

**Title 15. Natural Resources and Economic Development**

**Chapter VII. Arkansas Development Finance Authority, Department of Commerce**

**Subchapter C. Housing**

**Part 86. Compliance Monitoring Policies and Procedures Manual for the Low-Income Housing Tax Credit Program**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"The Arkansas Development Finance Authority ( ADFA or the Authority ), a public body politic and corporate, with corporate succession, was created May 1, 1985 by Act 1062. This act abolished the former Arkansas Housing Development Agency that had existed since 1977. The former agency had as its sole purpose to sell tax-exempt bonds and use the proceeds to develop safe, decent, sanitary and affordable housing for low and moderate income Arkansans. All records, funds, properties, obligations, debts, functions, powers and duties were transferred to ADFA, which sells both taxable and non-taxable bonds and supports programs not only for housing but also for economic development, agriculture, aquaculture, export finance, government finance, and tourism development."

"Adopted by the Board of Directors of the Arkansas Development Finance Authority this day of,

By: Thomas Spillyards, Chairman

ATTEST:

By: Gene Eagle, President/Secretary"

"Refer to ADFA's web site to access all forms. <http://www.arkansas.gov/adfa/>"

## **Subpart 1. General Information**

### **15 CAR § 86-101. Definitions.**

As used in this part:

(1)(A) "20/50 test" means a requirement whereby twenty percent (20%) or more of the residential rental units are rent restricted and occupied by households with incomes of fifty percent (50%) or less of the area median gross income, adjusted for family size.

(B) This test is referred to as one (1) of the minimum set-aside requirements.

(C) Compliance with the minimum set-aside requirements must be maintained at all times during the compliance period.

(D) Failure to meet the elected test will disqualify a development from being eligible for the credit;

(2)(A) "40/60 test" means a requirement whereby forty percent (40%) or more of the residential rental units are rent restricted and occupied by households with incomes of sixty percent (60%) or less of the area median gross income, adjusted for family size.

(B) This test is referred to as one (1) of the minimum set-aside requirements.

(C) Compliance with the minimum set-aside requirements must be maintained at all times during the compliance period.

(D) Failure to meet the elected test will disqualify a development from being eligible for the credit;

(3)(A) "Accelerated portion of the credit" means in exchange for ten (10) years of tax credits, under the low-income housing credit program, a building owner agrees to comply with I.R.C. § 42 for at least a fifteen-year period.

(B) This accelerates the tax benefits over a shorter term and lengthens compliance to fifteen (15) years.

(C) In each of the ten (10) years of the credit period, the building owner effectively receives an additional one-third (1/3) of the credit, which is accelerated from the eleventh through fifteenth years.

(D) Thus, the credit for each year consists of both the:

- (i) Earned portion of two-thirds (2/3); and
- (ii) Accelerated portion of one-third (1/3).

(E) It is the accelerated or unearned portion that must be recaptured as a result of decreases in qualified basis or disposition events;

(4)(A) "Applicable fraction", which is calculated for each building, is the lesser of the:

(i) Number of LIHTC units divided by the total number of units in the building; or

(ii) Total rentable square footage of LIHTC units in the building divided by the total rentable square footage in the building.

(B) The applicable fraction is established during rent-up.

(C) Once established, the applicable fraction for a building must never fall below this initial fraction.

(D) Failure to maintain applicable fraction could result in recapture of tax credits;

(5)(A) "Area median gross income (AMGI)" means a term that represents the midpoint (that is, half are above and the other half are below) income level for a given area.

(B) Those figures are published annually by the Department of Housing and Urban Development based on various population and earnings data.

(C) The AMGI figure, adjusted for family size, is used in the determination of whether or not a household qualifies as low-income for purposes of the LIHTC program;

(6)(A) "Bedroom election" allows owners of low-income buildings with allocations before 1990 or on financed buildings placed in service before 1990 to

determine the gross rent limitation for rent-restricted units under the number of bedrooms method.

(B) In this method, a set occupancy is assigned based on the number of bedrooms contained in the low-income unit.

(C) Previously, the actual number of occupants was used to determine the rent restriction;

(7)(A) "Below-market loan" means a loan funded in whole or in part with federal funds, if the loan is less than the applicable federal rate in effect under I.R.C. § 1271(d)(4).

(B) There are six (6) basic categories of below-market federal loan programs:

- (i) Federal tax-exempt interest loan;
- (ii) I.R.C. § 236 loans;
- (iii) I.R.C. § 515 loans;
- (iv) I.R.C. § 312 loans;
- (v) I.R.C. § 221(d)(3) and (4) loans; and
- (vi) Flexible subsidy loans;

(8)(A) "Building identification number" means the nine-digit alpha numeric designation assigned by the state housing credit agency to a low-income building.

(B) Essential to the monitoring process for I.R.C. § 42, Internal Revenue Service Notice 88-91 provides information regarding building identification number requirements;

(9)(A) "Compliance period" means the fifteen-year period over which a development must maintain compliance with I.R.C. § 42.

(B) This period begins with the first taxable year of the credit period.

(C) The compliance period may be extended another fifteen (15) years by terms of extended use provisions;

(10)(A) "Credit period" means the ten-year period over which an owner may claim tax credits annually on a building-by-building basis.

(B) The tax credit period begins either with the:

- (i) Taxable year in which the building is placed in service; or
- (ii) Succeeding taxable year (if elected by the owner);

(11)(A) "Eligible basis" means that portion of the development allocated credits and for which credits are allowable.

(B) "Eligible basis" consists of the cost of:

- (i) New construction;
- (ii) Rehabilitation; or
- (iii) Acquisition of existing buildings acquired by purchase (including

the cost of rehabilitation, if any, to such buildings incurred before the close of the first taxable year of the credit period which do not exceed a prescribed minimum amount).

(C) Only the adjusted basis of the depreciable property may be included in eligible basis.

(D) The cost of land is not included in adjusted basis;

(12) "Empty unit" means an LIHTC unit that has never been rented;

(13)(A) "Equity" means the funds provided by investors in a project.

(B) The amount of this investment is contingent upon the value attributed to the tax benefits generated by ownership in the project.

(C) Equity represents one (1) of the basic financing layers in a project;

(14) "Extended low-income housing commitment" means a binding agreement between the owner and the housing credit agency that obligates the owner and any successors to maintain specific occupancy and affordability requirements for the development;

(15)(A) "General public use". The legislative history of I.R.C. § 42 and Treas. Reg. § 1.42-9 provides that the residential rental units upon which a low-income housing credit is taken must be available for use by the general public.

(B) A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination.

(C) The Department of Housing and Urban Development Handbook 4350.3 is the appropriate reference source;

(16)(A) "Gross rent floor". This ruling allowed the owner to establish floor rent amounts that will not be affected by fluctuations in the income limits and maximum rent ceilings.

(B) For developments that received an allocation of credits or determination letter on or after October 6, 1994, the owner may elect to establish the gross rent floor as the maximum rent in effect either on the date the development:

- (i) Was placed in service; or
- (ii) Received an allocation.

(C) This irrevocable election must be made by the owner and submitted in writing to the Arkansas Development Finance Authority no later than the placed-in-service date of the development;

(17)(A) "Gross rent limitation" means gross rent may not exceed thirty percent (30%) of the applicable qualifying income as adjusted for household size.

(B) Gross rent includes the cost of utilities, except telephone and cable.

(C) If utilities are paid directly by the tenant, the maximum rent must be reduced by the amount of the utility allowance.

(D) The gross rent limitation applies only to payments made directly by the tenant.

(E) Any rental assistance payment, such as Department of Housing and Urban Development Section 8, is not included in the gross rent limitation;

(18)(A) "Household income limitations". One (1) of the requirements of the minimum set-aside test, household income limitation of a qualifying unit is a set percentage of the area median gross income figure.

(B) In accordance with the minimum set-aside elections, the income level may be no greater than fifty percent (50%) or sixty percent (60%) of the respective area median gross income.

(C) A household can consist of one (1) or more persons.

(D) Count all household members and compare to the per person income limits.

(E) You may count unborn children or children in the process of being adopted as members of the household for income limit purposes;

(19) "Income certification" means all qualifying units must have adequate documentation to support the household income limitation at initial lease-up as well as annually throughout the compliance period;

(20) "Low-income unit" includes any unit in a qualified low-income building if the:

(A) Individuals occupying such unit meet the income limitations; and

(B) Unit meets the gross rent restrictions;

(21) "Market unit" means any non-LIHTC unit, whether occupied or not;

(22)(A) "Minimum set-aside test" means a requirement that must be met at all times during the development's compliance period.

(B) This test restricts rent and dictates:

(i) Which households qualify as low income; and

(ii) How many units must be occupied by the qualifying households.

(C) The two (2) general minimum set-aside tests are the 20/50 and the 40/60 tests, which are defined in this section;

(23) "Move-in certification" means the form, signed by both the resident and owner's representative, that summarizes:

(A) Household composition;

(B) Projected household income; and

(C) Assets;

(24)(A) "Next available unit rule" states that if an existing tenant's income in an LIHTC unit increases above one hundred forty percent (140%) of the applicable income limitations (over-income unit), the next available unit of comparable or smaller size must be rented to a low-income tenant to continue treating the over-income unit as a low-income unit within that building.

(B) In fact, all comparable units that subsequently become available in the same building must be rented to qualified residents until the applicable fraction is restored to the percentage on which the credit is based;

(25) "Occupied unit" means an LIHTC unit that has been rented;

(26)(A) "Owner's certification" means a building owner must provide certification to the Arkansas Development Finance Authority every year that the low-income units in a development are occupied by qualifying households.

(B) Failure to provide such certification in a timely manner will result in the filing of Internal Revenue Service Form 8823 (Report of Non-Compliance or Building Disposition (Non-Compliance Report)) by the Arkansas Development Finance Authority;

(27)(A) "Placed in service" is defined in Internal Revenue Service Notice 88-116, 1988-2 C.B. 449, as being the date on which the first unit in the building is first certified as being suitable for occupancy under state or local law.

(B) For rehabilitations that qualify for treatment as a separate new building, the placed-in-service date would occur at the end of the twenty-four-month period over which such expenditures are aggregated;

(28)(A) "Qualified basis" means the formula used to calculate how much tax credit will be provided.

(B) Qualified basis amounts are determined as the proportion of eligible basis in a qualified LIHTC building attributable to the LIHTC rental units.

(C) This proportion is the lesser of the proportion of:

(i) Low-income units to all residential rental units; or

(ii) Floor space of the low-income units to the floor space of all residential rental units;

(29)(A) "Recapture" means an adjustment in which the accelerated portion of the credit, plus interest, is recovered as a result of reductions in qualified basis (including but not limited to the partial or full disposition of the building or interest therein).

(B) If the qualified basis on which credit is taken decreases, recapture applies to that portion of the qualified basis that is no longer eligible for the credit.

(C) If a project ceases to meet the minimum set-aside requirement, the project no longer qualifies as a low-income housing project until the minimum set-aside

is again met, and recapture is applied to all credits previously taken on the entire project;

(30) "Recertification" means the annual redetermination of household income and composition for continuing eligibility;

(31)(A) "Seventy-percent credit" means the seventy-percent present-value credit that applies to new construction and qualifying rehabilitations.

(B) The seventy-percent credit will yield, over the ten-year credit period, a tax benefit equal to seventy percent (70%) of qualifying costs.

(C) On an annual basis, this present value computation approximates a nine-percent figure each year over the credit period to arrive at the seventy-percent credit;

(32)(A) "Single-room occupancy (SRO) units". Residential rental units must generally contain complete living, sleeping, eating, cooking, and sanitation facilities.

(B) I.R.C. § 42 provides an exception to this definition that allows SRO units to qualify as residential rental units even if eating, cooking, and sanitation facilities are on a shared basis;

(33)(A) "Student tenants". Units occupied entirely by full-time students will not be eligible.

(B) Exceptions apply for students who are single parents of children who are also full-time students, provided no one is claimed as a dependent of a third party other than a parent of the dependent children.

(C) Another exception is a student who was previously under the care and placement of the state agency responsible for administering foster care.

(D) Married students who are entitled to file a joint tax return are also exceptions, as are students enrolled in certain job training programs or those receiving welfare assistance under Title IV of the Social Security Act;

(34)(A) "Thirty-percent credit" means the thirty-percent present-value credit that applies to acquisitions of existing housing or for new construction/rehabilitations that are federally subsidized.

(B) The thirty-percent credit will yield, over the ten-year credit period, a tax benefit equal to thirty percent (30%) of qualifying costs.

(C) On an annual basis, this present value computation approximates a four-percent figure each year over the credit period to arrive at the thirty-percent credit;

(35) "Unit fraction" means the percentage of low-income units in a building expressed as a fraction, the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential units, whether occupied or not, in such building;

(36)(A) "Utility allowance" means:

(i) A calculated average of expenses for utilities (other than telephone and cable) for units comparable in size; or

(ii) The utility allowances used by the local public housing authority or Section 8 office.

(B) Utility allowances are calculated annually; and

(37) "Vacant unit" means an LIHTC unit from which someone has moved.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

"Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

Title IV of the Social Security Act is codified at 42 U.S.C. § 601 et seq.

### **15 CAR § 86-102. Introduction.**

(a) This part presents an overview of the Arkansas Development Finance Authority's policies as they pertain to compliance monitoring for the Low-Income Housing Tax Credit (LIHTC) program.

(b)(1) The procedures are designed to assist owners and managers of developments that have received an allocation pursuant to the LIHTC program to ensure that the developments remain in compliance with I.R.C. § 42.

(2) The procedures are not intended to be all-inclusive.

(c) In the event of a conflict or inaccuracy, the Internal Revenue Code will control.

(d)(1) If the development has received a combination of funds from other government entities, owners generally follow the most restrictive regulations.

(2) Owners must be aware, however, that they may have to satisfy the requirements of all applicable regulations.

(3)(A) For instance, an owner may have received funds under a governmental program in which he or she agreed to rent a certain number of units to persons earning forty percent (40%) or less of the area median income.

(B) The owner must be sure to satisfy this restriction in addition to the applicable LIHTC area median income limit.

(e) Employees and officers of the authority are not liable for any adverse consequences that affect the taxpayer or investor relative to compliance with the federal tax code.

(f)(1) The authority reserves the right to implement additional policies as needed.

(2) Also, new rulings or other changes may be made periodically.

(g) Owners are responsible for compliance with any amendments or updates to the federal regulations.

(h) Any questions regarding this part should be directed to:

Compliance Monitoring Department  
Arkansas Development Finance Authority  
P. O. Box 8023  
Little Rock, AR 72203-8023  
Telephone: (501) 682-5900  
Telecopy: (501) 682-5859

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-103. Background.**

(a)(1)(A) Congress created the LIHTC program under the Tax Reform Act of 1986, Pub. L. No. 99-514.

