



Oregon
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To: LIHTC Owners and Management Agents
From: Tonya Evans, LIHTC Compliance Technical Advisor
Program Compliance Section
Date: December 13, 2010
Re: Program Updates

The Program Compliance Section has recently updated and revised the [LIHTC Compliance Manual](#), mostly to accommodate clarifications made and additional guidance provided by the IRS with their October 2009 revisions to The Guide for Completing Form 8823. The manual was posted to the OHCS website on November 19, 2010. There were several minor grammatical and reformatting alterations made. In addition, more examples have been included in Chapter 5 to assist owners and agents with the determination of household income. Any changes made have been highlighted and will remain so throughout the first quarter of 2011.

Please remember that the LIHTC Compliance Manual is a “working document” and that we do our best to stay current as industry changes take place. It is ultimately up to the owner of a low income housing credit property to ensure that Section 42 compliance is maintained.

LIHTC Form Additions/Revisions

In order to maintain fairness and uniformity, the information contained within the OHCS-Required forms must not be altered. Owners and agents opting to create their own forms (in lieu of using our Recommended forms), must include **at the very least** all information contained within the OHCS-Recommended forms. Please review the following changes/additions:

Required Forms:*

- **Owner’s Certificate of Continuing Program Compliance (CCPC) (OHCS.1 & OHCS.1a)** – both forms revised on 10/06/10 to include a link to the revised Annual Reporting Spreadsheet (OHCS.10), now an OHCS-Required form.
- **Tenant Income Certification (OHCS.2 and OHCS.2a)** – revisions were made (on 10/01 & 10/25/10) to accommodate the collection of tenant data as required by legislation within the Housing and Economic Recovery Act of 2008 (HERA). Instructions for completing the revised TIC were separated and introduced as form OHCS.2a.
- **Applicant/Tenant Questionnaire (OHCS.3)** – removed the “Anticipated” column, added more options to choose from, and expanded on existing options (revised on 03/16/10). Also, converted into fill-able, PDF format.
- **Under \$5,000 Asset Certification (OHCS.4)** – no changes.
- **Annual Certification of Student Status (OHCS.5)** – revisions made on 03/16/10 for clarity and to convert to fill-able, PDF format.
- **Student Status/Financial Assistance (OHCS.6)** – no changes.

- **Employment Verification (OHCS.7)** – converted to fill-able, PDF format on 04/09/10.
- **Unemployed/Zero-Income Certification (OHCS.8)** – this form was revised on 11/05/10. OHCS will be providing additional instructions on how to complete specific areas of the form upon receipt of additional guidance provided by the Employment Division. Until then, applicants who have been unemployed for 12 months or less **and** are not receiving unemployment benefits **and** do not receive any form of unearned income should be required to obtain or submit one or more of the following items in order for the owner/agent to adequately determine future household income based on income earned during the 12 month period preceding the effective date of the certification:
 - Termination of Employment Verification
 - Printout from the Employment Division for the most recent 12 month work history
 - Third party verification from the Employment Division indicating they have no work history on file for the applicant/tenant
 - Most recent tax return (if filed within the 12 month prior to certification effective date)
 Additional revisions to this form will be dependent upon guidance received by the Employment Division and will be done as soon as possible.
- **Unit Transfer Certification (OHCS.9)** – revised on 03/30/10 to clarify existing components and to convert to a fill-able, PDF format. The form must continue to be signed by hand with ink.
- **Annual Reporting Spreadsheet (OHCS.10)** – now a required form and was revised on 09/22/10 to include additional fields designed to facilitate the collection of tenant data as mandated by HERA (replaces the former recommended forms, R.2 and R.2a).

