividends)	$300	N/A	----	$0
Total:	$0			$52.50 (included as income)

*The total amount of **included** net family assets total is less than $50,000; therefore, the TIC may reflect $0 and nothing is imputed.

Example 2 – When net family assets total $50,000 or less and household has real property

Type of Asset	Cash Value	Actual or Imputed	Annual % Rate	Annual Income from Asset
Savings	$7,000	Actual	2.5%	$175
Checking	$300	Actual	.05%	$0.15
Land (minus the cost to sell and the amount still owed)	$40,000	N/A	----	$0
Total:	$40,000			$175.15

*The total amount of **included** net family assets (non-necessary personal property exceeding $50,000 and real property) is $40,000. Since the non-necessary personal property alone does not exceed $50,000, it is not included in the total cash value. Further, since the land is less than $50,000, nothing is imputed.

Example 3 – When net family assets total exceeds $50,000 and there is a combination of actual income and imputed income

Type of Asset	Cash Value	Actual or Imputed	Annual % Rate	Annual Income from Asset
Checking	$300	Actual	.05%	$0.15
Boat	$3,000	Imputed	.04% (HUD Passbook)	$1.20
Land (minus the cost to sell and the amount still owed)	$60,000	Imputed	.04% (HUD Passbook)	$24
Total:	$60,000			$25.35

*The total amount of **included** net family assets (non-necessary personal property exceeding $50,000 and real property) is $60,000. Since the non-necessary personal property does not exceed $50,000, it is not included in the total cash value. However, since the real property (land) exceeds $50,000, it triggers the imputed asset income to be calculated where the actual income is not known or cannot be determined (land and boat).

Example 4 – When net family assets total exceeds $50,000 and there is a combination of actual income and imputed income

Type of Asset	Cash Value	Actual or Imputed	Annual % Rate	Annual Income from Asset
Savings	$13,000	Actual	2.5%	$325
Boat	$35,000	Imputed	.04% (HUD Passbook)	$14
Checking (non-interest bearing account)	$3,500	Actual	0%	$0
Total:	$51,500			$339

*The total amount of **included** net family assets (non-necessary personal property exceeding $50,000 and real property) is $51,500. The savings and checking account interest is known. Since the non-necessary personal property exceeds $50,000, the imputed asset income is calculated where the actual income is not known or cannot be determined (boat).

6.10 Verification Requirements

Owners must determine all income, assets, family characteristics, and circumstances that affect family eligibility. In order to accomplish this, each adult family member must sign a Consent for Release of Information Form (Sample Form 3 available if needed). Applicants and tenants who refuse to sign the appropriate consent forms may be denied occupancy or continued occupancy.

Verifications forms can be used during the 120 days preceding the certification period for both initial certification and subsequent recertifications and are valid for 120 days from the date of receipt by the owner. If verifications are more than 240 days old, the owner must obtain new verifications.

Note: The application is considered a verification form. It is necessary for the owner/agent and applicant to review for updates during the certification process should the application exceed the 120 days. It is acceptable to sign and date current notating no changes, or initial and date any applicable changes on the existing form.

Owner/Agents of properties with Rural Development/HUD/HTF/HOME funding in conjunction with tax credits must be aware of verification time limit rules. Tax Credit/HOME/HTF property owner/agents must be aware of 6^{th} year rules, verification date and valid certification time limits.

Time limits do not apply to information that does not need to be re-verified, such as: Age, disability status, family membership or citizenship status.

6.11 Methods of Verification

Owners must use verification methods acceptable under IRC §42 and consistent with state guidance as outlined in this compliance manual. There are three acceptable methods KHRC accepts:

Third party verifications:

A. Written documentation sent directly by third-party source (usually on Sample Verification Form)

B. Authentic and verifiable documentation provided by the applicant/tenant (usually paystubs, letter of hire, statements)

It is assumed that third-party sources will send written verification (the completed Sample Form) to the owner through fax, email or postal mail. The applicant or tenant will not hand-carry third-party verifications provided by a source other than themselves (i.e. paystubs, statements, etc.).

C. Oral verifications by telephone from a reliable third-party source is an acceptable verification method only after the first two methods indicated above. Owners frequently use this method when the third party does not respond to the written verification request. When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file. Oral verification alone will not suffice in situations where a written verification exists that shows a nonqualified situation. Oral verifications cannot be more than 120 days from the date of move in.

When verifying information by phone, the owner must document and include in the tenant's file the following information: third-party's name, position, and contact information; information reported by the third-party; name of person who conducted the telephone interview; and date and time of the telephone call.

Facsimiles (or information sent by FAX) is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name, person providing the verification information and fax number of the verification source.

E-mail, similar to facsimiles, is also most reliable when the owner and the verification source have first talked by telephone. The email should include the email address, name of appropriate individual and firm.

Information verified on the internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen and the information will be available permanently to support qualification. If not, the use of a printout from the internet will be adequate verification.

Example: Verification by Internet Printout Jose Perez maintains a savings account at a financial institution that charges to complete asset verifications. Further, Jose does not receive monthly bank statements in the mail due to requesting only electronic statements. The owner may accept a printout of Jose's most recent savings account statement if it includes the relevant information required for a third-party verification.

Documenting Why Third-Party Verifications are not available: When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

A. A written notice to the file explaining why third-party verification is not possible, OR

B. A copy of the date-stamped original request that was sent to the third party, AND

C. Written notes or documentation indicating follow-up efforts to reach the third party, AND

D. A written note to the file indicating that the request has remained outstanding.

E. Documentation showing that certain third parties intend to charge for verifications and the owner is trying to avoid passing those costs along to low income applicants/tenants.

Review of Documents: An owner may review documents submitted by the applicant or tenant when third-party verifications are not possible or not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third party verification.

The owner can accept documents submitted by the applicant as suggested in HUD Handbook 4350.3, Change 4.

Examples: Appropriate Occasions to Verify Information through a Review of Documents
• The owner sent a verification request to the tenant's employer but did not receive a response and the applicant cannot provide two pay stubs. The owner then made several calls to the employer but has not received a return call. The owner/agent may use a review of documents (pay stubs) for verification. The owner/agent should insist on a minimum of two current, consecutive pay stubs. • The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months. • The tenant's employer uses a 900 phone number which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent 4-6 consecutive pay stubs to verify earned income.) • Owner or agent reviewed the applicant's savings bonds, took down the numbers, amounts and dates and determined the interest rate based upon the information gathered. The bonds were given back to the tenant and not copied for the file.

In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number. Copies of the reviewed documents must be placed in the applicant's or tenant's file. If copies cannot be made, the person reviewing the original documents must list the reviewed documents and the information provided on the documents and must initial and date the notation.

Obtaining accurate verification through a review of documents requires the owner to consider the following:

Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.

Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent four to six pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.

Is the document an unaltered original? The greatest shortcoming of documents as a verification source is their susceptibility to undetectable change through the use of high-quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.
Self-Certification or Self-Affidavit: An owner may accept a tenant's statement regarding the authenticity of information submitted if the information cannot be verified by another acceptable verification method. A self-affidavit should be a statement either written by or taken directly from the applicant/tenant in their own words. Management should never write out a statement for the applicant/tenant to sign nor should they "coach" the applicant/tenant on what should be written.

Sample verification forms are referenced throughout this Manual and are available on the KHRC's website. https://kshousingcorp.org/ The Kansas Tenant Income Certification (KTIC) is a required form, along with the Tenant Consent for Release of Information (should accompany all requests to third parties for verifications of income assets, and background checks, therefore the release and consent statement may be on the verification form being used and the application form), Drug-Free Lease Addendum (may be part of the lease), Move-in/Move-out Inspection forms.

6.12 Reasonable Accommodation

If an applicant or tenant cannot read or sign a consent form or lease document because of a disability, the owner must provide a reasonable accommodation.

Example: Reasonable Accommodation
1. Provide forms in large print 2. Provide readers for persons with visual disabilities 3. Allow the use of a designated signatory

Tenants unable to fully understand the terms of their lease due to a language barrier must be provided with an interpreter or allowed to have a party present who can explain the documents being signed. Such a reasonable accommodation should be fully documented and maintained as a part of the tenant's record. KHRC highly recommends you maintain leases and other owner documents in languages to serve the populations most likely to apply.

6.13 Confidentiality Laws

Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility.

Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes.

To help ensure the privacy of applicant and tenant information, owners and their employees are subject to penalties for unauthorized disclosure of applicant/tenant information. In addition, applicants and tenants may initiate civil action against an owner for unauthorized disclosure or improper use of the information they provided.
HUD encourages owners to develop their own procedures and internal controls to prevent the improper use or unauthorized disclosure of information about applicants and tenants. Adequate procedures and controls protect not only applicants and tenants, but also owners.

Owners must also comply with state privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

CHAPTER 7: RECERTIFICATION REQUIREMENTS

Treas. Reg. 1.42-5(c)(2)(ii)(B) requires that each low income household be recertified annually. Each subsequent recertification shall be completed within 120 days of the effective date of the initial tenant income certification (i.e., anniversary date of move-in). IRS requires owners to make recertifications effective the same date in subsequent years as the initial move-in date (this applies to transfers also) in order to appropriately determine the application of the Next Available Unit Rule. This may appear to be less important on a 100% tax credit property, but an owner who rents to over income tenants or cannot rent all of the available units to tax credit qualified tenants may eventually be considered a mixed use project.

Recertification activities should commence prior to the end of twelve months. A recommended practice, effective in proving due diligence, is to issue 120, 90, 60, and 30 day notices to residents that their recertifications are coming due.

Recertification effective dates in subsequent years and initial move in dates should continue to match even if the lease goes to a month-to-month or six month renewal. Special care should be taken when working with Section 8, Rural Development, and HOME tenants as they also have other federal rules with which to comply.

7.1 Mixed Use Developments

For mixed use developments the recertification process is identical to the initial certification in terms of documenting household composition, income, income from assets, student status and household eligibility. KHRC is required to review the tenant income recertification and supporting documentation for tenants occupying these units. Owners are required to make the recertification date the anniversary date of initial move-in for purposes of the NAUR. Failure to do so does not relieve the owner from demonstrating compliance with the NAUR. The “effective date” of the recertification should be listed at the top of the KTIC within the box titled “recertification” checked.

A mixed use development is a single building project or multi building project that contains both market rate and low income units. At each recertification, units shall be tested to determine if the total gross income of the household exceeds 140% of the current income limits in effect at the time of the recertification. For households that exceed 140% of the income limits, the Next Available Unit Rule applies. (See Chapter 9)

If the owner initiates an eviction proceeding and the household vacates the unit, no recertification is necessary. If, for any reason, it is determined that the household will not vacate the unit as anticipated, a recertification will be necessary within 120 days of the determination.

A unit will be considered out of compliance if the annual recertification was not performed, or the annual recertification was performed late and after notification from KHRC of an inspection (annual or onsite).

Example #1: Recertifying Tenants On January 15, 2005 the owner of a HTC building incorrectly completed a household's income recertification. The owner identified the problem and corrected the documentation deficiency on March 30, 2005. The owner was notified on April 20, 2005 that KHRC would be conducting a tenant file review on May 1, 2005. KHRC selected Unit A as part of the inspection sample and reviewed the household's income recertification and noted the owner's corrections. Because the owner corrected the noncompliance before April 20, 2005 the owner is in compliance.
Example #2: Holdover Tenant A tenant remains in possession of a unit without the owner's consent after the expiration of the lease with no lease renewal or upon eviction. Under these types of circumstances, the tenant is called a "holdover tenant." (Ref. Kansas Residential Landlord and Tenant Act, section 58-2570(c)). If, after the Court proceedings the tenant is allowed to stay, the owner has 120 days in which to complete the recertification process.

When a notice to vacate is received by the owner, staff should immediately begin reviewing the waiting list(s). Households on the waiting list should be notified of the unit's availability. By following this process, management is essentially pre-leasing/reserving the unit for the new household which can often times minimize the number of days the unit is vacant. Once the household on notice moves out, management should complete the unit turnover/make-ready process timely so the newly qualified household can move in as soon as the unit is ready.

7.2 100% Income and Rent Restricted Developments

Effective with the 2008 HERA law, tax credit developments that qualify as single building projects or multi-building projects where all units are both income and rent restricted are exempt from the recertification requirement of IRC §42. In lieu of a full recertification, KHRC requires each household in 100% low income projects to complete an Annual Household Certification Update (i.e. Sample Form 18). This form collects the household's self-certified statement of income, student status and demographic information. Each adult member of the household is required to sign the form. The effective date of Sample Form 18 is the same as other recertification documents in that it must be completed within 120 days of the anniversary date of the initial tenant income certification and made effective the anniversary of move-in. Sample Form 18 is necessary in order to collect information for reporting to HUD as required in HERA regulations, Section 36.

Owner/agents shall discuss with tenants what constitutes "income" when they update their income and qualification status (i.e. complete Sample Form 18). Best practices suggest a sit down with the tenant to cover the questions outlined on the KTIC; the method used for initial certification. In doing so, the tenant is assisted in computing their income based on the results of their answers instead of guessing. This provides a closer approximation of the household income. The owner/agent should only complete property or unit information on Sample Form 18 (ie, Property Name, Unit Number, Rent, UA, HUD Max, Set-Aside Met, etc.) Sections capturing household members', age, student status, and income is to be completed by the household. It should never be assumed by the owner/agent a household members' student status or income. Further, completion of this form by the household sometimes brings changes in household composition to management's attention. After the household and owner/agent complete their respective sections, the agent/owner and all household members age 18 and over must sign and date at the bottom.

7.3 Initiating the Recertification Process

Best practice procedures recognize that recertification efforts should begin 120 days in advance of the recertification due date to obtain the best results. Compliance staff monitor for owner due diligence when auditing tenant records. If KHRC staff find at least one letter of notification to the tenant apprising them of the need to recertify at least 30 days prior to the recertification due date, KHRC shall accept this as sufficient due diligence.

If an owner has sent timely notices but the household does recertify prior to vacating their unit, the vacated unit may not be considered out of compliance. Owners should keep a record of their attempts to obtain the recertification and the date the tenant actually moved out. If a significant amount of time has passed from when the recertification was due and the household's actual move out date, it may be considered noncompliant.

Example: Household gives notice stating their intent to vacate before recertification is due. The owner of a mixed use property provided timely notice to a household (on July 15, 2004) that the annual income recertification was due on October 1, 2004. The household informed the owner on September 13, 2004 that they would be vacating the unit on October 15, 2004. Since the household gave notice in advance and will not occupy the unit in the coming year, there is no reason to complete the income recertification and the unit remains in compliance. Should the household later decide to stay in the unit, a late recertification must be completed.

If KHRC identifies an issue of noncompliance on the initial tenant income certification, staff will review the subsequent tenant income certifications to determine whether the noncompliance was corrected at some point.

Annual Recertification was not Performed or Insufficient Example #1: A household in a mixed use development initially qualified and was properly certified at move-in. However, it has been more than 12 months since the previous recertification and there is no recertification on file. The unit is out of compliance as of the date the recertification was due and will not return to compliant status until the recertification is completed and signed by the tenant.
Example #2: A household in a mixed use building was initially qualified and properly certified at move-in; however, the recertification was not properly documented and KHRC could reasonably

determine the household's continued eligibility. The following are possible documentation noncompliance issues: • Application/questionnaire is not sufficiently detailed • Not all sources of income are verified • Not all sources of assets are verified • Verifications are insufficient • Not all adult household members' income and/or assets are disclosed and/or included • Tenant income certification form is not prepared, signed and/or dated • Other state-required forms designated to document compliance with IRC §42 are not in the file
Example #3: A household's initial income documentation was not sufficient for KHRC to determine qualification. KHRC will review each successive recertification to determine if the household ever qualified providing a full recertification is on file.

7.3.1 Retroactive Recertifications

A retroactive recertification can be performed which completely and clearly documents the sources of income and assets that were in place at the time the recertification should have been completed and applies income limits that were in effect on that date. If there is no resulting noncompliance (e.g., violation of the Next Available Unit Rule), the unit will be out of compliance on the date the recertification was due, and back in compliance on the date the tenant signs the recertification. Signatures made by the tenant or owner/agent should never be back dated. Owner/agents must include hand-written language on the Sample Form 2 (KTIC) or Sample Form 18 verifying that the information was "true and correct" as of the required date of recertification. The advantage of the retroactive recertification is that the owner may avoid violating the Next Available Unit Rule in mixed use projects. In either case, the effective date for recertifications continues to be the anniversary date of the actual move-in date.

New Recertification is Performed after Notice Example: An owner failed to complete a tenant's annual recertification which was due February 10, 2004. The mistake was identified during a KHRC inspection conducted November 1, 2004. The management company completed the recertification on November 12, 2004 using the income limits available on that date. The recertification was completed based on the tenant's anticipated future income for the period November 12, 2004 through November 12, 2005. The unit is out of compliance from February 10, 2004 to November 12, 2004. The next annual income recertification is due on February 10, 2005. Since the noncompliance was corrected after notification of a KHRC inspection, the noncompliance must be reported on IRS Form 8823.
Household determined to be Over-Income Example: An owner failed to complete a tenant's annual income recertification which was due February 10, 2004. The mistake was identified during a KHRC inspection conducted November 1, 2004. The management company completed the recertification on November 12, 2004

using the income limits available on that date. The recertification was completed based on the tenant's anticipated future income for the period November 12, 2004 to November 12, 2005. The household's income was determined to be more than 140% of the income limit.
Since the recertification was corrected after notification from KHRC of its review, the noncompliance must be reported on IRS Form 8823. The unit is out of compliance with the recertification requirements from February 10, 2004 to November 12, 2004. The next annual recertification is due on February 10, 2005. Further, the Next Available Unit Rule may have been violated if any unit was rented to a nonqualified household after February 10, 2004.

Compliance Reporting

The owner will be considered out of compliance if the annual recertification was not performed for each low income unit in a mixed use project including all verifications of income and asset; or, the annual recertification was performed late and after notification of a KHRC compliance review.

The owner will be considered out of compliance if Sample Form 18, Annual Household Certification Update, was not completed for each low income unit in a 100% low income project. An owner's failure to complete Sample Form 18 jeopardizes the state's ability to comply with HERA regulations in reporting to HUD on types of tenant income and tenant demographic information. Further, owners may not be able to illustrate continued compliance with IRS' Student Rule nor be able to document compliance with the Restrictive Use Covenant.

CHAPTER 8: RENTS AND UTILITIES

A unit qualifies as a low income unit when the rent is restricted as outlined in IRC §42(g)(2)(A), and the gross rent does not exceed 30% of the imputed income limit applicable to such unit under IRC §42(g)(2)(C). The owner bases the income limit for low-income housing units on the federal minimum set aside election documented on IRS Forms 8609. For state targets or state set-asides, the corresponding rents shall be applied.

8.1 Rent Definitions

When determining gross rent, consider the following:

A. Gross rent does not include rental assistance payments made to the owner on behalf of a tenant participating in the Section 8 Program of the United States Housing Act of 1937 or any comparable federal rental assistance program. (KHRC monitors for the HOME and HTF program in conjunction with tax credit inspections, and different rent calculations and income limits may apply. The HOME program includes rental assistance payments in the gross rent calculation).

B. Gross rent includes a utility allowance for any utility paid by the tenant directly to the utility provider except for cable, telephone, and internet charges.

C. Gross rent does not include a fee for a supportive service paid to the owner by any governmental program of assistance or by any organization described in Section 501(c)(3) and exempt from tax under Section 501(a) if such program or organization provides assistance for rent and the amount of assistance provided is not separable from the amount of assistance provided for supportive services.

   Supportive services means any service provided under a planned program of services designed to enable residents of residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically disabled. In the case of a single room occupancy unit or a building described in IRC §42(i)(3)(B)(iii), Housing for the Homeless, such term includes any service provided to assist tenants in locating and retaining permanent housing.

Example: The maximum gross rent is $500 and the household receives a monthly payment of $600 from a tax-exempt organization to assist with the living expenses of handicapped persons. There is no noncompliance as long as the owner provides documentation that the assistance is inseparable from the rental of the unit and applies the above rule.

