

**Georgia Department of Community Affairs
2010 LIHTC Compliance Manual**

Except for the newly released Compliance Directives at the beginning of this manual, there are no changes from the 2009 LIHTC Manual. Always remember to visit our website for the most recent Compliance Manuals, notices and directives. The website can be found at www.tinyurl.com/dcacompliance .

To be notified of changes to the manual or website email: compliance@dca.ga.gov with “Add Me to Your Email List” in the subject line.

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March 31, 2010

To: Owners and Managers of Affordable Housing in Georgia

From: OAH Compliance Department

Regarding: Compliance Directive 2010-1
Recertification at 100% Tax Credit Communities and HERA

Effective Date: 3-31-2010

Directive 2010-1

In the **Housing and Economic Recover Act (HERA)**, enacted 7-30-2008, Congress included a provision that at 100% Tax Credit properties, tenants no longer needed to complete income recertification each year. The Compliance Department has taken a very conservative approach to this regulation and until now has required properties to apply for a recertification waiver.

After much consideration effective March 1, 2010 all 100% Tax Credit communities may take advantage of this regulation provided the DCA Compliance Department is notified using the *Notice Of Ending Recertification Form* found on the website.

Your project is not eligible to end recertification if:

- ***The site includes any market units***
- ***If the site has HOME Funds***
- ***If other programs require recertification***
- ***If the owner and syndicator do not approve ending recertification***

It is important to remember that your site may have other layers of financing that still require annual tenant recertification. The property may also have partners in syndication that must also approve the end to the recertification process.

There are serious consequences for failing to properly certify a household initially, including what the IRS calls "institutional non-compliance." Institutional non-compliance results from poor initial certification practices, or management policies which encourage tenants not to fully disclose all income sources or household members. DCA takes such practices very seriously and will not hesitate to report such policies or lack of due diligence to the IRS.

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Recertification – continued

As a reminder, HERA did not waive student regulations. HERA did not waive the available unit rule and at least one member of the household must be present each of the following years of occupancy for the household to qualify.

See the following steps to avoid errors and protect property credits.

The following practices are required by DCA at sites that decide to take advantage of the HERA provision:

- Complete the *Notice of Ending Recertification Form*
- Complete a detailed initial certification
- Complete one recertification on or up to 120 days prior to anniversary of the effective date.
- After the first recertification, annually complete a tenant self certification using the DCA Mandatory Form titled “Tenant Income Self Certification” listed under mandatory forms. This self certification must be completed each year prior to the anniversary of the household move in.
- Track and provide all HUD LIHTC Tenant Data as required.

Upon reviewing the above certifications, the following action may be required:

- Complete a full recertification if household student status changes.
- Complete a full certification if the household no longer has one original member from initial qualifying.

By following these steps, owners and managers can protect the property credits while taking advantage of the paperwork reduction allowed by HERA.

This directive is automatically incorporated into the LIHTC Compliance Manual. The manual will be updated to include this addition before the end of the next quarter.

Please direct questions about this policy to Colin Ferguson, Compliance Training Coordinator: colin.ferguson@dca.ga.gov

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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.

This manual 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.

The following documents are important source documents provided by federal agencies for LIHTC and HOME properties:

- HUD 4350 Handbook* (Chapter 5)
- IRC Section 42
- IRS Guide to Completing Form 8823*
- Housing and Economic Recovery Act of 2008

They should be used and available to owner representatives and management personnel.* As of January 1, 2009, the DCA Compliance department has the latest versions of the 4350.3 HUD handbook and the 8823 Guide posted on the compliance section of the DCA website. It can be reviewed and downloaded by following this link: <http://www.dca.state.ga.us/housing/HousingDevelopment/programs/compliance.asp>.*

Important Disclaimer

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 a tax accountant, attorney, or other professional as to the specific requirements of the Tax Credit program (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.

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

* It is the responsibility of the owner/manager to ensure that they are using the most current version of all program documents and forms. Federal Agencies such as HUD and the IRS frequently update materials. DCA makes every effort to post these changes to our website in a timely manner.. To keep abreast of all of the changes, the owner/manager should check the HUD, IRS and DCA websites on a monthly basis.

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

ORGANIZATION

The 2009 Compliance Manual is organized as follows:

- I Website, Training and Forms**
 - Low Income Housing Tax Credit Compliance**
- II HOME Program Compliance**
- III Other Federal Compliance Tools**

Please note: This manual is intended to be used in electronic format. It contains many hyperlinks to DCA and non-DCA websites. As always, users should make sure they are using an up to date security web browser with current anti virus software.

