

Chapter 3

Owner's Responsibilities

1. Reports

Effective 1-1-2010, a report / fee will be considered late if it is not in the OHFA office on or before the due date. OHFA will consider a report faxed or emailed to tax credit compliance on or before the due date as being received on-time as long as the original is also postmarked on or before the due date. **OHFA must have original signatures on all reports.**

In accordance with Section 42 of the IRS Code and OHFA Chapter 36 Program Rules, the owner of the development receiving a tax credit allocation is required, by acceptance of the allocation, to provide the following reports listed in this section.

A. Quarterly Owner Certification

Owners must begin quarterly reporting the FIRST FULL calendar quarter after the last building is placed in service and continue to report for the subsequent 3 quarters. The following are the quarterly dates:

1st quarter: Jan 1 - Mar 31 due no later than **April 10**

2nd quarter: April 1 - June 30 due no later than **July 10**

3rd quarter: July 1 - Sept 30 due no later than **Oct 10**

4th quarter: Oct 1 - Dec 31 due no later than **January 28**

FOR EXAMPLE:

PIS 10/15/03 First report = 10-15-03 thru 03-31-04 **DUE Apr 10**

Second Report = 04-01-04 thru 06-30-04 **DUE July 10**

Third Report = 07-01-04 thru 09-01-04 **DUE Oct 10**

Fourth Report = 10-01-04 thru 12-31-04 **DUE Jan 28**

ANNUAL REPORT = 01-01-05 thru 12-31-05 DUE 02-15-06

PIS 01/25/04 First Report = 01-25-04 thru 06-30-04 **DUE July 10**

Second Report = 07-01-04 thru 09-01-04 **DUE Oct**

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Third Report = 10-01-04 thru 12-31-04 **DUE Jan 28**

Fourth Report = 01-01-05 thru 03-31-05 **DUE Apr 10**

ANNUAL REPORT = 01-01-05 thru 12-31-05 DUE 02-15-06

The quarterly owners report can be found in appendix H, and must be

accompanied by copies of Income Certifications for each Tenant reflecting that quarter and new move-ins along with the completed Unit Data Sheet.

If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated. Owners will be required to report quarterly for no less than four quarters AND until the property has reached the owners' set-aside, and has initially leased all tax credit units.

B. Annual Owner Certification (AOC)

Owners must manage the development in accordance with the Code, the Rules, other applicable regulations, and any agreements reached with OHFA during the allocation process for the duration of the compliance period and must certify to this fact. This certification for the preceding calendar year shall be in a form prescribed by OHFA, must be received no later than **February 15 of each year**, and must be accompanied by the Unit Data Sheets. An addendum to the AOC must be completed by the non-profit entity if question #14 on the AOC is answered yes. A copy of this Annual Owner Certification report can be found in Appendix I. The cover pages to the certification should provide the current contact information.

HUD Demographic Data Collection

OHFA is required to report to HUD annually the race, ethnicity, family composition, age, income, use of rental assistance, disability status and amount of rental payments of tenants. To date of this publication, HUD has not issued formal guidance as to the specifics of how this data is to be collected and reported.

C. Unit Data Sheet

A separate Unit Data Sheet must be provided for each building in the development (to be updated at least on a monthly basis), and will be provided with the Quarterly and Annual Certifications and **upon any request from OHFA**. The Unit Data Sheet is historical; therefore an apartment may require several lines to record the ENTIRE history of a given apartment for that reporting year. Note:

each sheet only needs to contain the current reporting period's activity (recertifications, move-outs, and move-ins for that year). NEVER INCLUDE FUTURE DATES ON THE UNIT DATA SHEET.

The Unit Data Sheet should include the following information for each unit:

- A. Unit number
- B. Square Feet
- C. Bedroom size
- D. Head of Household
- E. Household Size at move-in
- F. Move-in Date
- G. Gross Income at move-in
- H. * Last Certification Date
- I. * Current Recert Date
- J. * Current Recert Income
- K. * Household size at recertification
- L. Tenants Rent Portion
- M. Current Utility Allowance
- N. Move-out date
- O. Set-Asides (50%, 60%, Market rate)
- P. Type of unit (homeless, elderly, exempt)
- Q. Comments (eviction, notice, late recert, be sure to attach back-up of due diligence i.e. 90, 60, 30 day notice)

A copy of the Unit Data Sheet with instructions can be found in Appendix J.