(B) The LIHTC program, governed by I.R.C. § 42, began in 1987.

(2) The tax credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction or acquisition and rehabilitation of rental housing that will remain income and rent restricted for an extended period of time.

(3)(A) Tax credits are allocated by the Arkansas Development Finance Authority for properties located in Arkansas.

(B)(i) After the authority allocates the tax credits to developers, the developers typically sell the credits to private investors.

(ii) The private investors use the tax credits to offset taxes otherwise owed on their tax returns.

(C)(i) The money private investors pay for the credits is paid into the projects as equity financing.

(ii) Equity financing is used to fill the gap between development costs for a project and the non-tax credit financing sources, such as mortgages, that could be expected to be repaid from rental income.

(4)(A) In awarding the credits, the authority attempts to provide sufficient credits to ensure the project's financial feasibility throughout the fifteen-year tax credit compliance period.

(B) The authority must consider:

(i) Any proceeds or receipts expected to be generated through tax benefits;

(ii) The percentage of housing credit dollar amounts used for project costs other than the cost of intermediaries; and

(iii) The reasonableness of developmental and operational costs.

(C)(i) Generally, the authority will compare the proposed project's developmental costs with the nontax credit financing, both private and governmental.

(ii) The difference between the development costs and the non-tax credit financing is the financing gap.

(iii) Tax credits are used to attract the equity investment needed to fill the gap, but are limited to a ceiling.

(b)(1) The authority is also designated as Arkansas's LIHTC compliance monitoring agency.

(2) Crucial elements of compliance are:

(A) Ensuring that the appropriate number of tax credit units are occupied by eligible households;

(B) Following income eligibility guidelines; and

(C) Restricting rents over a specified time period.

(3) The authority also monitors to ensure LIHTC properties are:

(A) Decent;

(B) Safe;

(C) Sanitary; and

(D) In good repair.

(4) The authority is available to provide guidance to owners in maintaining continuous compliance with federal and state LIHTC guidelines throughout the compliance period.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

### **15 CAR § 86-104. Credit period and compliance period.**

(a)(1) Generally, owners must:

(A) Place the projects in service within two (2) years of carryover allocation; or

(B) Return the credits to the Arkansas Development Finance Authority for reallocation to other projects.

(2) Once a development is placed in service, it is generally eligible for the tax credit every year for ten (10) years.

(3) To continue generating the credit and avoid recapture, an LIHTC building must satisfy specific tax credit compliance rules for fifteen (15) years.

(4)(A) In cases where one hundred percent (100%) low-income occupancy is not achieved during the first tax credit year (for example, either due to unqualified tenants or inability to find qualified tenants to qualify units), there will be possible increases in qualified basis in subsequent years.

(B) In such cases, excess qualified basis shall have the percentage equal to two-thirds (2/3) of the applicable fraction applied, thus extending the tax credits claimed over the fifteen-year compliance period.

(5) The tax credits may be generated annually on a building-by-building basis beginning either with the:

(A) Taxable year in which the building is placed in service; or

(B) At the election of the taxpayer (owner), the succeeding taxable year.

(b)(1) For buildings placed in service in 1987, the credit was taken at annual rates of nine percent (9%) (for the seventy percent (70%) value credit) and four percent (4%) (for the thirty percent (30%) value credit).

(2)(A) Three (3) types of credit are available for low-income buildings placed in service after 1987.

(B) The first type of credit is a nine percent (9%) annual credit for the cost of a new building or qualifying rehabilitation costs without a federal subsidy.

(C) The second type of credit is a four percent (4%) annual credit for the cost of a new building or substantial rehabilitation built with a federal subsidy.

(D) The third type of credit is a four percent (4%) annual credit for the cost of buying an existing building for which substantial rehabilitation expenditures are also incurred.

(3)(A) Although the nine percent (9%) and four percent (4%) credits are called nine percent (9%) and four percent (4%), the figures are actually estimates.

(B) The Internal Revenue Service sets the figures each month based upon fluctuating interest rates.

(4) A project can qualify for:

(A) One (1) of the three (3) credits; or

(B) A combination of the credits.

(c)(1) Low-income housing tax credit amounts are based on the:

(A) Cost of a building; and

(B) Portion of the project that low-income households occupy.

(2)(A) The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis.

(B)(i) The portion of the eligible basis attributable to low-income units is the building's qualified basis.

(ii) Generally, the qualified basis excludes the cost of land.

(C) Developers are urged to consult legal counsel, as other costs may be excluded.

(d)(1) Low-income housing tax credit projects that use federal subsidies generally receive a smaller credit.

(2) If federally subsidized loans are used to finance substantial rehabilitation or new construction, either the:

(A) Eligible basis of the building must be reduced; or

(B) Thirty percent (30%) credit must be used.

(3) Federally subsidized loans include:

(A) Below-market federal loans; and

(B) Tax-exempt financing.

(e)(1) The compliance period for any building is the period:

(A) Beginning on the first day of the first taxable year of the credit period of such building; and

(B) Ending fifteen (15) years from such date.

(2)(A) Beginning in 1990, the authority implemented the land-use restriction agreement (LURA), which extended the compliance period for an additional fifteen-year period.

(B) The LURA, recorded in the real estate records of the county in which the development is located, is a binding agreement of the owner and any successors to maintain specific occupancy and affordability requirements for the development.

(f)(1) Projects placed in service before the use of the LURA (1987, 1988, and 1989) must comply with the fifteen-year compliance period only.

(2)(A) In reference to those projects, the authority will review the Internal Revenue Service Form 8609 to determine the year the owner claimed the tax credits.

(B) If there is no completed copy of the Internal Revenue Service Form 8609 available, authority staff will ask the project owner to confirm the credit year.

(3) Upon determining that the fifteen-year compliance period has expired, the authority will notify the owner that:

(A) The compliance period has ended; and

(B) The authority will no longer conduct physical or tenant file audits.

(g)(1) After the initial fifteen-year compliance period, the authority will continue to monitor developments with extended use agreements.

(2) The authority intends to enforce the terms and agreements set forth in the land-use restriction agreement and Declaration of Restrictive Covenants for the Low-Income Housing Tax Credits and this part.

(3) The authority will not modify any of the I.R.C. § 42 requirements.

(4) Owners will be allowed specific time periods, as deemed appropriate by the authority, to correct items of noncompliance.

(h) Remedies for noncompliance include, but are not limited to, the following:

(1) Temporary suspension or permanent expulsion from participation in the LIHTC, HOME, or any other program administered by the authority;

(2) Notification to other lenders or agencies that provided funding for the project;

(3) Notification to the:

(A) Limited partners;

(B) Syndicators;

(C) Board of trustees; or

(D) Any other affiliate of the project; and

(4) Legal action.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-105. Four tax credit regulation periods.**

(a)(1) Since the 1986 enactment of the LIHTC, the United States Congress has changed or amended the laws governing the program, yet many changes have not been retroactive.

(2) In some cases, the change in regulations brought forth by a technical correction is minor, and in others, the effect is substantial.

(3) Owners must be aware of the differences in regulations and which credit period applies to each building or development.

(4) The period considered for management/compliance purposes is the year in which tax credits were allocated by the Arkansas Development Finance Authority.

(b) Currently, there are four (4) specific credit regulation periods as follows:

(1)(A) January 1, 1987 – December 31, 1989.

(B) Properties receiving credit allocations during this period based rent on the number of people living in the unit.

(C) Rents were subject to change whenever the household composition changed.

(D) The Omnibus Reconciliation Act of 1993 allowed owners of these developments a one-time opportunity to either:

(i) Maintain the per-person formula; or

(ii) Elect to change to the formula based on apartment bedroom size used for 1990 and later allocations.

(E) The owner had to write to the Internal Revenue Service no later than February 6, 1994, to request this election.

(F) Once made, the decision to switch formulas or retain the per-person formula was irrevocable.

(G) The new rent formula only affected any new move-ins on or after the election date.

(H) A copy of the election letter must be:

(i) Provided to the authority; or

(ii) Available during the on-site inspection;

(2)(A) 1990.

(B)(i) Rent is calculated by number of bedrooms in a unit.

(ii) This rule was not retroactive.

(C)(i) Gross rent floor was adopted.

(ii) This rule was not retroactive.

(iii) See definition herein.

(D)(i) Extended low-income housing commitment required.

(ii) See 15 CAR § 86-104 for further discussion;

(3)(A) 1991.

(B)(i) The Aid to Families with Dependent Children student rule exception was retroactive.

(ii) See 15 CAR § 86-317.

(C) Farmers Home Administration overage rule (not retroactive) is discussed in 15 CAR § 86-307.

(D)(i) Extension on initial compliance with set-aside (not retroactive).

(ii) Minimum set-aside requirements are discussed in 15 CAR § 86-301; and

(4)(A) August 10, 1993.

(B) Married students rule (retroactive).

(C) 1987-1989 rent change option (special rule).

(D) Section 8 requirement (retroactive) that states owners cannot refuse to lease to Section 8 tenants.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

The Farmers Home Administration is now the United States Department of Agriculture Rural Development.

"Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

This section as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "References: Blue Book, Section 42 of the Code, Congressional Laws"

This section as promulgated prior to codification into the Code of Arkansas Rules contained the following footnote at subdivision (b)(4)(A) of this section: "1 We discuss students in Section III.Q. Single Parent Student Rule (not retroactive)."

**15 CAR § 86-106. Additional revenue rulings and legislation.**

(a)(1) Two (2) important revenue rulings were later issued that were not retroactive.

(2) **September 9, 1992.** Internal Revenue Service Rev. Rul. 92-61, 1992-2 C.B. 7, deals with treatment of staff units as part of the eligible basis.

**(3) September 26, 1997.**

(A) Treas. Reg. § 1.42-15, available unit rule, was adopted as an amendment to the regulations.

(B) This rule allows over-income persons in LIHTC units to relocate to another unit in the same building.

(b) The Internal Revenue Service subsequently issued other important rulings, especially notable are the:

(1) Guide for Completing Form 8823, revised October 2009; and

(2) Housing and Economic Recovery Act of 2008.

**(c) Implementation of the Tax Credit Assistance Program (TCAP).**

(1)(A) On February 17, 2009, the President of the United States signed the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

(B) The purpose of the American Recovery and Reinvestment Act of 2009 was to jumpstart the nation's ailing economy, with a primary focus on:

(i) Creating and saving jobs in the near term; and

(ii) Investing in infrastructure that will provide long-term economic benefits.

(C) Title XII of the American Recovery and Reinvestment Act of 2009 appropriated funds for capital investments in low-income housing tax credit (LIHTC) projects.

(2)(A) All TCAP projects must have LIHTCs.

(B)(i) The project must maintain eligible basis and comply with all other requirements of I.R.C. § 42 throughout the compliance period.

(ii) A violation under I.R.C. § 42 also constitutes a violation under TCAP.

(3)(A) Arkansas Development Finance Authority staff will monitor TCAP projects in the same manner as LIHTC projects.

(B) Specific attention will be paid to the individual TCAP agreements for compliance with all the terms thereof.

(C)(i) Owner's breach of any provision of the TCAP agreement may constitute an event that the authority may, in its discretion, deem a recapture event.

(ii) If so, the authority will give owner notice and an opportunity to return to compliance.

(iii) The authority shall have full recourse against applicable parties for the full amount of recapture.

**(d) Implementation of Section 1602 of the American Recovery and Reinvestment Act of 2009 — Grants to states for low-income housing projects in lieu of low-income housing tax credits.**

(1)(A) The Section 1602 program is sometimes called the Exchange Program.

(B) However, this does not mean that a building that has been allocated LIHTCs must exchange these LIHTCs in order to receive Section 1602 funds.

(2) The Exchange Program refers to the exchange that takes place at the state level, where the authority exchanges all or part of the state housing credit ceiling (to the extent permitted under Section 1602) for Section 1602 funds.

(3) The purpose of the Section 1602 program is to provide funds to develop low-income housing where there is a funding gap.

(4)(A) Just as with LIHTC projects, buildings receiving Section 1602 funds are subject to a fifteen-year compliance period.

(B) The authority will monitor the projects for compliance with the terms and conditions set forth in the extended use agreement.

(5)(A)(i) A Section 1602 recapture event occurs any time within the fifteen-year compliance period (as defined in I.R.C. § 42(i)(1)) when the applicable fraction of a building under I.R.C. § 42(c)(1)(B) falls below the percentage of Section 1602 funds that comprise the eligible basis of the building (the Section 1602 percentage), or below the minimum set-aside elected for the building under I.R.C. § 42(g)(1), whichever is greater.

(ii) Individual extended use agreements will specify the Section 1602 percentage.

(B) When a recapture event occurs, the full amount of the Section 1602 subaward is owed minus six and sixty-seven hundredths percent (6.67%) (one-fifteenth) for each full year of the building's fifteen-year compliance where a Section 1602 recapture event has not occurred.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-107. Responsibilities of owners.**

(a)(1) Compliance with the requirements of the Internal Revenue Code is the development owner's responsibility.

(2) The Arkansas Development Finance Authority's obligation to monitor the development for compliance does not make the authority liable for an owner's noncompliance, nor does it alleviate an owner's duty to comply with applicable Internal Revenue Code requirements.

(b) In compliance with I.R.C. § 42 and in accordance with this part, the owner, by accepting the allocation of low-income housing tax credits, is obligated to:

(1) Manage the development in accordance with:

(A) The Internal Revenue Code; and

(B) All other applicable regulations and agreements;

(2) Ensure that, once the development is placed in service, it is suitable for occupancy by meeting Uniform Physical Conditions Standards and/or authority-approved design standards;

(3) Ensure that the development is continually managed in accordance with all applicable federal, state, local, and fair housing laws;

(4) Ensure that the complete records for the first year of the credit period are maintained for a minimum of twenty-one (21) years;

(5) Ensure that the records for subsequent years are maintained for a minimum of six (6) years after the due date for filing the federal income tax return for that year;

(6)(A) Immediately notify the authority of the placed in service date, initial credit year, completion of the development, as well as any material changes such as ownership or management that is made at any time during all phases of development.

(B) See 15 CAR § 86-701 et seq., for ownership or management notification requirements;

(7) Furnish to the authority a signed copy of the completed Internal Revenue Service Form 8609, and make available all such 8609 forms to the authority's staff during any on-site review;

(8) Cooperate with the authority's staff during compliance reviews;

(9) Furnish a copy of the election request to the Internal Revenue Service, showing change from family size to unit size in determining maximum allowable rents;

(10)(A) Furnish the annual Owner's Certificate of Continuing Program Compliance no later than February 1 of the year following the first credit year and every year thereafter during the compliance period.

