Low Income Housing Tax Credit

Now referred to in Montana as the Housing Tax Credit (HTC)

Compliance Manual

Effective September 10, 2013

Multifamily Program

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This manual is a training and reference guide for the administration of the Housing Tax Credit (HTC) Program. It is intended to answer questions regarding the procedures, rules, and regulations that govern the HTC projects. The manual should be used in conjunction with, and as a supplement to, Section 42 of the Internal Revenue Code (IRC). If a determination is made that any provision of this manual is in conflict with Section 42 of the Internal Revenue Code, the Internal Revenue Code will govern.

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

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1. INTRODUCTION

A. The Purpose of the Montana Board of Housing Compliance Manual

This manual focuses on the responsibilities of Owners and Managers of all Housing Tax Credit (HTC) properties from the beginning of the lease up period through the end of the compliance period. Tax Credit properties are governed by Section 42 of the Internal Revenue Code. All projects are governed by promises made by the Owner in their application for funding and any other more restrictive rules implemented by the Montana Board of Housing (MBOH). These rules can be found in the Declaration of Restrictive Covenants for Tax Credit properties.

This manual includes links to forms some of which are required for use in the State of Montana, some of which are highly recommended and some of which are available just to make your life easier and your tenant files more organized. MBOH is committed to providing quality affordable housing for the citizens of Montana and it is our goal to assist Owners and Managers to better understand and fulfill their obligations under the program. One easy way to make the Owner and Investors of the project happy is to have complete, accurate and organized files and a visually appealing project. Monitors dealing with organized and complete files will find far fewer compliance issues to report to the Owner and Investors. This manual is intended as a reference to promote a better understanding of the Tax Credit program. Owners are responsible for compliance with all applicable federal and state rules and regulations that govern their properties.

B. The Low Income Housing Tax Credit Program (HTC)

The Tax Reform Act of 1986 established a tax credit for low-income rental housing that was directly based on the number of low-income tenants residing in the complex. Section 252 of the Act and Section 42 of the Internal Revenue Code (IRC) govern the Low-Income Housing Tax Credit (HTC) program that began in 1987 and received permanent authorization with the Omnibus Budget Reconciliation Act of 1993. The HTC program provides incentives for investment of equity capital in the development of affordable single family or multifamily rental housing. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction or acquisition and/or rehabilitation of rental housing units that will remain income and rent restricted for an extended period of time.

The MBOH Qualified Allocation Plan (QAP) includes guidelines for competitive ranking of applications. Persons interested in developing Tax Credit funded projects should visit MBOH's website: **http://housing.mt.gov/About/MF/lihtcallocation.mcpx** and review the current MBOH Qualified Allocation Plan for more information.

C. The Credit Period vs. The Compliance Period (Extended Use Period)

Owners are liable to the Internal Revenue Service (IRS) for the initial 15 year compliance period as credits are subject to re-capture for non-compliance during the initial 15 year period. The IRS requires an extended period of 15 years. MBOH compliance period consists of the initial 15 year compliance period, plus at least an additional 15 years. The extended use period for most HTC properties in Montana is 31 years or longer.

D. Regulation Changes Over Time

During the period of time that the HTC program has been in effect, MBOH, Congress, and the IRS have made several changes to the rules and regulations governing the program. It is the responsibility of the Owner and Manager to stay current with changes as they occur.

2. GENERAL COMPLIANCE & SITE VISITS

The HTC program is governed and regulated by the IRS. A project may have other sources of funding with their own compliance requirements. When rules conflict, always yield to the most restrictive. The HTC program requires that the MBOH monitor each property for compliance. Site visits are done on a regular basis.

The IRS requires physical inspections and file audits on a minimum of 20% of the units in a HTC property at least every 3 years. MBOH may choose to do inspections and audits more frequently.

HTC properties funded with ARRA dollars are subject to 100% physical inspections and file audits annually.

MBOH is required to perform a physical inspection and file audit for each unit randomly chosen at each property. The inspection will include the entire property site, all vacant units, mechanical rooms, common areas, building exteriors, and additionally crawl spaces, basements, and other areas may be inspected. All other project records may be reviewed at the time of the site visit. Staff may choose to inspect additional units and records.