D. Gross rent does not include rental assistance payments made on behalf of a tenant by the Rural Housing Services (i.e. Rural Development 515 Program) to the extent that any excess rent paid by Rural Housing Services is rebated back to RHS by the owner.

E. Gross rent does not include rental assistance payments made on behalf of a tenant participating in the Housing Choice Voucher Program Section 8, and rents charged at HTC developments for unassisted units shall constitute the "rent reasonableness standard or test" required by Public Housing Authorities in the payment of rent subsidies. (Subtitle B of Title VIII of HERA)

F. Gross rent always includes non-optional/mandatory fees paid by the tenant per IRC§42.

8.1.1 Rules for Section 8 Tenants

With regard to Section 8 tenants, the gross rent limit applies only to payments made directly by the tenant. Any rental assistance payments made on behalf of the tenant, such as through the Section 8 Program or any comparable Federal rental assistance program, are not included in gross rent (see IRC 42(g)(2)(B)(i). Congress further intended that any comparable state or local government rental assistance not be included in gross rent, but see special considerations for Rural Housing Services (i.e. Rural Development).

Example 1 (Household portion of rent is below limit): A Section 8 household moves into a unit on 1/1/03; the maximum gross rent is $500. The Household pays $200 and the assistance pays $400; the total rent is $600. There is no noncompliance since the household portion of rent is below the maximum allowed.
Example 2 (insufficient rental assistance): A Section 8 household with an annual income of $7,000 applies for a unit for which the market rate rent is $750. Assistance will pay a maximum of $500, but the applicant is not allowed to pay the $250 difference to meet the $750 rent because it would require the tenant to spend more than 40% of their income in rent expense. The applicant is not approved for occupancy. There is no noncompliance.

8.1.2 Rules for Rural Housing Services (aka Rural Development) Tenants

Originally, the rent restrictions for developments with Rural Housing Services (USDA Rural Housing Services) assistance were computed using the general rules for HTC housing. Beginning in 1991, gross rent does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to Rural Housing Services under Section 515 of the Housing Act of 1949. In other words, as long as the owner pays Rural Housing Services the rent amount over the limit (all of the overage), that unit is in compliance.

Example: Assume a 2000 credit allocation to a property with Rural Housing Services assistance. The maximum gross HTC rent is $500 and the household's calculated rent under Rural Housing Services regulations is $650, which the owner charges. The owner provides documentation that the $150 above the tax credit maximum has been remitted directly back to Rural Housing Services. There is no noncompliance.

8.1.3 Rules for Housing Choice Voucher Tenants

Public housing agencies may “project-base” or attach to particular structures up to 25% of their vouchers. Families have the right to move with the next available tenant-based voucher after one year. The term “project” for Housing Choice Vouchers shall conform to the same definition as “project” used in the HTC Program (i.e. single building projects or multi-building projects). Further, the Housing Assistance Program (HAP) contract for these “project based” units shall be extended from 10 to 15 years to match the initial compliance period for the Housing Tax Credit Program.

A PHA may use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. The rent reasonableness of Section 8(o)(10)(A) must also continue to be met.

A rent comparison with unassisted local market units is not required for such dwelling units if the rent does not exceed the rent for other tax credit assisted units in a project not occupied by families with tenant-based assistance. The rent shall be considered reasonable if it does not exceed the greater of: (1) the rent for other tax credit assisted units in a project not occupied by families with tenant-based assistance, or (2) the payment standard established by the PHA for a unit of the size involved.

Concerning “Tenant Based Vouchers,” HERA makes it easier to use vouchers in units covered by the HTC Program, and protects tenants from extra out-of-pocket costs for such rentals. For tenant-based vouchers used in tax credit developments, the PHA does not need to make a separate determination of the reasonableness of the rent charged if it is at or below the rent for similarly assisted units not occupied by voucher holders in the project. Such rent levels are deemed to be reasonable.

HERA prohibits the use of vouchers in tax credit units if the rent exceeds both the voucher payment standard AND the rent charged to non-voucher holders in the project. In effect, this provision allows owners to continue to charge Section 8 holders a higher rent than is paid by tenants who do not receive rental assistance, but only if it is reasonable (based on comparable unassisted units) and if the tenants do not have to pay more than 30 percent of their income for rent and utility costs.

8.2 Determining Unit Size

IRC §42 does not address the question of what size unit is appropriate to a particular household size. Some areas have local laws establishing unit density standards; owners should check those first. In absence of local laws, owners may establish any “reasonable” occupancy standard. “Reasonable” should take into consideration larger size families and/or families with several children. A family constitutes any group of related or unrelated persons living together.

IRC §42 also does not establish the size of unit a household may select when the household is small. In other words, a single individual may rent a two, three or four bedroom unit so long as they meet the property's eligibility criteria and can afford the corresponding rent. Since there is no subsidy involved with IRC §42, there is no pressure to place households in units the government dictates as appropriate in size. Owners should be careful, however, that advertising does not appear to solicit smaller sized families, families without children or elderly households' for fear that larger families may be harder on low income units. This could be viewed as a Fair Housing issue.

The maximum rent limit is based on the number of bedrooms in each unit and is calculated using a formula of 1.5 persons per bedroom. (For studio and efficiency apartments, the one-person income limit is used.) Households with half numbers should use the average of the whole person household sizes above and below. Calculate the maximum monthly rent by multiplying the qualifying income limit for each unit by 30% and divide the result by 12 months. Subtract the appropriate utility allowance from the maximum monthly rent to determine the net monthly rent.

Example: The Smith Family (four people) is to occupy a 3-bedroom apartment in Topeka. Figure the maximum rent based on unit size if the development is 40/60 and the 1-7-98 maximum income and rent limits apply. A three-bedroom unit would be imputed at a 4.5 person income limit (3 bedrooms x 1.5 persons per bedroom = 4.5). Use the maximum incomes for both four and five person income guidelines and divide by two. (The four person income limit is $28,020 and the five person income limit is $30,262 for a total of $58,282 divided by two equals $29,141). Divide $29,141 by 12 and multiply by 30% ($29,141 divided by 12 = $2,428.42 x 30% = $728.53).

8.3 Overcharging Rent

Overcharging tenants for rent in the first year of the compliance period can disqualify the owner from claiming any credit. The IRS 8823 Guide indicates that an owner cannot avoid the disallowance of HTC credits by rebating excess rent to affected tenants in any year of the compliance period.

In situations where tenant incomes at recertification in developments considered to be mixed use exceed 140% of the income limits in effect at the time of recertification the Next Available Unit Rule applies. So long as owners continue to restrict the rents on units that exceed 140% until they can be replaced, the over income units will still be considered as qualified units. However, when owners immediately increase the rents on 140% units to "market" standards, the units are out of compliance.

8.4 Fees--Provision of Services

Units may still be considered residential rental property even when services other than housing are provided. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent (month to month or 6 month rent charges are never optional) (Treas. Reg. 1.42-11). A service (fee) is optional when the service is not a condition of occupancy and there is a reasonable alternative. Charges for services such as a washer/dryer hookup fee and built-in storage sheds (paid month-to-month or a single payment) will always be included within gross rent. No separate fees should be charged for tenant facilities (i.e., pools, parking, garages, recreational facilities) if the costs of the facilities are included in eligible basis. Assuming they are optional and reasonable, charges such as late fees, pet fees or rent, coin operated laundry equipment, garages, and storage fees may be charged in addition to the rent; i.e., they are not included in the rent computation. KHRC will scrutinize any excessive fees such as mandatory painting, additional move out, and move in make ready fees.

8.5 Fees—Condition of Occupancy

Under Treas. Reg. §1.42-11(a)(3), the cost of services that are required as a condition of occupancy must be included in gross rent, even if federal or state law requires that the services be offered to tenants.

A. Application fees are allowable fees as long as the application fee does not exceed the amount paid to the service provider. If the owner/agent is conducting their own credit and background checks a fee cannot be charged for management's time.

B. Refundable fees associated with renting a HTC unit are not included in the rent computation (example: pet and security deposits). In addition, one-time fees are excluded as well, such as termination and unit transfer fees.

C. Recurring costs or fees or one-time mandatory cost, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy, renter's insurance and mandatory carpet cleaning or other move out fees.

D. Other optional fees, such as those associated with a garage or storage space rental will not be considered rent so long as the amenity was <u>not</u> included in the project's Eligible Basis. If costs for these amenities was part of the eligible basis, they are to be made available to tenants free of charge.

E. Fees charged for failure to perform according to the lease agreement are not included in gross rent. An example is a $25 late fee penalty for failure to pay rent timely or a $5 charge for key replacement.

F. The IRS is allowing the use of optional tenant-paid insurance policies in lieu of security deposits for low-income housing tax credit units without requiring premiums to be included in gross rent. The policies cover losses or lease violations which otherwise would be payable to an owner from a security deposit under state and/or local landlord-tenant laws. An insurer contracts with a project owner to offer the insurance to tenants in lieu of their posting of a security deposit. At lease signing, tenants pay a one-time non-refundable premium for the insurance, which remains in effect for the duration of a tenancy. In order for this type of fee to be excluded from rent, the owner must allow tenants the option of posting a security deposit or using the insurance policy.

G. Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining HTC units in a manner suitable for occupancy.

H. Monthly pet fees are considered optional when determining gross rent calculations. The Kansas Residential Landlord and Tenant Act does not cover pet *fees* and limits the pet *deposit* to one-half of one month's rent. KHRC discourages monthly pet fees and any damage to the unit in excess of the deposit is collected as "damages" through the Court system.

8.6 Rent Floors

The area median gross income (AMGI) is determined annually for each county or metropolitan area. When the AMGI decreases, the rent limits will decrease as well. IRC §42 provides for a "rent floor" to protect owners from decreasing rents beyond those in effect during the first year of the credit. Regarding housing developments that received an allocation of credits in 1990 or later years, the applicable rent limits may not drop below the rents that were in effect:

A. When the KHRC made its initial allocation to the building, or

B. At the election of the owner (made no later than the in-service date) when the building was placed-in-service.

Example #1 (credit allocation date): The owner makes the 40/60 election on IRS Form 8609. HUD issues reduced income limits effective 1/1/2003. The revised maximum 60% gross rent is $400, which is below the calculated maximum rent floor of $500 in effect at the time the owner received the credit allocation. The owner has been charging $450 rent and a $50 utility allowance. There is no noncompliance; the owner may rely on the gross rent floor and continue to charge $500 in total rent.

Example #2 (placed-in-service date): The owner makes the 40/60 election on IRS Form 8609 and elects to treat the rent floor as taking effect on the date the building was placed-in-service which was 7/12/02. HUD then issues reduced income limits effective 1/1/03. The revised maximum 60% gross rent is $400 which is above the calculated rent floor of $300 at the time the owner placed the building in service. The owner could charge rent of $350 and a $50 utility allowance, for a total of $400.

8.7 Rent Increase Requests

For allocations made after 1995, Restrictive Use Covenants contain language that prohibits owners from increasing rents on low income housing units without first obtaining prior approval from the KHRC. This rule has been rescinded for all properties except for TCAP and CE. The HOME and HTF programs require annual rent reviews to be submitted upon publication of the annual income and rent limits for those programs. The rent review spreadsheet includes information about future rent increases, which replaces the need for rent increase requests to be submitted to KHRC separately for those programs. If HUD or Rural Housing Services (FmHA) approves the rent increase, since their process is similar to that of KHRC, KHRC will only require a copy of the rent increase approval letter documenting the new rent amounts due to KHRC’s lower income targeting.

Rent increase requests still required for TCAP and CE properties should be submitted via Procorem using the rent increase worksheets on KHRC’s website. The request may require the owner to include any of the material listed below, plus any additional documents being used to support the request.

A cover letter that briefly does all of the following:

A. Summarizes the reason(s) why a rent increase is needed and the date the increase will be effective.

B. Describes the development's physical condition and any improvements that have been budgeted.

C. Identifies any proposed change in services, equipment or charges and the reasons for the change.

Rent Increase Spreadsheets:

A. Unit Rents Worksheet - Identification of the current rent and proposed rent per unit type as well as the number of units in each type. In developments that have utility allowances, the allowance should not be included in the rent amounts. The utility allowance is listed in a separate column on the request form.

B. Operating Report - Provide income and expense statement for the 12 months following the anticipated effective date of the proposed rent increase, the current year's actual income and expenses, and the past year’s audited income and expenses. Properties that do not have a full year of current income and expenses due to the property being recently placed into service may provide the current year's anticipated income and expenses.

C. Pro forma - Provide a ten-year pro forma based on the proposed rent schedule.

D. Increase Analysis - Provide an analysis of the effects of the increase request.

E. Replacement Reserve - Provide evidence the replacement reserve is being funded.

These documents are available in MS Excel Format.
Explanation of Expenses:

Provide a brief statement explaining the basis for any increase in the expense line items on the Operating Report. Generally, if an increase amounts to three percent (3%) or more, it must be explained. If the income or expense for the budget year was an estimate of the prior year's actual expense, or the increase is less than $500, no explanation is needed.

When funding for a §42 development includes other sources of funds, i.e. Section 8 or Rural Housing Services, and the owner has already received approval for a rent increase from the appropriate government agency, this should be explained as well.

Fee Percentages:

Provide the percentages for any management fees, bad debt, and vacancies. Do not include any asset manager fee to syndicators with the management agent fees. These fees must be included as an entity expense.

Financial Statements:

The most recent audited financial statement must be provided. This should include information on the payment of the owner's original equity investment, such as a deferred development fee, when applicable. If an audited financial statement cannot be provided, the most recent year-end financial statements will be accepted.

Analysis of Market:

Provide a description of comparable developments within the market area, including rent levels and vacancy rates.

Compliance Reporting

Noncompliance occurs when the rent charged, including utility allowances, exceeds the limitation. It is reported on IRS Form 8823, line 11(g). Generally 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 no longer exceeds the limit. The owner cannot claim tax credits for units during the time the units are out of compliance and must file an amended return to reflect the reduced credit.

Rebating excess rents to avoid the disallowance of credits is not acceptable even when the noncompliance is either intentional, such as inappropriate fees charged to residents, or when amounts charged exceed the maximum rent level. When rent-overcharge affects minimum set-aside, KHRC will file IRS Form 8823, lines 11(f) and (g), and could issue a violation fee for the Restrictive Use Covenant.

8.8 Utility Allowance Calculations

The guidance for utility allowance calculations can be found in 26 CFR Part 1, effective July 29, 2008. Per IRC §42(g)(2) the gross rent for a unit must not exceed 30 percent of the imputed income limitation applicable to the unit. §42(g)(2)(B)(ii) requires the inclusion of a utility allowance in gross rent after taking into account the determinations made under Section 8 of the United States Housing Act of 1937.

Allowable utility costs shall include all utilities paid by the tenant directly to a utility provider, excluding telephone, internet and cable television. A separate estimate is computed for each utility and while the IRC §42 allows for different methods to compute individual utility allowances, KHRC does not. There may be circumstances allowing exceptions but it must first be discussed with KHRC. The utility allowance is computed on a building basis. The maximum rent that may be paid by the tenant must be reduced by utility allowances obtained in the following manner:

8.8.1 Rural Housing Service (FmHA/Rural Development) Regulated Buildings

If a building receives assistance from the Rural Housing Service (i.e. RHS-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service for the building (whether or not the building or its tenants also receive other state or federal assistance).

8.8.2 Buildings with Rural Housing Service Assisted Tenants

If any tenant in a building receives RHS rental assistance payments (RHS-tenant assistance), the applicable utility allowance for all rent restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development) is the applicable RHS utility allowance.

8.8.3 HUD Regulated Buildings

If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the buildings are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

8.8.4 Other Buildings

If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent restricted units in the building is determined under the following methods.

a) Tenants receiving HUD Rental Assistance: The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payment (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

b) Other Tenants: If none of the rules of Sections 8.8.1-4(a) as stated above apply to determine the appropriate utility allowance for a rent-restricted unit, then the appropriate utility allowance for the unit is the applicable PHA utility allowance. However, if a local utility company estimate is obtained (i), a State or local housing credit agency estimate is provided to a building owner (ii), a cost estimate is calculated using the HUD Utility Schedule Model (iii), or a cost estimate is calculated by an energy consumption model (iv) for any unit in the building, then *that is the applicable utility allowance* (i-iv) for all rent-restricted unit of similar size and construction in the building.

   i) A Local Utility Company Estimate: Under IRC §1.42-10(b)(4)(ii)(B) any interested party may request a written estimated cost of a utility for a unit so long as the utility company from which the estimate is being requested actually provides utility services to the building. If a local utility company estimate is obtained for any unit in the building then the same estimate shall be applied to all units of similar size and construction in the building.

   ii) Agency Estimates: A building owner may obtain a utility estimate for each unit in the building from the Corporation (i.e. KHRC or its Agent). The estimate is obtained when the building owner receives, in writing, information from KHRC or its Agent providing the estimated per unit cost of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. Costs incurred in obtaining the estimate are borne by the building owner.

   To establish an accurate utility allowance estimate for a particular building, KHRC or its Agent must take into account local utility rates, property type, climate, and degree-day variables by region in the State, taxes and fees on utility charges, building materials, and mechanical systems. KHRC or its Agent may also use actual utility company usage data and rates for the building. However, use of KHRC's estimate is limited to the building's consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under Section 8.8.5, Updating Utility Allowances, below. In the case of a newly constructed or renovated building with less than 12 months of consumption data, KHRC's estimate may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located.

iii) HUD Utility Schedule Model: A building owner may calculate a utility estimate using the HUD Utility Schedule Model that can be found on the Low Income Housing Tax Credits page at http://www.huduser.org/datasets/lihtc.html (or successor URL). Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90 day period under Section 8.8.5, Updating Utility Allowances, below.

iv) Energy Consumption Model: A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model. The energy consumption model must take into account specific factors including unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by KHRC that has jurisdiction over the building and the qualified professional and the owner must not be related. Use of the energy consumption model is limited to the building's consumption data for the twelve month period ending no earlier than 60 days prior to the beginning of the 90 day period under Section 8.8.5, Updating Utility Allowances, below. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the qualified professional may use consumption data for the 12 month period of units of similar size and construction in the geographic area in which the building containing the units is located.

De-regulated Utility Services: In the case of a "de-regulated utility service," the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in calculating utility allowances. The estimate should include all component de-regulated charges for providing the utility service.

Note: Properties to which HOME funds were committed on or after 8/23/2013 must use either the HUD Utility Schedule Model or a project specific methodology: Multifamily Housing Utility Analysis, Utility Company Estimate, Agency Estimate, or Energy Consumption Model to determine the utility allowance for the HOME units. **PHA utility allowances cannot be used.** The reason this is important for tax credit properties is stated above in 8.8.4(b). Further, if the property has HOME funds layered with tax credits and the tenant in a HOME designated unit receives assistance (HCV), the applicable utility allowance for KHRC compliance monitoring is the utility allowance required under the HOMEfires – Vol. 13 No. 2, *not* the PHA utility allowance.

8.8.5 Updating Utility Allowances

Utility allowances must be updated annually with a clear effective date. If the applicable utility allowance for units changes, the new utility allowance must be used to compute gross rents within 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due at the end of the 90 day period. A building owner using a utility company estimate, the HUD Utility Schedule Model, or an energy consumption model must submit copies of the utility estimates to KHRC and make the estimates available to all tenants in the building at the beginning of the 90 days period before the utility allowances can be used in determining the gross rent of rent restricted units. Any utility estimates obtained by KHRC must also be made available to all tenants in the building at the beginning of the 90 day period. The building owner must pay for all costs incurred in obtaining the estimates.

Note: If the source the owner/agent is using is not updating the utility allowance on an annual basis, the owner/agent may need to consult with KHRC about changing the utility allowance methodology. This is not uncommon with PHA utility allowances. Owner/agents are responsible for actively pursuing utility allowance updates and it is recommended they check with the PHA every 60 days.