Recommended Forms:*

- **Affidavit of Pregnancy (R.1)** – converted into a fill-able, PDF format on 03/16/10.
- **Assessment of Household Demographics (R.2)** – new recommended form created to assist owners/agents with collecting household demographic information for purposes of complying with the tenant data collection process.
- **Asset Verification (R.3)** – no changes.
- **Certification of Child Support and/or Alimony (R.4)** – revised on 03/25/10 to include more spaces to list children, converted into fill-able, PDF format, and designed the form to be more user-friendly for both the applicant/resident and the owner/agent.
- **Compliance Checklist (R.5)** – no changes.
- **Divestiture of Assets Verification (R.6)** – no changes.
- **Estrangement/Separation Certification (R.7)** – no changes.
- **Live-in Caregiver (R.8)** – converted into fill-able, PDF format on 03/16/10.
- **Periodic Assistance Verification (R.9)** – no changes.
- **Project Summary Sheet (R.10)** – new form created on 11/15/10 to assist owners/agents with verifying a variety of different types of annuity accounts an applicant/tenant may have.
- **Public Assistance Verification (R.11)** – no changes.
- **Public Housing Authority Statement (R.12)** – no changes.
- **Self-Employment Affidavit (R.13)** – revised on 07/22/10 to remove language suggesting that NO part of a LIHTC unit can be used for home-based businesses. It has been recently clarified that the IRS does allow a resident of a LIHTC unit to use a portion of the unit to conduct business, as well as claim any associated business expenses as tax deductions (on Schedule C and Form 8829). The unit must be the resident's primary residence.
- **Self-Employment (No Tax Return) Affidavit (R.14)** – revised on 07/22/10 (see explanation provided for "Self-Employment Affidavit" directly above).
- **Pension Verification (R.15)** – new form created on 11/15/10.
- **Social Security Benefits Verification (R.16)** – no changes.

- **Special Features Unit/Live-in Caregiver Verification (R.17)** – converted into fill-able, PDF format on 03/16/10.
- **Termination of Employment Verification (R.18)** – no changes.
- **Retirement Account Verification (R.19)** – new form created on 11/15/10.

** Applicants/tenants and owners/agents must continue to sign fill-able, PDF forms listed above in ink (where applicable).*

LIHTC Compliance Manual – 2010

Each chapter of the LIHTC Manual was revised and posted to the OHCS website on November 19, 2010. Links are provided throughout the manual to direct you to various forms, information, and external websites related to Section 42 compliance. Over the course of the last year or so, there have been a few changes within the Housing Credit industry, most of which were memorialized with IRS revisions to the 8823 Guidebook, made in October of 2009. Grammatical or formatting alterations will not be specified within this notification. The following list provides an overview of specific changes (or revisions) that were made to each chapter:

Chapter 1 – Introduction:

- Page 1-3 – added a link to Revenue Procedure 94-57, which allows owners to elect to establish the gross rent floor at the date of credit allocation or the PIS date. The election is irrevocable.
- Page 1-5 – added a section entitled, “Tenant Data Collection”, that explains the forms to be used by owners/agents in an effort to collect household demographic information required by HERA. Introduces the revised Annual Reporting Spreadsheet, now an OHCS-Required form (OHCS.10), as well as a newly created recommended form, “Assessment of Household Demographics” (R.2).

Chapter 2 – Responsibilities:

- Page 2-5 – discusses revisions made to OHCS-Required forms OHCS.1 and OHCS.1a (Owner’s Certification of Continuing Program Compliance) to introduce the revised Annual Reporting Spreadsheet (now OHCS.10) as an OHCS-Required form. The electronic submission of the spreadsheet is now required and must remain in its original, Excel format. This will assist OHCS with future submissions to HUD, as required by the Housing & Economic Recovery Act of 2008.

Chapter 3 – Regulations & Revenue Procedures:

- Page 3-7 – although no changes were made to this section since the 05/03/2010 revision of this chapter, OHCS would like to emphasize that per the IRS, if the owner fails to verify the student status of a household (via required form OHCS.5) at the time of move-in and/or annually throughout the initial compliance period, or the form was completed late and after the owner was notified that a state agency review would take place, **the unit in which the household resides will be out of compliance.**

Chapter 4 – Compliance Monitoring Procedures:

- Page 4-2 – under the first bullet at the top of the page, changed the 8823 Guide revision date from “January of 2007” to “October of 2009”.
- Page 4-2 – added a list of national consultants who provide LIHTC training opportunities at least once each year.
- Page 4-2 – changed the Owner’s Certification of Continuing Program Compliance (CCPC) due date submission from “the first business day after April 15th” to “on or prior to April 15th of each year.”
- Page 4-3 – added a hyperlink for the revised Annual Reporting Spreadsheet (OHCS.10), which is now a state-mandated form.