Staff will contact properties by phone to schedule site visits prior to MBOH staff arriving at the property. A confirmation letter will be sent by email. It is imperative that MBOH be kept updated on all email addresses and changes. **The Owner must supply MBOH with all email contact information for the Owner, Management**

Company, and Site Manager. Units will be randomly selected by computer. The property must provide all tenants at least 24 hour notice of the date and time period of the inspection. Staff will not enter any unit unless they are accompanied by property staff; preferably a Manager or maintenance person. Units not available for inspection will be noted as non-compliant. MBOH will follow HUD guidelines in reference to infested units, which are considered unavailable to inspect, and will be considered non-compliant.

To correct this non-compliance a second site visit will be scheduled and the cost for the additional visit will be billed to the property. Serious or repetitive non-compliance will prompt more frequent site visits.

The key to an HTC project Owner's ability to claim the full amount of tax credits is continuous compliance with Federal and State regulations throughout the compliance period. The main components of compliance are:

- Renting to qualified households
- For a unit to be considered HTC eligible, the rent must be restricted
- Providing decent, safe, and sanitary housing that meets the Uniform Physical Condition Standards
- Compliance with the Fair Housing Act

The Declaration of Restricted Covenants and the 8609 are an important part of compliance. The applications for tax credits were ranked using the promises made by the Owner and are key components for the successful allocation. Therefore, it is important for all involved in the project to be fully aware of the promises agreed to in these documents.

Agreements made between MBOH and the Owners are listed in the Declaration of Restricted Covenants. These covenants remain in place throughout the extended use period and may be amended only with mutual agreement between the Owner and MBOH. Non-compliance with the Declaration of Restricted Covenants is treated the same as federal non-compliance. Notice of non-compliance is issued to the Owner. A reasonable correction period will be given to correct the issues. Owners may be awarded negative points on any future tax credit applications due to non-compliance.

It is our goal to assist Owners and Managers to stay in compliance. Compliance may be achieved through due diligence, strong internal controls, organized files, and documentation. Notes written that document situations not covered in the regular process help the file to stand on its own.

3. HTC COMPLIANCE REGULATIONS

A. Compliance by Building

Compliance is a building by building issue. Records must be kept by building and by unit number. Every building is assigned its own (Building Identification Number) BIN, therefore, all record keeping and reporting must be sorted and submitted by BIN. The vacant unit rule is an exception and is on a property wide basis.

B. Placed-in-Service Date (PIS)

The PIS date for new construction is the date the certificate of occupancy (C of O) is issued by the proper authority. For rehabilitation of an existing building, the Owner selects a date within a 24 month period over which rehab expenditures are aggregated. The PIS date for each building is recorded on IRS form 8609.

C. Minimum Set Aside

The minimum set aside is an IRS election. Every tax credit property must have a minimum set aside. This is usually known as the 20/50 or 40/60 election and once it is made it is irrevocable.

- **20/50** – at least 20% of the total units in the property must be rent restricted and occupied by eligible tenants
- **40/60** – at least 40% of the total units in the property must be rent restricted and occupied by eligible tenants.

Please check the 8609(s) for the Owner's election of the minimum set aside.
Line 8b dictates whether the building is part of a multiple building project or each building is a separate project. The Declaration of Restrictive Covenants should be checked for additional commitments. A tracking system should be put in place to insure compliance.

D. Record Keeping & Submission Requirements

Federal regulations require the Owner of a low-income housing project receiving tax credits to retain the following information for each qualified low income building in the project. The information must show for each year in the compliance period:

1. The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the building that are low-income units, offices, and management units.

3. The rent charged on each residential rental unit in the building (including any applicable utility allowances) as well as any additional mandatory charges to the tenant.

4. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, the Owner must maintain documentation showing a diligent attempt is being made to rent the unit to a qualifying tenant.

5. The annual income re-certification (if applicable) of each low-income tenant (by unit), including any re-certifications for each continuous tenant.

6. The documentation to support each Tenant's Income Certification (TIC) including application or recertification (if applicable) and verifications.

7. The character and use of any non-residential portion of the building included in the eligible basis.

8. Record of all utility allowances from PIS throughout the extended use period.

9. Copies of Form 8609 after completion by the Owner and filed with the IRS.

E. Record Retention Requirements

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

F. Maximum Gross Rent

Maximum rents are calculated using the current HUD MTSP income limits. These income limits and maximum rents are provided as a courtesy by MBOH. *It is the Owner's responsibility to verify accuracy*. HTC income and rent limits are posted on the MBOH website for your convenience.
http://housing.mt.gov/About/MF/lihtccompliance.mcpx#MFcomplForms

Gross monthly rent must not exceed the maximum rent. Gross monthly rent is equal to the total tenant paid rent plus the applicable utility allowance plus any mandatory charges. Charging more than the allowable rent is non-compliance and recapture of credits may result. A utility allowance is included in the gross monthly rent for any utilities paid by the tenant. IRS has taken the position that once a tenant has been overcharged for rent, the unit will not be considered back in compliance until January 1st of the following year.