Effective 1-1-2008, all TIC's, including Rural Housing TIC's, must be completed within 120 days of the anniversary date of move-in. *For projects that are 100% tax credit and eligible to eliminate re-certifications, the above statement does not apply. In addition, OHFA will not monitor columns H – K on the unit data sheet.

D. Management and Ownership Changes

- Management changes must be submitted to OHFA at least 60 days prior to the change and are subject to approval by OHFA.
- Ownership changes require approval of the Board of Trustees. These changes must also be submitted at least 60 days PRIOR to the change. There is a 3% or \$2500 fee to transfer a site, see

Chapter 36 Rules, section 330: 36-4-3(a)(9). Please follow the procedures in the Chapter 36 Rules, section 330:36-6-1(a)(8). If a management or ownership change is anticipated, contact OHFA for the proper forms to complete and information needed.

E. Casualty Losses

Owners must report all instances of casualty loss to OHFA as soon as discovered. Casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual (e.g. car accidents, fires, hurricanes, tornadoes, storms, vandalism etc.). The common areas, units, or buildings are unsuitable for occupancy. Property damage such as siding off a building is not a casualty loss.

2. Compliance Fees and Tax Forms

A. Compliance Monitoring Fees

Owners must pay an annual fee for the applicable year that is invoiced, which shall be **payable on or before January 28** for each year during the Compliance Period and Extended Use Period. The applicable fees can be found in the Chapter 36 Rules in section 330:36-4-3(a)(7).

B. Tax Forms

Once a tax credit property is placed-in-service and OHFA issues the IRS Form 8609 to the owner, the owner is responsible for submitting the appropriate IRS forms to claim the credit. Copies of the **Tax Forms 8586, Completed Part II 8609, and 8609-Schedule A**, as filed on behalf of the ownership entity with the IRS for the **FIRST CREDIT YEAR** must be submitted to OHFA on or before **May 10th** of the year due to The Service. Copies of the filed forms may be requested by OHFA for any year if deemed necessary. NOTE: Make sure the 8609's submitted to OHFA with tax forms are signed and dated at the bottom of the forms.

Failure to comply with any of the above requirements will result in the issuance of an IRS Report of Noncompliance (Form 8823).

3. Record Keeping

A. **Tenant Files**

Should include but are not limited to:

- Rental Application
- Current Dwelling Lease and addendums
- Tenant Income Certifications
- Income and asset Verifications
- Release & Consent Form

- ★ Owners/Managers should develop a standard method for organizing tenant files. The preferable order would be:

Top to Bottom

Left Side

Rental Application
Release & Consent Form

Right Side

Tenant Income Certification
Student Verification (if applic.)
Asset Verification
Income Verification
Child Support Verification/
Divorce Decree (if applic.)
Dwelling Lease

- ★ It's a good idea to use colored paper to separate the paperwork for each year.

B. **Development Files**

Owners must maintain all tenant files for the development. Documenting the eligible basis and qualified basis of each building for the **first year of the credit period** is very important. These documents must be available for auditing purposes and kept for at least six years after the tax filing date for the last year of the compliance period, for a total of 21 years.

The character and use of non-residential portions of buildings that are included in the development's eligible basis must also be documented. Owners must establish that tenant facilities included in the eligible basis are available to all tenants and that no fee is charged for the use of these facilities.

4. Occupancy Rules

A. Project Occupancy Restrictions

Tax credit developments must contain enough qualified tax credit units to satisfy the chosen minimum set-aside by the end of the tax year following the year that the development was placed in service (1991 and later years' developments).