The building owner is not required to review the utility allowances or implement new utility allowances until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier. A building owner must review at least once during each calendar year the basis on which utility allowances have been established and update the applicable utility allowances. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates. The owner must also retain any utility consumption estimates and supporting data as part of the taxpayer's records for illustrating compliance with IRC §42.

Owners desiring to change the method they use to compute utility allowance calculations should submit their requests to KHRC using State Form 11, Utility Allowance Change Proposal. KHRC will only approve one utility change proposal per year. Utility allowances are submitted with the annual report and will be updated in ProLink.

8.8.6 Utility Allowance Submetering

IRS Notice 2009-44 states that utilities paid by a tenant that is based on actual consumption in a sub-metered unit are to be treated as being paid directly by the tenant, therefore is included in the utility allowance. In sub-metering arrangements, the billed amount must reflect the unit's actual consumption of the specific utility. The aggregate monthly fee(s) for all units utilities under one or more actual consumption submetering arrangements must not exceed the greater of:

1. Five dollars per month;
2. An amount (if any) designated by the publication of an Internal Revenue Bulletin; or
3. The lesser of:

- The dollar amount (if any) specifically prescribed under State or local law; or
- A maximum amount (if any) designated by the Internal Revenue Bulletin

8.8.7 Ratio Utility Billing Systems (RUBS)

In Notice 2009-44, the IRS published that ratio utility billing systems will be disallowed in sub-metering because this type of system uses a formula to allocate the property's utility costs and not actual consumptions.

RUBS calculations are based on a unit's relative floor space, the number of occupants, or some other measure, but no on the unit's actual use.

The utility rate charged to the tenants cannot exceed the utility company rate incurred by the building owner for a particular utility.

CHAPTER 9: NEXT AVAILABLE UNIT RULE

The terms Next Available Unit Rule (NAUR) and Available Unit Rule (AUR) are synonymous and may be used interchangeably (see IRC §42(g)(2)(D). The rule applies to any mixed use project where there are both market and low income units. The term "project" carries the same definition as used on IRS Forms 8609 (i.e. single building projects and multi-building projects).

The NAUR states that if the income of the occupants of a low income unit increases above 140% of the income limit, the unit will continue to be treated as a low income unit if the occupants initially met the income limitation and the unit continues to be rent restricted. If the income of the occupants of the unit increases above 140%, the unit will cease to qualify as a low income unit if any residential rental unit in the building (of comparable or smaller size) is rented to a new resident whose income exceeds the income limitation.

The determination of whether a tenant qualifies for purposes of the low income set-aside is made on a continuing basis, both with respect to the tenant's income and the qualifying income for the location, rather than only on the date the tenant initially occupies the unit. Meaning, the determination of an over-income household is not limited to instances where the household's income increases. A unit may also become over-income if, subsequent to the initial income qualification, there is a decrease in the Area Median Gross Income limit. Likewise, an increase in the AMGI increases the income limitation used to calculate whether an owner must rent any available residential units of comparable or smaller size to new low income tenants.

If an over-income tenant vacates a unit, it will be treated as an over income unit subject to the Next Available Unit Rule until the effective date of the tenant income certification for the new income qualified household that moves into the unit. The "next available unit" is any vacant unit, or any unit that is subsequently vacated in the same building of a comparable or smaller size. Treas. Reg. §1.42-15(c) states that a unit is not available when the unit is no longer available for rent due to contractual arrangements that are binding under local law.

A comparable or smaller unit is defined in §1.42-15 as a residential unit in a low income building that is comparably sized or smaller than the over income unit. Comparable is measured in the same manner in which the owner used to determine qualified basis for the credit year in which the comparable unit became available (i.e. the unit fraction or square footage fraction).

9.1 Key Concepts of the NAUR

A. The NAUR is used to replace over income households with new income qualified households as available units are rented. Alternatively, over income units may be returned to low income status if the household's income decreases or the AMGI increases.

B. In a project containing more than one low income building, the NAUR applies separately to each building.

C. Low income units containing households whose income rises above 140% of the current income limit are still considered low income units as long as the rent remains restricted and available units of comparable or smaller size are rented to qualified low income households.

D. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available. An owner may consider a residential unit with similar square footage and amenities to be a comparable unit.

E. The owner of a low income building must rent all comparable units that are available or that subsequently become available in the same building to qualified residents in order to continue treating the over-income unit as a low income unit. Once the percentage of low income units in a building (excluding the over income units) equals the percentage of low income units on which the credit is based, the over-income unit may be switched to a market rate unit and rents increased to market level.

F. If any comparable or smaller unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over income units within the same building for which the available unit is comparable or larger lose their status as low income units. See Teas. Reg. 1.42-15(f).

G. The NAUR should not be confused with the Vacant Unit Rule (VUR), which applies without regard to the income of existing tenants.

9.2 100% Income and Rent Restricted Buildings and Projects

Single building elections or multi-building elections where all units in the building are both income and rent restricted are exempt from the Next Available Unit Rule because all units are continuously rented to income qualifying households. In the event an owner of a 100% low income project errs in the qualification of a household and the unit is deemed to be noncompliant, the project will retain its status as a 100% low income project not subject to the NAUR so long as the owner illustrates due diligence in the correction of the noncompliance. However, if the noncompliance remains uncorrected for more than three years, KHRC can determine the owner to be grossly negligent and report a drop in Qualified Basis to IRS. If this action occurs, the project-type changes from 100% low income to mixed use and the NAUR will be invoked for balance of the compliance period.

Where single building or multi-building projects are established in the Restrictive Use Covenant to be 100% low income, but for which the owner has ineligible tenants residing in units at the end of the first year of the credit period, the project is deemed mixed use. Once the owner has rented all units to qualifying low income households, the project type will switch to 100% low income and the NAUR exemption will apply. For the units that were ineligible at the end of the first credit year but later rented correctly, the owner is only entitled to 2/3 of the credit value of the unit(s) for the balance of time left in the initial compliance period.

Where single building or multi-building projects are established in the Restrictive Use Covenant to be 100% low income, but for which the owner has "open vacant" units that have not been qualified by the end of the first year of the credit period, the project is still deemed to be 100% low income and exempt from the NAUR. Once the remaining units are rented, the owner may only take 2/3 of the credit amount allocated to the unit(s) for the balance of time left in the initial compliance period.

9.3 Unit Transfers

A household may move to another unit within the low income housing project providing certain rules are met. When a household moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit (see Treas. Reg. 1.42-15(d)). Thus, if a current household whose income exceeds the applicable income limitation moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

Where a single building project election has been made, households that desire to transfer into a different building must be able to initially qualify into the other building. This is accomplished using the same method used to initially qualify into their current unit (i.e. they are treated like a new move in and must be at or below income limit). The household is a "move out" and then a "move in" in the Procorem portal because they initially qualified for the new unit via the KTIC.

Where a multi-building project election has been made, households desiring to transfer to other buildings in the multi-building project may do so without having to initially qualify again. If the multi-building project is 100% low income, any household can transfer to another building regardless of the income amount they provided on their most recently completed Sample Form 18. The Next Available Unit Rule does not apply. The household is a "transfer out" and then a "transfer in" in the Procorem portal because the qualification KTIC from the original unit follows them to the new unit. Further, the only documentation required for this transfer is a new lease. The transfer is documented at the time the next Sample Form 18 is due, which may or may not be at the same time the household is transferring. Sample Form 18 should not be completed strictly because a household has transferred.

Keep in mind, tenants in multi-building projects desiring to transfer into a unit in a single building project or that of a different multi-building project would not be able to do so without initially qualifying. In both cases, they are transferring to a different "project".

Where a multi-building project election has been made and there are market units in one or more of the buildings, the entire multi-building project is deemed to be mixed use. Therefore, any tenant with an income exceeding 140% of the current income limits would not be allowed to transfer out of the building in which they currently reside because the NAUR would be invoked and the NAUR is a building rule. Any tenant below 140% of the current income limits would be allowed to transfer to another building so long as the building they transfer to is part of the multi-building project. Income for these tenants would be determined via full recertification. The same household would not be allowed to transfer into a single building election unit without initially qualifying again.

Transfers relating to reasonable accommodation requests that would put the owner in noncompliance with IRC §42 should address the situation with KHRC before the transfer is allowed.

CHAPTER 10: VACANT UNIT RULE

Treas. Reg. §1.42-5(c)(1)(ix) provides the statutory guidance for the Vacant Unit Rule which is applied on a "project basis and not by building". The Vacant Unit Rule (VUR) states that when a low income unit in a project becomes vacant during the year, reasonable attempts must be made to rent the unit or the next available unit of comparable or smaller size to tenants having a qualifying income BEFORE any units in the project are rented to tenants not having qualifying incomes. The term "project" shall have the same meaning as defined on IRS Forms 8609 (single building project vs. multi-building project).

The Vacant Unit Rule is applied only to a mixed use development; 100% low income housing projects are exempt from the Vacant Unit Rule.

Where single building or multi-building projects are established in the Restrictive Use Covenant to be 100% low income, but for which the owner has ineligible tenants residing in units at the end of the first year of the credit period, the project is deemed mixed use and the VUR shall apply. Once the owner has rented all units to qualifying low income households, the project type will switch to 100% low income and the VUR exemption will apply.

Where single building or multi-building projects are established in the Restrictive Use Covenant to be 100% low income, but for which the owner has "open vacant" units that have not been qualified by the end of the first year of the credit period, the project is still deemed to be 100% low income and exempt from the VUR.

When an ineligible household occupies a low income unit and later vacates the unit, the unit retains its status as "ineligible" until it is re-rented to a qualifying household. In such cases, the ineligible unit is considered a "market" unit and the VUR applies.

As long as reasonable attempts are made to rent to qualified low income households, vacant HTC units will continue to be included as qualified low income units for purposes of determining the minimum set-aside (IRC §42(g)(1)) and calculating the applicable fraction (IRC §42(c)(1)(B)). "Reasonable" attempt depends on several factors, including but not limited to, size and location of the development, tenant turnover rates, market conditions, and advertising methods available for the area.

KHRC requires owners to submit their reasonable efforts for review PRIOR to renting vacant market units before renting vacant low income units. The request should be made using State Form 12, Vacant Unit Rule Waiver Request. KHRC will grant owners a waiver of the VUR for a period of up to six (6) months, depending on the unique situation of the property.

The definition of an available low income unit for purposes of the Vacant Unit Rule is the same as used for the NAUR. Treas. Reg. §1.42-15(c) states that a unit is not available when the unit is no longer available for rent due to contractual arrangements that are binding under local law.

The definition of a comparable or smaller unit for purposes of the VUR is defined in §1.42-15 as a residential unit in a low income building that is comparably sized or smaller than the over income unit. Comparable is measured in the same manner in which the owner used to determine qualified basis for the credit year in which the comparable unit became available (i.e. the unit fraction or square footage fraction).

Compliance Reporting

If it is determined that an owner is not making reasonable attempts to rent vacant low income units, the owner will need to provide KHRC with a list of all vacant low income units in the property. Under Treas. Reg. §1.42-5(b)(1)(v), owners are required to maintain records identifying vacant low income units and information that shows when, and to whom, the next available unit was rented. Failure to provide the information results in a finding of noncompliance under 11(f), Property failed to meet minimum set-aside requirement, because the owner has failed to establish that the minimum set aside has been met or maintained.

Vacant units formerly occupied by low income individuals may continue to be treated as occupied by a qualified low income individual for purposes of the set-aside requirement providing the owner has not violated the Vacant Unit Rule. Failure to rent vacant low income units prior to renting market units results in a violation of the Vacant Unit Rule and IRS Form 8823 11(j) is marked. Once the applicable fraction is restored, a correction is filed.

CHAPTER 11: HOUSING FOR THE HOMELESS

11.1 Transitional Housing for the Homeless

Under the Stewart B. McKinney Act, housing that qualifies as transitional housing for the homeless can earn tax credits on portions of the building used to provide supportive services to the non-resident homeless.

The transitional housing must be operated by a governmental entity or by a non-profit organization that is eligible for the 10 percent set-aside of tax credits for non-profits. The building must be used exclusively to assist homeless individuals in their bid to make a transition to independent living within 24 months. The homeless includes persons without a fixed nighttime residence, persons living in a shelter or in a residence for the institutionalized that provides temporary quarters, and persons staying in a place not designed or ordinarily used for sleeping. Each housing unit must contain a kitchen and bathroom. Supportive services designed to assist the homeless in relocating and retaining permanent housing must be provided. There need not be a lease between the tenant and the owner in units that qualify as transitional housing for the homeless.

Tax credits can be earned on development costs for the portion of the transitional housing project that is used to provide outreach supportive services to the homeless. The recipients of the services can be persons who are not residents of the building. The space earning tax credits can also be the headquarters of an organization providing services at other locations over a broad geographic area.

Tax credits can be earned on the development costs of a community service facility that is part of a tax credit project that is located in a qualified low income census tract eligible for the 30 percent tax credit bonus.

There is no limitation on the length of a lease nor is there any minimum rental period for transitional housing. These units can be rented out on less than a month-by-month basis. Any transitional housing that does not meet this definition or is not single room occupancy housing must have at least a six month lease in order to qualify for tax credits.

KHRC requires a development plan that includes a supportive services component that will be monitored on a continual basis.

11.2 Single Room Occupancy Housing

Eligible Basis includes the adjusted basis of depreciable property subject to IRC §168 and the property qualifies as residential rental property under §103. Per IRC 1.103-8(b)(8)(i), the term "unit" means any accommodation containing separate and complete facilities for living, sleeping, eating, cooking, and sanitation. Such accommodations may be served by centrally located equipment, such as air conditioning or heating. For example, an apartment containing a living area, sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink, all of which are separate and distinct from other apartments would constitute a "unit."

SRO units can qualify for the IRC §42 credit even though kitchen, bathroom and dining facilities are shared. The significance for IRC §42 purposes is that while tenants in low income units are expected to sign leases of at least six months to establish the non-transient use nature of tenancy, occupants of SRO units can enter into monthly agreements.

11.3 KHRC Homeless Program

In 1992, KHRC created an initiative to help address homelessness in Kansas. As a way of encouraging developers to participate in the initiative, extra points were given during the scoring of applications to those willing to set-aside one or more units for homeless families (providing the need for such housing could be documented). The requirements established here for "homeless unit set-asides" are not the same as "homeless units" defined under the Stewart B. McKinney Act.

Note: As of the 2021 Qualified Allocation Plan (QAP), the KHRC Homeless Program has been removed as an option for scoring incentives.

The rent structure for these units is unique in that KHRC does not mandate a specific structure, but highly recommends the owner/agent formulate a structure that is fair and in accordance with the spirit of the initiative. An example of a rent structure is provided below:

Sample Rent Structure for Homeless Units	
Zero to three months occupancy	$0 rent
3 months to 6 months occupancy	15% of the advertised rent
6 months to 9 months occupancy	25% of the advertised rent
9 months to 1 year occupancy	35% of the advertised rent
and so on at 3 month intervals	50% of the advertised rent

In the example above, the rent is increasing approximately 10-15% of the advertised rent from move-in with the goal of reaching 100% at the end of the two year period. The rent structure should be outlined and included in the lease. While this is a two-year program, it is not mandatory (or even recommended) to sign a two-year lease term.

The following standards shall be used by owners/agents when renting tax credit units as homeless set-aside units:

A. Managers will contact local PHAs, social service agencies and other human service agencies to inform them that a rent-free or reduced rent unit(s) has been set-aside for a transitional homeless family, a disabled homeless person or an elderly homeless person who is age 55 and older or age 62 and older (depending on project eligibility requirements). The property's rent schedule and resident selection criteria should be supplied to aid these agencies in their referrals.

B. The PHA, social service agency or human service agency will provide the required written certification of homelessness for each family or person referred. The certification is to be attached to the tenant income certification and verification forms and made available for review by KHRC.

C. Part of the owner's responsibility involves helping their homeless household move toward self-sufficiency. This can generally be achieved by working in cooperation with the referring agency or with local entities providing supportive services. Supportive services could be such things as: food stamps, welfare, rental assistance, child care, citizenship documents, etc. The type(s) of supportive services being sought and/or provided may be reviewed by KHRC.

D. Homeless set-aside units need to be rotated every two years. Eligible households will have a maximum of two years of rent-free or reduced rent (based on the owner/agent's written policy) before they will need to begin paying full rent, vacate the unit or continue living in the unit with rental assistance. If tenants continue living in the unit with tenant based rental assistance or begin to pay full rent, another unit must be selected and set-aside as the replacement unit.

E. Once the person or family occupying a homeless unit begins earning income that exceeds 60% of area median gross income as adjusted for family size, the unit they occupy should be viewed as a traditional low income unit. This must be discussed with the household upon qualification of initial move in. The rent they pay should increase to a level comparable with other low income units of equal size, and a new unit selected as the new homeless unit. This change can only be accomplished after the completion of the current lease *and* recertification verifying the increase to the household's income. The tax credit program does not complete interim recertifications so this would be completed on the first anniversary of move in.

F. A property that reserves all units for the elderly and has project-based assistance will be required to establish another homeless unit every two years. Tenants in homeless units receiving rental assistance through the government will not be considered as homeless after the two year period is over but may continue to reside in the unit.

G. In the event management cannot locate an eligible homeless family during lease-up or at the beginning of any two-year period, the homeless set-aside unit may be leased to any eligible household. However, when an eligible homeless family or person applies for tenancy or is referred by the PHA, social service or human service agency and the referred individual or family qualifies for the unit, the next available vacant unit must become the new homeless set-aside unit.

H. Holders of tenant-based certificates, vouchers or coupons are not eligible for the homeless unit, except in projects that have 100% rental assistance.

If the two years elapses and the homeless household is still not capable of paying the established tax credit rent and would otherwise become homeless again if not allowed to continue living in the homeless unit, management should contact KHRC to discuss the situation and an extension to the two year rule may be considered.

KHRC's compliance responsibilities include monitoring for requirements and conditions outlined in the Land Use Restriction Agreement (LURA). If a homeless unit is identified in the LURA, KHRC's monitoring will include:

A. Owner due diligence in locating referral agencies such as PHA, social service and human service agencies in the community. Management should maintain a list of these agencies at the site along with contact names and telephone numbers.

B. Documentation of telephone contacts and attempts to locate a referral at times when the homeless unit is vacant.

C. Reference check criterion consistent with the homeless program's initiative; meaning, credit check criteria (income minimum and rental history) may need to be relaxed somewhat since homeless households being referred are likely to have poor credit and will not be required to pay full rent when beginning their two year tenure.

D. Management's effort at providing social service support to the homeless household.

Owners would not have received additional points during the application process unless they could demonstrate that a market existed for homeless unit(s) in the location of the project. Therefore, KHRC expects significant effort on the part of the owner/agent to find qualified homeless households. Owners should not fill all vacant units with otherwise qualified low income tenants if the LURA stipulates a homeless unit and the project has not met those criteria. The owner must leave the appropriate number of units vacant while they search for qualified homeless household. Owners facing financial pressure due to leaving units vacant while searching for qualified homeless household may submit State Form 21, Homeless Outreach Documentation and Waiver Request to KHRC. KHRC will review the owner's due diligence and justification for the waiver before making a decision on whether a temporary waiver is appropriate. Failure of owners to obtain the appropriate waiver puts them in violation of their Restrictive Use Covenant and violation fees may be assessed against the development. Even when a waiver is granted, owner due diligence must continue when any future vacant units become available. Penalties may apply for not meeting this requirement when applying for future funding. Review current QAP for details.

CHAPTER 12: PROPERTY DISPOSITIONS

KHRC is required to report the disposition of all transfers in ownership connected with a tax credit development to the IRS. Therefore, owners are required to consult with KHRC prior to making a disposition. Further, a LURA Assignment and Assumption must be drafted and signed. Owners not seeking approval from KHRC (State Form 22) with a minimum 30 days' notice prior to the change may be assessed penalties when their applications are scored for future funding. Review current QAP for details.