TAB I

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Website, Training and Forms

A. WEBSITE

In an effort to make information available to participants in the LIHTC and HOME programs as quickly and efficiently as possible, the Compliance Department posts all general and program wide notices on the Compliance section of the DCA website. The internet address is:

<http://www.dca.state.ga.us/housing/HousingDevelopment/programs/compliance.asp>

The Compliance Department no longer sends postcards or other updates to owners or managers except as specifically required or when correspondence or notices are project specific. Using the website not only allows DCA Compliance to notify all owners and managers simultaneously, it also allows DCA to save on the cost of printing and mailing and it has a positive effect on the environment.

B. TRAINING

The Compliance Department is committed to providing training to the participants in the LIHTC and HOME programs. Current offerings range from basic on-site management and compliance to the advanced principals of the Tax Credit Program. From time to time, Workshops are scheduled when major changes or initiatives are announced.

To see a schedule and list of classes currently offered, go to the DCA Compliance website listed above. This information may be found under Related Links; click on the training link.

Training can also be provided for individual companies at a site and time agreed to with the Compliance Training Coordinator. Information on cost and availability of this type of training is available on the training page documents.

1. 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 prior to the beginning of lease-up. The owner of a Tax Credit property will be required to submit to DCA the Certificate of Successful Completion for the Tax Credits training prior to the project's application for 8609's.

DCA requires Owners as well as an **on-site** 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 as part of the cure for non-compliance.. 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

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submission of the application must attend DCA Relocation Training Seminar prior to the submission of the an application for funding and must successfully complete the Tax Credit Certification Training no later than thirty (30) days after the awards are announced or a letter of determination is issued.. The Relocation Training is a specialty training conducted on a project specific basis.

C. FORMS

1. Mandatory Forms

DCA mandates that certain forms and formats be utilized by LIHTC program participants. As of the date of publication, the following forms are mandated by the Compliance Department:

- Affidavit of Child Support
- AFHMP Affirmative Fair Housing Marketing Plan - HOME
- Annual Owner's Certification - LIHTC
- Annual Owner's Certification - HOME
- Certification of Habitability
- DCA Student Affidavit
- Employment Verification
- End of Quarterly Reports Form
- HUD Form 27061
- HUD Form 27061-H
- LIHTC Required Lease Addendum
- HOME Required Lease Addendum
- Notice of Casualty Loss
- Placed In Service Notification
- Pre-Audit Information - Attchmt A
- Project Concept Change Request
- Property Management Summary
- Request for Recertification Waiver
- Tenant Income Self Certification

This list and the forms themselves are subject to updating or change. To ensure that the current form is being utilized, visit the compliance page on the website. Mandatory forms are found on the main [Compliance](#) page.

Failure to use these forms can result in state non-compliance and increased scrutiny during DCA property reviews. Penalties can include loss of future funding, and a diminished QAP Compliances Scores.

2. Suggested Forms

Suggested forms are forms, while not required for use, are recommended as a best practice. There is no penalty for failing to use these forms provided that all the information requested or required can be presented to DCA.

Suggested forms are subject to updating or change. To ensure that the current form is being utilized, visit the compliance page on the website. Suggested forms are found on the main Compliance page.

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Low Income Housing Tax Credit Compliance

A. INFORMATION TO BE KEPT AT EACH SITE

The following information must be kept at each site. It should be easily accessible to employees and DCA representatives and updated as required:

LURC

- 8609(s) – executed first year forms
- DCA Application for Funding
- Property Management Summary (Mandatory Form)
- Utility Allowance (Current and previous)
- Income Limits (Current and previous)
- 4350 HUD Handbook, Chapter 5
- Copies of All Advertising (For Past 4 years)
- Tenant Selection Criteria
- Copies of Company policy on Reasonable Modification and Accommodation
- Current Annual Owners Certification
- List of all units that meet DCA Accessibility requirements
- DCA Training Certificate (No more than two (2) years old)
- Certificates that staff has attended Fair Housing Training
- Copies of all Applicant Rejection Letters

As applicable, copies of:

- Supportive Services and attendance or participation
- IRS form 990 if the project received points for it in the QAP

B. IMPORTANT TIME PERIODS

Please refer to the Code for specific regulations regarding compliance with IRS Section 42 requirements regarding credit periods, compliance periods, and extended use periods. The Code also regulates Termination of Rent and Income Restriction prior to end of Extended Use Period.