- Page 4-4 – includes an explanation of how to determine when the 90-day implementation period begins for new utility allowances (dependent upon the utility calculation method chosen by the owner).
- Page 4-4 – hyperlink is now available to IRS Notice 2009-44 regarding how to treat sub-metered utility allowances.
- Page 4-5 – guides owners to apply the applicable Housing Authority utility allowances for LIHTC residents receiving tenant-based assistance, in housing credit buildings that are not regulated by HUD and not FmHA-assisted.
- Page 4-5 – includes all revision dates (and hyperlinks) for the OHCS-required forms. Also, a statement has been added to the effect that owners must implement the use of newly revised, state-mandated forms within 30 days of their website posting date (or revision date). In most cases, OHCS will notify owners when revisions to the required forms take place. Please be reminded that ultimately it is up to the owner to ensure the proper forms are being used. As such, the owner/agent should visit the OHCS LIHTC Website frequently.
- Page 4-6 – includes all revision dates (and hyperlinks) for the OHCS-recommended forms.
- Page 4-6 – combined “OHCS Tenant File Reviews and On-site Inspections”.
- Page 4-7 – explains how many units/files will be selected for review for LIHTC projects with multiple buildings (dependent upon how the owner answered line 8b of IRS form 8609 for each building).
- Page 4-8 – added a sentence giving examples of what events would cause casualty losses.
- Page 4-8 – now includes a section regarding vacant unit turnover and that OHCS defines a reasonable amount of time to complete turnover work to be **30 days or less**. It is further explained that if owners do not prepare vacant units to be “suitable for immediate occupancy” (within 30 days of most recent move-out), and/or the units are not being adequately marketed, OHCS will report the units to the IRS as being out of compliance.
- Page 4-12 – a note has been added regarding OHCS having the right to initiate or increase fees associated with performing various monitoring functions and/or noncompliance issues.

Chapter 5 – Qualifying Tenants:

- Page 5-3 – example provided for how to calculate employment income when an employer lists a range of anticipated hours worked (i.e. 15-20 hours worked per week).
- Page 5-3 – guidance provided for owners who cannot adequately anticipate upcoming income based on current circumstances due to little-to-no income being reported or from unstable fluctuations. Owners can anticipate income based upon the most previous 12-month work history.
- Page 5-3 – added a section entitled, “Year-to-Date Income” to explain that although paystubs typically list gross year-to-date (YTD) earnings, they do not provide owners with the date the YTD period began.
- Page 5-8 – added a “Note” to exclude any earned employment income of minors, including foster children.
- Page 5-8 – new section entitled, “Military Employment”, helps define what elements are included as military employment income. Also includes income exclusions (hostile fire pay and basic allowance for quarters), as well as “Note” on how to treat military income earned by a household member who is temporarily absent due to being actively on duty.
- Page 5-8 – expanded guidance and provided two examples of how to verify and calculate self-employment income. Includes a “Note” advising to treat net income reflected as a negative number (i.e. -\$3,500) as zero.
- Page 5-9 – new section included, “In-Home Office”, explaining that for residents operating a business from their LIHTC unit can claim part of the unit on IRS Form 8829, provided the LIHTC unit is the resident’s primary residence. In addition, residents offering daycare services

from their LIHTC units must be able to provide documentation to the owner (e.g. license, certification, or registration) that they have been approved to run such a business under state law.