If there is at least $1.00 in subsidy then the Maximum Gross Rent limit may be exceeded. If the subsidy goes to zero the rent must immediately be reduced to below the applicable maximum rent limit.

G. Utility Allowances

Utility allowances must be used when the tenants pay any of the utilities. Utilities normally are items such as electric, heat, oil or gas and on occasion water, sewer, trash. *Utility allowances used are:*

1. Public Housing Authority
2. Rural Development
3. Department of Commerce Section 8
4. Agency Approved Allowance
    a. One year after placed in service Owners may submit 12 months of actual utility bills for MBOH to average and approve. For properties rehabilitated with LIHTCs, data collected prior to being placed in service may be submitted at Acquisition Place in Service (PIS) or later to obtain an AGENCY APPROVED ALLOWANCE. Please see paperwork to be submitted at:

http://housing.mt.gov/About/MF/utilityallowance.mcpx

Utility allowances must be updated at least annually since they are included in the maximum allowable rent calculations. Copies of utility allowance documentation must be submitted to MBOH if using anything other than Department of Commerce Section 8. Realize that any changes in utility allowances have a direct impact on the net chargeable rent to the tenant. **Any utility allowance must be implemented within 90 days of the change.**

4. Additional Special HTC Rules

A. Vacant Unit Rule

If a low-income unit becomes vacant during the year, the unit remains HTC compliant and eligible for the tax credit provided reasonable attempts are made to rent the unit. The next available comparable or smaller size unit must be rented to an eligible household. This is a "project rule" not a "building rule" and thus includes all vacant units in the project.

"Reasonable attempts" indicates that efforts toward marketing and renting a unit must be made. Proof of such marketing must be available for review by MBOH staff. If an Owner with vacant units violates this rule by renting to a non-eligible applicant, credit on all vacant units in the project will be lost and the units cannot be counted toward the minimum set aside.

B. Available Unit Rule/ 140 % Rule

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

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

The Owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building until the applicable fraction (excluding the over-income units) is restored to the percentage on which the credit is based. Violating this rule means losing the credits on all 140% units.

C. Relocating Existing Tenants/Unit Transfers

When an existing tenant moves to another unit within the same building or within buildings in the same property, the status of the two units will swap. If a qualified tenant moves to an 'empty' (a unit never occupied by a qualified tenant) or 'vacant' (unit previously occupied by a qualified tenant) unit, the new unit ceases to be 'empty' or 'vacant' and becomes a qualified unit. The other unit will then be deemed 'empty' or 'vacant'.

Transfers between buildings may only be done if on the IRS form 8609 the Owner elected to say “Yes” to line 8b; which asks "Are you treating this building as part of a multiple building project for purposes of section 42?” **THEREFORE, YOU NEED TO KNOW HOW YOUR OWNER ANSWERED THE QUESTION ON LINE 8b OF THE 8609 FORM, BECAUSE IT IS QUITE POSSIBLE, YOU ARE ACTUALLY DEALING WITH BUILDINGS THAT ARE ACTUALLY SEPARATE PROJECTS.**

Transfers between buildings may also affect the Available unit/140% rule.

During the initial credit period, existing tenants cannot be relocated for purposes of qualifying more than one HTC unit to count toward the minimum set aside or applicable fraction. Under no circumstances can one household be used to initially qualify more than one tax credit unit in a project.

D. Staff Units

Revenue Ruling 92-61 [Section 13], effective September 9, 1997 allows a unit for a full-time staff member to be considered part of a project's "common space." Revenue Ruling 2004-82 [Section 251 further expanded staff units to include a unit occupied by a full-time security officer for the building if the building Owner requires the security officer to live in the unit.]

Two options apply:

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

(2) If a staff unit is considered common space, the household does not need to be qualified. The IRS has stated in the 8823 Guide, "...if the Owner is charging rent for a staff unit, the Service may determine the unit is not reasonably required by the project and may be considered commercial space".

The Owner's HTC application may have designated the number of staff units. Staff units may be added or removed through an approval process with MBOH.

Moving staff units around the property is not allowed without MBOH approval. A written request must be submitted to MBOH which shows a bona fide need for the change.

