

LOW INCOME HOUSING TAX CREDIT AND HOME COMPLIANCE MANUALS

Disclaimer

The Georgia Department of Community Affairs (DCA) is the agency responsible for the administration and monitoring of Low Income Housing Tax Credits and HOME Loans for the state of Georgia. This guide has been developed to assist recipients of Federal and State Tax Credits and/or HOME funds in maintaining a multi family rental property during the compliance and/or affordability period. It is not a substitute for the requirements of the Internal Revenue Code (I.R.C.) Section 42 as they pertain to Tax Credits or the requirements of HUD under the HOME Loan Program.

Compliance with the IRS and HUD requirements are the sole responsibility of the owner of any building for which Tax Credit or HOME funds have been allocated. DCA's responsibility to monitor for compliance will not cause DCA to be liable for an owner's noncompliance. Therefore, an owner should not rely solely on DCA to determine if the project and its records are in compliance. DCA recommends all Tax Credit and HOME funded recipients consult with their tax accountant, attorney, or advisors as to the specific requirements of the Tax Credit program and Section 42 of the Code and the HOME program Federal Regulations.

The penalty for failure to adhere to DCA's policies may be forfeiture of the right to participate in all DCA programs in one or more future years depending upon the severity and nature of the particular circumstances and/or financial penalties.

In addition to the information contained in these manuals, additional information concerning the operation of a Tax Credit and/or HOME project can be found at DCA's website: www.dca.state.ga.us. DCA requires participants in its programs to attend training courses that are regularly offered through the DCA Compliance section. For more information or to register for training courses, please contact the Office of Affordable Housing Compliance Division on line at <http://www.dca.state.ga.us/housing/HousingDevelopment/projects/complianceTraining.asp>, or by calling 404-679-0678.

ORGANIZATION

This manual is organized as follows:

TAB I: Low Income Housing Tax Credit Compliance

TAB II: HOME Program Compliance

TAB III: Other Compliance Requirements

Properties that receive both HOME and Tax Credit funding must adhere to the most restrictive regulation/requirement of that particular program.

Although DCA acknowledges that properties with other funding sources, such as Tax Exempt Bonds, Section 8, Rural Housing, etc. must adhere to those regulations it does not release the property from adhering to DCA's funding source regulations/policies in addition to any other requirements it may have. The most restrictive regulation/rule will always apply.

TAB I

TAB I: LOW INCOME HOUSING TAX CREDITS

GENERAL DCA MONITORING AND COMPLIANCE REQUIREMENTS

The responsibilities of DCA as the designated monitoring agency for the state of Georgia is to perform desk audits, conduct site visits, review tenant files, inspect the property and provide the applicant/owner with a summary report of any findings.

The applicant/owner is responsible for all representations made in the approved Application. 8609's for Tax Credit properties will not be issued until the applicant has complied with all Application representations, DCA requirements and accessibility requirements. The applicant/owner also is responsible for ensuring that the property abides by the rules, regulations, and restrictions specified in the Qualified Allocation Plan, the Land Use Restriction Agreement or Covenant, the Tax Credit Compliance Manual, and the IRC Code and regulations.

(Suggested and Mandatory Compliance Forms can be found in the DCA Forms Index)

Section 1

Important Time Periods

The applicant's compliance responsibilities begin with the award of the Tax Credits and will continue through the end of the Compliance Period or the Extended Use Period whichever is longer.

The Credit Period (IRC 42(f)) is usually 10 years following the date the building was placed in service. It is the time period in which the owners of the project receive tax credits, which they can then apply to their respective income tax liabilities.

The Compliance Period (IRC 42(i)(1)) is the duration of the credit period plus 5 years. The compliance period is 15 years beginning with the first year of the tax credit period (placed in service year or subsequent year if deferral was elected).

The Extended Use Period (IRC 42(h)(6)(D)) restricts the eligibility of developments to receive an allocation of Tax Credits to only those developments that agree to keep the property income and rent restricted for an extended period of time. The term for this period is a minimum of 15 years in addition to the normal 15 year compliance period. This results in a total term of **compliance of 30 YEARS**.

Minimum Period for DCA Rent, Income and Occupancy Restrictions. Many projects have additional rent and occupancy restrictions as a result of the DCA scoring process. These restrictions remain in effect through the “Compliance Period.”

Termination of Rent and Income Restriction prior to end of Extended Use Period. The extended use period for any building that is part of the Project shall terminate:

- On the date the building is acquired by foreclosure or instrument in lieu of foreclosure except that for a period of three years following the termination of the extended use period, the Owner shall not evict the tenant of a Low-Income Unit or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to any such Low-Income Unit.
- On the last day of the one-year period that begins on the date Owner properly submits a written request to the Authority, asking the Authority to assist in procuring a "qualified contract," as defined in Section 42(h)(6)(F), for the acquisition of the low-income portion of the building, but only if the Authority is unable to present a qualified contract during such one-year period; provided, however, such request may not be made before the end of the 14th year of the compliance period or as agreed to by the Owner in its application.

Waiver of Right to Opt Out. As part of its scoring process, some projects have elected to waive their right to request a qualified contract from the Authority after the end of the 14th year of the compliance period. Project Owners should review their Applications and recorded Land Use Restriction Agreements to determine whether there has been such a waiver for the project.

DCA is required to monitor projects for compliance with the requirements of the Code, the representations set forth in the Application, the requirements stated in the Plan, and the requirements set forth in DCA’s various program manuals. DCA’s plan for compliance monitoring described below outlines the overall requirements, offers explanations for individual program regulations, and sets forth the requirements for properties participating in multiple programs.

NOTE: On-Site Staff should be familiar with and maintain a copy of the Application and Land Use Restrictive Covenants at the site.

Required Training

A representative for the owner/general partner of a funded project is required to successfully complete a compliance-training seminar provided by or sponsored by DCA. The owner of a Tax Credit property will be required to submit to DCA the Certificate of Successful Completion for the Tax Credits training with the project’s application for

8609's. DCA now requires Owners as well as Property Management Representatives to attend this course. In the event, DCA determines that a property is experiencing compliance problems, additional training may be required for Owners, Property Managers or other project representatives. Limited partners are strongly encouraged to attend these training seminars, but may elect to have Property Managers serve as the Limited Partner's representative. Certification testing is required and certificates are awarded upon successful completion of the training.

Any Owner, Development or Owner Consultant and Management Company Representatives whose property is awarded DCA Tax Credits for Rehabilitation and that is occupied at the time of the submission of the application must attend a DCA Relocation Training Seminar no later than thirty (30) days after the awards are announced.

Section 2.

Land Use Restrictive Covenant (LURC)

DCA will enforce income, rent and occupancy requirements and agreements through covenants running with the property. For all projects allocated Tax Credits, the owner is required to execute a Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits with DCA. This document must be recorded with the local county clerk's office and is a deed restriction that carries forward to all subsequent owners of the property... When there is more than one financing source imposing land use restrictions on a project, e.g., a HOME Loan and Credits, there may be restrictions from one program that are more restrictive than similar restrictions in the other program(s). In such instances, the most restrictive requirements will apply to the project. Extended low-income housing commitment means any agreement between the owner and DCA in which the owner agrees to all terms and conditions in regard to the IRS compliance period of 15 years, the additional 15 year extended use period. An owner may also make additional commitments during the application phase. These commitments may include occupant restrictions, structural restrictions, additional rent and income restrictions, single-family dwelling lease to purchase or that a local public housing authority will sponsor the project. Owners must adhere to all pledges made during the application phase throughout the compliance and extended use periods.

