

SECTION III – FEDERAL REGULATIONS

The following section highlights some of the statutory and regulatory provisions directly affecting project compliance. The following is not meant as an exhaustive listing of compliance regulations.

Part 300 Calculating and Claiming the LIHTC

A. The Annual Tax Credit Amount

The maximum amount of credit that can be allocated is calculated by multiplying the “eligible basis” by an “applicable fraction” to ascertain the “qualified basis” and then multiplied by the “applicable credit percentage.”

For definitions of Qualified Basis, Eligible Basis, Applicable Fraction, and Applicable Tax Credit Percentage, see the Glossary in Section VIII or a low-income housing tax credit textbook or guide.

QUALIFIED BASIS = Eligible Basis multiplied by Applicable Project Fraction

ANNUAL TAX CREDIT = Qualified Basis multiplied by Applicable Credit Percentage

The annual credit allocated may not exceed this amount. However, it may be less if CTCAC determines that this maximum amount is not necessary.

B. Claiming Tax Credits in the Initial Year

The credit is claimed annually for ten years and the credit period can begin in the year that the building is Placed In Service. During the first year of the credit period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first month in which the project was Placed In Service (or the following year if there is an election to defer the credit period) even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving tax credits and is filed with the taxpayer’s tax return for the first year of the credit period. Owners can elect to defer the start of the credit period by checking the appropriate box on the IRS Form 8609. A sample copy of this form and its instructions are located in [Appendix 5](#).

C. Initial Year Proration

A project claiming credit in the initial year of occupancy is subject to a special provision which limits the credit to a proportionate amount based on average occupancy during the year.

For example: If one-half of the low-income units were occupied in November and

the remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 (12.5% - all for December and half for November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.

If a qualified low-income tenant becomes an ineligible tenant prior to the end of the initial tax credit year, that unit cannot be counted in the first year toward the minimum set-aside for purposes of determining the qualified basis.

D. The Two-thirds Rule

If an owner decides to take the tax credit for a property in the initial year when, for example, only 80% of the units are rented to tax credit eligible tenants, the maximum qualified basis for the entire credit period would be 80% with the remaining 20% eligible for two-thirds credit if later rented to eligible tenants.

E. Increase in Qualified Basis

If there is an increase in a building's qualified basis (usually by adding 1 or more new tax credit units) after the first year of the credit period, and to the extent that a building has been allocated more credit than it has been eligible to take, the owner may claim an additional credit equal to two-thirds of what would first have been eligible to claim. This should not be confused with the first year election described above and is applicable only for increases that occur after the first year of the credit period.

F. Claiming Credit in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low-Income Housing Credit) for every year in the compliance period. This form indicates continuing compliance and the qualified basis of the development for each year of the compliance period. A sample copy of this form is located in Appendix 5.

Part 310 Minimum LIHTC Set-aside Requirements and Income Limits

By the time credit is allocated, the owner has elected one of the following two minimum set-aside elections on a project basis:

(A) At least 20% of available rental units must be rented to households with incomes not exceeding 50% of area median income adjusted for household size.

Or;

(B) At least 40% of available rental units must be rented to households with incomes not exceeding 60% of area median income adjusted for household size.

The project owner may have also elected to target a percentage of the units to persons of lower income levels and/or to target a higher percentage (number) of units to low-income persons. These project owners must comply with those elections.

For more information regarding deeper targeting, see Section III, #380. HUD publishes median income and rent limit information for California and for each county or metropolitan area on an annual basis.

Part 320 Maximum Gross Rent

The maximum gross rent is the tenant paid portion of the rent plus the utility allowance (excluding telephone and cable) and any other mandatory charge. For more information regarding utility allowances, see Section III, #330.

A. Projects Allocated Credit During the Years 1987 to 1989

For projects allocated 1987, 1988, or 1989 credit, the tenant’s gross rent may not exceed 30% of the applicable median income (that is, either 50% or 60%, depending on which income set-aside has been chosen) adjusted for household size for the area in which the project is located. The gross rent must include an allowance for utilities, except those that are paid for by the development.

Owners of a low-income building placed in service before 1990 had until February 6, 1994 to make an irrevocable election to continue to use household size or to begin using the number of bedrooms in determining maximum allowable rent. The election applied only with respect to tenants first occupying any unit in the building after the date of the election.