E. Non-Transient Occupancy

"HTC rental units must be for use by the general public and all of the units in a project must be used on a non-transient basis.... Generally, a Tax Credit unit is considered to be used on a non-transient basis if the initial lease term is six months or greater."
"In General—a unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis." [Section 42(i)(3)(B)(i)]
To be in compliance, a six-month minimum lease term is required at initial occupancy.

F. General Public/Fair Housing

All residential rental units in the project must be available for use by the general public. Tax credit units may not be exclusively offered to members of a social organization or provided by an employer for its employees. "Available to the general public" applies to all residential rental units, market and tax credit.

HTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, prohibiting discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability.

G. Full Time Students

Households comprised solely of full time students are not HTC eligible, unless they meet one of the exceptions stated below. The issue with students is only a concern when everyone in the household is a full-time student.
A student as defined by the IRS is "an individual, who during each of 5 calendar months during a calendar year is a full time student. One day of attendance in a month is considered to be a full month. The determination of full or part time will be based on the criteria used by the educational organization.

- An educational organization is one that normally maintains a regular faculty and curriculum and normally has an enrolled body of students at the place where the educational activities take place. This would include K-12, colleges, universities, technical, trade and mechanical schools; but not on-the-job training. On-line colleges are considered to be an educational organization.
- Even if all tenants were not full time students at move-in, they are not exempt from the student rule at a later date if the entire household becomes comprised of all full time students.

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

Student Status Exceptions:

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

a. A student and receiving assistance under title IV of the Social Security Act, or
b. A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (foster care). (Montana has no age restriction), or
c. A student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state, or local laws, or
d. Single parents and their children and such parents are not dependents (as defined in section 152) and the children are not dependents of another individual other than the parents, or
e. Married and are eligible to file a joint tax return, or
f. Same sex couples have filed a joint tax return for the year 2013 or later.

Verification documenting the exception must be included in the tenant file and it **must**

be verified on an annual basis.

H. Section 8 Voucher Holders

Section 42 states that HTC properties may not refuse Section 8 certificate or voucher holders simply on the basis of their Section 8 status. However, this does not assure tenant qualification.

I. Tenant Data Collection

As mandated by Congress via the Housing and Economic Recovery Act (HERA) of 2008, HUD now requires that every state collect and submit specific demographic and economic information to them regarding households that reside in HTC units. Some of this information is tenant specific and some is property specific. A household is not required to supply this information. Never guess the answer to any of this requested information.

J. Suitable for Occupancy Requirement

A unit must be suitable for occupancy or habitable in accordance with Uniform Physical Condition Standards (UPCS). If a unit is destroyed due to casualty loss (i.e., fire, flood, or any other disaster) credits cannot be claimed while the unit is being replaced. If the unit is restored within a reasonable time within a taxable year, credits can again be claimed and no recapture would occur. Tax credit units that are vacant must be made ready to rent within 30 days. Otherwise, they would not be considered suitable for occupancy and would not be eligible for credit.

K. Montana's Tax Credit Recertification Requirements

MBOH is following the guidance of the IRS and is not requiring that projects continue to re-certify every household annually if the project is 100% Tax Credit. MBOH requires annual student status verification before the anniversary of the move-in date.

If the property is required by the Owner or Investor to continue to do recertification's or is a mixed property, the re-certifications are due before the anniversary of the move-in date for the household.

If there are significant non-compliance issues found with the files, the property maybe required to submit all new move-ins to MBOH until further notice.

L. <u>Post Year 15 Monitoring Procedures</u>

In Montana, there will be no change in monitoring procedures during the additional compliance period. Reviews will continue in the same manner as during the initial compliance period.

5. <u>HTC Common Regulations</u>

A. <u>Income Qualifying Households</u>

Income qualifying households is of the utmost importance in order to keep a project in compliance with federal regulations. Not only must you income qualify households, you must be able to produce the acceptable certifications and verifications necessary to prove they are qualified. The IRS (Section 42) mandates that income is calculated using the Income and Asset qualification requirements can be found in the HUD 4350.3 Chapter 5 on the MBOH website:
http://housing.mt.gov/About/MF/lihtccompliance.mcpx#MFcomplForms
<u>Remember it is your responsibility to be aware of any updates and changes.</u>

B. <u>Calculating Child Support and Alimony</u>

Because child support and/or alimony are often a source of income, MBOH follows the requirements of the HUD Handbook 4350.3 Chapter 5, Section 1, Subsection 5-6, F. which says:

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

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

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

Child support and alimony are issues that should be addressed at each annual re-certification as it is a situation that can change. This only applies to properties that are required to do re-certifications.