If a greater set-aside election than the minimum is selected by the owner during the application process, then this percentage is the Owner's set-aside election. The Owner's set-aside election is specified in the LIHTC Application for Tax Credits. NOTE: The owner must ensure that the minimum set-aside election specified in the application is maintained throughout the compliance period.

If occupancy in a tax credit development falls below the IRS minimum set-aside percentage (20-50 or 40-60), the development will be deemed out of compliance and reported to the Internal Revenue Service on an IRS Report of Noncompliance (Form 8823). The owner may be subject to credit recapture by the IRS, even if the violation is corrected before the end of the calendar year.

If OHFA cannot determine compliance on a property, the staff will request the 1st year files. In the event that this does not satisfy our compliance regulations, OHFA will then turn the matter over to the IRS for their determination.

B. Compliance with Fair Housing and Equal Opportunity Laws

All properties must comply with applicable federal, state and local fair housing and anti-discrimination laws in the marketing and provision of housing. OHFA may request written documentation to evidence the owner's compliance with these laws. Federal laws that may be applicable to a development include, but are not limited to, the Fair Housing Act as amended by the Fair Housing Amendments Act of 1988, Section 504, the Americans with Disabilities Act, and any further amendments of said acts. These laws include provisions for construction and design of multifamily developments as well as property management.

C. Changes in Family Size

The addition of a new member or new members to an existing low-income household requires the income certification of each new member of the household, including third party verification (this does not apply to anyone under the age of 18). Obtain the new household member's information on an application (i.e. felony and student status) along with any applicable verification's. The income of the new tenant or tenants must then be added to the income disclosed on the existing household's tenant income certification. If the new member's income added to the existing household exceeds the income limit, you may still allow the additional members to move-in. If the total income combined exceeds 140% of the income limit, the Available Unit Rule must be applied in that building. The next complete recertification (if applicable) is due when the existing household's TIC expires, which should be the anniversary of move-in. *However, if all of the original members ever move out, the new members must initially qualify.

*A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. If it is determined that a household intentionally manipulated the income limit requirements, the unit may no longer be treated as low-income.

D. Transfers

When a household moves to a different unit within the same building, the newly occupied unit adopts or swaps the status of the vacated unit.

*In addition a household may move to a different unit, in a different building, within the same low-income project without initially re-qualifying. The newly occupied unit adopts or swaps the status of the vacated unit. If the recertification process is applicable, the household income cannot be over 140% of the current income limit prior to the transfer. The last income certification may be used to verify that the household income is not greater than 140% of the current income limit.

**The next complete recertification is due on the anniversary date of the original move-in to the project (not the move-in date to the new unit). If the household income is above 140% at any recertification after the

transfer to a new building, the Available Unit Rule must be applied.

* OHFA will allow the transfer between buildings only when the buildings in the development have been chosen on the 8609's as part of a multiple project. Owners should use discretion when transferring households on a mixed-income property.

**On a 100% tax credit property, a recertification is not required by OHFA. Therefore, if a transfer is requested on a 100% tax credit site, in which all buildings have been chosen as part of a multiple building project, as long as the household was not over-income at move-in, the transfer will be allowed by OHFA.

E. Lease Requirements

In general, occupancy must be provided on a non-transient basis to the general public. However, provisions for housing for the homeless and Single Room Occupancy (SRO) developments are contained in 28 U.S.C., Sect. 42(i)(3)(B)(iii) and (iv). This means that, in certain cases, a 30-day lease can be signed by tenants of the low-income portion of the property and still qualify for tax credits. Tenants in all other types of developments must sign an initial lease term of six months, after which a new lease would not need to be executed as long as there are provisions in the initial lease that contain the required lease language that addresses the lease renewal: i.e. month to month leases, six month leases, etc. (for more information see Chapter 4, page 9).

F. Student Households

Households made up entirely of full-time students are not eligible to live in units receiving tax credits. There are five exceptions to the full-time student restriction (Section 42 (i)(3)(D)). These exceptions are described in detail in Chapter 5 Page 14 of this manual.