(B)(i) The authority will no longer provide copies of forms.

(ii) The owner is responsible for downloading forms from the authority's website, [www.arkansas.gov/adfa](http://www.arkansas.gov/adfa).

(C) The owner's certification is an annual requirement for the duration of the compliance period.

(D)(i) Tenant data must be submitted electronically via the authority's computer software.

(ii) Owners or managers must enter tenant data online as events (move-ins, recertifications, move outs, etc.) occur.

(iii) The authority requires that you update the system no later than the fifteenth day of each month following the event.

(iv) Your data must be accurate and current;

(11) Assume liability for any instance of noncompliance and to correct such deficiencies as required; and

(12) Notify the authority of any casualty loss of a unit or building within thirty (30) days of the loss.

(c)(1) Partial release reporting forms must be submitted to the authority annually for three (3) years following the termination of the extended use requirement.

(2) Owners will initially provide a list of existing tenants on the authority's annual reporting form.

(3) The owner:

(A) Shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause; and

(B) Shall not increase the gross rent above the maximum allowed under the Internal Revenue Code with respect to such low-income unit.

(4)(A) The reporting form listing all existing tenants will be updated annually, documenting:

(i) The current rents; and

(ii) Any tenants that have vacated their unit.

(B) The report will identify:

(i) The date the unit was vacated; and

(ii) A detailed explanation why the tenant vacated.

(5) The owner will update electronically via the authority's computer software only when an existing tenant vacates their unit.

(6) If the project has other authority funding that requires the software to be updated monthly the owner must continue to update the software to document the tenant data of the other funding.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote at subdivision (b)(4) of this section that provided as follows: "2 Refer to the IRS Compliance Monitoring Requirements – Page A-72(b)(2) Record Retention Provision."

**15 CAR § 86-108. Mandatory compliance training for new projects.**

(a) The Compliance Department of the Arkansas Development Finance Authority will require a representative from the owner entity and/or the management company to attend mandatory compliance training.

(b) The required training will be for current approved projects.

(c) The authority will contact all representatives with a training schedule following the authority's project award notification letter.

(d) The compliance training will review the authority's:

(1) Policies and procedures; and

(2) Tenant data monthly reporting software (WCMS).

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

## **Subpart 2. Compliance Requirements**

### **15 CAR § 86-201. Reviews.**

(a)(1) Fundamental requirements include the following:

(A) The project must be residential rental property;

(B) The owner must establish and maintain a minimum set-aside of units that will be available to and occupied by low-income tenants;

(C) Tenant eligibility must be properly documented;

(D) Rents must be affordable to low-income tenants;

(E) Habitability standards must be maintained; and

(F) The residential rental units must be available for use by the general public in a nondiscriminatory manner.

(2) Additional requirements may also apply.

(b)(1) After a qualified development has been placed in service, the Arkansas Development Finance Authority will initiate compliance monitoring reviews.

(2) The authority's staff will audit each development:

(A) Within one hundred eighty (180) days following the first taxable credit year; and

(B) One every three (3) years throughout the compliance period.

(3) The authority's staff will:

(A) Conduct on-site inspections of all buildings in the project; and

(B) Randomly select a minimum twenty percent (20%) of tax credit units and tenant files for review.

(4) During the initial review, staff will audit forty percent (40%) or more of the tax credit units to confirm satisfaction of the minimum set-aside selection.

(c) The authority's staff will contact the owner or manager to schedule the on-site inspections, which will include the following reviews:

(1) Record keeping;

(2) Fair housing;

(3) Tenant files; and

(4)(A) Uniform Physical Conditions Standards for Buildings, Units, and Common Areas and the authority's design standards.

(B) See 15 CAR § 86-205.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-202. Record keeping.**

(a) The Arkansas Development Finance Authority requires that each development owner or manager maintains an administrative file/binder for the authority's LIHTC recordkeeping procedures.

(b) Since the information will be reviewed by the authority during each visit, the administrative file/binder must include, but is not limited to the following items:

(1) Completed 8609 forms on each building with building identification numbers (signed by the authority, Part II completed, and signed by the development owner);

(2)(A) Records that indicate the character and use of any nonresidential portion of the development included in eligible basis as defined under I.R.C. § 42(d).

(B) For example, tenant facilities that are available on a comparable basis to all tenants for which no separate fee is charged for the use of the facilities or facilities reasonably required by the development;

(3) Certificates of occupancy or approval;

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

(5) Copy of land-use restriction agreement or other extended use agreement;

(6) List of the first-year qualifying tenants (date entered and unit qualified);

(7) Total number of units in the property (this information must be retained on a building-by-building basis, including the number of bedrooms and the square footage of each unit);

(8) Department of Housing and Urban Development income/rent tables and utility allowance calculations for all years the development has been placed in service;

(9) Rent increases and date new rent will be effective and notification to the tenants;

(10) Rent specials, when they started, and when they ended;

(11) Rents charged on each type of unit, including applicable utility allowances for all years the development has been placed in service;

(12) Management review questionnaire with required project certifications;

(13)(A) Nonresidential use fee (i.e., additional fees charged for parking, etc.).

(B) Outline all nonoptional and optional tenant fees;

(14) 20/50 test, I.R.C. § 42, or 40/60 test, I.R.C. § 42 (also known as the minimum set-aside);

(15) Partnership agreement;

(16) Management agreement;

(17) Evidence of fair housing compliance and a copy of any complaints filed against the project;

(18) Copies of reports submitted to the authority (such as occupancy status reports), annual owner's certification form, and any project change request forms, if applicable; and

(19)(A) Bank statements to confirm amounts in operating reserve account and replacement reserve accounts.

(B) **Note.** In order to monitor the balances in the operating reserve account and the replacement reserve account, the authority requires owners to attach current year-end bank statements to the annual Owner's Certificate of Continuing Program Compliance throughout the compliance period.

(c) The most recent financial statements will be reviewed by the Compliance Department of the Arkansas Development Finance Authority during the monitoring visit.

(d)(1) First-year records (including the tenant file for each tenant that initially occupied the LIHTC units, rent rolls, etc.) provide evidence that the property met its:

- (A) Minimum set-aside;
- (B) Targeted applicable fraction; and
- (C) Other elected set-asides.

(2) Such first-year records must be kept for a minimum of twenty-one (21) years, and subsequent records must be kept for a minimum of six (6) years, as mandated under the Internal Revenue Code.

(3) The authority requires the owner to certify on the Owner's Certificate of Continuing Program Compliance that he or she is complying with this section of the Internal Revenue Code.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

### **15 CAR § 86-203. Fair housing.**

(a) During the on-site visit, the Arkansas Development Finance Authority's staff, in addition to interviewing tenants, will check the following:

(1) Posting of Equal Housing Opportunity symbol on all advertising and exterior property signs;

- (2) Display of the Equal Housing Opportunity sign in office where tenant applications are taken;
  - (3) Existence of acceptable number and location of accessible units, parking spaces, and their proximity to ramps, etc.;
  - (4) Maintenance of waiting lists and sign-in sheets;
  - (5) Diverse placement of accessible units for the disabled;
  - (6) Safe and sanitary condition of accessible units for the disabled;
  - (7) Utilization of a current Affirmative Fair Housing Marketing Plan (the authority can provide necessary forms if owner needs assistance in developing and implementing a plan);
  - (8) Documentation of affirmative fair housing marketing and outreach efforts;
- and
- (9)(A) Records used to collect racial data on the head of household.
  - (B) This information is for statistical purposes only.

(b) **Requirements for new buildings.** In buildings that were ready for first occupancy after March 13, 1991, and have an elevator and four (4) or more units:

- (1) Public and common areas must be accessible to persons with disabilities;
- (2) Doors and hallways must be wide enough for wheelchairs;
- (3) The main entrance for the building must be at least thirty-two inches (32") wide, measured between the face of the door and opposite doorjamb; and
- (4) All units must have:
  - (A) An accessible route into and through the unit;
  - (B) Accessible light switches, electrical outlets, thermostats, and other environmental controls;
  - (C) Reinforced bathroom walls to allow later installation of grab bars; and
  - (D) Kitchens and bathrooms that can be used by people in wheelchairs.

(c) The authority may request additional information for statistical purposes.

(d)(1) In an effort to assist funded housing partners and entities to comply with federal fair housing laws and meet state fair housing objectives, the authority will partner with the Arkansas Fair Housing Commission.

(2) The commission will provide training and certification for the authority's housing program applicants.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-204. Tenant files.**

(a)(1) The Arkansas Development Finance Authority requires files to be maintained in a consistent order.

(2) The authority's staff will randomly select and review at least twenty percent (20%) of current tenant files, as required by the Internal Revenue Service.

(3) First-year tenant files must also be available on site for review.

(b) The authority's staff will conduct a thorough examination to:

(1) Ensure that all documents are completed, signed, and dated by all appropriate parties;

(2) Compare tenant files to WCMS data entries;

(3) Review initial Tenant Income Certifications;

(4) Review executed leases for:

(A) The initial lease term of six (6) months or longer; and

(B) For rents charged for each LIHTC unit;

(5) Review signed authorization for release of income, employment, and asset information;

(6) Review and document annual income, subsidized rent, tenant contribution, utility allowance, and gross rent for compliance with LIHTC program limits;

(7) Ensure that third-party income verifications are completed, signed, and dated by all parties;

(8) Ensure that appropriate asset income verifications are used;

(9) Ensure that income recertifications are completed within the twelve-month period;

(10) Review original tenant applications;

(11) Review student eligibility guidelines;

(12) Review unit inspection forms (unit inspections are recommended quarterly) and maintenance records; and

(13) Review tenant complaint forms, responses, and other correspondence.

(c)(1) The authority recommends the use of files divided into sections as follows with the latest information on top.

(2) This list is not meant to be all-inclusive.

(d) **Section I — Eligibility.**

(1) Original signed tenant application.

(2) Credit check.

(3) Criminal background check.

(4) Check of landlord references.

(5) Copy of birth certificate, if applicable.

(6) Copy of driver's license or other photo ID, if applicable.

(7) Copy of Social Security card, if applicable, or Social Security number or alien registration number.

(e) **Section II — Certification.**

(1) Move-in Tenant Income Certification.

(2) Affidavit of alimony or child support.

(3) Authorization of release of information/disclosures.

(4) Real estate verification.

(5) Worksheet and calculator tape supporting determination of resident eligibility.

(6) Statement of student status, if applicable.

(7) Third-party verifications of income.

(8) Tax returns or other self-employment verification, if applicable.

(9) Social Security payment letters.

(10) Zero income statement, if applicable.

(11) Worksheet of basic needs contribution, also known as certification of daily needs.

(12) Bank statements.

(13) Asset statements and verifications.

(14) Telephone conversation reports clarifying third-party verifications or other similar circumstances, if applicable.

(15) Annual signed recertifications.

(16) Each year's recertification packet should be separated with a sheet of colored paper.

**(f) Section III — Occupancy.**

(1) Signed leases.

(2) Lease addendums (e.g., LIHTC requirements, smoke detector rules, etc.).

(3) Site rules and regulations.

(4) Security deposit rules.

(5) Pet information/signed agreement.

(6) Rent and income limits for each year of compliance.

(7) Copy of annual utility allowances for each year of compliance.

(8) Current amount of rental assistance payments.

(9) Current amount of rent paid by tenant.

(10) Copies of tenant's checks or receipts, if applicable.

(11) Signed tenant agreements.

**(g) Section IV — Correspondence.**

(1) Correspondence between tenant and manager.

(2) One hundred twenty-day, ninety-day, sixty-day, and thirty-day recertification notices.

(3) Thirty-day notice of rent increase.

(4) Copy of signed warning notices.

(5) Inspection notifications.

(6) Any brochures (e.g., guide to keeping unit clean).

(7) Permission to enter forms.

**(h)(1) Section V — Maintenance.**

(A) Proof of move-in inspection signed by tenant and manager.

(B) Proof of quarterly unit inspections and maintenance requests.

- (C)(i) Form for maintenance calls for repairs needed or requested.
  - (ii) Nonemergency repairs must be made within thirty (30) days.
  - (iii) Life/health/safety repairs must be completed within twenty-four (24) hours.
  - (D) Copies of work orders.
  - (E) Copies of receipts or proof of completion.
  - (F) Proof of move-out inspection signed by tenant and manager.
- (2) The above-mentioned documents under subdivision (h)(1) of this section may also be maintained in a separate unit maintenance folder.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-205. Uniform Physical Conditions Standards and/or Arkansas Development Finance Authority-approved design standards.**

- (a)(1) The Arkansas Development Finance Authority's staff will:
- (A) Conduct inspections of the units that are randomly selected for file audit; and
  - (B) Utilize Uniform Physical Conditions Standards and/or authority-approved design standards.
- (2) Owners may utilize standardized inspection forms for quarterly unit inspections.
- (3) The authority's staff will:
- (A) Inspect major areas of the property; and
  - (B)(i) Identify the defect and the severity level of the defect.
    - (ii) The levels are 1, 2, and 3 with 3 being the most severe.
- (4) Any life-threatening hazard must be addressed immediately.
- (5) UPCS identifies the following areas for inspection:
- (A) The site;

- (B) Building exterior;
- (C) Building systems;
- (D) Dwelling units;
- (E) Common areas; and
- (F) Health and safety considerations.

**(b) The site.**

(1) Site components, such as fencing, gates, retaining walls, grounds, lighting, mailboxes, project signs, parking lots/driveways/roads, play areas and equipment, refuse disposal, and storm drainage must be:

- (A) Free of health and safety hazards; and
- (B) In good repair.

(2) The site must not be subject to material adverse conditions, such as:

- (A) Abandoned vehicles;
- (B) Dangerous walks or steps;
- (C) Poor drainage;
- (D) Septic tank back-ups;
- (E) Sewer hazards;
- (F) Excess accumulation of trash;
- (G) Vermin or rodent infestation; or
- (H) Fire hazards.

**(c) The building exterior.**

(1) Each building on the site must be:

- (A) Structurally sound;
- (B) Secure;
- (C) Habitable; and
- (D) In good repair.

(2) Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be:

- (A) Free of health and safety hazards;
- (B) Operable; and

(C) In good repair.

(d) **Building systems.** Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be:

- (1) Free of health and safety hazards;
- (2) Functionally adequate;
- (3) Operable; and
- (4) In good repair.

(e) **Dwelling units.**

(1) Each LIHTC dwelling unit must be:

- (A) Structurally sound;
- (B) Habitable; and
- (C) In good repair.