The new owner of a tax credit building still in its 15-year compliance period is eligible to continue receiving tax credits using the same qualified basis and credit percentages as used by the original owner. The accelerated portion of credits claimed in previous years will be recaptured upon transfer unless the new owner elects to continue renting units to low income qualified households. All dispositions of ownership interests in buildings are treated as transfers for purposes of recapture, except for a special rule for certain partnerships. (There is no election for the new owner to assume the recapture liability for prior year credits.)

12.1 Sales and Transfers

The two actions that constitute a sale (which does not necessarily involve the seller receiving money) include: Fee title sale or transfer of the tax credit property where the title passes from the current ownership entity to a whole new entity (buyer), and the termination or dissolution of the current ownership entity.

Prior to the sale or disposition of a tax credit property or the termination of the current ownership entity the current owner must submit a Request to Change Ownership or Transfer Interest (State Form 22) via the Procorem work center. The use of this form provides KHRC with the following information:

- Anticipated date of disposition,
- New ownership entity's legal name,
- Address,
- Tax identification number,
- Point of contact, including their phone number and email address.

The new point of contact listed on the request form is the person KHRC expects to sign the annual owner's certification of continued program compliance form submitted with the annual report. Further, and as stated on the form, it is the duty of BOTH parties to determine who is responsible for submitting the annual report and compliance fee for the year the change occurred. It is also the duty of BOTH parties to determine who is responsible for responding to any current/pending notices issued by KHRC (i.e. Files Inspections, Physical Inspections or Annual Report 60 day notices, Casualty Loss Events, Tenant Complaints/Concerns, etc.) Failure to submit this form for

KHRC approval at least 30 days' prior to the change may result in point penalties when scoring applications for future funding awards.

If there is an approved change to the ownership entity of the tax credit property, then a LURA Assignment and Assumption Agreement must be signed by the current and new ownership entities, registered with the County, and returned to KHRC. KHRC must review and approve the proposed Assignment and Assumption Agreement prior to its execution.

KHRC should also be provided with a copy of the bond that was posted or a statement from new owner that the property will continue to serve low income tenants.

A change in the general partner or managing member of the ownership entity also requires prior approval from KHRC. To obtain approval of that type of change, State Form 22 should be completed and submitted to KHRC. A change to the limited partner does not require prior approval from KHRC.

12.2 Foreclosure and Deeds in Lieu of Foreclosure

Foreclosure: Foreclosure is the legal process reserved by a lender to terminate the borrower's interest in a property after a loan has been defaulted. On foreclosure, the owner is deemed to have made a sale of the property for the outstanding amount of the mortgage debt. In some foreclosures, the new owner is an entity not eligible to claim tax credits (i.e. HUD, State Housing Finance Agency, etc.) or the new owner is not claiming tax credits (i.e., mortgagee, bank, etc.).

Whenever there is a foreclosure or deed in lieu of foreclosure, the prior owner is automatically considered to be in a state of "not in good standing." The not in good standing status will be reviewed by the Executive Director, Deputy Director, Housing Development, and Housing Compliance staff periodically, usually during the annual application/allocation process.

12.3 Destruction

Destruction is related to a building's physical structure, and not to the ownership interest in the building. The destruction affects the building in its entirety, i.e., the eligible basis of the property is reduced to $0. The destruction is permanent, and the building is not expected to operate as a tax credit property again. Violations of the physical inspection standards, or casualty losses that are temporary in nature should not be reported as destruction which is permanent.

Compliance Reporting

KHRC reports ownership changes on IRS Form 8823, Section 13. A bond disposition should accompany the notification letter to KHRC. However HERA legislation enacted on July 30, 2008 states that a recapture bond or surety bond may be repealed if the property is reasonably expected to continue on as a HTC property. In such cases a sale does not automatically trigger recapture tax. Instead, the development must be monitored by KHRC for 3 years or for the term left in the compliance period. Outstanding bonds may be retired if the taxpayer elects the new provisions of the law thereby allowing investors to shorten their investment period from 15 years to 10 years.

CHAPTER 13: MANAGEMENT COMPANY CHANGES

Prior to a change in management company of a tax credit property, the current owner must submit a Request to Change Management (State Form 18) via the Procorem work center. The use of this form provides KHRC with the following information:

- Anticipated date of the change,
- New management company name,
- Address,
- Main points of contact, including their title, phone number and email address
- Experience managing LIHTC properties in Kansas

The contacts listed on the request form will be the users added to the Procorem work center. As stated on the form, it is the duty of BOTH parties to determine who is responsible for submitting the Annual Report and Compliance Fee for the year the change occurred. It is also the duty of BOTH parties to determine who is responsible for responding to any current/pending notices issued by KHRC (i.e. Files Inspections, Physical Inspections or Annual Report 60 day notices, Casualty Loss Events, Tenant Complaints/Concerns, etc.) Failure to submit this form for KHRC approval at least 30 days' prior to the change may result in penalties assessed when scoring applications for future funding awards.

Be aware if the incoming agent does not have tax credit property management experience in Kansas, KHRC will request additional information. The additional information may include but is not limited to: a list of properties demonstrating tax credit management experience in other states (minimum of seven), proof of tax credit trainings attended and certifications received, and/or the completion of State Form 18A (provided by KHRC when applicable), which certifies the points of contact and Procorem users listed on State Form 18 have viewed the Housing Compliance training tutorials and specific compliance documents available on KHRC's website.

If the proposed management company does not meet any of the tax credit management experience requirements, then the owner may request KHRC's approval to proceed with the proposed management company under one of the options detailed below. Please know that an inexperienced management company will not be approved under one of the options below if the 8609s have not been issued and completed by the owner, if the project has not completed lease up, or if the project has open and unaddressed compliance tasks. Approval of a proposed management company under one of these options will be in KHRC's discretion and may be withheld for any reason.

Option 1 – Consulting Agreements:

The owner may request approval of the proposed management company, if the proposed management company agrees to enter into a consulting agreement for a minimum of two years with a management company in good standing with KHRC that meets KHRC's management experience requirements. Under the agreement the consulting management company must actively assist the inexperienced management company with LIHTC processes in Kansas. This includes the consulting management company maintaining Procorem access for the property, and helping to ensure deadlines are met, appropriate compliance forms are used, adequate verifications for qualifying tenants are obtained, and acceptable responses are being submitted to KHRC after physical/file inspections. The consulting company must be available for KHRC to contact, if necessary, and KHRC would need to review and approve the proposed consulting agreement.

Option 2 – Probationary Agreements:

The owner may request that the proposed management company be approved on probationary basis. If approved under this option, the owner, the proposed management company, and KHRC would enter into a probationary agreement, which would allow the proposed management company to manage the property on a probationary basis under certain terms and conditions. The agreement would remain in place for at least one year, but possibly longer in KHRC's discretion. In the event the proposed management company failed to perform as provided in the agreement, then the owner would be required to replace the proposed management company with a management company in good standing with KHRC that meets KHRC's management experience requirements.

Please note, if a project intends to apply for acquisition/rehabilitation tax credits, an inexperienced management company approved under one of the above options may not meet the requirements provided under the Qualified Allocation Plan. Please refer to the most recent QAP for more information.

CHAPTER 14: CREDIT RECAPTURE

The disposition of an HTC building (or interest therein) is a recapture event. The amount of recapture is 1/3 of the allowable credit for each year if the building is disposed of through year 11 of the compliance period, plus interest. The interest is computed at the overpayment rate established under IRC §6621 on the recaptured credit for each taxable year for the period beginning on the due date for filing the return for the prior taxable year involved. The amount of recapture declines if the disposition occurs after year 11.

Taxpayers must file Form 8611, Recapture of Low Income Housing Credits, with their tax return for the year of sale to recapture the HTC.

In the case of a large partnership (a partnership of 35 or more partners), the partnership is treated as the taxpayer to which the credit is allowable for purposes of recapture. The tax benefit rule under IRC §42(j)(4)(A) does not apply and the increase in tax because the recapture amount is allocated among the partners in the same manner as the partnership's taxable income for the year is allocated among the partners.

No change in ownership is deemed to occur on the disposition of a partner's interest provided that within a 12-month period at least 50% (in value) of the original ownership is unchanged. These conditions apply unless the partnership elects out of such under IRC §42(j)(5).

For partnerships with fewer than 35 partners, and those electing out of the large partnership provisions of IRC §42(j)(5), a partner (taxpayer) may elect to avoid or defer recapture until the taxpayer has, in the aggregate, disposed of more than 33 1/3% of the taxpayer's greatest total interest in a qualified low income building through the partnership at any time. Once dispositions aggregate more than 33 1/3%, further deferral is possible only if a surety bond or alternative collateral is provided. The taxpayer that defers recapture by reason of the 33 1/3% rule will remain subject to recapture with respect to that interest. See Rev. Rul. 90-60, 1990-2 C.B. 35.

Recapturing the accelerated portion of the credit can be avoided if the owner selling the building, or interest therein, posts a bond equal to the amount specified on Form 8693, Low Income Housing Credit Disposition Bond. However as indicated in HERA legislation enacted on July 30, 2008 the recapture bond or surety bond may be repealed if the property is reasonably expected to continue on as a HTC property. In such cases, KHRC must monitor the development for 3 years or for the term left in the compliance period. Outstanding bonds may be retired if the taxpayer elects the new provisions of the law thereby allowing investors to shorten their investment period from 15 to 10 years. The IRS will "call a bond" or require a bond to recapture credit if it subsequently determines the new owner did not continue to operate the building as a qualified low income building for the remainder of the compliance period.

CHAPTER 15: STATE REQUIREMENTS

Owner agreements with KHRC for an allocation of housing tax credits often go beyond the federal requirements. This is due in large part to the competitive nature of the program and the fact that credits are a limited resource. The QAP contains the scoring criteria for the current year of allocations. Owners often attempt to increase their application score by committing to certain conditions. These conditions (or agreements) are documented and recorded against the land in a Restrictive Use Covenant (RUC) or Land Use Restrictive Agreement (LURA). KHRC will routinely monitor owner compliance with the LURA using the annual report cycle, files inspections and physical inspections to determine the level of compliance. Noncompliance with state requirements is handled similar to the way federal deficiencies are dealt with (i.e. a 60-Day Notice) documenting noncompliance with the LURA. Owner's should respond to these 60-Day notices with evidence of their intent to comply via due diligence. An owner's failure to adhere to the agreements outlined in the LURA absent due diligence will incur a fine and other sanctions by KHRC.

Some items commonly referred to as state issues include:

15.1 Property Amenities

Amenity packages vary according to the location and type of development being proposed, but typically include such items as swimming pools, playgrounds, club houses, covered parking or garages, picnic tables, basketball or tennis courts, covered seating, exercise or computer rooms, and walking trails. When the cost associated with an amenity is included in the eligible basis of a development, it generates tax credits. Therefore, it must be maintained for the life of the covenant. If an amenity wears out, it must be replaced; if an amenity is broken, it must be repaired; and if an amenity is discontinued or exchanged with another comparable amenity, it must be at the discretion and approval of KHRC.

Amenities included in the eligible basis must be available to all tenants without charge. Specific rules may apply when safety becomes an issue, i.e. swimming pools. Amenities become a part of the rental offer to prospective tenants; therefore, reasonable house rules must be established to ensure tenants can use and enjoy amenities. Examples could be keeping swimming pools open until dark, having lighted basketball courts for evening hours, locking or limiting access to computer equipment during non-office hours. Owner/agents should address this issue during the allocation process. Owners may include the limiting of access to office areas if amenities are in the general area; the use of keycard, or other entry codes/devices may be necessary so tenants can fully enjoy the amenities.

15.2 Specific Designations and/or Set-Asides

Most owners are familiar with the common property types that exist (elderly, family, disabled, SROs) but experience difficulty in understanding how to apply the Restrictive Use Covenant appropriately.

A. Elderly: When allocating credits to senior housing properties, KHRC covenants will specify both the housing type and the percentage of units associated with the housing type. In most cases the Covenant will include all covered units. The law does not exclude children from elderly properties such as in the case of a grandparent caring for a grandchild; however, it does dictate the composition of the adults in the household. For example, senior housing qualifying under the "Housing for Older Persons Act" requires that only one adult in the household be age 55 or older.

If an owner is not able to keep enough of their senior units rented to cash flow, they may decrease the number of elderly units to the minimum required by law (i.e. no less than 80% of the units rented to households where at least one member is age 55 or older) or convert the property to general family occupancy. KHRC will consider amending the specific designation, but the owner must provide justification for doing so. Additionally, KHRC may charge a fee for amending the LURA (see QAP) and the owner will be required to register the LURA amendment with the county.

In cases where the tax credit development was financed in part with HUD Section 8 project based assistance or Rural Development 515 Program funds, the owner would still need to have the LURA amended in order to convert from elderly to general family. In such cases, KHRC would not recognize approval by the other agencies as constituting approval on behalf of KHRC.

B. Disabled/Special Needs: Some developments are created specifically for the mentally or physically disabled. It is generally illegal for owners to inquire whether an applicant for housing has a disability or to inquire into the nature and severity of a person's disability. 24 C.F.R. §100.202(c) (2005). Therefore, owners are normally prohibited from requiring applicants to undergo medical evaluations or testing. However, certain inquiries are permitted provided they are made of all applicants. Housing providers are permitted to make inquiries to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability. 24 C.F.R. §100.202(c)(2) (2005).

Properties with specific designations for their client base (example: SPMI – Severe and Persistent Mental Illness), can allow qualified staff to make limited inquiries to determine if an applicant is qualified for a property without violating the Fair Housing Act because it is permitted under the exceptions provided in the regulations 24 C.F.R. § 100.202(c)(2) (2005). However, if staff requires applicants to submit to a "medical assessment" as a condition of receiving housing, then utilizing the "assessment" to select tenants would normally violate the Fair Housing Act.

Developments providing supportive services must not require residents to accept those services. Similarly, individuals applying for housing cannot be required to accept supportive services if they become residents.

Developments designated for a specific category of disability are not required to admit applicants from a different disabled population, even when the development has vacant units and no one is on the waiting list. However, if such admission is necessary to preserve the solvency of the development, a waiver can be requested from KHRC and may require an amendment to the LURA.

15.3 Income Targeting

An allocation may be issued that reserves 100% of the units for persons qualifying at 60% or less of area median gross income under federal guidelines, but also requires the owner to set-aside a percentage of the units to be rented to households that can qualify at a lower targeted income (i.e. 50%, 40%, 30% etc).

Whenever there is a target set-aside within the minimum set-aside, the appropriate corresponding rent applies. Example, a family rents a target unit set aside for persons at 40% of area median gross income; their rent should be at or below the 40% level as well. The 20% target should be maintained at all times throughout the 30 year extended use period. Once a state target or set-aside household's income increases above the current income guidelines, the owner is required to re-establish the unit mix as soon as feasibly possible, normally with the next move in. If a full recertification is not required, owner/agents should use Sample Form 18 to track estimated increases in tenant income levels. The recommended method for completing Sample Form 18 is to explain to the tenant what constitutes income and help them complete the form accurately. Sometimes tenants will exaggerate their income in order to impress the manager without realizing that in doing so they could end up exchanging a lower rent unit for a higher rent unit. If the information being "self" reported on Sample Form 18 determines the household no longer qualifies for the lower income target, it is recommended management complete a full recertification using third party verifications.

The owner of ABC properties has a HTC property where all 10 units are set-aside for households that can initially qualify at 60% or less of AMGI (actual minimum set-aside 100/60). The LURA also requires the owner to target 20% of the total units to households that can income qualify at 50% or less of AMGI. This means that 8 units can be rented to households at or below 60% of AMGI and 2 units must be rented to households that income qualify at 50% or less of AMGI. The respective 60% and 50% rents apply.

In year 3, one of the 50% households had an income increase that exceeded the current 50% AMGI limit. Even though the property is 100% low income, the owner is to rent the next available unit of equal or smaller size to a 50% income qualifying household. Once the apartment complex has 2 50% renters again, the household that exceeded the current 50% AMGI limit may have their rent increased (upon 30 days' notice and when their current lease allows) to the 60% level. If this is a significant increase, the owner/agent may want to consider increasing the rent in small intervals rather than all at once. A written policy for how this would be implemented must be established and shared with the applicants meeting the deeper income targets.

The owner's failure to restore the deeper targeted set aside is not federal noncompliance and would not be reported on IRS Form 8823. However, the owner would be considered temporarily out of compliance with their Restrictive Use Covenant and asked to increase their marketing efforts and due diligence. Continued failure could result in a fine or other penalty.

15.4 Additional Rent Restrictions

The Restrictive Use Covenant will identify the units by bedroom size and include the initial utility allowance. In some cases, there may be more than one rent level for a single bedroom size depending on the square footage of the unit and/or deeper income restrictions. It is assumed the rent charged will be proportionate with varying unit sizes of the same number of bedrooms and/or those with the deeper income/rent restrictions.

For example, if the rent charged for a 60% unit is below the HUD Maximum Allowed Rent for the 50% AMGI limit, the owner/agent should still differentiate between the two set asides by staggering the rent that is charged.

Rent increases for TCAP and Credit Exchange properties must be approved by KHRC. Rent increase requests should be made to KHRC using TCAP and CE Rent Increase Process A or process B form. This form is found on our website under the TCAP/CE program compliance forms. If the increase in gross rents is due solely to an increase in utility allowance and the tenant paid rent amount per unit is not affected, there is no need to submit a rent increase request to KHRC. Rather the updated utility allowance sheet(s) will be submitted with the next annual report submission.

If the TCAP or Credit Exchange property is also layered with HUD or Rural Development, KHRC need only receive a copy of the approval letter from HUD or Rural Development with the new rents identified. In such cases it will not be necessary for the owner to obtain a second approval from KHRC.

15.5 Reserves for Replacement Accounts

Adequate reserves are essential to a rental development's long term financial and physical viability. Operating reserves must be adequate to cover short term operating income shortfalls, while replacement reserves must be sufficient to cover foreseeable and generally expensive capital improvements.

Adequate reserves are particularly important in Housing Tax Credit developments because rents are restricted and may not keep pace with operating, maintenance, and replacement costs. Unexpected increases in utility costs, property taxes, and insurance rates underscore the need for reserves adequate to cover unforeseen expenses.

In April 2015, KHRC removed the requirement for owners to seek prior approval to use Replacement Reserves before making any expenditure from the Reserve for Replacement Account except for TCAP/CE properties.

Owners must continue to fund the reserve as stated in Exhibit B of the Restrictive Use Covenant. The covenant details the amount of funds to be deposited annually. The funding of the replacement reserve is a cumulative amount for the extended use period. The initiation of the funding of the replacement reserve is up to the discretion of KHRC. KHRC takes into account the placed in service date, rent up factor, as well as a variety of other issues that may affect the funding to meet the levels required.

15.5.1 Eligible Items

Items traditionally considered as eligible for draws include capital improvement items such as:

A. Replacement of refrigerators, ranges, and other major appliances in the dwelling units.
B. Extensive replacement of kitchen and bathroom sinks and counter tops, bathroom tubs, water closets, and doors (exterior and interior).
C. Major roof repairs, including major replacements of gutters, downspouts, and related eaves or soffits. When replacing an entire roof, KHRC encourages owners to seek energy efficient roofs that are bonded.
D. Major plumbing and sanitary system repairs.
E. Replacement or major overhaul of central air conditioning and heating systems, including cooling towers, water chilling units, furnaces, stokers, boilers, and fuel storage tanks.
F. Overhaul of elevator systems.
G. Major repaving, resurfacing, and/or seal coating of sidewalks, parking lots and/or driveways.
H. Repainting of the entire building exterior.
I. Extensive replacement of siding.
J. Extensive replacement of exterior lawn sprinkler systems.
K. Replacement of, or major repairs to, a swimming pool.
L. Carpeting and other flooring replacement.