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).

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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 period 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 year 14 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 year 14 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.

C. 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

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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.

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 of 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:

D. 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

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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.

Electronic Storage (Revenue Procedure 97-22)

This Revenue Procedure outlines the type of electronic storage and processes that are acceptable in the Tax Credit Program.

E. PROPERTY STANDARDS

DCA inspects LIHTC properties according to Uniform Physical Conditions Standards (UPCS). Please see the following links for standards:

http://www.hud.gov/offices/reac/products/pass/upcd_comp_list.xls

http://www.hud.gov/offices/reac/pdf/pass_dict2.3.pdf

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The LIHTC program does not use a weighted score as in REAC. Deficiencies that are found during an inspection are reported on IRS form 8823 if necessary, unless self corrected prior to the review. DCA may also comment on and require, under state regulation, additional repairs not listed under UPCS guidelines.

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. The Housing and Economic Recovery Act of 2008 clarifies the general public use test to explicitly allow Tax Credit developments that establish tenancy restrictions for persons with special need, tenants who are involved in artistic or literary activities, and person who are members of a specified group (effective for buildings placed in service before, during and after date of enactment).

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.

F. TAX CREDIT RENT AND INCOME REQUIREMENTS

Minimum Section 42 Set aside Elections. For every tax credit project, the Owner must record a restrictive covenant agreeing 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

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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).

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.

Elimination of 40/50 Rule

The Housing and Economic Recovery Act of 2008 eliminates below-market federal loans from the definition of federally subsidized properties, allowing, 9% Credit on all federally subsidized properties, except for tax-exempt bond financed properties. In such projects, there is no longer a requirement for 40% of the units to be leased to households at 50% or less of the Area Median Income (AMI). This change is only effective of building placed in service after the date of enactment.

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.

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- 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 and to the appropriate year Qualified Allocation Plan (QAP).

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 year 14 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 where the programs 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

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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.

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.

G. INCOME LIMITS

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.

HERA (the Housing and Economic Recovery Act of 2008) defines median income in rural areas as the greater of the area median income and the national non-metropolitan median income, effective for income determinations made after date of enactment, applicable only to 9 percent Credit developments. Please note that at the time this manual was written, properties financed with HOME funds or that have Tax Exempt Bonds may not use these limits.

See the DCA website for the limits and the tools to determine if your project qualifies to use this income limit. If using this income limit, records must be maintained showing the project qualifies to use these limits.

H. CALCULATING INCOME

Please refer to the 4350.3 Handbook, Chapter Five, (or most recent edition), for guidance on calculating and determining household incomes.

Please refer to the mandatory forms that must be used in the verification process and to the FAQ (frequently asked questions) on the main DCA compliance web page.

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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 .**

I. OVER INCOME TENANT RESTRICTIONS (140% Rule) FOR TAX CREDITS

Georgia Over Income Tenant Rule

Please note: previously DCA had 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.**

Tax Credit: The Code provides that a tenant's income may increase during tenancy to exceed 140% of the allowable household income. 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 current 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.

J. EVICTIONS

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

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tenant had an increase in gross rent with respect to a low-income unit not otherwise permitted under Section 42.

Good cause does not include the following: failure to sign a new lease, failure to pay a utility bill that is made payable to the landlord, failure to move if over income, (except in cases of tenant fraud), the loss of job or for a mistake made by management in the qualification process. This is by no means an exhaustive list. Please refer to IRS regulations and the IRS Guide to completing form 8823 for further direction.

Tenant files must be well documented showing why evictions were filed. Copies of all notices leading up to the eviction and copies of all legal evidence must be included. All fees charged to the tenant leading up to the eviction must also be documented in the tenant file.

K. 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:

1. in the case of a unit that does not have a separate bedroom, one person income figures must be used in rent calculation,
- or**
2. in the case of a unit that has one or more separate bedrooms, 1.5 person for each separate bedroom must be used in rent calculation .

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

L. HOUSEHOLD SIZE

Please refer to HUD 4350.3 Handbook, (or most recent edition), for a complete discussion. Also see the FAQ posted on the website for up to date clarifications.

M. FEES

Application Fees: Only the amount the owner incurs may be charged for an application fee. Please refer to the FAQ and the 8823 Guide for a more complete explanation.