The Land Use Restrictive Covenant will be enforced by DCA. The Extended Use Agreement will not be removed until the agreement has expired.

Section 3.

Record Keeping Requirements

DCA asserts the right to perform an on-site inspection of tenant records on any project receiving Tax Credit funding at any time from initial allocation, through the end of the Compliance Period or the Period of Affordability whichever is longer. Copies of Tenant records on any project receiving credits may be requested at anytime during the compliance period.. The following are the records that must be kept for each program:

Tax Credit Record Keeping (*Treas. Reg. 1.42-5(b) (1)*)

Under the Tax Credit record keeping provision, the owner of a low-income housing project must keep records for each qualified low-income building in the project that show for each year in the compliance period:

- (i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (ii) The percentage of residential rental units in the building that are low-income units;
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances);
- (iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under I.R.C. Section 42(g) (2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989);
- (v) The low-income unit vacancies in the building and information that shows when and to whom, the next available units were rented;
- (vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see I.R.C. Section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);
- (vii) Documentation to support each low-income tenant's income certification (for example, verifications of income from third parties such as employers or state agencies paying unemployment compensation, a copy of the tenant's federal income tax return, or Forms 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 (Section 8), 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 I.R.C. Section 42(g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under I.R.C. Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities or facilities reasonably required by the project).

Tax Credit Record Retention (*Treas. Reg. 1.42-5(b)(2)*)

Under the record retention provision, the owner of a low-income Tax Credit housing project is required to retain the records described in *Treas. Reg. 1.42-5(b)(1)* for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. Owners must retain first year records for a minimum of 21 years plus DCA's requirement of the extended use period.

Tax Credit Inspection Report Retention (*Treas. Reg. 1.42-5(b)(3)*)

Under the inspection record retention provision, the owner of a low-income housing project is required to retain the original local health, safety or building code violation reports or notices that were issued by the state or local government unit. Retention of the original violation reports or notices is not required once DCA reviews the violation report or notices and completes its inspection, unless the violation remains uncorrected.

DCA requires that an owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to DCA. In addition, the owner must state whether the violation has been corrected.

Section 4

Property Standards

Tax Credit Properties-Non-transient Occupancy and Suitable for Occupancy Requirement (*I.R.C. Section 42(i)(3)(B)*). A unit shall not be treated as a Housing Credit unit unless the unit is suitable for occupancy and used other than on a transient basis. For purposes of clause, the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary of the Treasury taking into account local health, safety and building codes. A unit is considered to be used on a non-transient basis if the **initial lease term is six months or greater**. Therefore, owners may meet this requirement by executing a minimum six months' lease with Housing Credit occupants. The only exceptions are **Single Room Occupancy (SRO) and transitional housing units supported under the Stewart B. McKinney Homeless Assistance Act**. All

Housing Credit units must be suitable for occupancy at all times to be deemed eligible for credit. Owners are encouraged to make periodic inspections of vacant and occupied Housing Credit units utilizing the HUD Uniform Physical Condition Standards to ensure that the units are suitable for occupancy.

General Public Use – Treas. Reg. 1.42-9

- (a) If a residential rental unit in a building is not for use by the general public, the unit is not eligible for Housing Credit.
- (b) If a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for Housing Credit. In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, life care facility, trailer park or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for Housing Credit.

If DCA determines that a project does not meet these requirements, it is required to report the noncompliance and whether or not the problem is corrected, to the Internal Revenue Service on IRS Form 8823. Failure to maintain a building will result in the loss of tax credits. All incidents of non-compliance will be reported.

Section 5

Tax Credit Rent and Income Requirements

Minimum Section 42 Set aside Elections. For every tax credit project, the Owner must covenant and agree to one of the following tax credit set asides ("Section 42 Rent and Occupancy Restrictions"):

At least 20% of the Units in the Project [**are and**] will continuously be maintained as both rent-restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income. (If an Owner makes this election, all tax credit units will be rent and income restricted to 50% or less of Area Median Gross Income).

(or)

At least 40% of the Units in the Project [**are and**] will continuously be maintained as both rent-restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income. (If an Owner makes this election, all tax credit units will be rent and income restricted to 60% or less of Area Median Gross Income).

In addition, if a project has a HOME loan which is included in the project's eligible basis, at least 40% of the units in *each building* will be rent and income restricted at the 50% or less level. DCA's requirement is more restrictive than Section 42 in that these units must be rent restricted as well as occupied by tenants earning 50% of AMI or less. Special care should be given by an Owner of a multi family project comprised of single family style units. In this case, each dwelling is considered a building. Therefore the project's rent and income limitation would apply to all units.

The owner has until the end of the first year of the tax credit period for the building to lease the specified number of units to eligible low-income tenants necessary to meet the minimum low-income occupancy requirements (20 percent or 40 percent based on the minimum percentage elected). **For projects consisting of more than one building, low-income occupancy compliance for the entire project must be met within this same time period.** [Section 42 (g)(3)]

A property is in compliance if the elected minimum set aside test is met by the end of the first year of the owner's credit period and continues to be met throughout the compliance period. In an acquisition and rehabilitation project in which a tenant is living in the unit prior to acquisition and plans to remain in the unit after the rehabilitation is completed, the tenant should be certified within ninety (90) days of the time of acquisition or loan closing unless the unit is not suitable for occupancy.

If the project does not meet the minimum set aside by the end of the first year of the credit period, the property does not qualify as a low income housing project and the credit cannot be claimed in any year. Non compliance also occurs if the project falls below the minimum set aside anytime during a subsequent year in the compliance period.

Rent, Income and Occupancy Requirements. In an Application submitted by the Owner of a project, the Owner may make additional representations to DCA regarding rent, income and occupancy restrictions which may be more restrictive than those required by Section 42. These limitations may include but are not limited to:

- Very Low Rent and Income Restrictions where the Applicant agrees to reserve a specified number of units for occupancy by households earning annual gross incomes greater than 30%, but less than or equal to 50% of AMI and to set rents for those units at or below 30% of 50% of the area gross median income.
- Very, Very Low. Applications that propose dwelling units with rents set at the 30% rent level and reserved for occupancy by very-very low-income (those earning annual gross incomes of 30% or less of the AMI)
- Mixed income projects in which a specified percentage of the units are designated as market rate units which are not subject to any rent or income restrictions.

The use of Project Based Rental Assistance is not prohibited for Very Low and Very, Very Low units, but an owner cannot accept PBRA in excess of the applicable restricted rent amount for those units if points have been received for the deeper targeting. Please refer to HUD 24 CFR Part 983 for new project-based certificate regulations.

These additional rent and income restrictions will be referenced in the Land Use Restrictive Covenant for the project.

Minimum Period for Rent and Income Restrictions. Section 42 Rent and Occupancy Restrictions shall remain in effect throughout the "extended use period." In accordance with Section 42, the extended use period shall commence with the first day in the compliance period on which any building that is part of the Project is placed in service and end on the date which is 15 years after the close of the compliance period. (Generally a period of 30 years). The DCA Rent, Income and Occupancy Restrictions shall remain in effect through the "Compliance Period." Compliance period shall be the period of fifteen (15) taxable years beginning with the 1st taxable year of the credit period.