B. Projects Allocated Credit After January 1, 1990

Projects receiving tax credit allocations after January 1, 1990, must be rent-restricted based on an imputed, not actual, household size. Household size is imputed by the number of bedrooms in the following manner:

1. An efficiency or a unit that does not have a separate bedroom – 1 individual; and
2. A unit that has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable median income for the imputed household size (notwithstanding that the actual household size may be different).

For Example:

Income Limits (by household size)

<u>One Person</u>	<u>Two Persons</u>	<u>Three Persons</u>	<u>Four Persons</u>
\$10,000	\$15,000	\$20,000	\$25,000

The rent for a two bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the

income limit for the imputed household size (\$20,000 x 30%) divided by 12 months [equals \$500]. The \$500 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying the two bedroom unit.

C. Allowable Fees and Charges

Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits, and/or credit deposits are permissible. However, an eligible tenant cannot be charged a fee for work involved in completing the additional forms or documentation required by the LIHTC Program, such as the Certification of Tenant Eligibility.

If after occupying a unit, an eligible tenant cannot pay the rent, the owner has the same legal rights in dealing with the income-eligible tenant as with any other tenant.

D. Section 8 Rents

Gross rent does not include any payments made to the owner to subsidize the tenants' rent, including Section 8 or any comparable rental assistance program to a unit or its occupants. Only the tenant-paid portion of the rent payment (inclusive of tenant-paid utilities) is considered in determining if the rent exceeds the maximum gross rent permissible.

Additionally, the gross rent may exceed Tax Credit limits at recertification, as long as the initial rent at move-in was under the limit, and the household is receiving at least \$1 in subsidy.

For example:

The maximum allowable gross rent for a unit is \$300. A particular tenant is paying \$200 and the owner receives \$175 Section 8 subsidy for this unit. The rent meets tax credit guidelines because the tenant-paid portion of the rent is not more than \$300.

E. Gross Rent Floor Election

The Gross Rent Floor Election (GRFE) is made by the owner within the 1st year of receiving a credit reservation. For all projects, CTCAC will determine the GRFE to be at carryover allocation for 9% tax credit projects or at preliminary reservation for 4% bond projects unless specific written notification is made by the owner to TCAC specifying the GRFE is to be at placed in service.

For all projects Placed in Service on or before 5/13/2010, a project's rent limit is **not** impacted by the GRFE selected by the owner, due to HUD's Hold harmless policy, as the limits were never less at placed in service than they were at carryover or preliminary reservation. Similarly, a project could not use HERA Special limits as their GRFE, since to qualify as a HERA Special project, the project must have been **placed in service** prior to 12/31/2008.

For all projects that Placed in Service on or after 5/14/2010, the owner and management company needs to be knowledgeable of the GRFE as the income limit in several counties decreased in 2009, 2010, 2011, or 2012. These counties are:

Alpine	Amador	Marin
Monterey	Orange	Plumas
Riverside	San Benito	San Bernardino
San Diego	San Francisco	San Joaquin
San Mateo	Santa Barbara	Santa Clara
Solano	Stanislaus	Ventura
Yolo		

For all projects that Placed in Service on or after 5/14/2010, located in the counties noted above, the correct Rent limit to use would be the greater of:

- A.) the limits in place at carryover allocation/preliminary reservation, or
- B.) the current rent limit at Placed in Service

The time frame for the Rent limit is driven by the Rent/Income release date by HUD. The following is a list of HUD release dates per calendar year as determined by HUD that may potentially affect projects placed in service on or after 5/14/2010.

- 2006 – on or after 3/8/2006 through 3/19/2007
- 2007 – on or after 3/20/2007 through 2/12/2008
- 2008 – on or after 2/13/2008 through 3/18/2009
- 2009 – on or after 3/19/2009 through 5/13/2010
- 2010 – on or after 5/14/2010 through 5/30/2011
- 2011 – on or after 5/31/2011 through 11/30/2011
- 2012 – on or after 12/1/2011

F. 8609 Form Line 8b Election

CTCAC issues the IRS Form 8609 for each building in a project once the Placed in Service package has been received. The owner then completes Part II and submits the form to the IRS in order to start claiming credits on the project. The owner is also required to send a completed copy of the 8609 to CTCAC for record keeping.