For certain developments, requests for capital improvements or enhancements to the property could be considered. For example, a personal computer and associated software could be purchased, or individual air conditioning units could be added to a development that was not air conditioned when it was built, or gutters and downspouts could be added where necessary. Some improvements may be eligible if KHRC considers such items would:

1. Result in enhancing the mortgage security.
2. Upgrade the property and place the property in a more favorable competitive position in the rental market.
3. Be necessary to comply with changes in local, state, or federal laws.

4. Other considerations that would not inordinately deplete the Reserve Fund, i.e., the improvement must be affordable.

15.5.2 Ineligible Items

Items traditionally determined as ineligible for draws from the replacement reserve account may include such items as:

A. Repainting of interior areas of developments.
B. Replacement of range burners, bibs, oven elements, controls, valves, wiring, etc.
C. Replacement of dwelling unit air conditioning components such as fan motors and window unit compressors.
D. Minor repairs to central air conditioning and heating systems such as valve replacements and the cleaning of boiler interiors.
E. Minor roof repairs, including minor repairs to gutters and downspouts.
F. Minor paving repairs.
G. Caulking and sealing.
H. Window and screen repairs.
I. Purchase of maintenance tools and equipment such as lawnmowers or snow blowers.
J. Purchase of minor office equipment.
K. Inspection, recharging, and replacement of fire extinguishers.
L. Other items generally considered to be routine maintenance or operating expenses.

Owners are encouraged to set up a separate fund, apart from the reserve account, for expenses attributable to routine maintenance and general operating expenses.

KHRC encourages owners to periodically analyze their Reserve Account in light of anticipated replacement needs, by conducting periodic capital needs assessments (CNA). Owners should rely on their own personal knowledge of the physical condition of the development, evaluations made by their managing agents and physical inspection reports provided by KHRC and the mortgagee.

15.5.3 KHRC Policy and Procedure

KHRC monitors Replacement for Reserve Accounts to ensure they are funded in accordance with the schedule outlined in Exhibit B of the Restrictive Use Covenant. Failure to adequately fund the reserve account can cause the owner to be fined or otherwise penalized.

KHRC can reject a request to use the reserve for replacement account if in doing so the account would drop below 24 months of aggregate funding even if the expense is an eligible capital item. In such cases KHRC may look to the developer’s guarantee or partnership agreement for the necessary funds, or may approve the request but require additional funding beyond that which is required in the Restrictive Use Covenant in order to make up the difference.

KHRC may also approve non-capital items that are necessary for the physical integrity of the property if the operating account is low but the reserve account is flush. Any request to use the Replacement for Reserve Account should be made using State Form 4 and submitted via Procorem. Requests should come directly from the owner unless the owner gives authority to their agent to act on their behalf.

Properties not cash flowing sufficiently to fund the reserve should notify KHRC and provide a corrective action plan. If it is deemed the property is distressed, a recovery plan will be required in lieu of. KHRC may also request monthly financial reporting through Procorem to monitor the project's income to debt ratio, operating and reserve use patterns, etc.

15.6 Fair Housing Activities

Owner agreements with KHRC also includes a component to "affirmatively further Fair Housing choice in Kansas." An owner is generally considered to be in compliance if they complete one Fair Housing activity per grant/allocation/loan per year. KHRC agreements with the owner do not specify the type of Fair Housing activity to be done, but rather leaves it to the owner to determine what is appropriate for the type of tenant population the property is serving. Some ideas for Fair Housing activities include:

A. Fair housing articles featured in tenant newsletters that highlight specific laws, definitions, or project policy concerning requests for reasonable accommodations or modifications.

B. Guest speakers at apartment community gatherings.

C. Posting of Fair Housing laws on apartment bulletin boards.

D. One-on-one discussions with tenants concerning the ADA features of their units.

15.7 Adaptive Devices

Some properties have covenants that commit the owner to provide certain adaptive devices as a reasonable accommodation for tenants upon request. Such devices might address the hearing or sight-impaired and include such devices that would normally improve the living condition and/or safety of the resident at the project.

When such language appears in the Restrictive Use Covenant the owner is not required to keep these devices at the site, but rather to maintain information about where they can be located (i.e. provider agencies and contact numbers) if needed with short notice. Tenants should be made aware that they are entitled to make such requests of the owner as a condition of occupancy, and there should be a procedure in place to make requests of this nature.

When tenants make requests for devices, the owner shall respond within a reasonable amount of time, and the device(s) shall be provided at the owner's expense, including installation charges. Property records should be maintained that demonstrate the owner's compliance as these records may be a part of the onsite inspection process.

15.8 Homeless Units

Homeless units set-aside in the Restrictive Use Covenant must be rented to qualifying households where a "Certification of Homelessness" is obtained from the referring agency. Owners are required to rent the unit following guidance outlined in Chapter 11 and rotated every two years. If the covenant does not explicitly indicate a shorter time frame, the homeless unit is to be maintained for the entire 30 year extended use period.

CHAPTER 16: STATE AUDITS

Treasury Regulation 1.42-5 requires each state to establish a procedure for monitoring and to publish their compliance procedures for the benefit of owners doing business in their state. This Manual constitutes Kansas' compliance with Treas. Reg. 1.42-5.

Professional judgment is used to identify noncompliance issues, establish the scope and depth of the project/building audit, and apply the law and regulations to the facts and circumstances of each case in a fair and equitable manner. IRS retains authority to request additional taxpayer information, complete audits, recapture and/or to disallow the credit. IRS Form 8823 is the vehicle states use to notify the Internal Revenue Service of noncompliance with the requirements of IRC §42 and to fulfill other reporting requirements.

16.1 Federal Requirements

Treas. Reg. 1.42-5(c)(2)(ii)(A) requires KHRC to conduct on-site physical inspections of all buildings in a qualified development, inspect the units, review the tenant certifications including the documentation supporting the certifications, and the rent records for the tenants in those units by the end of the second calendar year following the year the last building is placed-in-service. IRS recommends the first review of HTC developments be conducted within the first 180 days following the end of the first tax year. Under specific circumstances, previously allocated credits can be reclaimed and returned to the state's credit ceiling if necessary. A timely review of the initial lease-up also provides owners the opportunity to correct problems early on in the compliance period.

Treas. Reg. 1.42-5(c)(ii)(B) requires that at least once every 3 years states conduct on-site inspections of all buildings in the tax credit development, inspect the units, review the certifications including the documentation supporting the certifications, and the rent records for the tenants living in the units.

KHRC's inspection protocol follows final regulations outlined in the Federal Register (81 FR 9333), previously Rev Proc 2016-15.

Specifics include:

A. The physical inspection protocol established by the Department of Housing and Urban Development (HUD) REAC/NSPIRE standards satisfies the physical inspection requirements.

B. KHRC does not need to select the same units for physical inspections as for certification reviews (aka files inspections). Units are selected separately and in a random manner.

C. The minimum number of units selected for inspection and review is the lesser of below:

(i) 20 percent of the low-income units in the low-income housing project, rounded up to the nearest whole number of units, or
(ii) The Minimum Unit Sample Size set forth in the following Low Income Housing Credit Minimum Unit Sample Size Reference Chart:

Number of Low-Income Units in the Low-Income Housing Project	**Number of Low-Income Units Selected for Inspection or Low-Income Certification Review (Minimum Unit Sample Size)**
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

Using the REAC/NSPIRE Protocol for physical inspections:

A. Both vacant and occupied low income units are included in the units selected for inspection.
B. The inspection complies with procedural and substantive requirements of HUD REAC/NSPIRE including the most recent inspection software.
C. The inspection is performed by a HUD certified inspector.

D. The inspection results are sent to HUD, reviewed and scored within HUD's secure system without any involvement of the inspector who conducted the inspection, and HUD makes the inspection report available.

KHRC provides the inspection report to the owner/agent via Procorem with the applicable notice included (i.e., 60 Day Notice of Noncompliance, Final Response – No deficiencies, etc.).

Per HERA Regulations, KHRC is required to furnish to HUD on an annual basis information concerning race, ethnicity, family composition, age, income, use of rental assistance under Section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency. KHRC collects the data through the tenant portal as part of the annual report process. Data is collected through the extended use period.

In the case of a household that continues to reside in the same dwelling unit, information provided by the household in a previous year may be used if the information is of a category that is not subject to change or if the information for the current year is not readily available to the owner of the property.

16.2 IRS Form 8823

Treas. Reg. 1.42-5(a) provides the authority for reporting noncompliance to IRS when reviewing an annual report, or completing the files and physical inspections. Noncompliance corrected in advance of the state's notification concerning an annual report, files inspection and physical inspection will generally not be reported to IRS. The Small Business/Self-Employed Mission at IRS considers the date of the notification letter as a "bright line," comparable to the rules for requesting a Private Letter Ruling (PLR) or the disclosure on Form 1040X that an amended tax return is being filed after an IRS audit or subsequent to notification that the taxpayer will be audited. All noncompliance found after a notification to the owner is subject to being reported on Form 8823, Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition Form. Tax returns are subject to a three-year statute of limitation from the date the return is required to be filed, or from the actual filing date if later.
Forms 8823 are routinely analyzed by the IRS. Based on the categories of noncompliance, and without regard to subsequent "back in compliance" Forms 8823, owners are identified for further consideration of audit potential. The taxpayer's tax return and all Forms 8823 filed for the property are evaluated. If it is determined that an audit is warranted, the complete file is sent to the appropriate IRS field office. The taxpayer is then notified that an audit has been scheduled.

A separate Form 8823 is filed for each BIN (building identification number) matching the buildings identified on IRS Forms 8609. When filing a "back in compliance" Form 8823, all noncompliance for each specific category in the building must be remedied before the building is considered "back in compliance." Amended Forms 8823 are filed only when necessary to correct an administrative error on the original Form 8823. For example, the wrong category was selected or an address was incorrect.

KHRC is allowed and encouraged to submit descriptions of noncompliance as an attachment to IRS Form 8823 but the descriptions are to be brief and concise. Large attachments that include the owner's explanation of due diligence are no longer considered as owners are required to resolve questionable findings with KHRC. In the event an owner believes it has exhausted its efforts with the state, it may request a Private Letter Ruling (PLR) from IRS. States are also encouraged to include explanations when they suspect owners, managing agents or other parties may have misrepresented information such as falsifying income verifications or altering tenant files.

There is no "noncompliance corrected" block for category 11(p) on IRS Form 8823, Project is no longer in compliance or participating in the program. Should KHRC decide to reinstate a property after having reported it out of compliance using block 11(p), it must contact the appropriate IRS tax credit program analyst first.

Once KHRC files Form 8823 with IRS, the IRS will send the owner a notification letter. The notification letter identifies the type(s) of noncompliance that has been reported and informs the owner not to include any of the nonqualified low income housing units when computing the tax credits for the tax year in question. The letter further states that the noncompliance may result in a recapture of previously claimed credit and instructs the owner to contact KHRC to resolve the issue(s).

Once noncompliance is resolved, KHRC files a "back in compliance" Form 8823 as long as the noncompliance is corrected within three years. Depending on the problem, noncompliance may extend to one or more housing units within a HTC building, may apply to the whole building, or may encompass the entire development. The three-year rule is another "bright line" of the program. Owners who fail to correct noncompliance within three years following the end of the correction period for which the noncompliance was reported may forfeit their ability to ever correct the noncompliance. This is due in part to tax returns having a three-year statute of limitation and in part to the appearance of a disregard for program rules.

Owners should be wary of allowing noncompliance to remain on the books for longer than three years as it could result in a permanent drop in qualified basis. A permanent drop in qualified basis is one of the criteria for owners being considered as "not in good standing" with KHRC.

Example #1:
Owner has a unit that failed to initially income qualify for housing credits. Three years elapse from when the noncompliance was first reported to IRS. KHRC reports a permanent drop in Qualified Basis making it impossible for the owner to claim future credits on the unit, even if noncompliance is later corrected. The unit in question is part of a 100% low income building eligible for the automatic recertification waiver provided for in the 2008 Housing & Recovery Act. The building's permanent drop in Qualified Basis changes its designation from a 100% low income building to a mixed use building. Full tenant recertification requirements must be reinstated for all remaining low income units for the balance of time left in the initial 15 year compliance period. The mixed use designation now means the Next Available Unit and Unit

Vacancy Rules apply. KHRC views the owner's actions as grossly negligent and puts them in a status of "not in good standing." The status of the owner is taken into consideration should the owner apply for any new allocations. This one single instance of uncorrected noncompliance has had a staggering effect on the owner and property.

16.3 State Requirements

To receive an allocation of Housing Tax Credits in Kansas, owners must enter a competitive process that begins with the application. Applications are reviewed and scored by the Housing Development Division. At the end of the process some developments are chosen for an award of credits. Upon receiving this award, covenants are signed by the owner and KHRC and then recorded against the land as a Land Use Restriction Agreement and filed with the Register of Deeds office. These documents are legal instruments binding in a Court of Law.

Agreements made between KHRC and owners and enumerated in the Restrictive Use Covenant and other legal documents are monitored for compliance on an ongoing basis. These covenants remain in place throughout the extended use period.

Noncompliance with the Restrictive Use Covenant is treated the same as federal noncompliance in that a 60-Day Notice of Noncompliance is issued to the owner and due diligence efforts are monitored to determine the level of cooperation being exerted to correct deficiencies. An owner's failure to correct state noncompliance or demonstrate due diligence in lieu of, can result in the issuance of violation fees as outlined in this Manual, and the owner being put in a status of "not in good standing" with KHRC. Owners who are not in good standing will not be considered for future awards of housing credits until the noncompliance is resolved and the owner is removed from "not in good standing" status.

16.4 Compliance Monitoring Process

Procorem, a cloud based application is utilized by KHRC and its HTC owners to report and track compliance with IRC §42. All notices and communication regarding compliance matters happens within the property's Procorem work center. One of the most important benefits of Procorem is transparency. Posts, tasks, and uploads allow all users on the work center (KHRC staff, owners, management agents, and syndicators) to be informed regarding all compliance matters.

Step 1: KHRC performs a review of the annual report and evaluation of tenant data, completes a files inspection electronically via Procorem, and conducts an onsite physical inspection of the units and buildings. The annual reporting, files inspections and physical inspections are explained in greater detail later in this chapter.

Step 2: Upon completion, KHRC prepares a deficiency report (aka 60-Day Notice) separately for each the annual report, files inspection, and physical inspection for owners. The 60-Day Notice details if potential noncompliance has been detected. These may be Federal or State level deficiencies. The notice may also identify administrative, technical, or other concerns whether they be federal or state violations.

Step 3: The owner responds to KHRC within 60 days, which can be extended for four months, giving up to a total of six months (beginning the date of the first 60-Day Notice of Noncompliance was issued). The owner's response must include documentation to illustrate corrective action has been implemented. To request an extension beyond the 60-day correction period, owners must complete State Form 7 and submit via Procorem to KHRC. The request for an extension and/or workout plan must be made before the 60-day correction period expires. Please note for annual report submissions, only an additional two months will be approved. If the owner fails to abide by the terms and conditions stipulated in the approved workout plan, KHRC will exercise its right to file a Form 8823 immediately and consider the property for KHRC's distressed list.

Since taxpayers are identified for audit without regard to any corrected IRS Forms 8823 it is in the owner's best interest to apply for an extension with KHRC and complete a workout plan than for Forms 8823 to be filed without correction dates.

Step 4: When the owner's response is received, KHRC determines whether the owner provided:

1. Clarification establishing sufficient proof the owner was always in compliance;
2. Documentation that issues of noncompliance have been remedied within the correction period (out and back in compliance);
3. No documentation that issues of noncompliance have been remedied within the correction period (still out of compliance); or
4. Documentation that issues of noncompliance have been remedied, but the noncompliance was not corrected until after the end of the correction period and a request for extension via a workout plan was not requested timely. A Form 8823 is submitted to the IRS only to report the correction of previously reported noncompliance (back in compliance).

In the event extensive noncompliance is identified, KHRC may consider expanding the sample size of units to be inspected. Circumstances warranting consideration of expanding the sample of low income units reviewed include, but are not limited to:

1. Poor internal controls (significant risk of error),
2. Multiple problems or problems systemic in nature,
3. A significant number of nonqualified units,
4. Credible information from a reliable source.

16.4.1 The Scope of the Compliance Monitoring

Large, unusual, or questionable items may be material in determining whether noncompliance exists and thus affect the scope of KHRC's inspection. Some factors used to determine materiality include:

A. Comparative nature of the issue: noncompliance found with one unit out of 24 is not as important as a development failing the 40/60 minimum set-aside.

B. Absolute nature of the issue: major violations of health, building and safety codes are investigated thoroughly whether one or 100 units are impacted.

C. Inherent nature of the issue: a permanent change in the eligible basis of a development is more significant than two units that are not available for rent for two months due to storm damage.

D. Evidence of intent to mislead: this may include missing, misleading or incomplete documentation.

E. Extenuating circumstances: the issue cited is very temporary or in the process of being fixed at the time of inspection (i.e., a roof in process of being repaired at time of inspection or a casualty loss event).

As part of its scope, KHRC will review the agreements/requirements outlined in the Restricted Use Covenant, the property's management and fair housing plans, resident selection criteria, security deposit dispositions, rejected applicant files, and grievance procedures. For the physical inspection, owners are provided the list of Exigent Health and Safety (EH&S) deficiencies at the end of the inspection (each day for multiple day inspections), which must have proof of corrections submitted to KHRC within 72 hours.

16.4.2 Due Diligence

Compliant behavior can be demonstrated when an owner exercises ordinary business care in fulfilling its obligations. Due diligence is demonstrated in many ways, including establishing strong internal controls (policies and procedures) to identify, measure, and safeguard business operations and avoid material misstatements of property compliance or financial information. Internal controls include:

A. Separation of duties,

B. Timely and adequate record keeping,

C. Owner/agent oversight and review (internal audits),

D. Third party verifications of tenant income,

E. Appropriate and qualified maintenance staff,

F. Adequate supervision of employees,

G. Independent audits, and

H. Timely correction of reported federal and/or state noncompliance.

16.4.3 Evaluating Evidence

When KHRC gathers information to determine the owner's level of compliance with IRC §42 and KHRC covenants, a determination is made on the basis of all available facts, including facts supporting the owner's position (i.e. prior owner compliance and historic performance). Evidence is defined as something that proves a fact or point.

Owners have the right to expect the information they provide KHRC will be safeguarded and used only in accordance with the law. To promote and maintain owner confidence in matters of privacy, confidentiality and security, protections have been put in place by KHRC. These include:

A. No information will be collected or used with respect to owners that is not necessary and relevant for tax administration and other legally mandated or authorized purposes.

B. Information will be collected, to the greatest extent practical, directly from the owner to whom it relates. If the owner has designated another person or source to act for them in situations of noncompliance, KHRC reserves the right to seek information from the alternate source (i.e. management companies, syndicators, third party contractors, etc.).

C. Information about owners collected from third parties will be verified, to the extent practical, with the owner before a determination of compliance is made using the information.

IRC §42 requires owners to keep adequate records to support information on their tax returns. However, not all evidence is required to be books and records. The following is an overview of different types of acceptable evidence owners may use to illustrate compliance:

A. Documentary Evidence: Physical documentation is generally regarded as providing proof or evidence. Writings made contemporaneously (or at the same time) as the happening of an event is deemed to generally reflect the actual facts of that time, and indicates what was in the minds of the parties to the event. If possible, original documentary evidence should be retrieved.

Example: Unusual or peculiar events documented by notes to the file that attempts to explain disparities in documentation or conversations with applicants/tenants and third party sources.

B. Other Evidence: While documentary evidence has great value, KHRC is not required to rely on it to the exclusion of all other facts and circumstances. Facts can also be established by oral testimony. There are times when greater weight can be given to an oral testimony than to conflicting documentary evidence. A unit will not be considered non-compliant merely because documentary evidence is incomplete when there is some evidence to support compliance. In the alternative, oral evidence will not be used in lieu of credible documentary evidence.

Note: If an issue involves specific recordkeeping required by law, then oral testimony alone cannot be substituted for the necessary written documentation.