G. Available Unit Rule (building rule)

If the household income in a low-income unit increases above 140% of the current maximum allowable income limit, the next available unit of comparable or smaller size in the **building** must be rented to a qualified household in order to remain a set-aside unit. The unit will cease to

comply as a low-income unit if any residential rental unit in the building (of comparable or smaller size) is occupied by a new resident whose income exceeds the income limitation.

In 100% LIHTC projects, this rule should have no impact since every unit **must** be rented to tax credit eligible household. In the case a mistake is made and a unit is rented to a market household, all over-income units in that building lose their status. In less than 100% LIHTC projects, market rate units may have to be rented to LIHTC qualified households in order to remain in compliance.

H. Vacant Unit Rule (project rule)

If a low income unit becomes vacant during the year, reasonable attempts must be made to rent that unit or the next available unit of comparable size or smaller size to tenants having a qualifying income before any units of comparable or smaller size in the **project** are rented to non-qualifying tenants. **Note:** If the project is a 100% set-aside LIHTC project, non-qualifying tenants are **not allowed under any condition** without jeopardizing the credit.

OHFA staff will request to see all reasonable attempts that were made to rent a vacant tax credit unit if the unit has been vacant for more than 90 days. The property must document all attempts made and keep documentation on file. Examples of reasonable attempts are: signage, open house, advertising, rent concessions/incentives, outreach in community, waiting list, retaining marketing consultant in area. Under no circumstances can a tax credit unit be down. It must always be available to the general public and suitable for occupancy at all times. (See IRS Reg. 1.42-9 and 42(i) (3) (B) (i-ii) of the Code) **If the Vacant Unit Rule is violated, all vacant units previously occupied by qualified households lose their low income status and are not considered qualified units.**

I. Buildings with Four or Fewer Units

Buildings with four or fewer units are not eligible to receive tax credits if the owner of the property, or a relative of the owner, occupies one of the units. An exception exists if the buildings are bought or rehabilitated according to a state, local government, or qualified non-profit's development plan. Developments in this category are subject to limitations on the applicable amount of credit.

J. Equality Between Low-Income and Market-Rate Units

The amount of credit claimed for the low-income units in a development is contingent upon the comparable quality of the low-income and market-rate units. The following conditions apply:

- the low-income units of a development must be intermingled reasonably with all other dwelling units and on all floors of the building(s).
- the low-income units shall be of a quality, and offer a range of sizes and number of bedrooms, comparable to units which are available to other tenants.
- tenants in the low-income units shall have equal access to and enjoyment of all common facilities of the development.
- all units must be maintained to ensure a safe and sanitary condition.

K. Employee / Manager / Exempt-Staff Units

According to Revenue Ruling 92-61, the cost of an employee unit is included in the eligible basis of a building, but excluded from the applicable fraction. This means that a staff person could live on site in a unit without qualifying under the income limits. If an owner is charging rent for an exempt/employee unit, the IRS may determine that the unit is not reasonably required by the project because the owner is not requiring the employee to occupy the unit as a condition of employment. **The owner must request an employee unit through OHFA BEFORE one can be claimed.** Upon approval, owners will be allowed to have an employee unit on site. Employees are always allowed to qualify just as the other low-income households. The purpose of this rule is to allow employees to live on site who can not qualify under the income guidelines

and still provide a benefit to the property (i.e. maintenance, security, manager). Effective 2-1-07, rent cannot be charged for an employee unit, whether such rent is paid by the employee or deducted from the employee's paycheck. If an owner is charging rent for an employee unit, the IRS may determine that the unit is not reasonably required by the project because the owner is not requiring the employee to occupy the unit as a condition of employment. By not charging rent, the unit is considered a facility reasonably required for the benefit of the project and the employee is not required to be income qualified. Free or discounted rent to an employee must be included as income if their household is being certified as tax credit qualified.

L. Model Units

A unit on a tax credit property being claimed as such and being held as a full time model is prohibited. According to the Code, once a unit is tax credit occupied, it will remain as such as long as reasonable attempts are being made to rent that unit to a qualified low-income household and as long as the next available unit of equal or smaller size is occupied by a qualified low income household. If potential tenants request to view a model apartment, OHFA suggests creating a temporary model which applicants are aware is available for lease.