Termination of Rent and Income Restriction prior to end of Extended Use Period. The extended use period for any building that is part of the Project shall terminate:

- On the date the building is acquired by foreclosure or instrument in lieu of foreclosure except that for a period of three years following the termination of the extended use period, the Owner shall not evict the tenant of a Low-Income Unit or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to any such Low-Income Unit.
- On the last day of the one-year period that begins on the date Owner properly submits a written request to the Authority, asking the Authority to assist in procuring a "qualified contract," as defined in Section 42(h)(6)(F), for the acquisition of the low-income portion of the building, but only if the Authority is unable to present a qualified contract during such one-year period; provided, however, such request may not be made before the end of the 14th year of the compliance period or as agreed to by the Owner in its application.

Combining Tax Credits with PBRA. Many projects that receive funding from DCA also have project based rental assistance contracts. Generally, if federally funded PBRA is involved, rent in excess of the tax credit maximum can not be collected. However, Applicants need to use care in identifying areas of both programs which can conflict so as to avoid situations where the allocated tax credits could be subject to recapture. To initially certify a tax credit unit, the occupant must meet the income election of his designated set aside regardless of whether there is a section PBRA contract. This means that if you have a 40/60 election and 100% of the units are tax credit units, all of the initial tenants in the project must be certified at 60% AMI or less. Problems can arise in an existing tax credit rehab property, if you have a tenant that is receiving PBRA but has income over 60%, but within the 80% PBRA requirement, that tenant would not meet the first year tax credit requirements. However, under Section 8 PBRA rules you could not evict the tenant or refuse to renew his lease. In a 100% tax credit project the conflict requirements under the programs could create an insurmountable problem. Projects combining tax credits and PBRA can also have problems dealing with waiting lists, various fees and with certain tenancies such as students.

In a tax credit low-income unit, if a tenant subsequently goes over income, the tax credit rent (30% of 60% AMI) stays the same. The tenant could stay in the unit as long as the

requirements of section 42(g)(2)(D) of the code are met. If that same unit has PBRA, contract rent or can no longer exceed the maximum allowable tax credit rent. Theoretically, the tenant portion of the rent could actually go up to 30% of 80 of AMI in a tax credit unit where a 40/60 election has been made. This would be in violation of 24 CFR Part 983 which was published on October 13, 2005 and was effective November 14, 2005.

DCA recommends that Applicants in projects that are 100% PBRA not structure their tax credit project with 100% tax credit units. This gives some leeway in dealing with conflicts between the two programs.

Section 6

Determining Income Limits

Owners and managers must understand how income limits are applied if they are to be successful in maintaining a project in compliance. Each year HUD publishes new income limits with an effective date. The household's total annual gross income must be at or below the applicable income limit as elected by the owner. Revenue Ruling 94-57 states that owners and managers may rely on the list of income limits until 45 days after HUD releases a new list or until HUD's effective date for the new list, whichever is later. Once HUD publishes the new income limits, DCA will complete the necessary calculations and release the new income and rent limits on its Web page.

Household Income Calculation The household's total annual gross anticipated income must be calculated to determine if a household meets the applicable income limit and is income eligible for a Housing Credit unit.

- At initial Tenant certification for any Tax Credit funded Project, the household's annual gross anticipated income should be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (HUD Handbook 4350.3, Chapter 5), not in accordance with the determination of gross income for federal income tax liability.

Qualifying Section 8 Tenants. When an applicant with Section 8 rental assistance applies for occupancy in a Housing Credit unit, the owner may obtain verification of the household's annual gross income from the issuing Housing Authority in lieu of obtaining verifications from each income source. The applicant must give the proper authorization to obtain verification of the household's annual gross income. Then, the property manager should request third party written verification from the issuing Housing Authority of the household's annual gross income (the Housing Authority verification of income and assets cannot be over 90 days old). Once the verification is received, the Tax Credit Income Certification must be completed and signed and dated by the applicant and the owner. During a tenant's initial certification, **DCA recommends that property management verify all income and assets via third party documentation and that the Housing**

Authority verification of household income only be used when the household is recertified, if at all

Income and Assets.. The following provides general guidance for determining income that should be included in the household's annual gross anticipated income. Annual gross anticipated income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income. If a particular type of income is not specifically mentioned as being excluded in HUD Handbook 4350.3, then it is included in annual gross income.

- Wages: Types of wages include salaries, hourly wages, overtime, tips, bonuses, holiday pay, shift differential, commissions and other compensation for personal services.

Ensure that:

- Gross income is used instead of net income,
 - Income from overtime, tips, bonuses, etc. are included,
 - Year-to-date income is compared to hourly wages, and
 - Anticipated income changes are considered (i.e., raises)
- Self-employment Income: Types of self-employment may include babysitter or child care provider, handyman, painter, Mary Kay or Avon consultant, small engine repairman or hair stylist.

Acceptable forms of verification for self employment include: notarized statements, financial statements prepared by a CPA, affidavits or income tax returns signed by the applicant describing self-employment and amount of income or income from tips and other gratuities. Owners should request a notarized statement or affidavit from the applicant projecting income to be derived from the activity for the next 12 months. This statement must be supported with a copy of the most recent federal tax return with applicable schedules.

When reviewing Schedule C of the tax return, the net income from the business is used to support the income stated on the notarized statement or affidavit. A net loss may not be deducted from the household's annual gross income and should be recorded as zero income derived from the business.

- Child Support: When an applicant has minor children in the household, verification concerning child support income for each minor child should be obtained. Entitlement of child support income must first be established. "Entitlement" means that a written agreement exists between the parties to provide child support. This could be a court order/award or a consensual agreement between two parties, such as a divorce settlement or separation agreement.

If an applicant is entitled to child support and is receiving the entitled benefit:

- Obtain a copy of the entitlement documentation and include the entitled benefit in the annual gross income

If an applicant is entitled to child support but is not receiving the benefit:

- Obtain a copy of the entitlement documentation and third party documentation of the applicant's efforts to collect the entitled benefit. If efforts are not being made to collect the entitled benefit, the entire entitlement must be included in the household's annual gross income. If efforts are being made to collect the entitled benefit, the entitlement may be excluded from the household's annual gross income.

If an applicant is entitled to child support but is receiving sporadic benefits or less than the full entitlement:

- Obtain a copy of the entitlement documentation and third party documentation of the sporadic or varying benefits. An average of the most recent six months' payments should be included in the household's annual gross income.

If an applicant states that they are not entitled to child support:

- The applicant must also certify that they are not entitled to child support.

For the required Child Support Affidavit please refer to the DCA Website www.dca.state.ga.us/housing/HousingDevelopment/programs/housingTaxCredit.asp

- Unemployment benefits should be annualized. Even though verification may indicate an ending period, the unemployment benefit should be calculated over 52 weeks.
- Assets are items of value such as checking and savings accounts, real estate and mobile homes. Assets do not include necessary personal items, i.e. cars.
- Real Estate. If an applicant indicates they own real estate, the Owner must determine the fair market value of the asset and determine the actual income derived from the asset.

Documentation: Property Value Assessment statement or recent appraisal

Documentation: lease agreement, land contract, etc.

If the income limits are jeopardized by using the gross rental income, an additional calculation may be completed to determine net rental income.

If the property is not generating income then the applicant must document the status of the property (i.e. vacant and for sale) If an applicant indicates that their previous address was "owned" or "vacated due to sale or separation", etc., then third-party documentation should be obtained to determine if there is possible income from real estate. Owners

should be extremely cautious when attempting to document real estate values and income derived from real estate. Additional guidance on calculating income from real estate is provided in HUD Handbook 4350.3.