The owner will need to know how the Line 8b election on the 1st year filing of the 8609 forms is treated or will be treated, and be able to relate that information to the management company operating the property. Line 8b states:

Are you treating this building as part of a multiple building project for purposes of Section 42? Yes No

If the owner elects “Yes” and attaches the required statements to IRS Form 8609, all buildings are considered to be part of one project (*multi-building project*). All Section 42 regulations

apply to all buildings, transfers may be completed between buildings as long as the household does not exceed 140% of Area Median Income, and the Gross Rent Floor Election (GRFE) is the same for all buildings in the property.

If the owner elects “No”, for IRS Section 42 purposes, each building is to be treated as its own project for IRS purposes. All Section 42 regulations must be applied to each building separately, all transfers (except for reasonable accommodation) must retain income eligibility at the set-aside limit of 20/50 or 40/60, the gross rent floor will be applied individually to each building, and there may be a different set of rent limits for each building based on the GRFE. CTCAC strongly recommends developing an internal tracking system and making sure management is aware of both the owners Line 8b election and the GRFE for each project in the portfolio, to ensure rents are being held at the correct limits. Over-charged rents are reportable on Form 8823 to the IRS. For examples and further clarification see the Gross Rent Floor Memo posted on the CTCAC website in July of 2011.

G. Amenities and Services

Charges for any mandatory amenities and/or services, such as garages, carports, meals, laundry, and housekeeping, must be counted as part of the gross rent for these units. Charges for optional services other than housing do not have to be included in gross rent, but they truly must be optional.

Physical amenities such as carports, storage, or garages that were included in eligible basis cannot be charged to the tenant even if they are an “optional” charge.

For more information regarding supportive services and exceptions to the above rule, See Appendix IV, IRS Notice 89-6 and IRS Revenue Ruling 91-38, Answer 12.

H. Conflicts with Other Government-Funded Housing Programs

Management must be aware of the differences between RHS rent rules and those of the LIHTC Program that could result in proper RHS rents but in incorrect LIHTC rents. If the LIHTC maximum allowable rent is less than the overage, the overage cannot be charged.

NOTE: For credit allocations beginning in 1991, the overage can be charged for amounts that will be returned to RHS. This provision is not retroactive to projects receiving credit allocations from 1987 through 1990.

If a rent amount that is greater than the maximum allowable LIHTC rent is charged to a tenant, management may either rebate the difference between the basic rent and LIHTC rent to the tenant, or discount that amount in the current lease.

NOTE: A lease addendum must be executed indicating the appropriate discount and the difference between the government (HUD or RHS) rental and the LIHTC. If a discount is not offered, management must maintain adequate documentation of the

rebate.

If the management company determines that the project is not in compliance with LIHTC Program requirements, the CTCAC monitoring agent must be notified immediately.

Part 330 Utility Allowances

The maximum gross rent includes the amount of tenant paid utilities. Utilities include heat, lights, water, sewer, oil, gas, and trash, where applicable. Utilities do not include optional telephone, cable, internet, or television charges.

When utilities are paid directly by the tenant (as opposed to the development), a utility allowance must be used to determine maximum eligible unit rent. The utility allowance (for utility costs paid by the tenant) must be subtracted from the maximum gross rent to determine the maximum amount of allowable tenant-paid rent.

For example:

If the maximum gross rent on a unit is \$350 and the tenant pays utilities with a utility allowance of \$66 per month, the maximum rent chargeable to the tenant is \$284 (\$350 minus \$66).

If all utilities are included in the household's gross rent payment, no utility allowance is required. The IRS requires that the utility allowances be set according to IRS Notice 89-6, included in Appendix 4.

IRS Notice 89-6 lists the different sources of utility allowances for tax credit developments built from 1988 – July 2008, which included the following:

- A. RHS Financed Project – Use RHS utility allowances.
- B. HUD Project-Based Subsidy Regulated Buildings or Individual Apartments Occupied by Residents who receive HUD Assistance (Section 8 Existing, etc.) – Use HUD approved utility allowances.