(2) All areas and aspects of the dwelling unit (for example the unit's bathroom, call-for-aid, if applicable, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be:

- (A) Free of health and safety hazards;
- (B) Functionally adequate;
- (C) Operable; and
- (D) In good repair.

(3)(A) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(B) Note, for example, that single-room occupancy units need not contain water facilities.

(4) If the dwelling unit includes its own sanitary facilities, such facilities must be:

- (A) In proper operating condition;
- (B) Usable in privacy; and
- (C) Adequate for personal hygiene and the disposal of human waste.

(5) The dwelling unit must include at least one (1) battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

**(f) Common areas.**

(1) The common areas must be:

(A) Structurally sound;

(B) Secure; and

(C) Functionally adequate for the purposes intended.

(2) The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be:

(A) Free of health and safety hazards;

(B) Operable; and

(C) In good repair.

(3) All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be:

(A) Free of health and safety hazards;

(B) Operable; and

(C) In good repair.

(4) These standards for common areas apply to all housing but will be particularly relevant to congregate housing, independent group homes/residences, and single-room occupancy units in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

**(g) Health and safety concerns.**

(1)(A) All areas and components of the housing must be free of health and safety hazards.

(B) These areas include, but are not limited to:

(i) Air quality;

(ii) Electrical hazards;

(iii) Elevators;

(iv) Emergency/fire exits;

- (v) Flammable materials;
- (vi) Garbage and debris;
- (vii) Handrail hazards;
- (viii) Infestation; and
- (ix) Lead-based paint.

(2) For example, the buildings must have:

- (A) Fire exits that are not blocked; and
- (B) Handrails that are undamaged and have no other observable

deficiencies.

(3) The housing must have no evidence of:

- (A) Infestation by:
  - (i) Rats;
  - (ii) Mice; or
  - (iii) Other vermin; or
- (B) Garbage and debris.

(4) The housing must have no evidence of:

- (A) Electrical hazards;
- (B) Natural hazards; or
- (C) Fire hazards.

(5) The dwelling units and common areas must have proper ventilation and be free of:

- (A) Mold;
- (B) Odor (e.g., propane, natural gas, methane gas); or
- (C) Other observable deficiencies.

(6) The housing must:

(A) Comply with all requirements related to the evaluation and reduction of lead-based paint hazards; and

(B) Have available proper certifications of such, if applicable.

(h)(1) The physical condition standards stated herein do not supersede or preempt applicable state and local codes for building and maintenance.

(2) A low-income housing project must satisfy the local standards, and the authority is obligated to report known violations to the Internal Revenue Service.

(3) If there is a conflict between UPCS and state or local codes, an official of a governmental entity, such as the fire marshal's office or municipal building inspector, must provide a written notice to the authority explaining the nature of the conflict.

(4) The authority will evaluate and determine if the project or unit is in compliance.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "UPCS" means Uniform Physical Conditions Standards.

"HVAC" means heating, ventilation, and air conditioning.

"LIHTC" means low-income housing tax credit.

**15 CAR § 86-206. Monitoring fee.**

(a) The Arkansas Development Finance Authority has implemented a two-tiered plan for collecting monitoring fees.

(b)(1) The first plan begins with the 2009 allocations.

(2)(A) The authority will assess a one-time monitoring fee of eight percent (8%) of the annual credit allocation for the development.

(B) This assessment is due when credits are allocated, and no other monitoring fee will be due.

(c)(1) The second tier of the plan applies to existing properties that were assessed a monitoring fee of six percent (6%) at allocation.

(2) The initial six percent (6%) fee covers the first fifteen (15) years of monitoring.

(3) Properties that are now in extended years sixteen (16) through thirty-plus will be assessed a fee of fifty dollars (\$50.00) per tax credit unit.

(4) Rather than collect the fee annually, the authority will collect this fee when the authority conducts the audit, which is typically every three (3) years but is subject to the authority's discretion.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

### **Subpart 3. Compliance Issues**

#### **15 CAR § 86-301. Minimum set-aside.**

(a)(1) In order for an owner to claim tax credits, a development must have a minimum number of qualified tax credit units.

(2) The owner must select one (1) of two (2) minimum set-asides, which establishes both the:

- (A) Minimum percentage of tax credit units at the development; and
- (B) Maximum income limit used to determine tenant eligibility.

(b)(1) The choices are 20/50 and 40/60.

(2) Under the 20/50 selection, twenty percent (20%) or more of the aggregate residential rental units in the development must be occupied by persons with incomes of fifty percent (50%) or less of the area median gross income adjusted for family size.

(3) Under the 40/60 selection, forty percent (40%) or more of the aggregate residential units in the development must be occupied by individuals with incomes of sixty percent (60%) or less of the area median gross income adjusted for family size.

(c)(1)(A) The owner selects the minimum set-aside when applying for the tax credit allocation and makes the election on Form 8609.

(B) Once selected, the minimum set-aside is irrevocable.

(C) The year tax credits are claimed determines when the minimum set-aside test must be met.

(D) The minimum set-aside test must be maintained for the entire compliance period.

(E) If the property is identified as a multiple building project on Line 8b of Form 8609, the minimum set-aside may be met across the development.

(F) If the property is not identified as such, the minimum set-aside must be met building-by-building.

(2) For 1987 – 1990 developments, the minimum set-aside had to be met within twelve (12) months of the placed-in-service date.

(3) For 1991 and later years, the minimum set-aside must be met no later than December 31 of the second year of the initial credit period.

(4) The minimum set-aside must be met before any credits may be claimed.

(d)(1) The federal minimum set-aside election must not be confused with other set-aside elections that may have earned extra points in the allocation process and are recorded in the development's regulatory agreement.

(2) Additionally, the tax credit set-aside must not be confused with HOME fund requirements or subsidy programs such as Section 8 or United States Department of Agriculture Rural Development.

(3) Owners must always determine the tax credit minimum set-aside first and review allocation documents to identify any additional set-asides.

(4) If the development has layers of funding, the owner must satisfy the requirements of all programs.

(5) Following the most restrictive requirement may or may not apply.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

### **15 CAR § 86-302. Income limits.**

(a)(1) The Department of Housing and Urban Development publishes the Multifamily Tax Subsidy Projects (MTSP) income limits annually.

(2) The Internal Revenue Service requires these income limits, adjusted for family size, to be used when determining eligibility of LIHTC tenants at move-in.

(3) The minimum set-aside election establishes whether the fifty percent (50%) or sixty percent (60%) AMGI limit applies to the development's tax credit units.

(b)(1) The Department of Housing and Urban Development's L50 Very Low-Income amounts equal the fifty percent (50%) AMGI limits for households of one (1) to eight (8) persons.

(2)(A) The sixty percent (60%) AMGI limit must be calculated from the fifty percent (50%) limits.

(B) The sixty percent (60%) AMGI limit equals one hundred twenty percent (120%) of the Department of Housing and Urban Development Very Low-Income amount for the corresponding family size.

(C) Owners must calculate the sixty percent (60%) limits by multiplying the fifty percent (50%) AMGI figures by one and two-tenths (1.2).

(c)(1) When the Department of Housing and Urban Development publishes new MTSP income limits, owners are required to implement the new income limits no later than forty-five (45) days after the effective date.

(2) Any fluctuations in the income limits will have a corresponding impact on maximum gross rent amounts.

(3)(A) When determining income levels for qualifying tenants, the correct family size must be determined.

(B) A family includes all occupants of the unit.

(C) Owners should closely monitor family size.

(d) **Note.** Owners and managers must review development files to determine if the Department of Housing and Urban Development or United States Department of Agriculture Rural Development restrictions also apply or if owner agreed to other income restrictions.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-303. Maximum gross rents.**

(a)(1)(A) Units qualifying for tax credits are subject to a rent restriction formula that sets the maximum gross rent that may be charged.

(B) The maximum gross rent (including utilities) may not exceed thirty percent (30%) of the imputed income limitation.

(2) If low-income tenants are charged more than the allowable rent:

(A) The unit is in noncompliance; and

(B) Recapture of credits may result.

(3)(A) Whenever utility costs are paid directly by the tenant, gross rent must include an allowance for utilities.

(B)(i) Telephone and cable are not considered to be essential utilities and are not included in the allowance for utilities.

(ii) See 15 CAR § 86-308 for a discussion of telephones.

(b)(1) Maximum gross rent = (applicable income limit x 30%) divided by twelve (12).

(2) Remember that the tenant's rent plus the utility allowance cannot exceed the maximum gross rent.

(c)(1) If the rent calculation ends with an amount beyond the decimal point, you must not round the amount up.

(2) Rounding up would charge more than the maximum allowable rent, thus resulting in noncompliance.

**Example:** If the applicable income limit is twenty-one thousand seven hundred fifty dollars (\$21,750), multiply by three-tenths (.30) to get six thousand five hundred twenty-five dollars (\$6,525), and then divide by twelve (12) to get five hundred forty-three dollars and seventy-five cents (\$543.75). You may round this amount down to five hundred

forty-three dollars (\$543) but you cannot round up to five hundred forty-four dollars (\$544). The maximum gross rent including the utility allowance cannot exceed five hundred forty-three dollars and seventy-five cents (\$543.75).

**(d) 1987–1989 developments.**

(1) For developments with 1987, 1988, or 1989 tax credit allocations, the unit rent is calculated using the income limit for the actual number of people in the household.

(2) Thus, the maximum rent can increase or decrease based on respective changes in the household composition.

# Persons		1	2	3	4	5	6
Income	50%	12,150	13,900	15,600	17,350	18,750	20,150
Limits	60%	14,580	16,680	18,720	20,820	22,500	24,180

(3) The resulting maximum allowable rents (including utility allowance) based on household size equals  $(\text{limit} \times 30\%) \div 12$ :

# Persons		1	2	3	4	5	6
Rents	50%	303	347	390	433	468	503
	60%	364	417	468	520	562	604

(4) The rent decreases based on a reduction in household composition or a decrease in the income limits.

**(e) 1990+ developments.**

(1)(A) For developments with 1990 and subsequent allocations, the rent formula uses an imputed family size of one and one-half (1.5) persons per bedroom to determine the applicable income limit to be used for rent calculations.

(B) For efficiency or studio units, the one-person income limit is used.

(2)(A) To determine which income limit is used for the bedroom size rent formula, use the imputed household size of one and one-half (1.5) persons times actual number of bedrooms.

(B) Studio, one (1) person.

(C) One (1) bedroom, one and one-half (1.5) persons.

(D) Two (2) bedrooms, three (3) persons.

(E) Three (3) bedrooms, four and one-half (4.5) persons.

(F) Four (4) bedrooms, six (6) persons.

(3)(A)(i) For the one and one-half-person income limit, take the one-person limit, add to the two-person limit, and divide by two (2).

(ii) Multiply your answer by thirty percent (30%) and divide by twelve (12) to arrive at maximum rent.

(B)(i) Two (2) bedrooms:  $1.5 \times 2 = 3$ .

(ii) Use the income for three (3) persons x thirty percent (30%) divided by twelve (12) = maximum rent.

(C)(i) Three (3) bedrooms:  $1.5 \times 3 = 4.50$ , which means that you take the income limit for four (4) persons and add to the income limit for five (5) persons, divide by two (2).

(ii) Multiply by thirty percent (30%) and divide by twelve (12) = maximum rent.

(D)(i) Four (4) bedrooms:  $1.5 \times 4 = 6$ .

(ii) Use the income limit for six (6) persons x thirty percent (30%) divided by twelve (12) = maximum rent.

**(4) Income limits sample.**

# Persons		1	2	3	4	5	6
Income	50%	12,150	13,900	15,600	17,350	18,750	20,150
Limits	60%	14,580	16,680	18,720	20,820	22,500	24,180

(5) **Maximum rents sample.**

# Bedrooms		0	1	2	3	4
Income	50%	303	325	390	451	503
Limits	60%	364	390	468	541	604

(6) **Note.**

(A) For certain projects and depending on the project's rent floor election effective date, rents may be higher than the rent limits derived from the MTSP income limits.

(B) LIHTC project owners can elect to have their rent floor effective on:

- (i) The date of their carryover allocation; or
- (ii) The date the project is placed in service.

(C) Owners must notify the Arkansas Development Finance Authority if choosing the rent floor election.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-304. Fees.**

(a)(1) Any charges to low-income tenants for services that are not optional generally must be included in gross rent.

(2) A service is optional when:

- (A) The service is not a condition of occupancy; and
- (B) There is a reasonable alternative.

(3) No separate fees can be charged for tenant facilities (swimming pools, parking, recreational facilities) if the costs of the facilities are included in eligible basis.

(4) Fees cannot be charged for services considered as amenities or for which the owner received points.

(b)(1)(A) Refundable fees associated with renting an LIHTC unit are not included in the rent computation.

(B) For example, security deposits and fees paid if a lease is prematurely terminated are one-time payments that are not considered in the rent computation.

(2)(A) Required costs or fees, which are not refundable, are included in the rent computation.

(B) Examples include fees for month-to-month tenancy and renter's insurance.

(c) The following fees may be charged if they are optional:

- (1) Pet fees;
- (2) Laundry room fees;
- (3) Garage; and
- (4) Storage fees.

(d)(1) Owners/managers must be careful that gross rents do not exceed tax credit limits.

(2)(A) A common mistake is to charge additional fees that are prohibited under the program.

(B) Prohibited fees include, but are not limited, to the following:

- (i) Unit preparation fees;
- (ii) Redecorating fees; and
- (iii) Rekeying fees.

(e)(1) Application fees may be charged to cover the actual cost of checking a prospective tenant's:

- (A) Income;
- (B) Credit history; and
- (C) Landlord references.

(2) The fee is limited to recovery of the actual out-of-pocket costs.

(3) Owners or managers must provide supporting documentation to justify the amount of application fees.

(4) It is also acceptable for the applicant to pay the application fee directly to the third party actually providing the applicant's rental history.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-305. Rent subsidies.**

(a) Gross rent does not include any housing assistance payments made to an owner to subsidize a tenant's rent (i.e., Section 8).

(b) Only the actual rent paid by the tenant, including tenant-paid utilities, is counted toward the maximum allowable rent.

(c)(1) For example, if the LIHTC maximum gross rent is three hundred fifty dollars (\$350) and the total tenant payment is two hundred fifty dollars (\$250) with rental assistance paying an additional subsidy of one hundred fifty dollars (\$150) to equal the contract rent of four hundred dollars (\$400), there is no problem.

(2) The amount paid by the tenant, including utilities, does not exceed three hundred fifty dollars (\$350).

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

"LIHTC" means low-income housing tax credit.