- **Assets \$5,000 or less.** For tax credit properties, if the value of a household's total net assets is \$5,000 or less, the tenant may submit a signed, sworn statement to this effect and owners are not required to third-party verify assets. However, income derived from the household's total net assets must be included in the household's annual gross income calculation (i.e., the income from an interest bearing checking or savings account). Owners should request asset income on the asset certification form.
- **Assets greater than \$5,000.** If the value of the household's total net assets is greater than \$5,000, the owner must obtain third-party documentation to support the value of all assets and income derived from those assets. The owner must calculate the imputed income from the assets and compare that number to the actual income derived from the assets. The greater of the two should be included in the household's annual gross income.

Methods of Verification for Income and Assets. The three methods for verifying income and assets are listed below. The most preferred method is written third-party verification.

- Third-party Verification- Written correspondence should take place directly between the third party and the owner/manager. Third-party written verifications are acceptable and valid for 90 days prior to move-in and annual re-certification effective date. A documented verbal update may extend that verification an additional 30 days (up to a maximum of 120 days).

Inasmuch as many agencies have gone to the use of computer-generated forms in responding to requests for "third-party written verification," the owner/developer may accept all such computer forms as documentation of third-party written verification. Entities known to use such forms include, but are not limited to:

- Social Security Administration
- Veterans Administration
- Department of Family and Children Services
- Department of Labor
- Child Support Recovery Unit
- Various (800) business verification services

In the event that third-party written verification is not possible due to unwillingness by the source to respond or in the event that the information is not returned within a four-week period, the owner/developer will note the file accordingly and proceed with third-party oral verification as the primary source.

- Hand carried Verification – Owner or Property representative may not hand carry verification to employers. DCA faxed income verifications should be used. This method is not permitted unless there is documentation that third-party written verification is not possible.
- Review of Documents – Owners may use documents submitted by the applicant or tenant when every effort to obtain written third-party verification has been exhausted and documented or cannot be obtained. When utilizing this method, the most recent documentation must be obtained. See Chart 1-4 for examples of acceptable forms of income verification.

Applicant/Tenant Certification – Applicant/Tenant certification is acceptable when other preferred methods of verification cannot be obtained or such certifications are specifically authorized.

When written third-party verification or review of documents is not possible prior to move-in, direct contact with the source will be acceptable only as a last resort. The conversation should be documented in the applicant's file to include all information that would be contained in a written verification. The information must include the name and title of the contact, the name of the on-site management representative accepting the information and the date. The applicant's file must contain evidence that attempts were made to obtain written third-party verification.

In order to verify information about household income and composition, owners/manager must have tenants complete a DCA approved Release and Consent form. This form authorizes the release of certain information to DCA (See DCA Compliance website @www.dca.state.ga.us/housing/HousingDevelopment/programs/housingTaxCredit.asp-compliance).

Property Management should always refer to HUD Handbook 4350.3 for additional information regarding income and assets.

Section 7

Over Income Tenant Restrictions (140% Rule)

Tax Credit: The Code provides that a tenant's income may increase during tenancy to exceed 140% of the allowable household income. **(Although previously DCA has required that the lease for tenants who exceed this limit for two (2) successive years may not be renewed for the third year; effective January 1, 2005, this requirement is no longer in place)** The Housing Credit Program allows for the increase of income for all initially qualified residents in a Housing Credit unit. (Please refer to the IRS Good Cause Eviction set forth below for more information.)

If the gross income of the occupants of a qualifying unit increases to more than 140 percent of the applicable income limit, the unit may continue to be counted as a low income unit as long as the unit continues to be rent-restricted and the next unit of comparable or smaller size is occupied by a qualified low-income tenant. (Documentation of the implementation of the next available unit rule must be in both the over income tenant and the replacement tenant files). When a building is restricted to 100 percent Housing Credit, this rule does not typically affect the building because all units should be rented to Housing Credit qualified households. A violation of this rule could occur in a 100 percent building if the owner inadvertently rents to an unqualified household. For example, the tenant in Unit A exceeds the applicable income limit by more than 140 percent at annual re-certification. Unit A is a 3-bedroom unit with 800 square feet. Unit B is the next available unit in the building and is a 2-bedroom unit with 700 square feet. Unit B must be rented to a Housing Credit qualified household and Unit A must remain rent restricted until it has been replaced with Unit B to ensure compliance with the Next Available Unit Rule. In a 100 percent Housing Credit building, Unit A must remain rent restricted at all times.

EVICTION FOR GOOD CAUSE. IRS Revenue Procedure 2005-37, effective June 21, 2005, prohibits evictions or the termination without good cause of tenancy of an existing tenant of any low-income unit throughout the entire commitment period. The Owner must, as part of its certification under 1.42.-5 c (1)(xi), must certify annually that for the preceding 12 month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenant had an increase in gross rent with respect to a low-income unit not otherwise permitted under Section 42.

Section 8

Determining Rents

Section 42(g)(2)(A) provides that a residential unit is rent restricted if the gross rent for the unit does not exceed 30 percent of the imputed income limitation applicable to the unit. The imputed income limitation applicable to a unit is the income limitation that would apply under section 42(g)(1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

- in the case of a unit that does not have a separate bedroom, one individual, or
- in the case of a unit that has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

In determining the appropriate rent, Owner must consider the utility allowances, services provided, revisions to HUD Income limits, rent calculation methods, changes in the tenant's income, and section 8 tenants.

Household size. In determining the household income limitation, all applicable income standards are adjusted for family size. For purposes of the LIHTC, all occupants of a unit

are considered in the determination of family except for the following (refer to HUD manual 4350.3 for a complete discussion:

- 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, is not obligated for the support of the person 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 aid/attendant, they must meet the above requirements.
- Foster children or foster adults
- Guests

When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

- Children temporarily absent due to placement in foster home
- Children in joint custody arrangements who are present 50% or more of the time
- Children who are away at school but who live with the family during school recesses
- Unborn children of pregnant women
- Children who are in the process of being adopted
- Temporarily absent family members
- Family members in the hospital
- Persons permanently confined to a hospital or nursing home

Prohibited Fees:

Application Fees: Only the amount the owner incurs may be charged for an application fee.

Non-Optional Services. Any charges for services that are not optional to low-income tenants must be included in gross rent. For example, if an owner provides meals to residents but requires the cost for this service as a condition of occupancy, the cost must be included in the calculation of gross rent for the unit or, if the property individually meters, the water any service charge for this service will be considered rent. The cost of services must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners. An example of charges that DCA does not consider optional are: privately metered utility service charges, cable charges, appliance rental, decorating fees (charged above security deposits). Contact DCA's compliance office for further guidance regarding "optional" charges.

Supportive Services Owners may pledge to provide various supportive services in their Application. Owners must provide pledged supportive services through the compliance period or period of affordability whichever is longer. In addition, pledged supportive services will be monitored for existence during compliance monitoring reviews. No

change may be made in supportive services without the express written consent of DCA. Fees cannot be charged for supportive services that are provided to the tenants.

Section 9

Calculating Utility Allowances

Tenant-Paid Utility Allowances

If the cost of any utilities (other than telephone) for a residential rental unit is paid directly by the tenant(s), the gross rent for that unit includes the applicable tenant-paid utility allowance. Any changes in utility type or source must be approved by DCA Compliance prior to implementation.