Non-Optional Services. Any charges for services that are considered to be optional not to low-income tenants must be included in gross rent. Please refer to the FAQ and the 8823 Guide for a complete explanation.

Supportive Services and Fees. Owners may pledge to provide various supportive services in their Application. Fees cannot be charged for supportive services that are provided to the tenants.

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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.

N. CALCULATING UTILITY ALLOWANCES

New Utility Regulation. The final regulation amending the utility allowance regulations for Section 42 properties was effective July 29, 2008 or January 1, 2009 depending on the tax year of the property. This new regulation may be found on the DCA website. It is DCA's understanding that this regulation may be amended during 2009. Please check the DCA Compliance Website for updates regarding the possible revisions or changes.

This is a very complicated regulation. DCA recommends that the owner read the regulation and attend a DCA Utility Allowance Workshop prior to submitting revised utility allowance requests. Please check the DCA website for Utility Allowance Training opportunities.

Tenant-Paid Utility Allowances. If the cost of any utilities (other than telephone, cable television and internet) 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.

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.

DCA HOME and 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 several other methods of calculating utility allowances available.

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4. *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.)

If no local PHA is located in the projects jurisdiction then the owner may elect to utilize DCA’s Section 8 utility allowance.

5. *A written allowance established by a Utility Provider* based on actual usage may also be used.
6. *The Housing Credit Agency (DCA) may provide an allowance;* DCAs Office of Affordable Housing is in the process of examining the cost involved in such and allowance. The regulation states that the owner of a project requesting such and allowance will be responsible for the costs associated with such allowance. DCA is making every effort to ensure that the cost is as reasonable as possible.
7. *The HUD Utility Schedule Model:* This model may be found at www.huduser.org/datasets/lihtc.html.
8. *An allowance calculated by an Energy Consumption Model:* the property owner may retain either a properly licensed engineer or a qualified professional approved by the HCA (DCA) (with no identity of interest to the owner) to calculate an estimate using an energy and water and sewage consumption and analysis model. The model must, at a minimum consider unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the buildings for a 12-month period.

The new revisions also state that submetering and RUBS will no longer entitle an owner to create/claim a utility allowance. In order to claim an allowance the cost of the utilities must be paid directly by the tenant to the utility provider, not by or through the owner of the building. Owners that have been using such a system will now have to discontinue the use of a utility allowance and not bill the tenants for the cost of utilities. Owners will now pay the utilities but owners may charge full gross rent to the tenants.

Please note that Ration Utility Billing (RUBS) is not allowed at GA Tax Credit or HOME properties.

O. TENANT CERTIFICATION - RECERTIFICATION

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 effective date. The effective re-certification date is the annual anniversary of the move in date specified on the Tenant Income Certification form. See the IRS Guide to completing Form 8823 for additional discussion

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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))

Tenant Income Recertification and HERA (the Housing and Economic Recovery Act). In Georgia the elimination of the annual income recertification requirement for 100 percent Tax Credit developments is subject to Compliance Department approval. To apply for recertification exemption go to the Compliance section of the DCA website under mandatory forms and complete the Request for Recertification Exemption. Until the property is approved for the waiver the tenant recertification must continue.

DCA also requires that the following forms be completed at certification and recertification: Student Affidavit, (application/recertification application), HUD form 27061- H (application/recertification) and as applicable: self certification of Employment, Child Support Addendum, Lead Based Paint addendum. Additional forms and documents may need to be completed to properly document the tenant's eligibility. Attend a DCA compliance training for the latest updates.

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 but must verify the student status and have the tenant complete a tax credit addendum.
- 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, gross tenant-paid rent documented and a tax credit addendum completed.

P. VACANT UNIT RULE AND NEXT AVAILABLE UNIT RULE

Please refer to The Code and the 8823 guide for a complete explanation of implementing the Vacant Unit rule

In addition to IRS regulations, DCA mandates that all units be made ready for occupancy within 30 days of the last qualified tenant vacating the unit. Owners must keep documents showing that vacant units are ready for occupancy and being marketed to low-income tenants.

Down Units Vacant units not ready for occupancy within the above stated guidelines may be considered down units and reported to the IRS on form 8823. Units with major Health and Safety violations will also be reported as such. All units and common areas must satisfy UPCS requirements..

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Notice of Causality Loss DCA must be notified within 24 hours if the loss results from a major event such as fire or flood, the loss results in a household being transferred or removed from the unit, or if an occupied unit will not pass a Uniform Physical Conditions Standards inspection for more than 48 hours: [click here for form.](#)

Q. TRANSFER OF OWNERSHIP

DCA must be notified of **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 Property Information 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.