**15 CAR § 86-306. Section 8 rental assistance.**

(a)(1) Under the Department of Housing and Urban Development Section 8 Program, a tenant cannot pay more than thirty percent (30%) of his or her adjusted gross income for rent.

(2) For this reason, in 1989 the Internal Revenue Service ruled that if the tenant portion of rent increases above the LIHTC maximum allowable rent, thereby reducing the Section 8 subsidy, the higher rent may be charged.

(b)(1) Owners must make sure the total tenant payment does not exceed the maximum LIHTC rent at time of move-in.

(2) A low-income resident may pay more than the restricted tax credit rent in one (1) situation.

(3) If a federal rental subsidy, such as Section 8, is paid on behalf of a low-income resident, I.R.C. § 42(g)(2)(E) permits the resident to pay more than the maximum LIHTC rent if:

(A) The excess of gross rent over the applicable rent limit is due to the tenant's income, at recertification, now exceeding the applicable income limit;

(B) A federal rental assistance payment is made on behalf of the tenant;  
and

(C) The sum of the rental assistance payment and the gross rent for the unit does not exceed the amount of rental assistance payment and gross rent that would be paid for the unit if the:

(i) Income of the tenant did not exceed the applicable income limit;  
and

(ii) Unit was rent restricted.

(c)(1) An owner may collect more than the tax credit allowable rent from a tenant in the situation described herein.

(2)(A) However, the owner does not receive more total rent than he or she received prior to the increase in the tenant's income.

(B) In other words, while the tenant pays more, the rental assistance payment is less.

(d) If no Section 8 subsidy is paid on behalf of the tenant, the tenant portion cannot exceed the allowable tax credit rent.

(e) **Note.** At move-in, all tenants must qualify under I.R.C. § 42 LIHTC regulations.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

"LIHTC" means low-income housing tax credit.

**15 CAR § 86-307. United States Department of Agriculture Rural Development overage.**

(a)(1) In United States Department of Agriculture Rural Development Section 515 projects, overage rents may result when thirty percent (30%) of the tenant income minus the utility allowance exceeds the United States Department of Agriculture Rural Development program's basic rent.

(2) If this overage rent exceeds the LIHTC rent, then the overage cannot always be charged.

(b) For 1991 and later year developments, the overage can be charged for amounts that are turned over to the United States Department of Agriculture Rural Development.

(c) In 1987–1990 developments, the overage cannot be charged to the tenant since the provision is not retroactive.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-308. Utility allowances.**

(a)(1) Utilities include the costs for:

- (A) Heat;
- (B) Lights;
- (C) Air conditioning;

- (D) Water;
- (E) Sewer; and
- (F) Trash removal.

(2)(A) Generally, telephone, cable television, and internet are not included in utilities.

(B)(i) However, if a supportive service or any other charge is mandatory, such charge becomes part of the gross rent calculation.

(ii) This may include:

- (a) Parking fees;
- (b) A telephone if it is required to open the door for visitors;
- (c) Meal service; or
- (d) Other required costs.

(b)(1) Whenever a tenant directly pays utility costs, a utility allowance must be used to determine the maximum unit rent that may be charged.

(2) The utility allowance must be subtracted from the maximum gross rent to determine the maximum tenant portion of rent.

(3) Utilities are part of rent.

(c) Overcharging rent can take the unit out of compliance even if the excessive amount is returned to the tenant.

(d) The Internal Revenue Service released final regulations regarding utility allowances for the LIHTC program.

(e)(1) The Arkansas Development Finance Authority is currently accepting the following:

(A) **Department of Housing and Urban Development-regulated properties.** Buildings that receive Department of Housing and Urban Development rental assistance or are required to have rents and utility allowances reviewed annually by the Department of Housing and Urban Development must use the Department of Housing and Urban Development-provided utility allowances for all rent-restricted units;

(B) **United States Department of Agriculture Rural Development-assisted buildings.** Buildings that receive assistance from the United States

Department of Agriculture Rural Development must use the allowances provided by the United States Department of Agriculture Rural Development for all rent-restricted units;

(C) **Buildings with United States Department of Agriculture Rural Development-assisted tenants.** If any tenant in a building receives United States Department of Agriculture Rural Development rental assistance, the applicable rental allowance for all rent-restricted units in the building is the applicable United States Department of Agriculture Rural Development utility allowance;

(D) **Tenants receiving Department of Housing and Urban Development rental assistance.** If none of the rules in subdivisions (e)(1)(A) – (C) of this section applies, the utility allowance for any rent-restricted units occupied by tenants receiving Department of Housing and Urban Development rental assistance (Department of Housing and Urban Development tenant assistance) is the applicable public housing authority utility allowance established for the Section 8 Existing Housing Program;

(E) **Conventional buildings.** Use local public housing authority utility allowances unless utility company data can support alternate amounts;

(F) **Conventional building with Section 8 subsidy through certificates or vouchers.** Owners must use the local public housing authority Section 8 existing utility allowances for those Section 8 units;

(G) **Utility company estimates.**

(i) Owners may obtain written estimates from local utility companies that provide services to that building.

(ii) Information must be based on comparable property of similar size, construction for the geographical area, and to specific types of units (e.g., by number of bedrooms).

(iii) Once obtained, a private utility estimate must be used for a building.

(iv) Owners must average the utility costs for each unit type and divide by twelve (12) to determine monthly utility allowance;

**(H) Department of Housing and Urban Development Utility**

**Schedule Model.** An owner may calculate a utility allowance using the United States Department of Housing and Urban Development's Utility Schedule Model found at <http://www.huduser.org/resources/utlmodel.html>; and

**(I) Energy consumption model.**

(i) A building owner may calculate utility allowances using an energy and water and sewage consumption and analysis model.

(ii) The energy consumption model must, at a minimum, take into account specific factors including, but not limited to:

*(a)* Unit size;

*(b)* Building orientation;

*(c)* Design and materials;

*(d)* Mechanical systems;

*(e)* Appliances; and

*(f)* Characteristics of the building location.

(iii) The energy consumption estimates must be calculated by either a properly licensed engineer or qualified professional approved by the Arkansas Development Finance Authority.

(iv) The Arkansas Development Finance Authority will provide more details on the submission process.

(2) The above options in subdivisions (e)(1)(A) – (D) are mandatory.

(f) The Arkansas Development Finance Authority does not provide estimates at this time.

(g)(1) All utility allowances must be updated annually.

(2) Any changes in utility allowances have a direct impact on the net chargeable rent to the tenant.

(3) Any new allowance must be implemented within ninety (90) days of the effective date.

(4) Properties utilizing HOME only must implement the new rate at lease renewal.

(5) It is the owner's responsibility to keep track of changes in applicable PHA utility allowances and to implement them.

(6) Owners must be sure that the lease indicates when and under what circumstances the rent and utilities may change.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

"PHA" means public housing authority.

**15 CAR § 86-309. Vacant unit rule.**

(a)(1) If a low-income unit becomes vacant during the year, the unit remains in compliance with LIHTC regulations and eligible for the tax credit.

(2) The unit may be counted in the set-aside requirement and in determining the qualified basis provided:

(A) The owner has made reasonable attempts to rent the unit or the next available comparable or smaller size unit to an eligible household; and

(B) No other comparable or smaller size units in the building are rented to nonqualifying individuals.

(b)(1) Units that have never been occupied are termed empty, rather than vacant, and cannot be counted as low-income units.

(2) Empty units must be included in the building's total unit count for purposes of counting the applicable fraction.

(c)(1) Throughout the compliance period, owners are required to keep records for each qualified low-income development showing the low-income unit vacancies and data for when and to whom the next available units were rented.

(2) The vacant unit rule applies to both one hundred percent (100%) LIHTC developments and mixed income developments.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-310. Next available unit rule.**

(a) If the household income for residents in a qualified unit increases to more than one hundred forty percent (140%) of the current applicable income limit, the unit is considered an over-income unit but may continue to be counted as an LIHTC unit as long as two (2) conditions are met:

- (1) The unit must continue to be rent restricted; and
- (2) The next comparable size unit in the building must be rented to a qualified low-income tenant.

(b) The owner of an LIHTC building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building until the applicable fraction (excluding the over-income units) is restored to the percentage on which the credit is based.

(c) Once the original applicable fraction of the building has been restored, the over-income unit may:

- (1) Remain rent restricted; or
- (2) Become a market-rate unit if the building is a mixed income building.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-311. Relocating existing tenants.**

(a)(1) If existing LIHTC tenants wish to transfer to a different LIHTC unit in the same building (as identified by the building identification number), they do not need to be recertified.

(2) A new lease must be executed to be effective on the move-in date to the new unit.

(b)(1) When a household moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit.

(2) Thus, if a current household whose income exceeds the applicable income limitation moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit.

(3) The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(c) When a household moves to a unit in a different building, the Arkansas Development Finance Authority requires the owner or manager to treat that household as a new move-in and qualify accordingly.

(d) During the initial credit period, existing tenants cannot be relocated for the purpose of qualifying more than one (1) LIHTC unit to count toward the minimum set-aside or applicable fraction.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-312. Staff units.**

(a)(1) Rev. Rul. 92-61, 1992-2 C.B. 7 [Section A], effective September 9, 1992, allows a unit for a full-time staff member to be considered part of a development's common area.

(2) Such units are not classified as residential rental units and thus are not included in either the numerator or denominator of the applicable fraction under I.R.C. § 42(c)(1)(B) for purposes of determining the building's qualified basis.

(b)(1) Two (2) options apply:

(A)(i) If the staff unit is a rental unit and is to be counted as part of the qualified basis, then the staff must be income-eligible, be certified, and sign a lease the same as any LIHTC tenant.

(ii) In this case, if the staff member receives free rent or a rental discount, the imputed value of the rent or discount must be included as income; or

(B) If the unit is not a residential unit but used as common area by full-time staff, then the staff does not have to be:

(i) Income eligible;

(ii) Certified;

(iii) Leased; or

(iv) Considered a tenant.

(2)(A) The bottom line is that the staff person must be full-time for the unit to be common area.

(B) The owner's application and allocation documents should specify the number of common area units set aside for staff.

(C) The Revenue Ruling does not apply to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of tax credits prior to that date, unless the owner filed a tax return that is consistent with this ruling.

(c)(1) When contacted with a request to convert a tax credit unit to a manager's unit or security officer's unit, the Arkansas Development Finance Authority will send the owner:

(A) A copy of Rev. Rul. 92-61; and

(B) Other information on the definition and discussion of functionally related facilities and functionally related and subordinate facilities.

(2)(A) If, based on the information, the owner (not the site manager) determines that the unit or units may be converted, then the owner must submit a written request to the authority.

(B) The request must include a:

(i) Statement of approval from the syndicator/investor (limited partner whose credits are at issue);

(ii) Description of why the conversion is needed; and  
(iii) Statement that the staff will be full-time and indicates how the unit will be functionally related and subordinate to the development.

(C) Within thirty (30) days of receipt of your request and pertinent information, the authority will review your request.

(D) The owner will receive written notification of the authority's decision.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-313. Nontransient occupancy.**

(a) According to the Internal Revenue Code, residential units must be for use by the general public, and all of the units in a development must be used on a nontransient basis.

(b) For LIHTC units to be in compliance, a six-month minimum lease term is required at initial occupancy of such low-income units.

(c) A six-month lease addendum should be signed with in-place tenants who do not have six (6) months left on an existing lease when the building is placed in service.

(d) The only exceptions to this requirement would be for:

(1) Single-room occupancy housing rented on a month-by-month (thirty-day lease) basis; or

(2) Transitional housing for the homeless.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-314. General public — Fair housing — Section 504 — Americans with Disabilities Act.**

(a) All residential rental units in the development must be available for use by the general public.

(b)(1) LIHTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, 42 U.S.C. §§ 3601 – 3619.

(2) The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on:

- (A) Race or color;
- (B) Religion;
- (C) Sex;
- (D) National origin;
- (E) Familial status (including children under the age of eighteen (18) living with parents or legal custodians, pregnant women, and people securing custody of children under eighteen (18)); and
- (F) Disability.

(3) However, all households must be eligible in the areas of:

- (A) Income;
- (B) Occupancy;
- (C) Selection criteria by management; and
- (D) Type of property.

(c)(1) Tax credit units may not be provided:

- (A) Only for members of a social organization; or
- (B) By an employer for its employees.

(2) Also, a residential unit is not for use of the general public, and therefore does not qualify under the Internal Revenue Code as part of a:

- (A) Hospital;
- (B) Nursing home;
- (C) Sanitarium;
- (D) Life care facility;
- (E) Dormitory;
- (F) Trailer park;
- (G) Retirement home that provides significant services other than housing; or

(H) Intermediate care facility for the disabled.

(d)(1) The Fair Housing Act also mandates specific design and construction requirements for multi-family housing built after March 13, 1991, to provide accessible housing for individuals with disabilities.

(2) Owners are expected to be familiar with accessibility requirements for their developments in compliance with:

(A) The Fair Housing Act;

(B) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; and

(C) The Americans with Disabilities Act.

(3) Some of those pertinent facts are:

(A) **New construction requirements.** Since March 13, 1991, the Fair Housing Act has required that downstairs units in nonelevator buildings and all units in elevator buildings be accessible;

(B) **Reasonable accommodation.** The law requires that reasonable accommodations in rules, regulations, policies, and procedures may have to be made for disabled applicants or residents;

(C) **Reasonable modification.** The law requires that reasonable physical alterations cannot be refused to an applicant or tenant;

(D) **Section 504.**

(i) Section 504 of the Rehabilitation Act of 1973 covers all federal programs, including Community Development Block Grant, HOME funds, United States Department of Agriculture Rural Development, PHA, and Department of Housing and Urban Development properties.

(ii) New construction and substantial rehabilitation require that a minimum of five percent (5%) of units or a minimum of one (1) and additional two percent (2%) of units or a minimum of one (1) be adapted for wheelchair and visual/hearing impaired respectively.

(iii) All common areas must be accessible to and useable by the physically mobility impaired.

(iv)(a) While the Fair Housing Act states that reasonable modification costs may be charged to tenants, Section 504 of the Rehabilitation Act of 1973 states it is a project expense unless it poses a financial or administrative burden.

(b) It is the owner's responsibility to provide documentation to prove financial or administrative burden; and

**(E) The Fair Housing Act applies to all LIHTC developments.**

(i)(a) Section 504 of the Rehabilitation Act of 1973 does not apply to conventional nine percent (9%) deals without other federal funds.

(b) This ruling may be subject to change.

(ii) The Americans with Disabilities Act provision in regard to public accommodations would require offices and other common areas to be accessible.