For projects submitted in 2007, Project Owners should establish utility allowances for the property as follows:

1. USDA-Assisted Buildings – If a building receives assistance from the USDA (formerly called the Farmer’s Home Administration, or FmHA), the USDA-prescribed utility allowance applies to all rent-restricted units in the building. The USDA-approved allowance applies even if the building is assisted by any other program or agency. Examples of USDA assistance include assistance provided under the USDA Section 515 rural rental loan program and USDA rental assistance.
2. Buildings with USDA-Assisted Tenants. If any resident of a building receives USDA rental assistance, the USDA-approved utility allowance applies to all rent-restricted units in the building. This is even the case if residents of some units receive rental assistance from the U.S. Department of Housing and Urban Development (HUD).
3. HUD-Regulated Buildings. If neither a building nor any resident in the building receives USDA assistance, and HUD annually reviews the rents and utility allowances for the property (such as for Section 8 and Section 236 projects), the HUD-prescribed utility allowance is used. This rule doesn’t apply to buildings that have only FHA-insured mortgages.
4. DCA HOME/Tax Credit buildings. If a building is neither an USDA-assisted nor HUD-regulated property, and no tenant in the building receives USDA rental assistance, there are two possible methods for establishing the utility allowance. These include:

- A. The allowance established by the local Public Housing Agency (PHA) for the Section 8 Program in the locality where the property is located.(the local PHA must administer a Section 8 program and that allowance must be used). However, the electric allowances may be calculated as outlined in Section C below. (Many Public Housing Agencies utility allowance tables for the Section 8 Program include a deduction for “elderly”. This deduction can only be used at DCA funded properties that are 100% PBRA properties and which satisfy DCA’s definition of Elderly.)
- B. If no local PHA is located in the projects jurisdiction then the owner may elect to utilize DCA’s Section 8 utility allowance.
- C. A written project specific estimate by a Utility Provider for the **electric allowance only** may also be used. If a private estimate is obtained, it must be prepared in accordance with DCA Energy Simulation Tool Criteria requirements as outlined in the DCA Compliance Manual. The Energy Tool Criteria must be validated by a source acceptable to DCA as identified in the DCA Compliance Manual. Each year, the Utility Provider will recalculate the Utility Allowance based on the current rate and all other billing inputs to determine if there is any change in the allowance. See DCA Compliance Manual – Utility Allowances. Once this method of choosing a utility allowance is elected, the project must continue using this method during the entire compliance period for the project. However, any unit occupied by a resident with a Section 8 / Housing Choice Voucher must use the PHA utility allowance, even if a private estimate has been obtained.

Prior to 2005, DCA did not allow utility allowances to be established based on the estimate of a Utility Provider for electric service. Projects that received funding prior to 2005 can not utilize this method. Owners should be aware that once they elect to determine the electric utility allowed based on such an estimate, the project must continue using this method during the entire Compliance Period for the project. Participants may submit a 2006 Application using the DCA utility allowance and after the award and at the time the Plans are submitted to the DCA Architect (by the date required) the participant may submit a utility allowance from the utility provider using the method outlined below. Along with this information a written request for DCA’s approval regarding the utility allowance source change is required. Please note, this is the only time such a change can be made.

DCA Energy Simulation Requirements. Before a Utility Provider can prepare an estimate for an electric utility allowance, the Energy Simulation System it will utilize must be approved by DCA. DCA requires that Utility Providers must be able to perform an energy analysis for a building by calculating energy consumption associated with heating and cooling loads, HVAC systems and other loads (lighting, water heating, office equipment, and other internal loads). The Simulation program must be tested according to ANSI/ASHRAE Standard 140 (HVAC Equipment Performance Tests E100 – E200 only). The Simulation system must provide favorable results compared with the

analytical solutions provided with this Standard. The Simulation tool must also have the capability to predict building envelop loads within the 90% confidence interval of reference results provided with the HERS BESTEST Tier 1 validation procedure. A sample data sheet with information that the Utility Provider will need to prepare the Utility Allowance Estimate can be found in the Form 18 Appendix I.

Initial Estimate and Required Updates

1. The initial Utility Estimate must be prepared by the Utility Company and submitted at the time of project Application.
2. The Estimate must be updated by the Utility Company at the time all buildings are placed in service.
3. Owner should request the Utility Company to prepare an update at least thirty days prior to the filing of the property's 2nd year annual report. This update must compare the actual usage at the property with the current estimate. The updated estimate should be attached to the report when it is submitted to DCA.
4. The Utility Company must prepare an update within 90 days of any rate or tax change.
5. DCA reserves the right to require that an estimate be updated at any time upon 60 days written notice to the Owner.
6. Owner must implement any updated estimate received by the Utility Company within 90 days of receipt.

Utility Providers. Estimates must be prepared by a utility company provider. Qualified electric providers in the State of Georgia can be located on a list at <http://www.psc.state.ga.us>.

Process for obtaining DCA approval of a Utility provider and its Energy Simulation Tool. Utility Providers and their Energy Simulation Tool must be approved by DCA prior to the time that an estimate is requested for calculation of an electric Utility Allowance.

In order for DCA to approve the Utility Provider and its Energy Simulation Tool, the Utility Provider conducting the energy simulation must provide a completed Certification on company letterhead stating the following:

- 1 . Name and description of energy system used.
2. Statement that the energy simulation system has been tested according to ANSI/ASHRAE Standard 140 and that the results received from the Tool compared favorably with the analytical solutions provided by the standard.

3. Statement that the simulation tool has the capability to predict building envelope loads within the 90% confidence interval of reference results provided within the HERS BESTEST Tier I validation procedure.
4. Statement that the utility provider is committed to accurate quality data.
5. Statement that the utility provider will update the utility allowance within 90 days of any rate change when required information is provided by the Owner or as requested by DCA.
6. Contact name, phone number and e-mail address that may be used by DCA if clarification or additional documentation is needed.
7. Statement that a copy of all estimates prepared by the Utility Company for the Owner will also be sent to DCA at the following address:
Nan Maddux, Compliance Manager
DCA
60 Executive Park South, N.E.
Atlanta, Georgia 30329-2231

Upon receipt of the required certification and review and approval of all required documentation, DCA will issue a letter directly to the Utility Provider stating that it has been approved to issue an estimate for DCA Utility Allowances.

Application Stage. At Application, the Owner must provide the actual specification sheet submitted to the Utility Provider along with a signed Certification on Provider's letterhead stating the following:

1. The name of the proposed Utility Provider
2. The Utility Provider and Energy Simulation Tool were approved by DCA for use in preparing Utility allowance and the date of said approval. (A copy of the DCA approval letter should be attached).
3. All materials provided to the Utility Company for use in the utility simulation system were true and complete to the best of the Owner's knowledge.
4. Applicant understands that it is his responsibility to ensure that the utility allowance is updated according to Federal and State regulations and in accordance with DCA requirements.
5. Applicant understands that failing to update the utility allowance according to Federal and State regulations will be considered a property wide major instance of non compliance and will be reported to the Internal Revenue Service on IRS Form 8823.