C. Changes in Household Size

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

For additions to the household, the property must complete a new household member TIC and have it signed by the new household member and the Manager. This along with all income verification will be placed in households file. The new household member and their income will be added into COL but a new TIC does not need to be printed and signed. The unit continues to remain qualified as long as one original member is still living in the unit.

D. Restricted Rents

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

E. Application for Tenancy Procedure

Your application may be your most valuable tool in the qualification process. It will be the first document that a monitor will want to see in a file as it is the starting point that all other documentation must support. Because the HTC program uses special definitions for income, assets, and household composition, standard property management application forms may not collect sufficient information to determine eligibility. A comprehensive housing application is critical to the accurate identification of all necessary information required to effectively determine household eligibility for the HTC program. MBOH does not require a specific application form be used. A face-to-face interview with all adult household members can be very beneficial to review the application and historical documents and clarify any discrepancies or missing information.

F. Leases

All tenants occupying a Tax Credit unit must be certified and under lease no later than the date the tenant takes possession of the unit.

G. Uniform Physical Condition Standards

MBOH staff will inspect to UPCS regulations. MBOH is responsible for monitoring the physical condition of projects and marketability. Owners are required to abide by all local and state codes.

MBOH will also inspect for health and safety concerns and all life threatening incidents will be reported to the IRS on form 8823. Non-life threatening concerns may also be reported depending on the severity and frequency.

H. Evictions

Pursuant to Revenue Ruling 2004-82, the Owner may only evict residents for "Good Cause" as defined by the state or local jurisdiction. Non-renewal of a lease without good cause is also prohibited.

I. Compliance On-Line Reporting Requirements

All Project Owners/Management Companies are required to use the MBOH's Certificate On-Line (COL) system. COL is an internet-based reporting system that enables Project Owners/Management Companies to generate the Project Owners Annual Certification of Continuing Program Compliance and Tenant Income Certifications and Re-certifications submitted to the MBOH.

The COL system automates and replaces the annual reporting requirements, with the exception of the Contact Information Form. An updated Contact Information Form is required to be submitted annually with the annual packet on your assigned reporting date or anytime changes have been made to the contact information.

Project Owners/Management Companies using the COL system to generate a Tenant Income Certification must still complete all of the required backup documentation for determining tenant eligibility and verifying tenant income referenced in Chapter 5 of this manual and as required by the HUD Handbook 4350.3, Chapter 5.

COL Data Input

Project Owners/Management Companies are required to input unit occupancy and tenant information for each Tax Credit unit and each tenant in the unit into the COL system. This information must be inputted into COL when it is completed unless it falls outside of the projects' report period. Project Owners/Management Companies are responsible for ensuring the information is current and correct.

COL Submission

Project Owners/Management Companies are responsible for the electronic submission of the Owners certification of Continuing Program Compliance and TIC must be submitted on or before the 25th of the month following the assigned annual period.
COL also enables Project Owners/Management Companies to track tenant incomes and assets, set and manage gross rents, track unit move-ins, transfers, and generate TICs for use in resident qualification and re-certification.

Instructions for using the COL system can be found on the COL site itself along with on the MBOH site. **http://housing.mt.gov/About/MF/lihtccompliance.mcpx#Top**

Training will be provided for any Owner/Management Company that requests it.

J. Compliance Training Requirements

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must be certified in HTC compliance by one of the nationally recognized HTC compliance training companies. Property Managers and Property Management Company personnel must complete a nationally recognized certification course, passing the test. For MBOH purposes, to maintain certification, the person must attend a class with a nationally recognized compliance company at least once every four years. For each of the other three years, all Property Managers and Property Management Company personnel should attend annual MBOH compliance training. The Manager for a HTC property must be trained and certified before the property is placed in service. New Managers hired for existing HTC properties must be certified within their first year of employment. On a case-by-case basis, MBOH may approve our compliance training as adequate training until such time as the next nationally recognized training program is offered within Montana.

K. Transfer of Property Ownership

An Owner may not sell a property or transfer its interest in a Tax Credit funded property without prior notice to the MBOH. Detailed information on Ownership transfers can be obtained by contacting MBOH.

6. Types of Non-Compliance

Non-compliance may be defined as a period of time the development, specific building, or unit has failed to adhere to required regulations and procedures. These procedures may be IRS Section 42 requirements, or MBOH requirements. Non-compliance can lead to recapture or loss of credits. Any non-compliance noted in the initial report that is fixed during the correction period will be considered "clear".