(e)(1) The current Annual Owner's Certification being used by the Arkansas Development Finance Authority asks the owner to indicate if a finding of discrimination under the Fair Housing Act, 42 U.S.C. §§ 3601 – 3619, has occurred for the development.

(2) A finding of discrimination includes an:

(A) Adverse final decision by the Secretary of Housing and Urban Development, 24 C.F.R. § 180.680;

(B) Adverse final finding by a substantially equivalent state or local fair housing agency, 42 U.S.C. § 3616a(a)(1); or

(C) Adverse judgment by a federal court.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

"PHA" means public housing authority.

**15 CAR § 86-315. Section 8 housing choice vouchers.**

(a) Owners may not refuse to rent to Section 8 housing choice voucher holders simply because they have Section 8.

(b) On the other hand, owners must not assume a Section 8 certificate or voucher holder automatically qualifies.

(c) Applicants eligible for Section 8 may:

(1) Have incomes exceeding LIHTC income limits;

(2) Have negative references; or

(3) Otherwise not qualify.

(d) Proof of income eligibility must be in the tenant file.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

"Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

**15 CAR § 86-316. Suitability of unit.**

(a)(1) A unit must be suitable for occupancy in accordance with state or local codes in order for credits to be claimed.

(2) If the unit is not habitable, no credits can be claimed.

(b)(1) The Internal Revenue Service has ruled that if a unit is destroyed due to a casualty loss (i.e., fire, flood, or other disaster), credits cannot be claimed while the unit is being replaced.

(2) Owners must report a casualty loss to the Arkansas Development Finance Authority within thirty (30) days following the loss.

(3) If the building or unit is restored within a reasonable time, credits can again be claimed and no recapture would occur.

(c) **What is a reasonable replacement time.**

(1) The reasonableness of the time period to repair damaged property depends on the extent of the damage.

(2) The authority will consider other factors such as the:

(A) Location of the property; and

(B) Time of the year.

(3)(A) Generally, however, two (2) years should be sufficient for the replacement of property completely destroyed by a casualty loss.

(B) In the event the owner is not able to replace the property within two (2) years, the authority may extend the time period if the owner demonstrates that there is a reasonable cause for delay.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-317. Students.**

(a)(1) The Internal Revenue Code specifies that LIHTC housing must be for the use of the general public on a nontransient basis.

(2) Further, the regulations state no dormitory may be a qualified low-income project.

(b)(1) An LIHTC development cannot be entirely occupied by full-time students.

(2) Student status becomes an issue when everyone in the household is a full-time student.

(c) The tenant, in order to be considered a full-time student, must be:

(1) Taking at least twelve (12) credit hours per semester;

(2) Taking the school's full-time requirement (as defined by the institution); or

(3)(A) Enrolled five (5) months out of twelve (12) months in an institution of higher learning.

(B) The five (5) months need not be consecutive.

(d)(1)(A) Student status must be reverified at annual recertifications to confirm continuing eligibility of the household.

(B) If owner has obtained a recertification waiver, he or she, too, must continue to check student status annually.

(2) Student status must be verified through the registrar's office of the educational institution.

(3) Children in grades kindergarten through twelve (K – 12) are considered full-time students.

(e) Full-time students who are not entitled to file a joint tax return are not eligible for the tax credit unit.

(f) There is no grandfathering of eligibility because the tenant was not a student when he or she moved in and later became one.

(g) **Exceptions.** A unit would not be disqualified for tax credits if it is occupied as specified in I.R.C. § 42(i)(3)(D):

(1) By an individual who is:

(A) A student and receiving welfare (Aid to Families with Dependent Children or Temporary Assistance for Needy Families) assistance under Title IV of the Social Security Act, 42 U.S.C. § 601 et seq.; or

(B)(i) Enrolled in a job training program receiving assistance under:

(a) The Job Training Partnership Act [repealed]; or

(b) Other similar federal, state, or local laws.

(ii) **Note.** The Workforce Investment Act [repealed] replaced the Job Training Partnership Act [repealed].

(iii) A similar program must get federal, state, or local government funding and have a mission similar to the one for the Job Training Partnership Act [repealed] program; or

(2) Entirely by full-time students if such students are:

(A) Single parents and their children and such parents are not dependents (as defined in I.R.C. § 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children;

(B) Married and entitled to file a joint tax return; or

(C)(i) At least one (1) household member was under the care and placement responsibility of the state agency responsible for foster care services.

(ii) It is the authority's position that the household member would have been in foster care during the last five (5) calendar years prior to applying for residency.

(iii) Owners must obtain court or state agency documents to confirm foster care.

(h)(1) The authority considers a household eligible if it contains at least one (1) part-time student.

(2) Children in kindergarten through twelfth grade (K – 12) are considered full-time students.

(i) The Arkansas welfare-to-work program known as the Transitional Employment Assistance Program qualifies as a job training program.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

#### **Subpart 4. Determining Tenant Eligibility**

##### **15 CAR § 86-401. Determining tenant eligibility generally.**

(a) Owners must determine and provide documentation that proves the eligibility of potential low-income tenants in accordance with LIHTC requirements.

(b) A tenant's income eligibility is determined by comparing the household's gross annual anticipated income, calculated in accordance with Department of Housing and Urban Development guidelines, to the LIHTC fifty percent (50%) or sixty percent (60%) area gross median income limits that apply to the development.

(c)(1) Owners must verify the household's income and the student status of all household members.

(2) The tenant and owner must certify the accuracy of the verified information.

(d) Since household composition, income, and student status may change over time, owners must recertify the eligibility of tenants in tax credit units annually.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-402. Household size and income limits.**

(a)(1) I.R.C. § 42 mandates that the MTSP income limits adjusted for household size be used in determining income eligibility for the LIHTC program.

(2)(A) A household can consist of one (1) or more persons.

(B) Members need not be related to be considered a household.

(3) Count all household members and compare to the per-person fifty percent (50%) or sixty percent (60%) income limits currently in effect.

(4) Please do not confuse the one hundred forty percent (140%) rule, which allows an existing tenant's income to exceed the allowable limit.

(5) Owners or managers must never allow over-income applicants to move into an LIHTC unit.

(6) Full-time students residing together in a unit must qualify under one (1) of the exceptions previously listed herein.

(b)(1) Certain individuals are not considered members of the household in determining the income limits.

(2) Do not count the income of the following when determining household income:

(A) Live-in care attendants;

(B) Visitors or guests;

(C) Foster children; and

(D) Foster adults.

(c)(1) A live-in attendant or caregiver is a person who resides with an elderly, disabled, or handicapped person and who:

(A) Is determined to be essential to the care and well-being of the person;  
(B) Is not obligated for the support of the person;  
(C) Would not be living in the unit except to provide the necessary supportive services; and

(D) Is not eligible to remain in the unit once the tenant is no longer living in the unit, regardless of the circumstances of tenant's departure.

(2) A relative may be considered to be a live-in aide/attendant if he or she meets the above requirements.

(3) A spouse does not qualify as a live-in aide.

(4) Owners must utilize the Live-in Care Attendant Affidavit.

(d)(1) The caregiver need not sign the lease, application, or Tenant Income Certification, but the caregiver should sign an agreement to abide by house rules and that the caregiver understands and agrees the eviction regulations apply to him or her.

(2) Owners may, as part of established procedures, obtain consent from the caregiver for a criminal background check.

(3) A credit check is not necessary since the caregiver is not responsible for payment of rent.

(4) If a caregiver is denied residency (i.e., because of the criminal background check), the tenant must find another appropriate caregiver.

(e)(1) Temporarily absent members of the household should be counted when determining household size.

(2) Count the following:

(A) Children temporarily absent due to placement in a foster home;

(B) Children in joint custody arrangements who are present in the household fifty percent (50%) or more of the time;

(C) Children away at school but who live with the family during school recesses;

(D) Temporarily absent family members who are still family members (i.e., a tenant, cotenant, or spouse is always considered to be a family member);

(E)(i) A person confined to a hospital or nursing home for periods of limited or fixed durations.

(ii) For persons permanently confined to a hospital or nursing home, the family decides if such persons are included when determining household size for income limits; and

(F) A son or daughter on active military duty only if this person leaves dependents or a spouse in the unit.

(f)(1) The Arkansas Development Finance Authority counts unborn children and children who are in the process of being adopted as household members for the purposes of determining unit size and income limits only.

(2) The unborn child does not count as an exception to the full-time student rules.

**(g) Changes in household size.**

(1)(A) No additions may be made to the household during the first six (6) months of the lease unless such change was indicated on the application.

(B) After the initial six (6) months, the addition of new household members to an existing low-income household requires the Tenant Income Certification (TIC) for the new member of the household, including third-party verification.

(C) The new tenant's income is added to the income disclosed on the existing household's TIC.

(D) The household continues to be income-qualified and the income of the new member is taken into consideration with the income of the existing household for purposes of the available unit rule under I.R.C. § 42(g)(2)(D).

(E) The effective date continues to be the original move-in date, and the next recertification is due within one hundred twenty (120) days before the original move-in date.

(2)(A) A household may continue to add members as long as at least one (1) member of the original low-income household continues to live in the unit.

(B) Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit.

(C)(i) A household may be originally qualified based on the inclusion of an unborn child but the pregnancy ends in miscarriage.

(ii) It is not necessary to certify the remaining household as a new tenant at the time of the miscarriage.

(D) If the income of the remaining household members exceeds the income at the next income recertification, the available unit rule is applicable.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "MTSP" means multifamily tax subsidy projects.

"LIHTC" means low-income housing tax credit.

**15 CAR § 86-403. Gross annual income.**

(a)(1) Total income is gross income with no adjustments or deductions.

(2) Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for federal income tax liability.

(3)(A) Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the twelve-month period following the effective date of certification of income.

(B) Certain types of income are excluded.

(b)(1) The LIHTC program refers to the current Department of Housing and Urban Development Handbook 4350.3 in utilizing its definition of income only.

(2) Keep in mind that the LIHTC program is governed by I.R.C. § 42.

(3) Owners or managers of mixed-use properties must comply with all applicable program rules and regulations.

(4) Allowances used in some government programs, such as childcare, elderly status, medical expense, etc., are not deducted from the household's gross annual income to determine income eligibility for LIHTC units.

(5) Owners must review the current version of the Department of Housing and Urban Development Handbook 4350.3 for a comprehensive discussion of income calculations.

(c) Annual income includes:

(1)(A) The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults of the household (including persons under the age of eighteen (18) who are the head, spouse, or co-head).

(B) Includes salaries of adults received from family-owned businesses;

(2) Net income, salaries, and other amounts distributed from a business;

(3)(A) Interest, dividends, and other net income of any kind from real or personal property (including income distributed from a nonrevocable trust).

(B) This includes any withdrawal of cash or assets from an investment, except to the extent the withdrawal is reimbursement of cash or assets invested by the family.

(C)(i) Where the family has net family assets in excess of five thousand dollars (\$5,000), annual income includes the greater of:

(a) The actual income derived from all net family assets; or

(b) A percentage of the value of such assets based on the current passbook savings rate, as determined by the Department of Housing and Urban Development.

(ii) The current passbook rate is two percent (2%);

(4)(A) The gross amount (before deductions for Medicare, etc.) of periodic Social Security payments (including the cents, do not round down).

(B) This includes payments received by adults on behalf of minors for their own support.

(C) **Note.** If Social Security is reducing a family's benefits to adjust for a prior overpayment, use the amount remaining after the adjustment for the overpayment;

(5)(A) The full amount of periodic payments of annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum amount or prospective monthly amounts for the delayed start of a periodic amount (other than deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts).

(B) Count the total amount received.

(C) Do not reduce the amount by any amounts the individual previously paid into the account in order to receive the:

(i) Pension;

(ii) Annuity; or

(iii) Insurance policy;

(6)(A) Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay, including delayed periodic payments received that would have been paid periodically but were paid in lump sum because of circumstances such as processing delays.

(B) Count any payment that will begin during the next twelve (12) months;

(7)(A) Welfare assistance.

(B) If the payment includes an amount specifically designated for shelter and utilities and the welfare agency adjusts that amount based upon what the family is currently paying for shelter and utilities, special calculations are required.

(C) If the welfare agency is reducing a family benefit to adjust for a prior overpayment, use the amount remaining after the adjustment for the overpayment;

(8) Alimony and child support awarded to the household, unless the applicant:

(A) Certifies that payments are not being made; and

(B) Has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment;

(9)(A) Alimony or child support paid by a member of the household is counted as income (not deducted from the income of the party paying such alimony or child support), even if it is garnished from wages.

(B) For example, John Smith pays one hundred fifty dollars (\$150) per month in child support. It is garnished from his monthly wages of nine hundred fifty dollars (\$950). After the child support is deducted from his wages, Mr. Smith receives eight hundred dollars (\$800). The owner must count nine hundred fifty dollars (\$950) as John Smith's monthly income;

(10)(A) Recurring monetary gifts or contributions regularly received from persons not living in the unit.

(B) Except, exclude from annual income recurring monetary contributions that are paid directly to a childcare provider by persons not living in the unit;

(11)(A) Lottery winnings paid in periodic payments.

(B) Lottery winnings paid in a lump sum are included in net family assets, not in annual income;

(12) All regular pay, special pay, and allowances (including housing allowance) of a member of the United States Armed Forces (except the special pay to a family member serving in the United States Armed Forces who is exposed to hostile fire);

(13) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and

(14)(A) Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant family.

(B) **Note.** Even if family assets exceed five thousand dollars (\$5,000), use actual income distributed from the irrevocable trust.

(d) **Educational scholarships or grants.** The treatment of educational scholarships or grants is dependent on whether the student is receiving Section 8 assistance.

(e) **Not receiving Section 8 assistance.**

(1) All forms of student financial assistance, no matter how it is used, are excluded from annual income.

(2) Financial assistance includes:

- (A) Grants;
- (B) Scholarships;
- (C) Educational entitlements;
- (D) Work-study programs; and
- (E) Financial aid packages.

(3) It does not matter whether or not the assistance is paid to the student or directly to the educational institution.

(f) **Receiving Section 8 assistance.**

(1) All financial assistance received from the following sources in excess of tuition is included in income:

(A) The Higher Education Act Assistance under the Higher Education Act of 1965, including:

- (i) Pell Grants;
- (ii) Federal Supplemental Educational Opportunity Grants;
- (iii) Academic Achievement Incentive Scholarships;
- (iv) State Assistance Partnership Program;
- (v) The Robert G. Byrd Honors Scholarship Program; and
- (vi) Federal Work-Study programs;

(B) Private sources (nongovernmental) of assistance, including assistance provided:

(i) By a parent, guardian, or other family member, whether residing within the family in the Section 8-assisted unit or not; or

(ii) From other persons not residing in the unit; and

(C)(i) Institutions of higher education, when the specific institution and scholarship amount are referenced.