6. If at any time during the building's compliance period, the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units no later than 90 days after the effective date of the change.
7. Applicant understands that if any unit is occupied by a resident with a Section 8/Housing Choice Voucher, Owner must use the PHA utility allowance, even if a private estimate has been obtained.
8. Applicant understands that the project must use this method of calculating the utility allowance for the entire compliance period.
9. Applicant understands that it is his responsibility to review the utility estimate quarterly and to contact the Utility Provider to determine whether there have been any rate or tax increases which will affect the utility allowance estimate.
10. Applicant understands that he must obtain an annual utility estimate from the Utility provider which must be attached to the project's annual owners' certification.
11. Applicant understands that in order to obtain an "actual usage" and estimate comparison from the providing utility company, he must submit his request and required documentation to the Utility Company no later than 30 days prior to submitting the property's 2nd year annual report.

Questions regarding utility allowances can be directed to the DCA Compliance Department.

Section 10

Owner Certification

Annual Tax Credit Certification (*Treas. Reg. 1.42-5(c)(1)*)

Owners are required to annually certify the household's Housing Credit eligibility. The re-certification must be effective no later than 12 months from the date of the last certification. The effective re-certification date is the effective date specified on the Tenant Income Certification form. If a property fails to complete the annual re-certification or completes the re-certification after 12 months, it will be considered an out of compliance issue and will be reported to the IRS on Form 8823.

Owners must obtain third-party documentation to support the household's income eligibility and verification of the household's student status during an annual re-certification. The owner must also maintain evidence to support the gross rent for the unit. Once this information has been obtained a Tenant Income Certification form must be completed and signed by all adult household members. (*Treas. Reg. 1.42-5(c)*)

Section 11

Vacant Unit Rule and Next Available Unit Rule

A unit may not be counted as a tax credit unit until it is occupied by a qualified tenant. A vacant unit cannot be counted as a tax credit unit if the unit did not qualify as a tax credit unit prior to being vacated. In qualifying enough tax credit units before the end of a lease up period, owners and or managers must not improperly terminate the occupancy of in place tenants.

Vacant units that were previously occupied by low-income tenants can continue to be considered a qualified Housing Credit unit if:

- Reasonable attempts are being made to rent the vacated Housing Credit unit(s), and
- That unit or the next available unit of comparable or smaller size is rented to tenants having a qualifying income.

The owner must actively market the vacant unit, retain evidence of the marketing efforts for monitoring purposes (i.e., newspaper, flyers and signage) and the vacant unit must be suitable for occupancy. In addition, owners are required to annually certify that the project has met this requirement. Owners of mixed-income properties should establish procedures to ensure that when a restricted unit becomes vacant, the next available unit of the same size or smaller as the restricted vacant unit is leased to an eligible household.

(Next Available Unit Rule – I.R.C. Section 42(g)(2)(D))

Down units are those units that are not suitable for occupancy. (some examples of down units are those units that are missing parts of the HVAC system, missing appliances, units that are trashed, units that have infestation, unsecured units, units with mold and/or mildew). A down unit is not suitable for occupancy and does not satisfy the vacant unit rule. Down units must be reported on the Occupancy Status Report as Down not Vacant. (DCA considers any unit vacant and not rent ready within 30 days of becoming vacant a DOWN UNIT)

Section 12.

Transfer of Ownership

All changes in ownership interest or project participant structure require reporting to DCA. Current and potential owners are reminded that the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits will be enforced by DCA. The Extended Use Agreement will not be removed until the agreement has expired. Owners are encouraged to contact their tax consultant prior to the sale of any Housing

Credit property. If a transfer is approved, the previous owner must provide a completed Transfer of Ownership Interest form to DCA prior to disposition of the property. In addition, the new owner must submit a completed IRS Form W-9 Request for Taxpayer Identification Number and Certification to DCA within 30 days of acquisition of the property.

If the transfer occurs during the initial 15 year period, the previous owner must secure a satisfactory bond and submit a completed IRS Form 8693 Low-Income Housing Credit Disposition Bond to the IRS for approval within 60 days of disposition of the property. A copy of IRS Form 8693 must be submitted to DCA at the time it is submitted to the IRS. This will allow DCA to report the disposition on IRS Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. If the transfer occurs after the initial 15-year compliance period but during the extended use period, the new owner must operate the property as 4 I.R.C. Section 2(j)(6) a qualified low-income project for the remaining extended use period.

Section 13

Additional Compliance Issues

Employee Units – Revenue Ruling 92-61. According to Revenue Ruling 92-61, 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 I.R.C. Section 42(d)(1), but the unit is excluded from the applicable fraction under I.R.C. Section 42(c)(1)(B) for purposes of determining the building’s qualified basis. On-site maintenance personnel are treated similar to managers.

Under Treas. Reg. 1.103-8(b)(4), units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units. Therefore, the project should thoroughly document the need for such a unit to avoid violations and identify the unit as a “Manager’s Unit” on the annual Building Status Report. DCA will not issue a written opinion as to the designation of such unit(s) or that the unit(s) will continue to be eligible for Housing Credit.

DCA policy under QAP: For Applicants electing to house management, security, or maintenance personnel in a project unit, the employee unit can be either designated as part of the residential unit count or as part of the common space. If the employee unit is designated as part of the residential unit count, and is also designated as a low-income unit, it must be occupied by an income eligible household that may be the on-site management, security or maintenance personnel and rent can be charged or collected by the Owner for this unit. If the employee unit is designated as part of the common space, it need not be occupied by an income-eligible household, but must be occupied by a full time on-site manager, security or maintenance personnel. **No rent can be charged or collected by the Owner for a unit designated as common space.**

Unit Transfers. Unit transfers can only occur within the building in which the tenant currently resides. Owners must consider the current location and requested destination of any current tenant requesting to be relocated within a project. Consideration must also be given to whether the tenant is an eligible Housing Credit occupant at the time of the transfer.

- If a current resident moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit. The vacated unit adopts the status of the newly occupied unit prior to the transfer. Therefore, a tenant that was originally eligible at move-in would not have to be re-certified at the time of transfer.
- If a current resident requests to move to a different unit in a different building, this should be treated as a new move-in and new verifications and certifications must be obtained and the household certified as income eligible at the time of move.

Documenting Transfers on the Building Status Report:

How are unit transfers, within the same building, reported on the DCA Quarterly Occupancy Status Report?

1. Record the transfer date in the move-out column of the unit being vacated.
2. Record the initial move-in date to the building as the move-in date in the new unit being occupied. Also, the move-in and re-certification data should be carried over and recorded as if the transfer never occurred.

How are transfers, not within the same building, reported on the DCA Quarterly Occupancy Status Report?

1. Record the move-out date in the move-out column of the unit being vacated.
2. The newly occupied unit should be treated as a new move-in. A move-in certification should be completed and reported on the Building Status Report and a new re-certification cycle will begin.

Full-time Student Households. A household where all members are full-time students is typically not eligible to reside in a Housing Credit unit. However, I.R.C. Section 42(i)(3)(D) grants four exceptions that can be used to establish eligibility of a household where all members are full-time students. Definition of a full-time student is 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. The educational organization normally maintains a regular facility and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. A full-time student may also be an individual who is pursuing a full-time course or institutional on-farm training under the supervision of an accredited agent.

Student Exceptions allowed by I.R.C. Section 42(i)(3)(D):

A unit shall not fail to be treated as a low-income unit merely because it is occupied –

- (i) by an individual who is
 - a student and receiving assistance under Title IV of the Social Security Act, or
 - enrolled in a job training program receiving assistance under the Job Training Partnership Act (JTPA) or under other similar Federal, State, or local laws, or

- (ii) entirely by full-time students if such students are –
 - single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or
 - married and file a joint return.