C. Reconstructing Evidence: There are times when tenant documentation has been lost, damaged (by fire or flood) or even stolen. In such cases, KHRC may allow property managers to perfect the documentation during the correction period.

D. Third Party Evidence: Third party evidence is evidence obtained from someone other than the owner. Credible third party evidence is used when the owner is unable to provide the information or it is necessary to verify information provided by the owner.

Example: The property manager reports a casualty loss of 4 units in a low income housing credit building due to fire. The insurance agent has been contacted and 3 bids secured for repair of the damaged units; however, no further information is forthcoming from the property manager. KHRC attempts to follow up with the owner and management company to no avail. KHRC will make no further attempts to contact the owner and file Forms 8823 immediately if the 60 day period for correction has passed.

E. Evaluating Evidence: IRS expects KHRC to arrive at definite conclusions based on a balanced and impartial evaluation of all available evidence. Therefore, KHRC will employ independent and objective judgment in reaching its conclusions. Fairness is demonstrated by:

1. Making decisions impartially and objectively based on the consistent application of procedures and tax law;
2. Treating individuals equitably;
   a. Being open-minded and willing to seek out and consider all relevant information, including opposing perspectives;
   b. Voluntarily correcting mistakes and refusing to take advantage of mistakes or ignorance on the part of the owner; and
   c. Employing open, equitable, and impartial processes for gathering and evaluating information necessary for making decisions.
3. In order to achieve an objective opinion concerning the audit, KHRC may use the following factors when evaluating evidence:
   a. Numbers and type of noncompliance observed;
   b. Elements missing from the documentation;
   c. Reasons why documentation is incomplete;
   d. Availability of other information to substantiate compliance; and

e. Materiality of unsubstantiated documentation.

16.4.4 Appeal Process

KHRC has formalized an appeal procedure for disputes concerning inspections (tenant files and physical inspections). If an owner desires to appeal KHRC's findings, the appeal must be submitted within 30 days of the date of the summary report. The appeal should be directed to the Housing Compliance Division on State Form 8, Appeal Request, and specifically detail the finding(s) and reasons for the dispute. It should also include all of the owner's support documentation.

There are three options for resolving disputes through the appeal system. They include:

A. A review of all pertinent documents by an "appeal committee" comprised of KHRC staff. The committee will examine the state's work papers, official report, owner's response and support documentation, plus any other relevant information; or, KHRC may opt to discuss the appeal with IRS or other state agencies in order to rule on the appeal. Owners may be asked to meet with the Committee in person, with or without legal representation, to answer questions and present their case. Once a decision is rendered it shall be considered final.

B. The owner can request that KHRC accept a professional third party review, paid for at the owner's expense. In such cases, the third party source must be approved in advance by KHRC and the results of the third party review must be sent directly to KHRC instead of through the owner. Such third party documentation could come from many sources including, but not limited to, a certified lead-based paint tester, mold expert, or a certified file auditor of low-income housing tax credit developments. In any case, KHRC still retains the right to either accept or reject the third party recommendation. If rejected, the third party's documentation would be included with the IRS Forms 8823 so IRS is made aware of all relevant facts and circumstances when determining the tax penalty.

C Owners may seek a Private Letter Ruling (PLR) from the IRS at their expense. The results of the Private Letter Ruling would be accepted by KHRC as the final decision.

16.5 Annual Reporting

Each year KHRC collects annual reports submitted by owners of HTC properties. The reports are due each year (generally in the Spring) and are required for every property throughout the entire extended use period. A notification letter and compliance fee invoice are uploaded to the work center with a corresponding task. The letter explains how to access forms necessary to complete the annual report. The checklist along with other required forms are available on KHRC's website.

The submission is completed electronically via Procorem. Owner/agents are required to enter and maintain tenant data in Procorem. Data must be entered as part of the annual report submission. Further, it is to be updated prior to a files or physical inspection and immediately upon request by KHRC. The Procorem cloud allows managers to input tenant data referred to as "Tenant Events" in the Tenant Event Portal. A "Tenant Event" can be a tenant move-in, transfer-in, recertification, transfer-out or move-out. Interim certifications are not reported in the Tenant Event Portal. As part of the annual report submission, the tenant data must be entered and pass validation for the year being submitted.

KHRC evaluates the data where errors are flagged by the system. Some errors may include income ineligibility, incorrect rents/utility allowances, ineligible students, failure to recertify, and compliance issues with the Next Available Unit and Unit Vacancy Rules. Errors generated during KHRC's evaluation are not available to the owner/agent until the annual report is reviewed by KHRC. KHRC will require specific supporting documentation be provided to remedy data entry errors.

KHRC requires specific Excel templates be used to provide annual financial and budget information.

An annual compliance fee is due along with the annual report. For properties in years 1-15 the fee is .009 x the annual tax credit amount allocated; for properties in years 16 and beyond, the fee is .004 x the annual tax credit amount allocated. Extensions may be granted for annual report submissions; however, extensions are not granted for fees due.

Owners are in compliance when annual reports have been submitted timely, accurately and completely. Owners who fail to submit their annual owner's certification as part of the annual report, will receive an IRS Form 8823 line 11(d). Owners who submit the annual owner's certification but provide inaccurate or inadequate reports to the extent that it prevents KHRC from determining whether the property is at least minimally compliant with IRC §42, will receive an IRS Form 8823 line 11(q). KHRC may regard the entire development as noncompliant with the tax code. Under such a scenario, IRS could decide the property has failed its federal minimum set-aside and invoke its recapture provisions.

To bring the property back in compliance, owners must complete and submit the annual report, including the annual compliance fee. After three years of failing to provide an annual report, noncompliance is reported under IRS Form 8823, line 11(p), Project is no longer in compliance nor participating in the §42 program. As stated elsewhere in this Manual, IRS Form 8823, line 11(p) does not include a correction date box. Therefore, special consideration must be given as to whether the state will be willing to have the owner continue in the program if compliance is eventually restored, and the appropriate IRS program analyst contacted to assist in the decision-making process. For properties out of compliance for one or two years, the project is placed on KHRC's distressed list and may be fined in accordance with the Violation Fees identified in this manual. Further, the owner is placed in a state of "not in good standing" with KHRC until the required report(s) are furnished and fees paid.

If not already provided to KHRC, the first annual report submitted must include signed copies of IRS Forms 8609 with Part II filled in. The multiple building project election attachment must be included for line 8b, if applicable. It is acceptable to use State Form 40 for this purpose. Without this information, KHRC's records are incomplete. Therefore, KHRC will pursue these documents and eventually fine the owner if they are not submitted. The annual report will also be deemed incomplete, and the property placed on the distressed list.

KHRC is willing to assist owners and managers in meeting their Procorem requirements by providing training and directing managers to review existing guidance and tutorials on our website. https://kshousingcorp.org/ We also strongly encourage owners and managers to attend trainings offered each year, specifically compliance and housing update classes at the annual Kansas Housing Conference.

16.5.1 Owner's Certification of Continued Program Compliance

IRC §42 requires a certification of compliance, under penalty of perjury, be completed each year by the owner. KHRC obtains the signed declarations with the owner's annual report submission. The declarations are:

1. The housing development meets the federal minimum set-aside test elected by the owner at the time of application under 42(g)(1)(A), 42(g)(1)(B), 42(g)(1)(C) or for deep rent-skewed developments IRC §42(g)(4) and 142(d)(4)(B) of the Code.

   The owner should checkbox the applicable federal minimum set-aside requirement if they reasonably believe their property meets the federal minimum set-aside test as elected on IRS Form 8609 for each building at the end of the tax year for which the owner's certification is being submitted.

2. There has been no change in the applicable fraction (as defined in IRC §42 (c)(1)(B) of the Code) for any building in the development.

   The owner should answer "no change" to this question if they reasonably believe they have correctly rented low income units throughout the year and maintained the appropriate portion of low-income units in each low income building of the project. If there was a finding of noncompliance during the course of an inspection which resulted in an IRS Form 8823 being filed, the answer would still be "no change" if the owner reasonably believes they corrected the noncompliance before the end of the tax year, or if they are in process of appealing the audit.

3. The owner has received an initial Tenant Income Certification for each low-income resident and has documentation to support the certification; OR has performed an annual tenant recertification for each low income household and has documentation to support the recertification. New regulations in the 2008 HERA exempt the requirement of full

recertifications for 100% low income buildings or projects; however, Sample Form 18 is required in lieu of and Procorem must be kept up to date.

The owner should answer "true" to this question if they have initially certified each low income household occupying a qualified low income unit in accordance with IRC §42 and performed the appropriate recertifications or Sample Form 18 and updated the Procorem Tenant Event Portal.

4. Each low-income unit in the building has been rent restricted under IRC §42(g)(2).

   The owner should answer "true" to this question if they have restricted the rent on all low income units in their low income buildings in accordance with the federal maximum rent guidelines per bedroom size that was in effect during the certification year. Violations of additional rent restrictions (for example, Fair Market Rent requirements or state-approved rents for TCAP/Credit Exchange properties) will not affect the Owner's Declaration statement so long as rents are under the federal maximum. State issues are dealt with separately.

5. All low-income units in the development are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under IRC §42(i)(3)(B)(iii).

   The owner should answer "true" to this question if they made all of their units available for use by the general public, and each unit rented had an initial lease term of at least six (6) months. SROs and units qualifying under the Stewart B. McKinney Act are excepted from this certification statement as is housing strictly set-aside for the elderly and/or disabled.

6. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this development. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.

   The owner should answer "true" to this question if they have rented their units in accordance with the Federal Fair Housing Act and not been found guilty of discrimination in a court of law.

7. Each building in the development is and has been suitable for occupancy taking into account local health, safety, and building codes (or other habitation standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the development. If "no/false", state the nature of the violation on page 3 and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of correction.

The owner should answer "true" to this question if they reasonably believe their units are habitable and in compliance with local codes. If there was a citation during the tax year against the owner by local code enforcement where a finding of health, safety or building code violation was initiated (whether or not corrected), the owner should answer "false" and attach a copy of the violation report to the annual report. Citations made during a physical inspection are not considered if corrected by the end of the tax year, or if the owner is in process of an appeal.

8. There has been no change in the eligible basis (as defined in IRC §42(d) for any building in the development since the last certification submission.

   The owner should answer "true" to this question if all buildings and units for which the credit is to be claimed were not damaged during the certification year. If they were damaged, such as in the case of a casualty loss, and not restored by the end of the tax year, the owner should answer this question with a "false" and include a statement as an attachment explaining the casualty loss or damage caused as a result of a Presidentially Declared Disaster.

9. All tenant facilities included in the eligible basis of any building in the development such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings (See IRC §42(d)).

   The owner should answer this question "true" if they are reasonably certain that all project amenities were available and usable by all tenants without charge.

10. If a low-income unit in the development has been vacant during the year, reasonable attempts were or are being made to rent the unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were/will be rented to tenants not having a qualifying income.

    The owner should answer "true" to this question if due diligence was applied toward renting vacant low income units before renting market units, or in situations where the owner applied for and received a temporary waiver of the Unit Vacancy Rule during the certification year.

11. If the income of a low-income unit in any building increased above the limit allowed in IRC §42(g)(2)(D)(ii), the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income.

    The owner should answer "true" to this question if any households that exceeded 140% of the current income limits continued to have their rents restricted until replaced by renting the next available market rate unit(s) of comparable or smaller size to a qualified HTC household.

12. An extended low-income housing commitment as described in IRC §42(h)(6) was in effect, including the requirement under IRC §42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the development to an applicant because the applicant holds a voucher of eligibility under Section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437s, the owner has not refused to lease a unit to an applicant based solely on their status as a Section 8 recipient, and the development otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment such as not enforcing minimum income limits.

    The owner should answer "true" to this question if they reasonably believe they are in compliance with their Restrictive Use Covenants.

13. The owner received its credit allocation from a portion of the state credit ceiling set-aside for projects qualified as non-profit organizations under IRC §42(h)(5), and its non-profit entity materially participated in the operation of the development within the meaning of §469(h) of the Code.

    The owner should answer "true" to this question if their property was allocated housing tax credits from the non-profit set-aside AND complied with the requirements of Treasury Regulation 1.469-5T concerning "material participation." Non-profit participation is described as involved in all aspects of the operation including but not limited to day to day operation, management and financial decisions, and participation in property and board meetings. They are also REQUIRED to submit State Form 1 that documents material participation.

14. There has been no change in the ownership or management of the development.

    The owner should answer "true" to this question if there has been no change in the ownership or management of the development during the certification year. If the answer is "false", corresponding information relating to the change must be listed on page 3 of the form. KHRC should already have this information based on previous submission of State Form 18 (Request to Change Management Company) and/or State Form 22 (Request to Change Ownership).

15. The owner acknowledges that the recorded Extended Use Agreement binds their property for the length of the agreement, prohibits the eviction or termination of any qualified low income tenant under an existing lease other than for good cause, and prohibits any increase in the gross rent with respect to the low income unit not otherwise permitted under IRC §42 during the term of the LURA.

    The owner should answer "true" to this question if they have not evicted or terminated the lease of any low income tenant during the past year without good cause or increased the gross rent of low income units above the amount permitted under IRC §42. All lease terminations should be kept as a part of the property's records for the appropriate record retention period outlined in Section 2.5 of this Manual.

16. The owner continues to comply with all terms it agreed to in its application for Credit authority, including all federal and state level program requirements and any commitments for which it received points or other preferential treatment in its application.

    The owner should answer "true" to this question if they have continued to comply with the recorded LURA, any amendments, and any commitments made in the application.

17. The property has not suffered a casualty loss resulting in the current displacement of residents.

    The owner should answer "true" if a casualty loss as outlined in Chapter 20 of this manual has not occurred. If "false", State Form 10 is to be submitted to KHRC via Procorem if the owner has not done so already.

18. The property is in compliance with the Violence Against Women's Act requirement and all related implementing regulations providing protections for residents and applicants who are victims of domestic violence, dating violence, sexual assault, and/or stalking.

If the Owner's Certification of Continuing Program Compliance discloses noncompliance with the requirements of IRC §42 for which KHRC is not already aware, the noncompliance is reported to IRS.

Example: The owner of a HTC building correctly submits the annual report and discloses that the swimming pool was closed during the certification year and not available for use by tenants. The owner is in compliance with the annual report requirement, but if there was a reduction in eligible basis, it must be reported to IRS on Form 8823, line 11(e). Once the swimming pool is repaired and back in use, a corrected Form 8823 will be filed.

16.5.2 Unit and Building Requirements

IRC §42(m)(1)(B)(iii)(b) defines unit and building requirements for qualified tax credit developments. IRS uses the building identification numbers (BINs) to distinguish and track tax credit activity at the federal level.

IRC §42 also provides direction concerning the type of building and unit information that is to be kept:

A. The total number of residential rental units in the development, including the number of bedrooms and the size in square feet of each unit.

B. The percentage of restricted units.

C. The rent charged on each residential rental unit, and the corresponding utility allowance for the unit.

D. The number and ages of occupants in each restricted unit as well as family composition, income, use of rental assistance or other assistance, disability status and monthly rental practices required under HERA regulations for reporting to HUD. Owners should also attempt to document race and ethnicity for applicants/tenants willing to provide the information.

E. The restricted unit vacancies, non-restricted unit vacancies, and rentals of the next available unit.

F. The annual income certification for each qualified household, including information on income and assets, and the number of occupants.

> Note: Regardless of whether there is a HUD or Rural Development tenant income certification already on file for the household, owner/agent must still ensure the Kansas Tenant Income Certification (KTIC) is filled out and available for review in the tenant's file. The KTIC is a mandatory form.

G. Documentation by a third party employer or a public agency verification that supports each income certification. Examples include third party documentation from employers or documentation of unemployment compensation, a copy of the tenant's federal income tax return, or IRS Form W-2. Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under IRC §42(g).

Recertification requirements also require documentation by a third party employer or a public agency verification that supports each income recertification for properties that are mixed-use. HERA regulations allow that for 100% buildings or projects, no recertification is required. However, KHRC has implemented Sample Form 18 to capture tenant data necessary to illustrate compliance with the IRS Student Rule, HUD reporting requirements, and the Restrictive Use Covenant. For owners who are not required to complete full recertifications, Sample Form 18 must be completed in lieu of.

H. The eligible basis and the qualified basis of the building at the end of the first year of the credit period.

I. The character and use of the nonresidential portion of the building included in the eligible basis.

J. The dates of occupancy for each tenant and continuous rent roll for all restricted units.

Owners submit information to KHRC via Procorem as part of the annual report, which captures most of what is outlined above.

16.6 Tenant File Inspection Process

Using Procorem for files inspections:

A. Owner/agents will provide tenant files via Procorem for review. Onsite certification reviews will not be conducted.

B. The date of the files inspection will be previously confirmed via task and a notification letter from KHRC. The letter outlines the documents being requested. KHRC will notify the owner/agent of the units selected for review the morning of the files inspection date. Scanned copies of the requested tenant certifications must be uploaded to the secure, cloud-based system, Procorem. Specific details regarding file naming requirements are outlined in the notification letter as well.

For 100% low income buildings or projects where full recertifications are no longer required, KHRC staff will review the last Sample Form 18 and check the initial move-in record. Noncompliance that is corrected in advance of a notification of inspection will not be considered noncompliance for purposes of reporting to IRS.

Per IRS regulations, KHRC provides a minimum two week notice prior to inspections. Additionally, historical inspection folders are kept in the Procorem work center. The inspection year is identified on the inspection subfolders, which is an easy way to identify and calculate what year the next inspection will likely occur.

When reviewing tenant records, each initial tenant file should contain at a minimum:

A. A completed application (Mandatory).

B. Tenant consent for release of information (Mandatory). The release may be included in the verification form or the application.

C. Kansas Tenant Income Certification (Mandatory).

D. Proof of income.

E. Asset certification, proof of assets (each of which are documented on the TIC).

F. The last recertification and substantiating documentation, or Sample Form 18, whichever is appropriate.

G. Initial written rental agreement (lease) that includes the charged rent amount and term.

H. Drug free lease addendum.

I. Violence Against Women's Act addendum.

J. Move-in/Move-out Inspection form, (upon moving out, the charge sheet/security deposit disposition and letter to the tenant).

Other file documents may include: Utility Allowance documentation, proof of tenant identification, age, disability status, student verification, marital status, divorce decree and/or child support statement, subsidy type and assistance, citizenship, lead-based paint pamphlet and pet agreements, Next Available Unit Logs and Vacant Unit Rule compliance. KHRC will also review at least one denied applicant, one move-out file, and the homeless unit file (if applicable) to verify compliance with IRC §42 and notate concerns regarding compliance with the Kansas Residential Landlord and Tenant Act. Further, staff will *review* (not approve) Management Plans for current maintenance procedures, Affirmative Fair Housing Marketing Plans using HUD Form HUD-935.2A (12/2011), Resident Selection Criteria, Grievance Procedures.

KHRC suggests owner/agents conduct background checks of all applicants at the time of move in, to include additional household members. This check may include credit, criminal, and previous housing. Though background checks are not mandatory, the checks give a historical record into an applicant's past rental and payment activity and assists in making an informed decision on approval or denial. If a background check/screening process is put in place, it must align with the property's written resident selection criteria and must be carried out in a consistent and uniform manner.

16.7 Physical Inspection Process

Under Treas. Reg. §1.42-5(C)(2)(ii)(B) KHRC is required to conduct physical inspections of HTC properties using either HUD's National Standard for the Physical Inspection of Real Estate (NSPIRE) or local codes. NSPIRE standards require properties to be "functionally adequate, operable, and free of health and safety hazards". The three (3) inspectable areas are outside, inside, dwelling units. Each deficiency is given a severity rating using two factors: 1) possible impact on safety, and 2) whether or not it creates a life-threatening condition.

The severity ratings are:

- Low or Advisory (LOW),
- Moderate (MOD),
- Severe or Severe Non-Life Threatening (SNLT),
- Life Threatening (LT).

To ensure consistent evaluation of a property's physical condition, the definitions used by the National Standard for the Physical Inspection of Real Estate (NSPIRE) under HUD is also used to determine whether noncompliance has occurred under IRC §42.