(ii)(a) An institution of higher learning:

(1) Provides education beyond high school (or equivalent);

(2) Is accredited (or has reaccreditation status);

(3) Is legally authorized to provide a program of education beyond the high school level; and

(4) Awards a bachelor's degree or provides a two-year program that is acceptable for full credit towards such a degree.

(b) The institution may be public or nonprofit.

(iii)(a) Institutions of higher education also includes any school that:

(1) Provides education beyond high school (or equivalent);

(2) Is accredited (or has reaccreditation status);

(3) Is legally authorized to provide a program of education beyond the high school level; and

(4) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation.

(b) The institution may be public or nonprofit.

(iv) Finally, an institution of higher learning includes public and nonprofit private educational institutions in any state that, in lieu of providing education beyond high school, admits students who are beyond the age of compulsory school attendance in the state in which the institution is located.

(2) Financial assistance received from one (1) of the sources above, in excess of tuition, is not included in income if either of the two (2) following exceptions is applicable:

(A) The student is over the age of twenty-three (23) with dependent children; or

(B) The student is living with his or her parents who are applying for or receiving Section 8 assistance.

(3) Financial assistance does not include loan proceeds for the purpose of determining income.

(4)(A) Tuition includes whatever the school declares as tuition.

(B) Do not add any amounts for books, fees, or other expenses that may be itemized separately on the verification form.

(C) **Note.**

(i) If you have a Section 8/I.R.C. § 42 combination on the property, the student must qualify under both programs to get the benefits of both programs.

(ii) If family members are students and qualify for Section 8 but the entire household consists of full-time students and none of the I.R.C. § 42 exceptions apply, tax credits cannot be claimed on the affected units.

(g) Some common income exclusions are listed below. Please refer to the current Department of Housing and Urban Development Handbook 4350.3 for a comprehensive list:

(1) Income from the employment of children (including foster children) under the age of eighteen (18);

(2)(A) Payments received for the care of foster children or foster adults.

(B) Foster adults are usually adults with disabilities who are:

(i) Unrelated to the tenant family; and

(ii) Unable to live alone;

(3) Income of live-in care attendants;

(4) Meals on Wheels or other programs that provide food for the needy;

(5) Groceries provided by persons not living in the household;

(6) The principal portion of the payments received on mortgages or deeds of trust;

(7) The special pay to a family member serving in the United States Armed Forces who is exposed to hostile fire;

(8) Temporary, nonrecurring, or sporadic income;

(9) Annual rent credits or rebates paid to senior citizens by government agencies;

(10) Lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains, and settlement for personal or property losses (other than payments in lieu of earnings, such as unemployment and disability compensation);

(11) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(12)(A) Income from training programs.

(B) Compensation from state or local employment training programs or training of a family member as resident management staff is not included in income.

(C) Income from training programs not affiliated with a local government and income from the training of a family member resident to serve on the management staff are also excluded.

(D) Amounts excluded by this provision:

(i) Must be received under employment training programs with clearly defined goals and objectives; and

(ii) Are excluded only for a limited period as determined in advance under the program by the state or local government;

(13)(A) Amounts received under training programs funded by the Department of Housing and Urban Development are not included in income.

(B)(i) Similarly, payments received under programs funded in whole or in part under the Workforce Investment Act [repealed] (formerly the Job Training Partnership Act [repealed]) are excluded from income.

(ii) These are:

(a) Employment and training programs for Native Americans and migrant and seasonal farm workers;

(b) Job Corps;

(c) Veterans employment programs;

(d) State job training programs;

(e) Career intern programs; and

(f) Americorps; and

(14) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Support are excluded from income.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

Section 8 of the Housing Act of 1937 is codified at 42 U.S.C. § 1437f.

Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is codified at 42 U.S.C. § 4621 et seq.

The Higher Education Act of 1965 is codified generally at 20 U.S.C. § 1001 et seq.

**15 CAR § 86-404. Assets.**

(a)(1) The net income from assets must be considered when determining the tax credit eligibility of a household.

(2) Asset information for all household members (including minors) should be obtained at the time of application.

(3) Please refer to the latest revision of the Department of Housing and Urban Development Handbook 4350.3 for a discussion of assets.

(b)(1) For LIHTC program purposes, third-party verification of assets is required only if assets exceed five thousand dollars (\$5,000) per household.

(2) The Arkansas Development Finance Authority will accept the Under \$5,000 Asset Certification for tax credit units only.

(3)(A) Under the HOME or other federal programs, all assets, regardless of value, must be documented by third-party verification.

(B) For example, if a tax credit unit is also HOME-assisted, the owner must comply with the stricter HOME verification requirement.

(c)(1) The Under \$5,000 Asset Certification must be completed accurately.

(2) There should be no blank lines.

(3) Owners or managers should always question the reasonableness and compare the amounts on the form to the application.

(d)(1) If net family assets total five thousand dollars (\$5,000) or less, owners must count the actual income derived from net family assets.

(2) If net family assets exceed five thousand dollars (\$5,000), owners must impute the asset income by multiplying the net family assets amount by the passbook rate specified by the Department of Housing and Urban Development, which is currently two percent (2%).

(3) The income to be included in household income will be the greater of:

(A) Actual asset income; or

(B) The imputed income from assets.

(e)(1) At each certification and recertification, applicants and tenants must declare whether or not an asset has been disposed of for less than fair market value during the two (2) years preceding the:

(A) Date of application; or

(B) Effective date of the recertification.

(2)(A) An asset is considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the family received by more than one thousand dollars (\$1,000).

(B) If it does, for a period of two (2) years owners must include in the total household assets the difference between the cash value of the asset and the amount received.

(3) For examples of assets disposed of for less than fair market value, you should refer to the latest revision of the Department of Housing and Urban Development Handbook 4350.3.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-405. Tenant application process.**

(a)(1) Because the LIHTC program uses special definitions for income, assets, and household composition, standard property management application forms may not collect sufficient information to determine tenant eligibility.

(2) A comprehensive housing application is critical to the accurate identification of:

- (A) Full-time students;
- (B) All assets; and
- (C) Anticipated income sources.

(3) An updated sample application form is included in this part.

(b)(1) Owners or managers must review all information furnished on the fully completed Application for Housing, including any supplementary historical documents (i.e., most recent 1040 tax form, divorce decree, etc.).

(2) The application procedure must include an interview with all adult household members to:

- (A) Review the application and historical documents; and
- (B) Clarify any discrepancies or missing information.

(3) For example, if the 1040 form and W-2 forms show two (2) employers but the application only lists one (1), owners must ask about the second job and confirm its termination.

(c)(1) One (1) application signed by all coapplicants should be submitted per household.

(2) Nonrelated roommates should submit separate applications.

(3) If a delay of ninety (90) days occurs between application and move-in, the owner or manager must take another application.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-406. Tenant income verification.**

(a)(1) Owners/site managers must remember that the United States Department of Housing and Urban Development Handbook 4350.3 is the reference guide to be used for identifying income to be included or excluded when determining household income.

(2) Determination of annual income of individuals and area median gross income must be made in a manner consistent with the United States Department of Housing and Urban Development Section 8 income definitions and guidelines.

(b)(1) The earned income of every prospective household member aged eighteen (18) or older must be verified.

(2) Unearned income, assets, and asset income of all household members, including minors, must be verified.

(3) Verifications must be received by the owner or site manager prior to the execution of the certification of tenant eligibility and lease.

(c)(1) Third-party verifications are valid for one hundred twenty (120) days before the effective date of the TIC.

(2) Owners may not rely on verifications that are more than one hundred twenty (120) days old.

(3) After this time, a new written verification must be obtained.

(d)(1) Written third-party verifications are preferred.

(2) An authorization to release information must:

(A) Be signed by the applicant; and

(B) Accompany verification requests.

(3) Owners must send verifications directly to the source, and the source must return them directly to the owner.

(4) Verifications must not be hand-carried by the applicant to or from the source.

(5) The owner may obtain acceptable third-party written verifications by:

- (A) Facsimile;
- (B) Email; or
- (C) Internet.

(6)(A) If written verification is not possible, direct contact with the source, in person or by telephone, is acceptable.

(B) The owner must:

- (i) Document this verbal verification in the tenant file; and
- (ii) Obtain all information as requested on the written verification

form.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

"TIC" means Tenant Income Certification.

**15 CAR § 86-407. Tenant Income Certification (TIC).**

(a)(1) When all the income and asset verifications have been received, the owner/manager must:

(A) Record and compute the twelve-month anticipated income and income from assets of adult occupants; and

(B) Reconcile to amounts on the verifications.

(2) If the total twelve-month projected income is less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification, the household is income-eligible for a tax credit unit.

(3) If the household income exceeds the maximum allowable qualifying income, the household cannot be certified eligible for a tax credit unit.

(4) If it is determined that all requirements for eligibility are met, the Certification of Tenant Eligibility must be completed and executed along with the lease prior to move-in.

(5) All adults (age eighteen (18) or older at time of move-in) must sign the lease and TIC prior to move-in.

(b)(1) The Tenant Income Certification must be completed in ink or by computer.

(2) The Arkansas Development Finance Authority will not accept strikethrough lines or the use of white out on the TIC.

(3) If errors are discovered before all parties sign, a new TIC must be prepared.

(4)(A) If errors are discovered after all parties have signed, the authority will accept a properly executed addendum with corrections or a new TIC.

(B) You may:

(i) Use the regular TIC form;

(ii) Identify it as the addendum; and

(iii) Complete only the areas that are being corrected.

(C) Attach the signed addendum to the TIC.

**(c) The effective date of the LIHTC Tenant Income Certification.**

(1) I.R.C. § 42 specifies that the LIHTC TIC is effective on the date the unit is designated as a low-income unit, i.e., the date a qualified household occupies the unit.

(2) For example, John and Jane Doe completed a rental application on April 12, 2004. The property manager determined the household to be eligible on April 21, 2004. John and Jane Doe signed the rental lease on April 25 and took possession of the unit on May 1, 2004. The effective date of the LIHTC certification is May 1, 2004. All subsequent recertifications must be performed within one hundred twenty (120) days of May 1 of each subsequent year of the compliance period.

(d)(1) Managers must be aware of the tax credit effective date and be sure to recertify within one hundred twenty (120) days of the anniversary of the tax credit certification date.

(2) Do not move the effective date forward to accommodate other programs.

(3) If signatures are obtained in advance of the effective date, managers are responsible for determining that the information is true and correct.

(4) Please refer to 15 CAR § 86-410 on recertifications for additional information.

(5) See policy pertaining to United States Department of Agriculture Rural Development properties.

**(e) Arkansas Development Finance Authority acceptance of United States Department of Agriculture Rural Development certifications and recertifications.**

(1) The purpose of this policy is to eliminate duplication of the Rural Housing Service and low-income housing tax credit (LIHTC) requirements as defined under Treas. Reg. § 1.42-5(c)(4), as it pertains to Tenant Income Certification and annual recertifications.

(2)(A) Under Treas. Reg. § 1.42-5(c)(4), a state agency, the authority, may exempt buildings financed by the Rural Housing Service under the Section 515 program from the annual income recertification as part of its certification and review provisions.

(B) The state agency (the authority) may assume the accuracy of the information provided without further verification.

(3)(A) Under this exception, owners are not required to perform annual income recertifications specific to I.R.C. § 42 and the state agencies are not required to review:

- (i) Tenant income recertifications;
- (ii) Supporting documentation; and
- (iii) Rent records.

(B) The state agency must:

- (i) Review the information provided by the Rural Housing Service;

and

(ii) Determine whether the owner is in compliance with the income limitations and rent restrictions in I.R.C. § 42(g)(1) and (2).

(C) However, student status must be documented at least annually via the authority-approved Student Status Affidavit.

(D) If the information provided by the Rural Housing Service is not sufficient for the state agency to make a determination, the state agency must request the necessary additional income or rent information from the owner of the buildings.

(4)(A) The Rural Housing Service recertifications will be accepted only after the initial Arkansas Development Finance Authority Tenant Income Certification has been completed.

(B) The next recertification after move-in can be completed utilizing the Rural Housing Service TIC and recertification process.

(C) The authority will allow an adjustment of the effective date to coincide with the Rural Housing Service effective date.

(5)(A) The authority's web-based tenant software must be updated at a minimum:

- (i) Annually to reflect the annual recertification was completed; and
- (ii) Within twelve (12) months from the last recertification.

(B) Due to the fact the Rural Housing Service processes interims it will be up to the owner/management company to decide how they want to upload tenant data to maintain compliance with the LIHTC annual recertification dates.

(C) The authority will accept all interims or an annual recertification that is within the required time frame for the LIHTC program requirements.

**(6) Note.**

(A) The Rural Housing Service determines tenant eligibility based on its definition of "adjusted annual income", rather than "annual income" as defined under the Section 8 program.

(B) Therefore, the state agency may:

(i) Be required to calculate the tenant's income for I.R.C. § 42 purposes; and

(ii) Need to request additional income information from the owner.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

**15 CAR § 86-408. Waiting lists.**

(a) The waiting list is required as part of the selection process.

(b) No one should be placed on the waiting list unless he or she has submitted a completed application.

(c) All applications should be logged by date and time received.

(d) The waiting list should have columns for bedroom size, need for subsidy (if available), any other program priorities, need for accommodations for disabled persons, gross income, etc.

(e) If the owner has more than one (1) income level in the LIHTC property, the owner must keep appropriate lists or columns by:

- (1) Thirty percent (30%);
- (2) Fifty percent (50%);
- (3) Sixty percent (60%); or
- (4) Other income limit.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-409. The lease.**

(a)(1) All tenants occupying tax credit units must be certified and under lease no later than the date the tenant takes possession of the unit.

(2) All parties must sign the lease by the beginning of the lease term date to be properly in effect and the unit in compliance.

(b) Some leasing guidelines are as follows:

- (1) The lease should include, but is not limited to:
  - (A) The legal name of all parties to the agreement and all additional occupants;
  - (B) Identification of the unit to be rented (number, street address, etc.);
  - (C) The date the lease becomes effective;
  - (D) The term of the lease;
  - (E)(i) The amount for rent.
    - (ii) If this reflects a contract rent amount that may include a subsidy payment rather than just the tenant portion of the rent, a lease addendum listing only the tenant share of rent is recommended;
  - (F) The rights and obligations of the parties, including the obligation of the tenant to recertify income annually (or more frequently as required);
  - (G) Language addressing changes in income, utility allowance, income limits, basic rent (United States Department of Agriculture Rural Development or Department of Housing and Urban Development 236 projects), family composition, or any other change and its impact on the tenant's rent;
  - (H) The consequences of fraudulent reporting of:
    - (i) Income;
    - (ii) Assets; or
    - (iii) Household composition;
  - (I) The prohibition of subletting;
  - (J) The prohibition of commercial business in a unit; and
  - (K) Signature and dates;
- (2) The tenant portion of rent plus utility allowance and other mandatory fees must not exceed the maximum gross rent allowed by I.R.C. § 42; and
- (3)(A) The initial lease term must be at least six (6) months on all tax credit units, except for:
  - (i) SRO housing, which may have a thirty-day lease; or
  - (ii) Transitional housing for the homeless.
- (B) Succeeding leases are not subject to a minimum lease term.