Buildings without RHS or HUD Assistance:

- C. Use the Utility Allowances as given by the Public Housing Authority (PHA) for building type
- D. Utility Company Estimate - An interested party may request the utility company's estimated utility cost for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by a local utility company official, prepared on the utility company's letterhead, and maintained in the Development File for the project. Use of the actual utility rates, whether higher or lower, is required once they have been requested and must be updated annually.

The Internal Revenue Service published Final Regulations on July 29, 2008 which impacted the Section 42 Utility Allowance Regulations, by adding three new methods of Utility Allowance calculation and by modifying the existing Utility Company Estimate (*See Sect. V 530E for complete breakdown of all methods*)

- E. Utility Company Estimate (*modified*) – All information listed above is still in effect, however the Final Regulations clarify that in the case of deregulated utility services, the owner is required to obtain an estimate from only one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company providing the estimate must offer service to the building.
- F. Energy Consumption Model (California Utility allowance Calculator) – CTCAC has posted a memo dated December 18, 2009 with the submission guidelines on our website.
- G. HUD Utility Allowance Model
- H. Agency Estimate – *please note CTCAC will not be implementing the Agency Estimate Model*

To remain in compliance, owners must utilize a correct Utility Allowance in order to properly determine unit rents. An increase in the Utility Allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the tenant's rent must be lowered. When a Utility Allowance changes, rents must be recalculated within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42(g)(2). Utility Allowances need to be reviewed and updated as follows:

- When the rents for a project or building are changed or there is a change in who pays the utilities.
- Within 90 days of an update by HUD, RHS, PHA, or local utility supplier.
- Within 90 days of a change in the applicable allowance (e.g., a new tenant is receiving HUD Section 8 rental assistance).
- Annually for projects or buildings with documentation from a utility company.

CTCAC requires that the tenant files include documentation on how utility amounts are determined annually. The Utility Allowance used in the calculation for the property must be obtained at least once a year and kept in a location that is accessible by tenants. Contact the appropriate agency to request current utility allowance information. The LIHTC Section at CTCAC does not maintain the various utility allowances.

Part 340 Rules Governing the Eligibility of Particular Residential Units.

Following is a partial listing of rules governing the eligibility of a unit to be counted as a low-income housing tax credit unit. For more information regarding unit eligibility, consult Section 42 of the IRS Code or a LIHTC textbook or guide.

A. Unit Vacancy 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 or smaller size to qualifying tenants BEFORE ANY units of comparable or smaller size in the project are rented to non-qualifying tenants.

Units that have never been occupied cannot be counted as “low-income”, but must be included in the “total units” figure for purposes of determining the applicable percentage.

Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered “low-income” for purposes of determining the amount of credits claimed only if the units were occupied for a minimum of one month by an eligible low-income tenant.

B. When a Unit Must Remain Vacant

If the required percentage of tax credit units has not been met, the remaining number of qualified units must be held vacant for eligible tenants. Units cannot be left permanently vacant and still satisfy the requirements of the tax credit program. The owner or manager must be able to document attempts to rent the vacant units to eligible tenants.

C. 140% Next Available Unit Rule

If the income of the occupants of a qualifying unit increases to more than 140% of the applicable income limitation, 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.

Please note: The 140% calculation is based off of the Federal set-aside of either 40/60 or 20/50 elected by the owner of the property. It is not used with any deeper targeting requirements stipulated in the Regulatory Agreement for the property.

D. Transfer of Existing Tenants – 100% Tax Credit Property

Should an existing household desire to move to a different rent-restricted unit in a different building, this is acceptable provided that the current income of the tenants does not exceed 140%, and the owner has elected “yes” to the Line 8b on the IRS Form 8609, indicating the property is considered a multi-building project. All application, certification, and verification procedures for the transferring resident(s), including the income and asset verifications transfer with the household. The units then swap status.

If the owner has elected “no” to the Line 8b on the IRS Form 8609, this indicates that each building is to be considered its own project for tax purposes and the household must

re-qualify under the 20/50 or 40/60 set-aside to be able to transfer. The household is treated as a complete move-out and complete move-in. The only exception would be for “reasonable accommodation” requests and must be documented adequately.

Unit transfers within the same building do not require interim certification/ recertification. The file must include documentation verifying income eligibility for the originating unit and document the reason for the transfer.

Section 42 is silent on whether “unit transfer fees” may be required for transfers throughout a property. CTCAC does not have a policy either “for or against” charging a transfer fee, however, after researching this topic the determination is most major owner/management agents do not charge a transfer fee.