All levels of deficiencies must be reported (see back page instructions on Form 8823).

Examples for each rating are listed below. For a full list of inspection standards visit:
https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/standards

Low:
- Sink or sink component is damaged or missing (Minor)
- Ten or more discarded items or pieces of litter in a 100 SF area on the Site/Outside
- Erosion is present, and the footer is exposed

Moderate:
- Any one pothole is greater than 4'" deep and 1 SF in area
- Refrigerator door seal is damaged
- The roof soffits, eaves, fascia, or deck is damaged
- A unit window will not open or stay open
- Interior wall has hole greater than 2"

Severe:
- Any heating system is functioning but cannot provide interior temp greater than 68 degrees
- GFCI outlet or GFCI breaker reset button does not test
- Extensive cockroach infestation (1+ in multiple locations)

Life threatening:
- Smoke alarm does not produce an audio or visual alarm when tested
- Fire escape access is obstructed
- The date on the fire extinguisher service tag has exceeded one year (expired)

Life threatening and severe require immediate attention because of the life-threatening potential. KHRC will inform the owner of all life threatening and severe deficiencies at the exit conference prior to leaving the property. These deficiencies are to be corrected within 24 hours. Once corrected, the owner is required to report back to KHRC within 72 hours (3 business days) providing proof of the corrective actions taken.

NSPIRE went into effect for multi-family properties on October 1, 2023. The below list (not all inclusive) outlines some notable changes.

- Blocked egress: Tenant owned items blocking access to windows will no longer be cited as blocked egress. This includes conditions such as windows being blocked with headboards, dressers, and other large or heavy objects. The only exception is permanently installed window air conditioners. If an air conditioner is placed in a unit but not permanently attached to a frame with screws, bolts, etc. it will not be cited.

- Electrical Minimum: All habitable rooms (sleeping rooms, living rooms, etc.) must have two outlets or one outlet and one switched light source.

- Electrical Equipment: Gaps in electrical equipment have changed to ½" (verses ¼").

- Smoke Detectors (Battery Only): All smoke detectors (as of December 29, 2024) which are solely battery operated must have sealed, tamper proof batteries.

- Fire Sprinkler Assemblies: Evidence of corrosion on sprinkler heads, including any corrosion on the sprinkler assemble or components. Thresholds require 75% or more of the sprinkler assemble to be covered by a foreign material (such as paint), or 75% or more of the glass bulb by covered by foreign material to be considered a deficiency.

Notwithstanding the above inspection requirements, a low-income housing development under IRC §42 must continue to satisfy local codes. Each year, owners are required to certify that each building in the development is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit at the property. If a violation was issued, the owner has further responsibility to state the nature of the violation on page 3 of the owner's certification, and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of correction. During the year in which the owner's property is selected for inspection, KHRC will inspect corrective action taken with regard to local code violations to assure they have been remedied. Owner certifications are signed under penalty of perjury.

Units vacant 90 days or longer will be *viewed* by KHRC inspectors regardless of whether the unit was part of the random sampling. This process is to document if the unit(s) appear to be vacant 90 days or longer due to excessive tenant damage, casualty loss, or deferred maintenance.

Owners need to have at least one property representative available for the physical inspections who is able to accompany the KHRC inspector during the inspection process. Inspectors provide at least a 28 day notice unless affected by extenuating circumstances. Should a property representative not be available for the inspection on the originally proposed date, an alternate date within seven days of the original date should be confirmed for the inspection per NSPIRE protocol. As long as the inspector schedules during normal work hours, Monday through Friday between 8 am and 5 pm, the owner needs to ensure adequate coverage at the site, and provide all tenants with adequate notice, generally 24 hours. KHRC staff will not be obliged to change dates or times of inspections to coordinate with the regional or district manager's schedule. However, if a site manager is ill the day of inspection, KHRC will attempt to accommodate the owner and reschedule if possible. If not possible, the owner is required to have someone else at the property to meet with the inspector or risk failing the inspection.

When a unit has been selected for inspection and the occupant is not home, the owner/agent shall allow entry. In situations where tenants have changed entry door locks without owner/agent approval, it is the owner/agent's decision to have maintenance staff drill the lock to allow the unit inspection to occur, otherwise the unit fails. Either management or maintenance staff will need to open any closed door (exterior and interior) for inspectors. In addition, the person accompanying the inspector will need to turn the stove on and off, remove any items from window sills and move furniture for ease of access, access any smoke detectors or windows above 8 feet, and accompany the inspector throughout the inspection. Accompanying personnel cannot leave the inspector by her/himself at any time during the inspection.

Each selected unit must be inspected for adequate electrical power and plumbing, including vacant units.

During the exit conference at the end of the inspection, the inspector can answer questions regarding the process for submitting proof of corrections via Procorem. Proof of corrective documentation should be detailed and at a minimum include the following:

1. Location of the deficiency (unit #, building number/address, common area, site, etc.)
2. Description of the deficiency (the description is found in the deficiency report attached to the 60 day notice)
3. Explanation of the work completed (must be detailed enough to confirm the deficiency was mitigated)
4. Date deficiency was corrected
5. Signature of management, maintenance tech, or person who performed the work (this is to certify the work was completed as stated)

Acceptable evidence can be in the form of pictures and/or invoices for completed contractor work, but the documentation should also include the specific details listed above. A bid or a letter awarding the work to a contractor does not constitute repaired.

If an inspection is scheduled properly, (i.e. during normal work hours), and upon arrival there is no one to escort the inspector around the property, the entire property will be deemed to have failed the inspection and KHRC will attempt to reschedule with the owner. A Violation Fee as outlined in this manual may be assessed to cover the additional expense of travel and staff time for an inspection that was not able to be completed. If it appears the owner/agent is clearly trying to avoid the inspection process, KHRC will report the failure on IRS Form 8823 line 11(n), Owner has failed to respond to Agency requests for monitoring reviews. A severe filing such as this is enough for KHRC to consider the property as distressed. Therefore, owners should notify KHRC as soon as possible if no one will be at the property once an inspection date has been agreed on.

When physical inspection deficiencies are identified, the reported out of compliance date is the date the property failed to meet the inspection standard, if known; otherwise, it is the earliest documented date that the standard was not met, which is the date of the inspection.

Example 1: KHRC determined that some vacant HTC residential rental units were not suitable for occupancy for new tenants when they conducted a physical inspection of the property. The owner explained that because of the high vacancy rate, there were enough vacant units suitable for occupancy. All vacant HTC units that were not suitable for occupancy are out of compliance. The out of compliance date is a factual determination reflecting the earliest date that any of the noncompliant units became vacant.
Example 2: KHRC inspected a property site and determined a refrigerator door seal is damaged. The date of noncompliance is the date of the inspection.

The property is back in compliance when noted deficiencies are corrected. The correction date is the date of repair, if known and documented accordingly or the date the owner/agent submits appropriate documentation to KHRC that clears the deficiency.

16.7.1 Physical Inspection Alignment Program/Harmonization

Properties that have HAP contract funding or Federal Insured Loans may participate in the Physical Inspection Alignment Program. The IRS has allowed KHRC to decouple the physical and files inspection. Not only does it not have to be the same unit inspected, the inspection does not have to happen in the same year. The physical inspection cycle will be determined based on the score received during the physical inspection. The files inspection cycle will be a three year cycle to meet IRS requirements, or a five year cycle depending on what year of the extended use period the property is in.

Either KHRC certified inspectors or a HUD contracted inspector will conduct an inspection of the property and provide the Exigent Health and Safety report immediately. The full detailed deficiency report cannot be provided to the owner/agent immediately. The inspector must follow HUD procedures, and the Physical Inspection Detailed Deficiency Report must be reviewed by HUD Quality Assurance before publication. Once the report is provided to KHRC, the physical inspector will upload the report with the 60-Day Notice to Procorem. The owner/agent is to respond with proof of corrections to all deficiencies cited in the inspection report.

16.7.2 Lead Based Paint

Properties built before 1978 with deteriorated paint or surface coatings are Lead Based Paint (LBP) hazards if the paint is LBP. Surface by surface visual assessment is completed to determine paint condition. If a pre-1978 property is being renovated, repaired, or painted, staff must be aware of the dangers of lead paint and contractors or property personnel completing the work are to be Lead-Safe Certified. To find out more, visit: https://www.epa.gov/lead/lead-renovation-repair-and-painting-program

Compliance Reporting

Lead-based paint noncompliance is reported to IRS on Form 8823, line 11(c). To correct the noncompliance, the owner must prove the lead paint has been stabilized and/or remediated.

16.8 Enhanced Monitoring

Per the 2009 American Recovery and Reinvestment Act (ARRA), KHRC was able to exchange up to 40% of its credit authority for a cash grant or "sub-award" from the Department of Treasury based on $.85 for each credit dollar. Funding was used by January 1, 2011. The sub-awards were made with or without an allocation of housing tax credits.

KHRC monitors these properties like a syndicator using an enhanced monitoring approach. The owner/agent submits tenant files to KHRC for approval, KHRC conducts limited physical inspections during years that fall outside of the three-year full inspection cycle, and owner/agents are required to provide monthly status reports that include financials and occupancy details.

16.9 State Agency Work Papers

Work papers are the state's written records that provide the principal support for property audits and the filing of Forms 8823. They include all of the information needed to conduct the inspection and documents contacts made with HTC owners. Work papers serve to:

A. Provide a record of the evidence gathered, procedures applied, tests performed, information obtained and conclusions reached;

B. Support technical decisions and conclusions reached;

C. Establish the basis for internal reviews by KHRC; and

D. Document support for IRS audits of the owner's tax returns as well as evidence to be used in event of appeal.

State agency work papers may be used by IRS examiners to support conclusions regarding the accuracy of the owner's tax return. Case files may be reviewed to help establish the scope and depth of an IRS audit, establish a pattern of noncompliance, or provide evidence to support adjustments to the tax return. In some cases, the state's work papers may be the only evidence.

There is no required format or style for state work papers other than certain "identifying" information to support IRS examinations. Identifying information includes:

A. Owner's identity;

B. Type of audit/inspection (desk audit, file audit, physical inspection, other);

C. Identity of person preparing the work papers;

D. Date the work papers were prepared;

E. A summary of the findings; and

F. Correspondence between KHRC and the owner/agent, or communication between KHRC and IRS.

IRS agents can informally provide owners with access to the work papers associated with their own audit that would otherwise be made available under the Freedom of Information Act. Work papers have also been useful in assisting owners who have lost records to support their tax returns in events of fire, theft, or unintentional disposal.

CHAPTER 17: FAILURE TO COMPLY

17.1 Distressed Properties

A property may become distressed for a variety of reasons. Distressed properties can have a negative impact on owners desiring to submit future applications for funding in Kansas, as well as result in financial penalties and/or enforcement action against the properties and their owners by KHRC or IRS. KHRC determines distressed as meaning one or more of the following:

A. Multiple/recurring (pattern) of deficiencies at a property resulting in the filing of IRS Forms 8823;

B. A pattern of noncompliance tracked from property to property under a single owner or management company;

C. IRS Forms 8823 that remain uncorrected/outstanding for a period exceeding one or more years from the date the Forms 8823 are filed, that are not a result of a reported casualty event or Presidentially Declared Disaster;

D. Failure to submit an annual report and/or the annual compliance fee after all extensions have been exhausted;

E. Failure to enter data in the Procorem Tenant Portal or gross Procorem procedural noncompliance;

F. Properties that have a vacancy rate of more than 20% and are not cash flowing;

G. Failure to meet and/or maintain conditions outlined in the Restrictive Use Covenant absent due diligence;

H. Deteriorating physical condition resulting in poor curb appeal, threatens the health and safety of tenants, or violates the Residential Landlord and Tenant Act;

I. Multiple tenant complaints or complaints from interested third parties such as community residents, local government, or other interested parties;

J. Failure to have appropriate staff present for scheduled site inspections, to properly notify tenants, and/or to reschedule inspections in a timely manner.

KHRC reserves the right to deem other concerns not listed above as meriting status as a distressed property.

Distressed properties are audited annually or more often to encourage the owner to correct the deficiencies. To this end, distressed properties shall submit a Recovery Plan that must be agreed to and accepted by KHRC.

KHRC will send a communication to owners that have properties on the distressed list. The communication will direct them on developing a Recovery Plan.

17.1.1 Recovery Plans

A goal of KHRC is to enhance Kansas communities with housing opportunities. Distressed properties are of great concern because they do not contribute towards that goal. Through regular and periodic monitoring, KHRC tracks owner compliance with federal and state regulations, bringing any concerns to the owner's attention via the 60-Day Notice of Noncompliance. However, KHRC is not responsible for the property's recovery. Data collected and analyzed throughout the years clearly show that properties do not become distressed overnight but rather evolve over time. For this reason, it is not always realistic to conclude that a distressed property can resolve the problems that led to its distressed state in a short period of time either.

To respond to tenant and community concerns that erupt when a property is performing poorly, KHRC has implemented a Recovery Plan requirement as part of its compliance oversight authority. A Recovery Plan is different from a "work-out plan." Work-out plans are tied to IRC §42 regulations with a six month correction period; the maximum amount of time allowed before states are required to report noncompliance to IRS. Work-out plans are geared only to noncompliance identified in the state's report of findings (i.e. 60 day notice of noncompliance). The Recovery Plan is designed to aid the owner in uncovering and exposing the root problems that has led the property to a distressed state. It is further designed to help the owner develop a plan or path aimed at returning the property to acceptable performance and involves KHRC staff in the decision-making process. KHRC may ask for one or more of the following as conditions for an acceptable Recovery Plan:

A. A Capitol Needs Assessment paid for at the owner's expense that addresses the physical integrity of building exteriors; building systems; dwelling units; common areas and health, fire and safety concerns identified in the most recent inspection and/or previous 2-3 inspections (pattern issues).

B. A site assessment specifically targeted to improve curb appeal. Such assessment is aimed at components such as building exteriors, fencing and retaining walls, grounds, lighting, mailboxes, property signs, parking lots/driveways, play areas and refuse disposal equipment, roads, storm drainage and walkways.

C. Budgets and market strategies that address low occupancy and negative cash flow concerns. Plans should include an analysis of the budget to determine the property's ability to cover its debt service, spending patterns, increases in insurance and/or maintenance costs and other overhead expenses, and consider where savings may be derived. Changes in community demographics can often impact a property, especially in smaller cities. Owners should review the original market study to determine if these impacts exist and collaborate on ways to improve occupancy and cash flow to the development. A stabilization plan may be appropriate that includes a cash influx from the owner as well as from the limited partnership.

D. Tenant Surveys may be required to address tenant dissatisfaction, or the owner may be asked to consider forming a tenant association. Property rules and regulations may need revamped or clarified and Fair Housing Plans may need updated. The owner could be asked to produce a better grievance procedure and/or take a more active participatory role at the property. The problem could lie in the type of management team the owner selected and perhaps a different team is appropriate to resolve problems at the site.

E. There could be several different approaches to address concerns regarding continued Procorem problems, gross noncompliance with files and records and/or a pattern of such noncompliance, failure to submit annual reports, failure to be present for site inspections, or failure to maintain restrictions and conditions outlined in Restrictive Use Covenants. The solution could be as simple as appropriate training and oversight at the management level, or as involved as scrutinizing the entire management structure of the property. Compliant behavior is demonstrated when an owner exercises ordinary business care in fulfilling its obligations. Due diligence is demonstrated in many ways, including establishing strong internal controls (policies and procedures) to identify, measure, and safeguard business operations and avoid material misstatements of property compliance or financial information. Based on the particular concerns of the property, Recovery Plans may vary.

F. Payment of fees. There is an annual compliance fee owed each year at the time the annual report is filed with KHRC. The fee is either .009 of the annual tax credit amount for properties in years 1-15, or .004 of the annual tax credit amount for properties in years 16 and beyond. There could be additional fees assessed as Violation Fees. When a fee is due to KHRC it is treated as noncompliance. Continued problems encountered by KHRC to collect on a debt will put the owner in a state of "not in good standing," as well as subject the owner to legal action.

KHRC reserves the right to require additional corrective actions not identified above as part of the Recovery Plan.

An acceptable Recovery Plan shall have a stated goal and objectives, specific target dates and other benchmarks that are measurable. Quarterly updates are required so that KHRC can monitor progress. The KHRC Compliance Officer assigned to the property will review these quarterly updates (AKA progress reports) with the owner or owner's agent at a mutually agreed upon time and date. An owner's failure to adhere to their Recovery Plan or illustrate due diligence in lieu of, puts the owner in jeopardy of moving to KHRC's "not in good standing" list and subjects them to potential enforcement and/or legal action by KHRC. An owner who is not in good standing is considered to be grossly negligent. KHRC will not allow an owner who is not in good standing to continue doing new business with the Corporation and will report the owner's status to other states that inquire about performance.

17.2 Not in Good Standing

Beyond legal enforcement, one of the stiffest penalties KHRC can assert against an owner is to place them in "not in good standing" status. Owners "not in good standing" are prohibited from doing new business with KHRC including not only the Housing Tax Credit Program, but any other programs offered by the Corporation. Further, KHRC will report the owner's status to other states that inquire about owner performance which generally occurs during application rounds. How long the owner remains in "not in good standing" status depends on the owner's willingness to address issues and demonstrate tangible due diligence in resolving KHRC's concerns. It could be for one or more years.

Some conditions for being in "not in good standing" status includes, but is not limited to the following:

A. Foreclosure. Property is "sold on the Courthouse steps" resulting in a loss of affordable housing in Kansas communities. In most cases the Restricted and Extended Use Agreement is terminated and properties are left in a state of disrepair blighting the city neighborhoods where they are located. Owners of properties going through a foreclosure are considered "not in good standing" and will remain in that status beginning with the notification to KHRC of an impending foreclosure action up to two years following the "sale of the property on the Courthouse steps."

B. Deeds in Lieu of Foreclosure. Deeds in lieu of foreclosure convey the subject property back to the mortgagee in order to avoid foreclosure action. In such cases the Restricted and Extended Use Agreement can still be terminated resulting in a loss of affordable housing in Kansas communities. Further, deeded properties are generally left in a state of disrepair and can blight a city's neighborhood. Owners who deed HTC housing in lieu of foreclosure will be placed in a status of "not in good standing" with KHRC for up to two years following the completion of all legal paperwork.

C. Failure to adhere to the owner's Recovery Plan absent due diligence as determined by KHRC.

D. A permanent drop in qualified basis resulting from a failure to correct noncompliance within three years as outlined in guidance from IRS; or failure to restore a property to its pre-casualty loss state within two years or per guidance outlined in Revenue Procedure 2007-54 or subsequent IRS Guidance.

E. A reported minimum set-aside violation that results in a recapture of Housing Tax Credits for the current and prior years, or a minimum set-aside violation in the first year of the credit that takes the property out of the program and is considered “not correctable” by IRS.

F. Filing of IRS Forms 8823 that report the owner is no longer participating in the HTC Program and that KHRC will no longer be liable for monitoring the property.

G. The inability of KHRC to collect on a debt whether it is an outstanding annual compliance fee, Violation Fee, or other debt.

H. An owner/agent’s inability to pay just and due debts owed to others.

I. Other owner actions KHRC determines to be negligent so as to undermine the mission of KHRC or the Housing Tax Credit Program.

17.3 Failure to Respond to Agency Requests for Monitoring Reviews

Under the provision Treas. Reg. §1.42-5, KHRC must have the right to perform inspections of any low income housing project at least through the end of the initial 15-year compliance period for the buildings in the project, and to monitor throughout the decontrol period for projects where an owner has chosen to go through the qualified contract process. KHRC must conduct onsite inspections, inspect units, and review income certifications and recertifications, supporting documentation and rent records for the tenants in those units, and otherwise meet the provisions listed in Treas. Reg. §1.42-5(a)(2)(i)(A), (B), (C) and (D).