R. STUDENTS

DCA recognizes all five student exceptions. A Student Affidavit must be completed with each recertification. Please see the DCA website for the current student forms.

See the HUD 4350.3 Handbook, the 78823 guide and the Compliance FAQ for a detailed discussion of student income. Even if the student exception is satisfied the student(s) must still be income eligible.

S. 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

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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.

T. 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).

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Please note that the issuing of 8609s does not indicate that the project meets all accessibility requirements or that DCA approves any in place project changes that were not approved by DCA. It signals that to the best of DCAs knowledge that at that time, the project meets requirements. The owner is ultimately responsible for meeting all Federal and State 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.

U. COMPLIANCE MONITORING REVIEWS

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 three days 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. **IRS form 8823 line 11n will be completed for each project that fails to respond to requests for monitoring. It is the responsibility of the owner/manager to contact DCA with changes in contacts or mailing/emailing addresses.** Under the Suggested forms section of the DCA website is a Property Information Form that may be used and emailed to DCA Compliance.

DCA monitors for compliance with State and Federal requirements and agreements made in the Formal Application and LURC.

Also see Section C (Forms) for additional requirements.

V. OWNER REPORTIN REQUIREMENTS

Under the certification provision, the owner of a low-income housing project is required to certify at least **annually** to DCA on DCA mandated form. The form for 2008 certifications has been. The new form can be found here: [click here](#) or visit:

www.dca.state.ga.us/housing/HousingDevelopment/programs/complianceMandatoryForms.asp

Annual Owner Certification Changes

Effective January 1, 2009, Owner certifications are due on the 28th of February covering the previous calendar year. This certification is due throughout the LIHTC compliance

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period. Please note that the annual certification covers the previous calendar year, not the upcoming year.

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 are due on the 15th of each month following the end of the quarter. For example, the report for the first quarter (January through March) is due on April 15th and the report for the second quarter is due on July 15th.

Quarterly reporting waivers were introduced late in 2008. See the Mandatory forms section of the DCA website for the Quarterly Report Exemption Request. Unless an exemption has been granted by DCA, quarterly reporting is required.

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

W. PROPERTY INSPECTIONS

Tax credit 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. 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.

Units unavailable for inspection From time to time, for reasons not the fault of the owner, DCA will be unable to inspect a unit. The owner/manager will then complete with the tenant a Certification of Habitability. If tenants are not given proper notice of possible physical inspection or if there is a pattern of inability to gain access, the units 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.

The reviewer/inspector will wait a reasonable time for entry to be gained to any given unit. Reasonable will be determined by the inspector at the site. Cooperation and preparedness of management up to that point will be a major determining factor. Once a unit has been skipped during an inspection, time constraints prevent an inspector from going back to the unit.

Tenant refuses an inspection The unit will be skipped if a tenant refuses inspection in the presence of a DCA inspector. The right for management to inspect a unit should be in all leases. At the time of the attempt to enter the unit, the Owner's representative should inform the tenant of a

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possible lease violation if access is denied. If at that time, the tenant refuses the inspection the unit will be skipped. The owner/manager should not instigate an argument with the tenant. Evidence that the violation of the lease was pursued and photographs of the unit along with a Certification of Habitability (signed by tenant and owner representative) must be submitted as a cure.

Follow up inspections, of increased frequency will be scheduled for site with significant physical non-compliance.

X. RESPONDING TO A “NOTICE TO CURE FILE AND PHYSICAL REVIEW FINDINGS” LTR.

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.

Generally, 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 corrected, uncorrected or no non-compliance existed. The definitions are as follows:

No Non Compliance Exists

Generally this is the most difficult response for an owner to present. This response is presented if the owner feels an error in fact or interpretation of The Code and/or QAP has occurred. DCA evaluates this response on a case by case basis.

Corrected

For Files: The eligibility of the household during the time period in question has been established. Only in cases where the household is or was not eligible will an IRS Form 8823 be issued.

Physical: documentation provided clearly supports that the violation is corrected. An IRS Form 8823 will be prepared showing the earliest possible out of compliance date, and the date the unit was back in compliance

Uncorrected

For Files and Physical. No documentation has been provided, or unacceptable documentation is received. The IRS Form 8823 will indicate that the building is out of compliance.