In the absence of specific regulation, it is assumed the owner may charge a reasonable transfer fee. However, transfer “fees” may not be incurred for any reasonable accommodation request. Additionally, CTCAC reserves the ability to require specific documentation if excessive or unreasonable fees are determined to be charged of a household wishes to transfer to another unit.

E. Resident Manager’s Unit

The resident manager’s unit may be considered in one of two ways listed below:

1. The manager’s unit can be considered a common area or other special facility within a rental project that supports and/or is reserved for the benefit of all the rental units. Under this interpretation, the unit is excluded from the low-income occupancy calculation and the unit can be used by the manager without concern as to the effective rent being charged to or the income level of the manager. Additionally, if the manager’s unit is determined as common space, no rent **or utilities** may be charged for the unit. If this option is elected, the unit occupied by the resident manager is included in the building’s eligible basis, but excluded from the applicable fraction for the purposes of determining the building’s qualified basis; or
2. The manager’s unit could be treated as a rental unit and the unit could be included in the low-income occupancy percentage calculation for the LIHTC building. Under this interpretation, the income level of the manager and the rent charged will affect the low-income occupancy percentage calculation for the building. The manager’s unit could be considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low-income tenant).

For example:

The project contains one building. This building has 25 units, one of which is a manager’s unit. At the end of the first year of the credit period, all units are rented except the manager’s unit that remains unoccupied. The building’s applicable fraction would be 96% (24/25 assuming all units are the same size). Therefore, if the building’s

eligible basis is \$700,000, its qualified basis would be only \$672,000. If the manager's unit were considered as common area, it would not be included in either the numerator or the denominator in calculating the applicable fraction. If not included, the building's applicable fraction would be 100% (24/24) and its qualified basis would be \$700,000.

In a project that is 100% tax credit, changes may be permitted by the Tax Credit Allocation Committee (CTCAC) to the size or location of the approved managers unit(s) noted in the recorded Regulatory Agreement. CTCAC will review each owner request after performing due diligence and may or may not approve each individual request for changing the managers unit size or location. Written request must be made by the owner to CTCAC and sent to the attention of the Chief of Compliance, **before** making any changes to the managers unit.

Please note that in a mixed-income tax credit project (tax credit with conventional market rate units), the owner elects the unit size and the location of the on-site managers unit. Once this election is made, the on-site managers unit may **never** change size or location in the project. Making such a change in size or location can impact and affect both the applicable fraction and the qualified basis on which the credit was calculated. Such changes can result in placing the project in noncompliance and is reportable to the IRS on Form 8823. CTCAC **can never** approve a change to an on-site managers unit in a mixed-income tax credit property.

Part 350 Rules Governing the Eligibility of Particular Tenants and Uses

Following is a partial listing of rules governing the eligibility of certain tenants. For more information on tenant eligibility, consult Section 42 of the Code or a LIHTC textbook or guide.

A. Student Eligibility

The applicable definition of student is a full-time student at an educational institution with regular facilities, other than a correspondence or night school, during at least five months of the calendar year for which application for housing has been made. Under LIHTC regulations, if a single applicant or all applicants are full-time students and not married, then that household is not eligible as an LIHTC unit.

In order for a household of full-time students to be considered eligible, they must meet one of the following criteria:

- All members of the household are married and either file or are entitled to file a joint tax return
- The household consists of a single parent and his or her minor children, and both the parent and children are not a dependent of a third party.
- At least one member of the household receives assistance under Title IV of the Social Security Act. (*AFDC, TANF, CalWORKS, etc. Please note: SSA or SSI do not qualify*)

- At least one member is enrolled in a job training program receiving assistance under the Work Investment Act (WIA) formerly known as the Job Training Partnership Act, or similar federal, state or local laws as defined by HUD 4350.3 REV-2.
- The household consists of a tenant under the age of 24, who has exited the Foster Care system within the last 6 years.

B. Manager or Employees as Tenants

It is permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a project. The manager or employee may also be included as an eligible tenant if income qualified. If, however, the manager or employee receives free rent or a rental discount, the imputed value of the rent or discount must be counted as income. For additional information regarding the manager's unit, see Section III, #340 E.