Non-compliance that remains uncorrected at the end of the correction period will generate a form 8823 to be submitted to the IRS. Only the IRS has the ability to determine the next course of action.

THIS MANUAL IS SUBJECT TO CHANGES AND UPDATES AT ANY TIME. PROJECTS WILL RECEIVE NOTICE OF ANY CHANGES OR UPDATES IMMEDIATELY.

7. Forms, File and Reporting Requirements

All required and recommended forms to be used for tenant certification and clarification can be found at:
http://housing.mt.gov/About/MF/forms.mcpx

Make certain that every form is filled out in its entirety. This includes forms that you have asked a third party to complete. Unanswered questions must be followed up by phone, email, or fax clarification.

A. Tenant Files

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

- Application for Housing
- Income & Asset Calculation Worksheets
- 3rd Party Source Verifications
- Tenant Income Certification (TIC)
- Certification of Zero Income (if applicable)
- Under $5,000 Asset Certification (if applicable)
- Lease (including any addendums)
- Utility Allowance documentation
- Re-certification documentation (if applicable)

B. <u>Annual Reporting</u>

The following forms are required to be submitted to MBOH on or before the property's assigned report date:

- MBOH Owner's Certification of Continuing Program Compliance
- Current Contact Information Sheet **<u>updated at least Annually</u>**
- Income & Expenses summary for last fiscal year
- Tenant data submitted via COL
- Annual compliance fee for each non-market unit

8. <u>Requirements, Tips, and Hints</u>

<u>(HTC includes Bond Properties)</u>

1. The HTC program requires the use of gross income, unless the tenant is self-employed. Some government programs allow for adjustments; such as childcare or medical expenses, while HTC does not.
2. The HTC program requires gross income to be the "anticipated" income (including any expected changes) for the following 12 months after certification.
3. Income for a self-employed person is calculated differently and is described in Section 5 of the HUD Handbook 4350.3.
4. The HTC program requires the inclusion of unearned income from all household members, including foster children and foster adults.
5. The HTC program requires the inclusion of any net income earned from assets held; <u>as long as the tenant has access to the asset</u>. The tenant can self-certify the amount of their assets by completing the "$5,000 and Under Asset Certification" form. If this form shows more than $5,000 in assets, then they must be verified by a third party.
6. The HTC program has a list of income sources that are specifically included and excluded from the income calculation. This list is included in the HUD Handbook 4350.3 Chapter 5.
7. The HTC program requires 3rd party verification of income; whenever possible. These verifications must be delivered directly from the Project to the Source and directly back to the Project; potential tenants cannot hand deliver verifications. Faxed and emailed documents between Project and Source are acceptable. Tenants may supply official government documents or in a case where the 3rd party absolutely will not respond, the tenant may supply bank statements and pay check stubs. MBOH requires that you collect at least 6 consecutive pay stubs. <u>Never</u> rely on an amount deposited into a bank account as an amount for income; it will most likely not be a gross amount.
8. The HTC program allows that verifications are valid for 120 days following receipt by the Manager/Owner. After the 120th day a new verification must be obtained. It may be wise to date stamp documents as they are received.

9. Every question on verification should be answered. You must do a verbal or written follow-up with documentation in the case of unanswered questions or vague answers. There is a "phone verification" form on the website. Your goal is to have a paper trail that shows due diligence.
10. Significant differences in answers and amounts between the tenant application and the source verification must be investigated and explained.
11. Assets disposed of for less than fair market value, which are over $1,000 in value, must be counted as an asset for the next 2 years.
12. A calculation worksheet for income and assets is strongly recommended to be in each tenant file.
13. After income and assets have been calculated, this information will be entered Certification on Line (COL) by the project representative. The TIC will be signed and dated by all tenants 18 years of age or over (unless a guardian is appointed) and the project representative. At move-in the TIC should be signed on the same day as the Lease.
14. Under no circumstances may "white-out ink" or "white-out tape" be used on any documentation. When information needs to be changed or corrected you will correct it in COL and print out a new TIC for all parties to sign and mark on the top that it is a correction.
15. If you create a paper trail and write a narrative explaining those "oddities" that occur, it will help MBOH understand your qualification.
16. MBOH recommends that no changes to the number of adults in a qualified household should be made within the first six months of a lease; minors and/or live-in aides may be added to the household at any time.
17. After the first six month term, adults may be added to the household, but they must be income certified using the new household member TIC. As long as you still have one member of the original qualifying household living in the unit, the unit is still qualified, regardless of how many members are added or removed.