An owner is out of compliance when requests for site visits or tenant file inspections are denied or unreasonably postponed. Records should be available for review and units for inspection so long as KHRC staff has provided adequate notice. Noncompliance is reported on Form 8823, 11(n)

KHRC must be able to continually meet its administrative responsibilities and demonstrate its due diligence to IRS. Therefore, KHRC could remove a HTC property from the program if the owner fails to respond to repeated notices for monitoring reviews or annual reports, and the owner’s certifications are not submitted as required. There is no correction for this type of noncompliance. See IRS Form 8823, line 11(p) project is no longer in compliance nor participating in the section 42 program.

17.4 Project is No Longer in Compliance or Participating in the Program

KHRC may find that a building is no longer in compliance with the HTC program and thus is no longer participating in the program.

A. The determination that a HTC building is entirely out of compliance and will not be in compliance at any time in the near future is a recapture event under IRC §42(j).

B. The filing of a Form 8823 for this category also puts the IRS on notice that KHRC is no longer performing monitoring activities with respect to the property.

C. The building is no longer considered a qualified low income building under IRC §42(c)(2)(A). No credit is allowable in the remaining years of the credit period, even if the building complies with all the requirements of IRC §42 at a later date.

17.5 Opting out of the Program (initiating the Qualified Contract Process)

IRC §42(h)(6)(D) requires a property owner to commit to the low income housing program for a minimum of 30 years. The commitment is documented in a Restrictive Use Covenant (RUC)/ (LURA) and is recorded against the property as a deed restriction governed by state law.

The initial credit period of 15 years is a time when the Department of Treasury (IRS) provides federal oversight and is empowered to recapture credit if there is noncompliance reported by KHRC. The second 15 years (or longer) is controlled solely by KHRC, and noncompliance is dealt with using a variety of methods.

The law provides that any owner wishing to sell a credit property may do so in the 15^{th} year and beyond. If the property is sold, the restricted use of the property is preserved and a LURA Assignment and Assumption must be executed.

If an owner wishes to initiate the qualified contract process, they must contact KHRC's Housing Development Division. During the 12 month qualified contract period, the property is posted for sale. If an offer is not made or a qualified buyer is not found, the property enters the three year decontrol period. This process is commonly referred to as "opting out of the program." Prior to 1996, most covenants did not provide the owner an opportunity to opt out and most covenants in 2009 and after also have eliminated the right to opt out. In the event a property's LURA allows an owner to opt out, KHRC will still continue to monitor the development until the end of the Qualified Contract period (see Rev. Rul. 2004-82). Owners must continue to maintain data in Procorem, produce annual reports, allow scheduling of inspections through the Qualified Contract period end date. Further, if noncompliance was found prior to the Qualified Contract period end date, a response showing corrective action is still required by KHRC.

When a building or project is removed from the program, KHRC has discretionary authority to release the extended use agreement and remove the deed restriction. Under IRC §42(h)(6)(E)(ii), there are two requirements that must be met when an extended use agreement is terminated:

A. No eviction or termination of tenancy other than for good cause of an existing tenant of any low income unit before the close of the 3-year period following the termination of the extended use agreement, and

B. No increase in the gross rent of any unit occupied by an existing tenant before the close of the 3-year period following the termination of the extended use agreement not otherwise permitted under IRC §42. In other words, units occupied by income qualified tenants continue to be rent restricted for three years or until the tenants vacate the units.

Note: The three year period, commonly referred to as the decontrol period, can be increased to a period greater than three years if agreed to in the Restrictive Use Covenant.

17.6 Egregious Noncompliance

Egregious noncompliance is conspicuous, flagrant, and systemic in nature and includes the failure to make reasonable attempts to comply with the requirements of the program, or careless, reckless, or intentional disregard of program requirements.

17.7 Voluntary Withdrawal from the Program

During the *15-year compliance period*, an owner may voluntarily withdraw a property from the HTC Program but retain ownership. The building still exists physically but is not being operated as an HTC property. In such instances there is recapture liability that the owner must address with the IRS. Voluntary withdrawal from the program after the 15 year compliance period is not an option. KHRC may consider relaxing the requirements outlined in the LURA after year 15 with a formal request from the owner using State Form #5, followed by a formal amendment that must be recorded. Additional fees are involved when an owner requests a LURA amendment.

17.8 Return of Credit

Under certain circumstances KHRC may obtain the return of previously allocated low income housing credits. In accordance with Treas. Reg. 1.42-14(d)(2)(ii) these credits may be returned up to 180 days following the close of the first tax year of the credit period for the building that received the allocation. If credits are returned within 180 days following the close of the first taxable year of a building’s credit period, and a Form 8609 has been issued for the building, KHRC must notify the IRS that the credit has been returned.

Treas. Reg. §1.42-14(d)(2)(iv) specifies the reasons for the return of the entire amount of allocated credit:

A. The building is not placed in service within the required time period or fails to meet the minimum set-aside requirements of IRC §42(g)(1) by the close of the first year of the credit period.

B. The building does not comply with the terms of its credit allocation. The terms of an allocation are the written conditions agreed to by the KHRC and owner in the allocation documents.

C. The owner and KHRC agree to cancel an allocation of credit by mutual consent.

D. KHRC determines, under IRC §42(m)(2) that an amount of credit allocated to a project is not necessary for the financial feasibility of the property and its viability as a qualified low income housing development throughout the credit period.

CHAPTER 18: VIOLATION FEES

KHRC has developed a schedule of violation fees to execute in instances where an owner cannot otherwise be persuaded to comply with specific compliance requirements of the tax credit program, or state laws. The violations and fee amounts are outlined below:

A. Owner fails to pay annual compliance fee by the required date: $50 per qualifying unit.

B. Owner fails to submit the annual compliance report by the required date, including all approved extensions: $50 per qualifying unit.

C. Owner fails to maintain targeting of units as represented in the application and agreed to in the Reservation Agreement and/or Restricted and Extended Use Agreement: $50 per qualifying unit.

D. Owner fails to maintain replacement reserves as committed to in the pro forma and agreed to in the Reservation Agreement and/or Restricted and Extended Use Agreement: $500 per year.

E. Owner fails to maintain other promises and covenants made in the application and enumerated in the Reservation Agreement and/or Restricted and Extended Use Agreement absent due diligence recognized and approved by KHRC: $500 per unit.

F. Owner fails to maintain properties in accordance with Kansas rental housing laws and/or KHRC compliance regulations: $50 per qualifying unit or episode. (Examples: Failure to be present for onsite inspections, Failure to correct noncompliance found that would otherwise be reported on IRS Form 8823, Kansas Residential Landlord and Tenant Act, Party Shack Law, Nuisance Law, KHRC HTC Compliance Policies & Procedures Manual)

Compliance Reporting

The owners' failure to properly administer its state covenants can result in the penalties outlined above. Noncompliance corrected within the 60-day notice period, including approved extensions, will not constitute a finable situation. In situations where an owner is working with KHRC and has received written approval for a change or waiver to the LURA (i.e. State Form 5, Request to Change or Waive Original LURA Requirements) will not constitute a finable situation.

CHAPTER 19: RECORD RETENTION PERIOD

19.1 Record Retention Periods

Treasury Regulation 1.42-5(a)(2)(i)(A) provides that a procedure for monitoring noncompliance must include record keeping and record retention provisions. The records to be retained by States and HTC property owners are described in Treas. Reg. 1.42-5(b)(1).

State Requirements: Under Treas. Reg. 1.42-5(e)(3)(ii), KHRC must retain the original records of noncompliance or failure to certify for six years beyond the filing of IRS Forms 8823. In all other cases the state must retain the certifications and records for three years from the end of the calendar year in which the state received the certifications and records.

Owner Requirements: Owners of qualified tax credit developments must retain their first year records for a minimum of six years beyond the end of the initial compliance period (i.e., a total of 21 years). Records for subsequent years need only be retained for six years after the date the federal tax returns are filed for the year.

Revenue Rule 2004-82 provides guidance to owners who maintain books and records using an electronic storage system; however, such an electronic storage system must satisfy the requirements of Rev. Proc. 97-22. The Revenue Procedure does not exempt owners from having to comply with any additional record keeping and record retention requirements of KHRC.

19.2 Electronic Storage System

Revenue Procedure 97-22 provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records to an electronic storage media, such as an optical disk. Records maintained in an electronic storage system that complies with the requirements of this revenue procedure will constitute records within the meaning of Section 6001 of the Internal Revenue Code.

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever necessary, the Secretary (meaning Dept. of Treasury Secretary) may require any persons by notice served upon that person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not that person is liable for tax.

Section 1.6001-l(a) of the Income Tax Regulations provides that, except for farmers and wage-earners, any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

Section 1.6001-l(e) provides that the books or records required by Section 6001 must be kept available at all times for inspection by authorized Internal Revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any Internal Revenue law. This Revenue Procedure applies to taxpayers who maintain books and records using an "electronic storage system."

Rule of Thumb: Always use the strictest rule when multiple sources of funds are involved.

CHAPTER 20: CASUALTY EVENTS

There are two types of casualty events that can affect a qualified low income housing tax credit project: those resulting from a Presidential Disaster Declaration and "others."

20.1 Casualty Losses Resulting from an Event Under Presidential Disaster Declaration

Revenue Procedure 2014-49 replaces all previous guidance from the Internal Revenue Service with regard to temporary relief from major disasters and is effective as of August 22, 2014.

When a disaster occurs that warrants assistance from the federal government, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), Title 42 U.S.C. 5121-5206 (2000 and Supp. IV 2004) authorizes the President to issue a major disaster declaration for the affected area. When the President issues such a declaration, the Federal Emergency Management Agency (FEMA) publishes a notice in the Federal Register designating particular cities and/or counties or other local jurisdictions covered by the President's major disaster declaration as eligible for Individual Assistance and/or Public Assistance. A city and/or county or other local jurisdiction so designated by FEMA for Individual Assistance and/or Public Assistance under the President's disaster declaration is a major disaster area for purposes of the relief provisions under Revenue Procedure 2014-49 (including Sections 5, 6, 7, 8, 9, 10 and 12). The emergency housing relief section of Revenue Procedure 2014-49 applies only in States where FEMA designates cities and/or counties or other local jurisdictions for Individual Assistance (Section 11).

Revenue Procedure 2014-49 Sections 5, 6, 7, 8, 9, 10, 12, (and Section 11, if applicable) should be reviewed for relief provisions should a disaster declaration be made. State Form 14, 14A, and 14B will be required should relief provisions be implemented.

20.2 Casualty Losses Resulting from Non-Presidential Disaster Declarations

A casualty loss is defined as damage, destruction or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A sudden event is one that is swift, not gradual or progressive as in deferred maintenance. An unexpected event is one that is ordinarily unanticipated and unintended. An unusual event is one that is not a day-to-day occurrence and that is not typical for low income housing tax credit properties. Casualty losses may result from a number of different sources: e.g., car accidents, fires, government-ordered demolitions, hurricanes, storms, tornadoes, 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 was progressive deterioration such as damage caused by termites.

20.3 KHRC Procedure for Casualty Losses

Physical damage to HTC properties caused by casualty events and which render HTC residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy may be reported as noncompliance. Owners are required to complete and submit State Form 10, Casualty Loss Report or Report of Damage Sustained as a Result of a Presidentially Declared Disaster to KHRC via Procorem.

KHRC will review State Form 10 including the target completion date for repairs and set a task for monthly updates in Procorem. Casualty loss events are reported to the IRS on Form 8823. Once the owner certifies all repairs have been made and provides supporting proof of repairs, KHRC will file a Form 8823 to report a noncompliance correction date to the IRS. It is important that the owner report casualty events to KHRC timely using State Form 10.

CHAPTER 21: EXTENDED USE PERIOD
(Kansas Policy for Y-16 and Beyond)

The Housing Tax Credit Program was enacted from the 1986 Tax Reform Act and is a major source of federal financial assistance used in the development and rehabilitation of rental housing.

Beginning in 1990 all developments receiving credit allocations are required by federal law to execute a minimum 30-year Land Use Restriction Agreement (LURA). The initial credit period of 15 years is a time when the Department of Treasury (IRS) provides federal oversight and is empowered to recapture credit if there is noncompliance reported by KHRC. After the initial 15 years has ended, and noncompliance is dealt with at a state level using a variety of methods.

KHRC has modified compliance requirements for credit properties in their extended use period to make it easier for owners to maintain the basic income and rent restrictions imposed by the program and each property's LURA. For program rules that must continue during the extended use period, owners shall use the following guidance in addition to guidance provided for Y1-15 properties.

21.1 Site, Building and Unit Requirements

All site, building and unit requirements remain intact just as they did during the initial 15 years. Site requirements include: the grounds and amenities such as play areas, swimming pools, tennis and/or basketball courts, parking garages and storage areas, picnic areas, etc. Common areas including: club houses, community rooms, bathrooms, libraries, exercise and computer rooms, offices, maintenance areas, etc. Building requirements including: building exteriors, landings, balconies, hallways, entrances and exits, etc. Unit requirements including: the appropriate federal actual set-aside and all state targets. However, the specific individual building set-asides need not be maintained so long as the federal and state set-asides as a whole are met (i.e. single building election rules and multi building election rules are no longer applied).

Distressed properties and owners who are not in good standing will be dealt with the same as those in the initial 15 years of the program. Distressed properties may have more options available that can be discussed with KHRC than those in the initial 15 years.

21.2 Non-Profit Requirements

KHRC would like for non-profit participation to continue throughout the extended use period for housing developments allocated tax credits from the 10% set-aside for non-profits. During the Extended Use Period KHRC will not require a minimum standard for material participation as required in the initial 15 years.

If the non-profit entity does not expect to have any continued relationship with the development after the initial 15 years, KHRC should be notified by letter.

21.3 Building Elections

All buildings will be considered as part of the same multiple building project. Depending on the election made during the compliance period, this may relax requirements relating to tenant transfers and sample size requirements for inspections.

21.4 Income Restrictions

Income maximums per household shall be determined by the greater of the county gross median income, HUD Hold Harmless income limits, or the state median income.

21.5 Military Exception

This exception has been rescinded and was removed with publication of the 2015 Manual. Basic Allowance for Housing will be counted as part of income, unless the property is located in a county where the BAH/BAQ is part of the permanent exemption. (See military income section).

21.6 Student Restrictions

The full-time student rule shall mean "full-time college students" only and will not consider children in grades K-12 as "a student" for purposes of applying the Student Rule. Further, college students who are not dependents of a third party are exempt from the Student Rule in years 16 and beyond, meaning that so long as one member in the household is not a full-time college student who is a dependent of a third party, the unit shall qualify. Units comprised entirely of full-time college students who are dependents of a third party must continue to meet one of the five exceptions outlined in the IRS Student Rule and must meet the exception on a continuing basis. This will be documented using the Kansas Tenant Income Certification (KTIC) for initial qualification and Sample Form 18, Annual Household Certification Update for all recertifications.

21.7 Recertification Requirements

All recertifications shall be completed using Sample Form 18, Annual Household Certification Update. Sample Form 18 is required regardless of whether the building or project is all low income or mixed use so KHRC can continue to meet its reporting requirements to HUD (ref. HERA regulations). Sample Form 18 is a self-certification and does not necessitate the inclusion of verifications, unless documenting a student exception being met. Properties that entered the extended use period and ceased any form of recertification (because it wasn't required prior to HERA) will need to begin having tenants complete Sample Form 18 to be effective on the anniversary date of move in.

21.8 Vacant Unit Rule

Properties with mixed units (i.e. low-income and market rate) are exempt from the Vacant Unit Rule. Owners may rent market units prior to renting low-income units regardless of unit size.

However, the appropriate set-asides outlined in the LURA must still be maintained, and the owner must still demonstrate due diligence in meeting all required income targets.

21.9 The Available Unit Rule

The Next Available Unit Rule will apply only when owners determined that a household whose self-certified income at recertification exceeded 140% of the federal minimum set-aside and the owner desires to move the tenant to market rent providing market units were set-aside in the LURA.

21.10 Changes in Household Composition

All low income households must initially qualify and have their income verified. Changes in household composition that occur at any time after the initial tenant income certification has been completed are to be documented on the most recently completed KTIC, the same as in the initial 15 years. The "totem pole" rule will no longer apply. If all original household members are eventually replaced, the owner shall continue to document the self-certified income of all replacement household members at each recertification.

KHRC encourages owners and managers to keep leases up to date and to ensure that all household members over the age of 18 sign the lease and the move-in inspection (including emancipated minors).

21.11 Reserves for Replacement Accounts

KHRC expects the reserve for replacement account to continue to be funded at the same rate of increase to operating costs.

For properties allocated housing credit in 1996 or later, the Reservation Agreement or Restrictive Use Covenant that requires owner/agents seek prior approval from KHRC prior to using funds from the reserve for replacement account; however, this has been rescinded except for TCAP/CE properties. Further, a pro forma is included in Exhibit B of the original Land Use Restrictive Covenant/Agreement that outlines the amount of funding to the reserve for Years 1-15 of the credit. No specific amount is required to be deposited in the reserve for replacement account in Years 16 and beyond, but KHRC expects the reserve to continue to be funded at the same rate of increase seen in operating costs.

21.12 Property Viability, Special Set-Asides, Amenities

KHRC will entertain requests to change some low-income units to market rate units during the extended use period especially when the following occurs:

1. Occupancy concerns exist at the property as evidenced by a low debt coverage ratio;

2. The market area is facing increased competitive forces due to additional tax credit allocations;
3. Markets necessitate a need for unit mix in the community, etc.

Any change in the unit mix must be approved by KHRC. To initiate the request for change, submit State Form 5 via Procorem. KHRC will review the form and determine the need for a LURA amendment to be issued. KHRC's Development Division assesses a fee for LURA amendments which is coved in the QAP. Once an amendment is drafted, agreed upon by all parties, and the fee has been paid, the amendment will be signed by KHRC and sent to the owner. It must be recorded with the applicable County and returned to KHRC prior to implementing the change.

Requests to amend covenants that contain special set-asides such as homeless units or units with deeper income targets will follow the same process for amending the LURA.

Owners should still request prior approval for manager/maintenance/security units not previously approved, or to have a low income unit set aside as a model unit.

Owners are still required to maintain all amenities as initially outlined in the Restrictive Use Covenant, including but not limited to: swimming pools, clubhouses, common areas, playgrounds, basketball courts, tennis courts, libraries, computer rooms, workout rooms, garages, storage areas, etc.

Owners desiring to be relieved from maintaining some or all amenities must appeal to KHRC and receive prior approval prior to discontinuing an amenity.

21.13 KHRC Monitoring

KHRC will continue to monitor for compliance with the LURA during the extended use period.

A. KHRC will complete a tenant files inspection (done electronically) at least once every five (5) years.

B. KHRC will complete an onsite physical inspection of the property at least once every five (5) years to ensure the property meets local building, health, and safety code. If the property is part of the Alignment Program, the physical inspection frequency will continue to be based on the inspection score.

C. KHRC will require an annual report be submitted from owners each year covering the prior year.

Noncompliance identified during the extended use period will be identified for the owner in the form of a 60-Day Notice just as it was in the initial 15 years. An extension of time will be granted for properties that request additional time in order to correct noncompliance. Failure of an owner to commit or respond to identified noncompliance will result in one or more of the following sanctions:

1. Monetary penalties as outlined in the Violation Fees section of this Manual.
2. Property placed on KHRC's distressed property list and required to complete a recovery plan.
3. A certificate of "not in good standing" with the KHRC issued against the owner which will prohibit future applications for KHRC funding until such time "good standing" is reinstated.
4. A lawsuit against the owner for specific performance of the Restricted Use Covenant.

21.14 Compliance Fees

An annual compliance fee shall be paid each year by the owner during the extended use period. The fee is due and owing at the time the annual report is filed. The amount of fee shall be .004 (.4%) of the annual tax credit amount allocated.

21.15 KHRC Rights

KHRC retains the right to amend, add, or delete from this Section as needed. KHRC also retains the right to work with owners to address specific needs or situations that may not necessarily establish precedence for all owners.