C. Live-in Care Attendants

A live-in care attendant for a tax credit tenant should not be counted as a household member for purposes of determining the eligible income and rent limits. The need for a live-in care attendant must be certified with documentation included in the Tenant/Unit File (see Section IV, #460). A live-in aide is in the unit solely for the care of the tenant. If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program.

In July 2009, HUD released revision 3 to the 4350 Handbook. This revision clarified the requirements for a live-in attendant in a Tax Credit property. Chapter 3 of the HUD handbook defines a live-in aide as:

1. A person who resides with one or more elderly persons, near elderly persons, or persons with disabilities, and who;
 - a. Is determined to be essential to the care and well-being of the person(s)
 - b. Is not obligated for the support of the person(s) and will not contribute materially to the household; and
 - c. Would not be living in the unit except to provide the necessary supportive services to the person(s)
2. Regarding a live-in aide;
 - a. The owner must verify the need for a live-in aide. Verification must be obtained from the person's physician, psychiatrist, other medical practitioner, or health care provider. Documentation should include the amount of hours the tenant will need care. If the need is not constant or consistent, owners/management must use their discretion as to whether the household requires a "live-in" aide.

- b. The owner must approve a live-in aide as a reasonable accommodation request in accordance with 24 CFR part 8. However, the owner should only document/verify the need for a live-in attendant and cannot require access to confidential medical records or require a physical examination be performed.
 - c. The live-in aide qualifies for occupancy only as long as the individual needing the supportive services requires the aide's services and remains a tenant. The live-in aid may not qualify the household as a remaining family member.
- 3. The income of a live-in aide is excluded from annual income
- 4. Multiple Aides are allowed as long as the Doctor's verification indicates the need for multiple aides (quadriplegic, amputee, etc.). However, if 2 or more attendants split the time monitoring the tenant, this may not meet the true definition of a live-in aide (ex. two 12 hour or three 8 hour shifts), as neither attendant is not caring for the tenant full-time.
- 5. A live-in aide may not bring in additional family members to live in the unit, unless a reasonable accommodation need exists for the additional members (ie. live-in aide may offer a specialty service that only they can provide), as the purpose for a live-in aide is the essential care of the tenant.
- 6. CTCAC may question if a live-in aide is either working full-time or going to school full-time. If the aide is working or going to school, then he or she may not be meeting the requirement of only being in the unit for the essential care of the tenant.
- 7. **Live-in Aide Verification Form** – In January of 2012, CTCAC released a third party Live-in Aide Verification Form to be used for all households requesting a Live-In Aide. This will be a required “as needed” form beginning in January 2012. In addition to the form, CTCAC strongly recommends the use of a “Live-in Aide Lease Addendum” that outlines the requirement for an aide, denies occupancy to the live-in aide if for any reason the tenant vacates the unit, and gives the owner the right to evict a live-in aide who violates the house rules. CTCAC may question circumstances where the live-in aide is “working” outside the unit as it calls into question the requirements of 1a and 1c above.

D. Non-transient Occupancy

Under program requirements, a unit cannot be tax credit eligible if it is used on a transient basis. A unit is deemed to be transient if the initial lease term is less than six months. There is an exception to this rule for single-room-occupancy (SRO) developments assisted under the Stewart B. McKinney Act.

Single-room-occupancy (SRO) housing must have a minimum lease term of one month. Federal rules allow for month-by-month leases for the following types of housing:

- SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation Assistance.
- SRO units intended as permanent housing and not receiving McKinney Act assistance.
- Units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

E. Ineligible Facilities

No hospital, nursing home, sanitarium, life-care facility, retirement home providing significant services other than housing, dormitory, or trailer park is eligible to be a low-income housing tax credit project.

Commercial space within a tax credit development is not tax credit eligible.

Part 360 Other Regulations

A. Physical Requirements of Units

1. Qualified units rented to, or reserved for, eligible tenants:
2. Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the project; and
3. Cannot be geographically segregated from the other units in the project.

Units intended for eligible tenants must be comparable in size, location, and quality to those rented to other tenants. In the event a residential unit in a project which is rented to an eligible tenant is above the average quality standards of the units rented to eligible tenants, then the basis in the project which is used to determine the amount of tax credits must be reduced by the portion which is attributable to the excess costs of the above standard units.