IRS Report of Noncompliance 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 close of the review 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

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Form 8823 with the IRS reporting the correction of the noncompliance or failure to certify. In the case of where the unit is out of compliance, it is the responsibility of the owner to present to DCA an acceptable proof of cure at a later date. DCA will not follow up once an 8823 has been filed.

Y. ADDITIONAL COMPLIANCE ISSUES

1. HERA Housing and Economic Recovery Act of 2008 This manual has referenced the bill several times. Industry experts and DCA are still formulating and adjusting interpretations and regulations in response to this Act and other recent legislation. Monitor the DCA website for the most current information and responses.

2. 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.**

3. Unit Transfers. Your first reference for unit transfers should be the IRS Guide to Completing Form 8823

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.

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If a current resident requests to move to a different unit in a different building, it is a DCA Best Practice that 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.

If, for reasons not the fault of the tenant, the resident requires a transfer to a unit in a different BIN and they are not qualified at time of transfer, please contact DCA, especially in cases of a Casualty Loss or when the tenant requires a transfer because of a disability

Please note that in a lease-up situation, one tenant household cannot be used to qualify more than one unit.

Documenting Transfers on the Building Status Report:

Within the same building

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.

Not within the same building

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.

4. Move out fees, Move out records and fees

“Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining LIHC units in a manner suitable for occupancy.” Chapter 11, Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

In 2008, DCA site reviews indicated that excessive fees were being charged to tenants at move-out. Fees are acceptable only if damages exceed reasonable wear and tear. In cases where excessive wear and tear is well documented (photos), the Owner/Manager must be able to provide documentation of the actual cost for repair or replacement of non-capital items. In the case of capital items, replacement/repair may not exceed the actual pro-rated replacement cost based on expected life span.

Documentation of charges should include copies of bills from vendors, with contact phone numbers, showing that the work was completed. **(If a vendor fails to cooperate with a DCA investigation, the bill will be disallowed, and the charge included in rent.)**

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Move-Out Cost Manual

Each site must keep a Move-Out Cost Manual The following is a list of standards and materials to be kept in the manual.

Section 1: Standard charges. For standard charges to residents at move out, such as drip pans, light bulbs, hardware and non-capitol fixtures, a price list by vendor must be maintained at the site. This manual may be updated at any time, and records must be kept for three years.

Section 2: Labor. If labor is to be billed to a resident, it must be billed on an actual cost basis. Only time in excess of the normal turn process should be billed.

Example: A tenant moves out after one year. It is determined that the tenant did damage in excess of normal wear and tear. If the average turn time for a unit is 4 hours, only time in excess of 4 hours may be billed to the tenant. The time to complete the task should be reasonable, and a copy of time card or sheet kept with the file.

Section 3: Outside contractors. A) The property and vendor should agree in writing that the vendor will respond all questions posed by DCA regarding a bill or service. A copy of this agreement must be included in this section. When an outside contractor is being used to make repairs to a unit (turn key, plumber, electrician), a copy of their bill must be maintained with the resident move out file. In the case where charges from normal turnkey vendors are being billed, it should be clear what the normal fee is, and what excess fee was charged. The bill should be signed by the vendor.

Section 4: Written management company policy on move-out charges and adjustments.

Resident Files

Move-In

All resident files should have a copy of the signed move-in condition form. Each line detail an item or unit amenity should be initialed separately. Blank forms with "OK" written once are not acceptable. The form should be sufficiently detailed to document the unit condition at move in.

Move-Out.

A detailed report of the move-out condition should be in all files of previous tenants. Residents must be notified of their right to conduct a move out inspection with the management. A copy of this notification should be in the file.

A copy of the letter notifying the resident of proposed charges, and their legal rights under Georgia Landlord Tenant Law must be in the file. The charges in this notice must be itemized and documentation of each charge must also be in the file.

If the owner/manager is making damage claims in excess of the deposit, then pictures must be included in the file as well as complete documentation of all the charges.

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Unjustified charges will be reported as a rent over charge on form 8823

5. 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.**

1. 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

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under any program or activity receiving federal financial assistance from the U.S. Department of Housing and Urban Development.

- 2. Tenant Relocation and Displacement Policies (Tax Credit and HOME)**
Please see DCA's Relocation Manual.
- 3. Accessibility (Tax Credit and HOME)** Please see DCA's Accessibility Manual which is attached.
- 4. Environmental (Tax Credit and HOME)** Please see DCA's Environmental Manual which is attached in Appendix