Project owners must maintain documentation to support the student status of each household during the entire term of occupancy. In addition, if the household consists entirely of full-time students at any time during occupancy, documentation must show that one of the four exceptions was met. The applicant must certify the household's student status at move-in and subsequent annual certifications. The required DCA Student Affidavit must be completed by all member of the household that are 18 years of age or older. (DCA mandated Student Affidavit in Forms Appendix)

In summary,

- If at least one member of the household is not a full-time student (i.e., one member part-time student or one minor child not of school age) No further action is required.
- If all household members are full-time students,
The household must meet one of four exceptions and the exception must be supported with acceptable documentation

Documenting and Monitoring Interpretations for student exceptions:

1. A household member is receiving Title IV benefits.

Documentation: Third-party documentation from the Department from which the Title IV (TANF) benefits are issued showing that a household member receives Title IV benefits. TANF is generally considered to be Title IV benefits.

2. A household member is enrolled in a job training program. Third-party documentation from a caseworker showing that a household member is enrolled and receiving assistance under JTPA or a similar program should be maintained.

3. A household member is a single parent and their children are not dependents of another individual. A copy of the most recent years signed federal income tax return claiming the dependent tax exemption or a copy of the executed court order should be maintained. DCA finds that a household satisfies this exception if the household member claims the dependent tax exemption in alternating tax years. Documentation should be obtained to support the household's claim to the dependent tax exemption in alternating years (i.e., copy of executed divorce decree).

4. The household members are married and file a joint income tax return. A copy of the most recent year's signed federal income tax return should be maintained. A newly married household who has not yet filed a joint tax return does not satisfy the exception rule.

(Please see Appendix I, Compliance Forms)

Section 14.

Material Participation of a Nonprofit Organization

The Internal Revenue Code requires that 10 percent of the total Housing Credit ceiling amount be available only to projects with qualified nonprofit participants and owners. Applicants must indicate that they are applying for credit from the nonprofit set-aside. The nonprofit organization participating in the project:

- Must be an organization recognized by the Internal Revenue Service as a 501(c)(3) or 501(c)(4) organization (status of an organization can be confirmed using the IRS website www.irs.gov and enter 78 into the Search IRS Site);
- Validly exist and be in good standing
- Have an ownership interest in the project throughout the entire 15-year compliance period. The non profit can own the interest directly or indirectly through a partnership or own stock in a corporation that owns a low income housing property, if the corporation is 100% owned by qualified non profit organizations.);
- Meet the criteria defined as material participation in Treas. Reg. 469(h);
- Must not be affiliated with or controlled by any for-profit entity (Limited partners cannot act without nonprofits concurrence – other than for malfeasance by general); and
- One of the exempt purposes of the nonprofit must include the fostering of low-income housing.

The nonprofit must meet the criteria defined as material participation in Treas. Reg. 469(h) and the owner must maintain documentation to support compliance. The owner must certify on the Owner's Annual Certification of Compliance which of the tests defined in Treas. Reg. 469(h) the nonprofit met in order to satisfy the material participation of the nonprofit (as outlined below). DCA will review the documentation during on-site reviews of the project. Owners should immediately notify DCA of any change in the nonprofit organization who is materially participating in a project.

Treas. Reg. 469(h) Tests for Material Participation

1. Nonprofit participates in the activity for more than 500 hours during the tax year.
2. Nonprofits participation constitutes substantially all of the participation in the activity of all individuals (including non-owners) for the tax year.
3. Nonprofit participates in the activity for more than 100 hours during the tax year, and its participation is not less than the participation of any other taxpayer for such year.
4. Nonprofit activity is a significant participation activity for the tax year, and the taxpayer's participation in all significant participation activities during the year exceeds 500 hours. A significant participation activity is one in which the taxpayer has more than 100 hours of participation during the tax year but fails to satisfy any other test for material participation.
5. The nonprofit materially participated in the activity for any five of the ten tax years immediately preceding the year in question.
6. Based on all facts and circumstances, the nonprofit participates in the activity on a regular, continuous and substantial basis during the tax year. To satisfy the facts-and-circumstances test, a nonprofit must participate in an activity for more than 100 hours. The nonprofit's management services are not taken into account unless no other individual is compensated for management services and no other individual performs management services exceeding the hourly total of such services performed by the nonprofit.

Section 15.

Additional I.R.C. Section 42 Requirements

IRS Form 8609 Elections

IRS Form 8609 is the document issued by DCA for the final allocation of credit to the owner. Once received, the owner must make important elections for each building that will be in effect during the compliance period of the project. **DCA will not issue an 8609 for a property which is not built in accordance with DCA approved plans and specifications, which do not contain amenities pledged in the project Application and which does not meet DCA or Federal requirements. Prior to issuance of an 8609, a property must also be in compliance with all accessibility requirements. (See DCA Accessibility Manual for a more comprehensive review of these requirements).**

Placed-In-Service Date

The placed-in-service date for new construction is the date the first unit in the building is ready and suitable for occupancy under state or local law and the unit received a Certificate of Occupancy. The Acquisitions placed in service date is generally the date of loan closing or purchase of the property occurs. The placed-in-service date for a rehabilitation development is established by the owner when it is determined that required expenditures have been met, whether or not the building is occupied, but must be no later than 24 months after the credit allocation. The minimum required expenditures are: (1) when 10 percent of the adjusted basis is spent, or (2) a minimum of \$3,000 per unit is spent, whichever is greater.

Section 16.

Compliance Monitoring Reviews

To determine tenant eligibility, rental housing owners/developers will be required to verify the annual income of families living or applying to live in any Tax Credit-assisted housing, using the income determination procedures described in this section. In order to verify information about household income and composition, owners/manager must have tenants complete a DCA approved Release and Consent form. This form authorizes the release of certain information to DCA (See Forms Appendix).

In addition, DCA compliance staff will conduct periodic compliance monitoring reviews of each project funded under the state Qualified Allocation Plan. DCA will contact project staff to schedule the review at least two weeks prior to the on-site review. Prior to the site review, the owner may be requested to submit certain information to DCA. It is the responsibility of the owner to ensure that all tenant income certifications are available and all units are accessible for physical inspection by DCA staff during the on-site review. DCA considers the failure to respond to monitoring requests or to provide access to tenant files or access to units to be major instances of noncompliance.

Owner Reporting Requirements

Under the certification provision, the owner of a low-income housing project is required to certify at least **annually** to DCA that, for the Proceeding 12-month period, the following items were true:

- (i) The project met the requirements of:
 - (A) The 20-50 test under I.R.C. Section 42(g)(1)(A) or the 40-60 test under I.R.C. Section 42(g)(1)(B), or the 25-60 test under I.R.C. Section 42(g)(4), whichever minimum set-aside test was applicable to the project; and
 - (B) If applicable to the project, the 15-40 test under I.R.C. Sections 42(g)(4) and Treas. Reg. 142(d)(4)(B) for deep rent skewed projects;
- (ii) There was no change in the applicable fraction in the project, or that there was a change, and a description of the change;
- (iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section. For an exception to this requirement, see I.R.C. Section 42(g)(8)(B), which provides a special rule for a 100 percent low-income building;
- (iv) Each low-income unit in the project was rent-restricted under I.R.C. Section 42(g)(2);
- (v) All units in the project were for use by the general public (as defined in Treas. Reg. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
- (vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety or building code (or other habitability standards), and the state or local government unit responsible for making local health, safety or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the agency under paragraph (c)(1) of this section. In addition, the owner must state whether the violation has been corrected;

(vii) There was no change in the eligible basis (as defined in I.R.C. Section 42(d)) of any building in the project, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

(viii) All tenant facilities included in the eligible basis under I.R.C. Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(ix) If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

(x) If the income of tenants of a low-income unit in the building increased above the limit allowed in I.R.C. Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income;

(xi) An extended low-income housing commitment as described in I.R.C. Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311), including the requirement under I.R.C. Section 42(h)(6)(B);

(xii) All low-income units in the project were used on a non transient basis (except for transitional housing for the homeless provided under I.R.C. Section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under I.R.C. Section 42(i)(3)(B)(iv)).