B. Discrimination Prohibited in Project

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, marital status, age, familial status, sexual orientation, source of income, or handicap. Additionally, owners cannot 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.

C. General Public Requirements

Under program requirements, tax credit units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (e.g. homeless individuals, persons with disabilities, etc.). These preferences, however, must not violate HUD's anti-discrimination policies.

The revised Guide to IRS Form 8823, published in September 2009, indicates that a qualified low-income project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) who are members of a specified group under a Federal program or state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

D. General Occupancy Guidelines/Family Size

There are no current tax credit requirements governing minimum or maximum household size for a particular unit; however, owners must comply with all applicable local laws, regulations and/or financing requirements (e.g. if RHS, use RHS regulations).

CTCAC advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit. CTCAC will not mediate in disputes regarding income eligibility of applicants.

E. Good Cause Eviction

On July 29, 2004, IRS issued Revenue Ruling 2004-82 which requires all Extended Use Agreements (Regulatory Agreements) for Housing Tax Credit properties to include, a prohibition against evicting or terminating tenancy of tenants in low-income housing units for other than good cause. This prohibition must extend throughout the duration of the entire extended use period.

The Regulatory Agreement for your project requires your compliance with all conditions to tax credit eligibility under Section 42 of the Internal Revenue Code (Code). In accordance with Revenue Ruling 2004-82, effective July 30, 2004, no low-income resident of any Housing Tax Credit project may be evicted or otherwise have their lease terminated other than for good cause. The reason for the "good cause" eviction must be provided to the tenant **in writing**. This prohibition includes the non-renewal of a lease or rental agreement other than for good cause. Housing Tax Credit unit occupants have the right to specifically enforce this prohibition in State court. Generally, "good cause" is defined as "the serious or repeated violations of a material term of the lease", as that definition is applied with respect to federal public housing. CTCAC will not mediate in disputes between the tenant and the

owner/management regarding evictions.

In 2009, The IRS modified the 8823 Guide to remove the language regarding non-renewal in the good cause eviction section. However, the requirement for the owner to be able to demonstrate in a court of law the reason for the non-renewal still stands.

Part 370 Statutory Set-Asides

The legislature of the State of California has statutorily created certain “set-asides” based on the housing needs within the state. A percentage of the state’s total credit ceiling each year is set aside for the following:

- Qualified nonprofit organizations pursuant to Section 42 of the Internal Revenue Code.
- Rural Set-aside
- Small Developments
- Special Needs / SRO
- At-Risk Supplemental

A. Qualified Nonprofit Organization

For projects receiving allocations under the Qualified Nonprofit set-aside, documentation must be provided indicating that the nonprofit organization is materially participating in the ongoing management and operation of the projects.

Documentation that should be retained in the owner’s file is as follows:

- IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation
- Proof of designation as a non-profit corporation under Health and Safety Code Section 50091
- Proof that one of the exempt purposes of the corporation is to provide low-income housing a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying current involvement, a third party legal opinion verifying the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with an Related Party of a for-profit organization including the basis for said determination and a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42 (h)(5)

Part 380 Qualified Allocation Plan

The federal low-income housing tax credit program requires allocating agencies to allocate low income housing tax credits pursuant to a Qualified Allocation Plan (QAP or Plan). CTCAC is the state agency responsible for implementing the federal and state low income housing tax credit programs in California. The specific provisions of the qualified allocation plans, are set forth in

subsections of IRC Section 42 and can be found here:

<http://www.treasurer.ca.gov/ctcac/qap.pdf>

Part 390 Adopted Regulations

These regulations establish procedures for the reservation, allocation and compliance monitoring of the Federal and State Low-Income Housing Tax Credit Programs and establish policies and procedures for use of the Tax Credits. Section 42 provides for state administration of the Federal Program. California Tax Credit Allocation Committee is the Housing Credit Agency to administer both the Federal and State Housing Tax Credit programs in California and determines the regulations as set forth by the policies and procedures noted in IRS Section 42. In addition to these regulations, program participants shall comply with any other statutory or regulatory requirements noted by the Committee or California Legislature. Both current and previous year's regulations can be found at:

<http://www.treasurer.ca.gov/ctcac/programreg/regulations.asp>