- Page 5-10 – clarifies how to properly calculate social security and/or pension income. Introduces a new state-recommended form, the Pension Verification (R.15).
- Page 5-10 – added a “Note” explaining that any **deferred** disability benefits received by a resident, be it monthly or a one lump sum, is to be **excluded** from income. Continue to count regular payments of disability benefits as income.
- Page 5-10 – section on how to verify and calculate income from annuities is now available and offers a new state-recommended form, Annuity Verification, as well as an example to assist with the calculation process and determination of what portion of the annuity would be treated as income and/or an asset.
- Page 5-11 – the IRS clarified within the October 2009 revision to the 8823 Guide that **for LIHTC purposes only**, all forms of **student financial assistance**, no matter how it is used, should be **excluded** from annual income. The only time an owner would include financial assistance (in excess of tuition) would be if a LIHTC resident was receiving Section 8 assistance.
- Page 5-12 – provides an example of how to treat student financial assistance for a LIHTC resident NOT receiving Section 8 assistance.
- Page 5-13 – explains that for LIHTC-only residents, any financial assistance reported by an educational institution on form OHCS.5 should be disregarded if the resident is NOT receiving Section 8 assistance.
- Page 5-15 – provides an example and explains (per IRS guidance) that if an applicant(s) qualifies at move-in because of an unborn child, moves into the unit, and then has a miscarriage later, the unit will still be considered a LIHTC unit occupied by a qualified household.
- Page 5-17 – states that applicants/residents claiming to be unemployed and not receiving unemployment benefits, and not receiving any form of unearned income, must obtain documentation from the Employment Division to substantiate the claim(s) as well as provide a work history of the most recent prior 12-month period (from the certification effective date). The intent of mandating that owners/agents obtain documentation from the Employment Division was geared towards those individuals who have worked for any part of the most recent 12-month period prior to the effective date of certification who claim they are not receiving unemployment benefits or any other form of unearned income. This information is useful to owners/agents in determining future income based on past work history.
- Page 5-17 – new information about excluding resident services stipends if the monthly stipend is \$200.00 or less.
- Page 5-19 – expands on the issue of verifying and calculating income earned from stocks, bonds, treasury bills, certificates of deposits, mutual funds, and money market accounts. An example has now been provided on how to verify and calculate income from stocks.
- Page 5-19 – introduces a new state-recommended form, the Retirement Account Verification (R.19).
- Page 5-19 – added a “Pension Funds” section that discusses when to treat a pension as an asset.
- Page 5-20 – added an “Annuity” section that discusses what portion should be treated as an asset. Also provides an example.
- Page 5-20 – provides guidance for verifying a Contract Sale, or Deed of Trust, and how to determine the cash value of the asset, as well as the income earned from the asset. An example has been included on page 5-21.
- Page 5-21 – new section regarding the treatment of “Lump-Sum Receipts”.

Chapter 6 – Extended Use Period Monitoring:

- No changes were made since the 03/25/2010 revision of this chapter.

Social Security Administration

On October 15, 2010, the Social Security Administration has once again announced (see [Press Release](#)) that there will not be a Cost of Living Adjustment for the 2011 calendar year. The monthly [Medicare Part B](#) premium for 2011 will remain unchanged from 2010 for most Medicare beneficiaries (premium will be either \$96.40 or \$110.50).

Minimum Wage Increase

On September 20, 2010, the Bureau of Labor and Industries (BOLI) issued a Press Release announcing that Oregon's minimum hourly wage will be adjusted to \$8.50 per hour (an increase of \$0.10) and will take effect on January 1, 2011. Revised posters reflecting the new minimum wage amount is available at no cost by accessing a link within the [Press Release](#). Owners/Agents will need to consider the increase when completing income calculations to determine household eligibility.

Extension of Unemployment Benefits

According to Oregon's Employment Department (<http://www.employment.oregon.gov/>), it has not yet been determined by Congress whether or not Emergency Unemployment Compensation (EUC) will be extended (through December 31, 2011). Furthermore, the Federal Additional Compensation (FAC), which provided an additional \$25 per week to individuals receiving unemployment benefits as part of legislation passed in 2009, has ended as of December 8, 2010. Please visit Oregon's Employment Department website (previously listed) frequently to ensure you have the most current information regarding unemployment benefits available.

Heater Clearance

The cold winter months have arrived driving residents to use their heaters more frequently. Help prevent an apartment fire in your community by educating your resident population about the minimum heater clearances required at your property. Heater clearances are dependent upon the type of heaters installed in your residential rental units. Many manufacturer specifications state that heaters should have a minimum clearance of at least 12 inches (some as much as 3 feet) in front of, at least 6 inches of clearance above the heater, as well as at least 6 inches of free space on both sides of the heater. Additionally, the heater fans "must be clean of excessive lint, dirt and debris."

It is ultimately up to owners of residential apartment properties to know the heater clearances required. For Cadet Heater specifications, please refer to the Cadet Safety & Quality webpage for specific clearance measurements at: <http://www.cadetco.com/FrequentlyAskedQuestions.php#Safety>. For heaters produced by someone other than Cadet, the owner should visit the applicable manufacturer's webpage (or user manual) in order to determine what the acceptable heater clearances are. The information should be documented somewhere accessible (e.g. within the Administration Notebook or in a "General Maintenance Specs" file) in the event OHCS has concerns with whether or not proper clearance has been achieved.

Should you have questions or concerns regarding information contained within this mailing, please feel free to contact me (Tonya.Evans@hcs.state.or.us), your assigned Compliance Officer, or Heather Pate, Manager of Program Compliance (Heather.Pate@hcs.state.or.us).

Sincerely,

Tonya Evans