(xiii) DCA also requires the Owner to certify that the project meets all required accessibility and fair housing requirements.

(xiv)The LIHTC Annual report is due within 30 days of the anniversary of the last building placed in service date throughout the LIHTC compliance period beginning immediately following receipt of a final tax credit allocation by DCA.

(xv) An owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to Section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439); and

(xvi)An owner must certify that no tenant in a low income unit was evicted or no tenant's residency in a low income unit was terminated other than for good cause.

DCA Quarterly Occupancy Status Reports for Tax Credit Units. DCA also requires Occupancy status reports be prepared on a **quarterly** basis for each tax credit property. Quarterly reports will be due on the 15th of each month following the end of the

quarter. Therefore, the report for the January through March quarter will be due on April 15th, the report for the April through June quarter will be due on July 15th, the report for the July through September quarter will be due October 15th and the October through December report would be due on January 15th.

Tax Credit projects of less than 5 units with 90% occupancy are required to submit the Occupancy Report and Income Certification annually.

Exceptions for Tax Credit Tenant Income Certifications

- Properties that were financed through the Farmers Home Administration (FmHA) Section 515 Program and complete the FmHA Tenant Income Certification Form 1944-8 for each household annually (with all adult household member's signatures) do not have to complete the DCA Tax Credit Certification form.
- Properties that receive project-based Section 8 rental assistance and complete the Form HUD-50059 or HUD-50058 annually (with all adult household members' signatures and income and asset verifications no older than 90 days) do not have to complete the DCA Tax Credit Certification form. However, owners and managers should remember that the household' student status must be verified and gross tenant-paid rent documented.

While the IRS does allow annual income re-certification waivers, DCA has elected not to allow such a waiver.

On-Site Inspections

Tax credit Properties Physical Inspections (*Treas. Reg. 1.42-5(d)*). DCA will conduct a physical inspection on all buildings in the project by the end of the second calendar year following the year the last building in the project was placed in service and at least every three years thereafter. DCA will conduct a physical inspection on at least 20 percent of the project's low income units, inspect the units and review the low income certifications, the documentation supporting the certifications and the rent records for the tenants in those units. DCA will randomly select which low-income units and tenants' records will be inspected and reviewed. The units and tenant records to be inspected will be chosen in a manner that will not give owners notice of which records will be reviewed. In addition to unit inspections, the site and grounds, all buildings exteriors, common areas and building systems will be physically inspected. However, Owners will be required to notify all residents of possible unit inspections at least two days prior to the scheduled inspection date. Copies of notices should be maintained in tenant files. In addition, the owner must ensure that all units are accessible for physical inspection by DCA.

If tenants are not given proper notice of possible physical inspection or DCA is unable to gain access to a unit during a physical inspection, the unit will be deemed out of compliance and a Form 8823 will be issued. Follow-up visits will not be conducted to merely gain access to a unit and the unit will remain out of compliance until the next regularly scheduled review.

Section 17

Non Compliance Procedures

Approximately three weeks following a property inspection or review, the owner of a project will receive:

- A letter outlining the findings noted during the inspection or review and requesting additional clarification or documentation; **or**
- A letter which indicates that there were no reportable findings.

The owner may submit follow-up documentation within 30 days of the date of that letter. DCA reserves the right to request follow up documentation within 24 hours for noncompliance relating to health and safety issues. The follow up documentation must address whether the non-compliance issues have been cured or corrected. The definitions of cure and correct are as follows:

- **Cure** - Documentation provided clearly supports the eligibility of the household during the time period in question. Cured findings are not reported to the IRS; therefore, no Form 8823 will be issued.
- **Correct** - Documentation provided establishes the eligibility of the household at a later point in time or a Housing Credit eligible household has later occupied the unit. Corrected findings are reported to the IRS on a Form 8823. The Form 8823 will indicate that the building was out of compliance but was brought back into compliance at a later date.

If an owner of a tax credit project fails to respond to the request for additional documentation or is unable to cure or correct the finding(s), a Form 8823 will be issued to the IRS notifying them of the findings.

IRS Report of Noncompliance – Form 8823

IRS Form 8823: Low-Income Housing Agencies Report of Noncompliance or Building Disposition is the document used to communicate information concerning the project to the IRS. DCA is required to report all findings of noncompliance to the IRS no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. If the noncompliance or failure to certify is corrected within three years after the end of the correction period, DCA will file Form 8823 with the IRS reporting the correction of the noncompliance or failure to certify.

Section 18

OTHER FEDERAL COMPLIANCE

Non Discrimination (Tax Credit and HOME)

The owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, marital status, age or handicap. Additionally, owners of post-1989 allocated projects can not refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All owners, managers and staff members should be familiar with both state and federal civil rights and fair housing laws. An adverse finding of discrimination must be reported to DCA on the Owner's Annual Certification of Compliance. **The Owner should include a copy of the finding included with the annual certification.**

A. Fair Housing and Equal Opportunity

All Tax Credit recipients must comply with any and all federal laws, state and local laws relating to fair housing and equal opportunity including but not limited to the following:

- **The Federal Fair Housing Act** (42 U.S.C. §3601 et seq. (1968)) and the **Georgia Fair Housing Act** (O.C.G.A. §8-3-200 et seq., (1992 Supp.)) requires each owner to affirmatively further fair housing. It is illegal to discriminate against any person because of race, color, religion, familial status, sex, handicap, or national origin: in the sale of rental or housing of residential lots; in advertising the sale or rental of housing or residential lots; in the financing of housing or residential lots; in the provision of real estate brokerage services; or in the appraisal of houses or residential lots. Blockbusting, the use of racial fears and prejudices to entice one racial group to flee a neighborhood when members of a disparate racial group move into the area, is also illegal. Normally, "blockbusting" refers to realtor exploitation of racial tensions.
- **Age Discrimination Act of 1975** (42 U.S.C. §6101 et seq.) which prohibits discrimination based on age.
- **Executive Order 11063** which requires that all action necessary and appropriate be taken to prevent discrimination based on race, color, religion (creed), sex, national origin, familial status or disability in the sale, rental, leasing or other disposition of residential property and related facilities, or in the use or occupancy thereof, where such property or facilities are owned or operated by the Federal Government, or provided with HOME funds and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the U.S. Department of Housing and Urban Development.

- **Title VI Civil Rights Act - 1964** (42 U.S.C. 2000d) which provides that no person in the United States may, on the basis of race, color, or national origin, be excluded from participation in, or be denied the benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Housing and Urban Development.

B. Tenant Relocation and Displacement Policies (Tax Credit and HOME)

Please see DCA's Relocation Manual.

C. Accessibility (Tax Credit and HOME) Please see DCA's Accessibility Manual which is attached.

D. Environmental (Tax Credit and HOME)

Please see DCA's Environmental Manual which is attached in Appendix