M. Homeless Units

Proof of one or more of the following will satisfy the Homeless definition:

- a. The tenant stayed in a shelter for at least seven (7) consecutive nights. A written statement on letterhead from the shelter manager stating this must be obtained; or
- b. If the town does not have a shelter, a written statement from a social service agency attesting to the fact that the prospective tenant is homeless, and no shelter exists to adequately shelter their family must be obtained; or
- c. If the town has a shelter, but it is filled to capacity, a written statement from a social agency attesting to the fact that the prospective tenant is homeless and that the shelters in the immediate area are filled to capacity must be obtained.

A homeless household lacks a fixed, regular and adequate nighttime residence; AND has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as a sleeping accommodation for human beings; OR

An individual or family who has been displaced due to a major disaster declared by the President of the United States AND receives temporary federal housing assistance within the state of Oklahoma AND has a valid personal federal disaster identification number issued by the Federal Emergency Management Agency (FEMA).

Homeless households are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i) (3) (B) (iii) (I) **of the Code.**

N. Supportive Services and Programs

If credits were allocated to a development and points were given to an owner that promised to provide supportive services and / or other programs to the residents of the community, these services and programs must be offered to the current resident(s) no later than after the first household occupies a unit in the project. **Offering programs and services to residents before minimum set aside is met, means to survey and document interest. If an interest is present, program/service must be provided.** Once the property reaches its minimum set-aside, services and programs must be provided, regardless if an interest is present. This will be monitored beginning with 2007 allocations.

O. Special Needs Units

Effective 1-1-08, any unit promised in the original application to be set-aside for a special need (homeless, disabled etc.) must have been vacant for a period of one year before it can be rented to a tenant that does not have the designated special need. In addition, the owner must show ongoing due diligence in attempting to locate a special needs tenant for the unit. Due diligence must include, but is not limited to, monthly advertisement in a newspaper of general

circulation in the area, and proof of at least monthly contact with providers of services for individuals with the designated special need, including advising such providers of the number and size of units available, the rents charged for the units, and the income limits for prospective tenants. Service providers must also be contacted immediately upon a special needs unit becoming available. OHFA may waive this requirement if the owner can demonstrate that continued compliance with this policy may cause a unit to lose tax credits or rental subsidy, but in no case will the requirement be waived if the unit has been vacant for less than 60 days. The waiver request must be submitted in writing to OHFA staff. *If special needs households do not occupy the number of units promised in the application upon approval of a waiver or the expiration of the one year period, the next available unit must be marketed to a special needs household.*

5. Placing a Property in Service

The minimum set-aside test must be met by the end of the first year of the credit period. This can be the year the building was actually placed in service or the next year. This is at the election of the owner. A building must be placed in service a FULL month before credits can be claimed.

A. New Construction: The placed in service (PIS) date is after the certificate of occupancy is issued. As the units are ready to be rented, they must be leased to households whose income is certified at or below the maximum income limits or credits can not be claimed on the unit for that time.

B. Acquisition / Rehab Properties: The PIS date is an arbitrary one. If the building is inhabited, the initial certification can be completed within 120 days after the date of acquisition using the income limits in effect on the day of acquisition.

C. Rev-Proc 2003-82 (Safe Harbor): This procedure applies for buildings that begin their credits in the deferred year. This is a “safe harbor” procedure that is to be applied if the property has households

occupying units whose incomes exceed 140% of the maximum income limit at the beginning of the deferred year. The AVAILABLE UNIT RULE must be applied at the beginning of the deferred year. The household will not need to vacate.

6. Determining Family Income

All families occupying a low-income residential rental unit in a building receiving tax credits must declare all sources of income that are received by the household. The total household income must be at or below the income limits established by the Code. OHFA can provide a copy of these income limits. The owner must determine if a family earns the correct amount of annual income to be eligible to live in the tax credit development. Determination and the verification requirements of income are discussed in detail in Chapter 5 of this manual.