(c)(1) In addition to the lease, the Arkansas Development Finance Authority recommends that owners or managers get the tenants to sign a tenant agreement.

(2) The tenant agreement specifies the development's rules with which the tenant is expected to comply.

(3) For example, the tenant agreement may include, but is not limited to, the following:

(A) Tenants must cooperate with management during the recertification process;

(B) Smoke alarms must not be disconnected;

(C) Tenants must:

(i) Keep their units clean and sanitary; and

(ii) Permit inspections by management and the authority;

(D) Use of illegal substances on the premises will not be tolerated and will be grounds for eviction;

(E) Tenants must comply with rules and regulations of the LIHTC program; and

(F) Any other legitimate reasons for eviction.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-410. Recertification.**

(a)(1) I.R.C. § 42 requires that recertification of residents be completed on at least an annual basis.

(2)(A) Annual recertification is crucial in identifying:

(i) The one hundred forty percent (140%) rule situation;

(ii) Student status; and

(iii) Household composition changes.

(B) The one hundred forty percent (140%) rule is discussed in 15 CAR § 86-310.

(b)(1) The procedure for annual recertifications is virtually the same as determining initial income eligibility.

(2) Owners/managers must contact the tenant and obtain an application with:

- (A) An accurate count of the current number of household members;
- (B) Information about student status of each member of the household;
- (C) An accurate list of income sources, including assets, for the coming

year; and

(D) Tenant's written authorization to verify household income, assets, etc.

(3) The owner/manager will compare income to one hundred forty percent (140%) of the current income limit.

(4) Any changes in household size must be reflected.

(5) If the household's income at recertification exceeds one hundred forty percent (140%) of the income limit, the available unit rule will apply.

(c)(1) The preferred method for income verification is third-party written verification.

(2) If third-party verification is impossible (e.g., self-employed, extended delay, etc.) owners or managers must obtain and review appropriate alternative documentation.

(d) Failure to recertify tenants on an annual basis is cause for the Arkansas Development Finance Authority to issue Internal Revenue Service Form 8823.

**(e) Report of noncompliance.**

(1) The timing of the recertification is critical to maintaining compliance with the tax credit program.

(2) Subsequent recertifications must be completed within one hundred twenty (120) days of the anniversary of the move-in date.

(3) When additional adult individuals join the household, the effective date will remain the same until the unit is completely vacated.

(f) See policy pertaining to one hundred percent (100%) LIHTC properties policies.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-411. Recertification exception for 100% LIHTC properties.**

(a) In reference to the recertification exception for one hundred percent (100%) LIHTC properties, the Arkansas Development Finance Authority reminds owners that the waiver refers to third-party verifications of income.

(b) The authority requires the following:

(1) Properties must have completed the first year in service or initial credit year, whichever is later;

(2) The authority must have completed its first compliance monitoring review at the property;

(3) The authority requires a complete recertification at first anniversary of the household's move-in (move-in and next complete recertification);

(4) Tenants must complete the Affidavit of Income Self-Certification Form and Student Status Affidavit within one hundred twenty (120) days of the anniversary date of the move-in; and

(5) Owners or managers are required to update tenant data online using the authority's web-based computer reporting system (WCMS) including information that has been self- certified.

(c) **Note.**

(1) If your property participates in other programs or additional set-asides (e.g., HOME, United States Department of Agriculture Rural Development, or thirty percent (30%) set-asides) that require annual third-party verifications of income, the owner is not relieved of the recertification requirements for those programs/set-asides.

(2) The authority recommends that owners or managers complete third-party verifications of income for all units if you are required to do so for other programs.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

**15 CAR § 86-412. Acquisitions or rehabilitations.**

(a)(1) For households occupying a unit at the time of acquisition by the owner, the initial Tenant Income Certification is completed within one hundred twenty (120) days after the date of acquisition using the income limits in effect on the day of acquisition.

(2) The effective date of the Tenant Income Certification is the date of acquisition since there is no move-in date.

(b)(1) In the event that the household occupies a unit at the time of acquisition, but the Tenant Income Certification is completed more than one hundred twenty (120) days after the date of acquisition, the household is treated as a new move-in.

(2) Owners use the income limits in effect at the time of the Tenant Income Certification, and the effective date is the date the last adult member of the household signed the certification (this is an exception to the general rule for effective dates because there is no move-in date).

(c) When the household moves into a unit after the building is acquired but before the beginning of the first year of the compliance period, the Tenant Income Certification is completed using the income limits in effect at the time of the certification, and the effective date is the date the household moves into the unit.

(d)(1) Under I.R.C. § 42(f)(2), the applicable fraction for the first year of the credit period is computed based on a month-by-month accounting of units or floor space occupied by income-qualified households.

(2) In the case of buildings that were acquired and then rehabilitated, there are two (2) separate allocations of credit documented on two (2) Forms 8609:

(A) One (1) for the acquisition credit; and

(B) A separate allocation for the rehabilitation credit.

(3) The owner is not required to determine two (2) applicable fractions.

(4) Under I.R.C. § 42(e)(4)(B), the applicable fraction for the substantial rehabilitation credit will be same as the applicable fraction for the acquisition credit.

(5) Therefore, for purposes of computing the applicable fraction under I.R.C. § 42(f)(2), the following units are considered low-income units:

(A) Units occupied before the beginning of the credit period, which are determined to be low-income units at the beginning of the credit period under Rev. Proc. 2003-82, 2003-47 I.R.B. 258;

(B) Units initially occupied after the beginning of the credit period by newly certified income-qualified households (regardless of whether rehabilitation costs have been incurred for the unit);

(C)(i) Units occupied by income-qualified households that moved from other units within the project.

(ii) The household's lease and Tenant Income Certification (with effective date) move with the household; and

(D) Vacant units that are suitable for occupancy under I.R.C. § 42(i)(3)(B)(ii) and were previously occupied by an income-qualified household, regardless of whether rehabilitation costs have been incurred for the unit during the first year of the credit period.

(e) Units are not included in the numerator of computation of the applicable fraction if the unit is:

(1) Occupied by a nonqualified household;

(2) Vacant and was last occupied by a nonqualified household; or

(3)(A) Not suitable for occupancy.

(B) Units not suitable for occupancy are considered out of compliance.

(C) The noncompliance is corrected when the unit is again suitable for occupancy.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-413. Qualifying Section 8 tenants.**

(a) For Department of Housing and Urban Development Section 8 tenants only, United States Treasury regulations permit the submission of a letter from the contract administrator (e.g., local PHA) as verification that the family's income does not exceed the applicable I.R.C. § 42 income limitation.

(b)(1) The Arkansas Development Finance Authority will accept the form Verification of Annual Income and Household Size only after the initial/move-in certification has been completed by the management company.

(2) Recertification after the initial move-in can utilize the Section 8 certification.

(3) Section 8 must have certified the income within one hundred twenty (120) days before the effective date of the Tenant Income Certification.

(4)(A) This form is a verification of income.

(B) It is not a substitute for the Tenant Income Certification, which must be executed for every LIHTC household.

(c) Upon receipt of the Verification of Annual Income and Household Size, the owner or manager must ensure the form is:

(1) Completed in its entirety; and

(2) Dated within the appropriate timeframe.

(d) The combined annual family income must be compared to the LIHTC income limit to ensure it falls at or below the limit.

(e) Any discrepancies between the application and income certified by the public housing authority will necessitate the use of third-party verifications for all income.

(f) Owners or managers must remember that full-time student household eligibility must be verified.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "Section 8" refers to Section 8 of the Housing Act of 1937 and is codified at 42 U.S.C. § 1437f.

"PHA" means public housing authority.

"LIHTC" means low-income housing tax credit.

**15 CAR § 86-414. Defining elderly housing.**

(a) The Fair Housing Act, 42 U.S.C. §§ 3601 – 3619, states that there are three (3) types of elderly housing:

(1)(A) Federal or state programs that the Secretary of Housing and Urban Development has recognized as being elderly so long as the definition of the program is followed.

(B) United State Department of Agriculture Rural Development, Department of Housing and Urban Development, and PHA elderly housing programs fall under this category.

(C) In these programs, the definition of "elderly" is the tenant or cotenant must be:

(i) Sixty-two (62) or older; or

(ii) Disabled, if the disabled tenant is of legal age.

(D) In these programs, children are allowed if they are members of the elderly household.

(E) In such elderly properties, many disabled applicants with or without children have been housed based on this definition.

(F) If a federal agency or a state government program wishes to create another elderly program that does not follow one (1) of the two (2) remaining choices in the Fair Housing Act, then that definition must receive a waiver from the United States Secretary of Housing and Urban Development.

(G)(i) How do you know if your property is recognized as being elderly?

(ii) You must determine if your property:

(a) Has project-based rental subsidy;

(b) Is insured by the Department of Housing and Urban Development or United States Department of Agriculture Rural Development; or

(c) Has United States Department of Housing and Urban Development or United States Department of Agriculture Rural Development funding.

(iii) Then you must comply with that program's definition of "elderly";

(2)(A) Sixty-two (62) and older housing.

(B)(i) This is the most restrictive type of elderly housing since every resident must be sixty-two (62) or older.

(ii) In other words, if an applicant who was sixty-three (63) applied with a spouse or household member who was sixty-one (61), the applicants would be ineligible for this type of housing.

(C) Children are not allowed nor are disabled persons or other applicants who are under sixty-two (62); and

(3)(A) Fifty-five (55) and older housing.

(B)(i) This type of property is recognized as elderly if one (1) household member is fifty-five (55) or older in at least eighty percent (80%) of the units at all times.

(ii) The remaining twenty percent (20%) of the units may be rented to households other than age fifty-five-plus.

(C) An applicant household consisting of a fifty-seven-year-old and a fifty-two-year-old applies, the fifty-seven-year-old later leaves or dies, with the remaining member under fifty-five (55) certainly allowed to stay.

(D)(i) There are two (2) important things to recognize under the Fair Housing Act.

(ii)(a) The first is that age is not a Fair Housing Act protection, so an owner may:

(1) Limit the age of other household members to, for example, fifty (50); or

(2) Require that everyone be fifty-five (55) or that all one hundred percent (100%) of the units have at least one (1) fifty-five-year-old tenant.

(b) In fact, if an owner wished to turn fifty-five-plus housing into sixty-plus, sixty-two-plus, sixty-five-plus, or another age-plus housing, it would still

meet the requirements of the Fair Housing Act since these ages are obviously over fifty-five (55).

(iii)(a) The second item to note is that in fifty-five-plus housing, there must be at least one (1) service or amenity that would benefit the elderly.

(b) This could be:

(1) A van for transportation to shopping or doctors;

(2) Meals programs;

(3) Specific seniors' activities on a regular basis; or

(4) Other services that would distinguish this property as

elderly housing.

(b)(1) New occupants must meet the age requirements.

(2) Vacant units must be reserved for occupancy by persons who meet the age requirements.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "PHA" means public housing authority.

## **Subpart 5. LIHTC Record Retention**

### **15 CAR § 86-501. LIHTC record retention.**

(a) The owner must retain the original tenant files (with original signatures), monthly unit data tracking, and development files for the first year of the credit period for a minimum twenty-one (21) years.

(b) First-year records must be maintained in addition to any copies on discs or other electronic devices.

(c) All other records must be retained for at least six (6) years after the due date (with extensions) for filing the federal tax return for that year.

(d) Owners must keep records throughout the compliance period, which is usually fifteen (15) years.

(e) Those owners who have executed a land-use restriction agreement must maintain records throughout the extended compliance period, which is usually an additional fifteen (15) years, for a total of thirty (30) years.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

## **Subpart 6. Noncompliance**

### **15 CAR § 86-601. Noncompliance generally.**

(a)(1) Any determinations of noncompliance, including owner's failure to certify, will be communicated to the owner in writing.

(2) The noncompliant conditions must be corrected within the period specified by the Arkansas Development Finance Authority.

(3) Generally, there is a maximum of sixty (60) days to correct items of noncompliance.

(4) Violations of general health, safety, and sanitary conditions may require immediate corrective measures.

(5)(A) The authority will notify the Internal Revenue Service of any noncompliant conditions no later than forty-five (45) days after the end of the allowed correction period, whether or not those conditions are corrected.

(B) The authority will utilize Internal Revenue Service Form 8823 when reporting noncompliance or corrections.

(6) The authority reserves the right to request additional information, if necessary.

(7) The authority, in its sole discretion, may schedule additional follow-up visits.

(b)(1) Noncompliance may be described as a period of time during which the owner failed to follow proper procedures for the:

- (A) Development;
- (B) Specific building; or
- (C) Unit.

(2) Noncompliance may lead to recapture of tax credits by the Internal Revenue Service for a given period of time.

(c)(1) Most noncompliance issues as identified by the Internal Revenue Service may be found on the Internal Revenue Service Form 8823.

(2) Generally, noncompliance issues can occur for:

- (A) Inadequate certification documents;
- (B) Failure to obtain and retain proper income verifications;
- (C) Missing signatures;
- (D) Late certifications or certification signature dates;
- (E) Lease issues, i.e., not signed, late, or no six-month term;
- (F) Failure to recertify by the LIHTC-required anniversary date;
- (G) Failure to furnish year-end documentation on time;
- (H) Failure to respond to requests for additional information;
- (I) Incomplete record keeping;
- (J) Failure to identify full-time students;
- (K) Failure to maintain and update utility allowance documentation;
- (L) Charging unrestricted rents;
- (M) Failure to maintain the minimum set-aside;
- (N) Any change in the applicable fraction or eligible basis that results in a decrease in the qualified basis;
- (O) Housing an ineligible tenant;
- (P) Failure to satisfy special needs or additional low-income housing set-asides;
- (Q) Failure to use appropriate forms; and
- (R) Implementing project changes prior to obtaining the authority's approval.

(3) This list is not meant to be all-inclusive.

(d) **Noncompliance percentage and negative points.** The Compliance Department of the Arkansas Development Finance Authority will calculate the noncompliance percentage for each applicant based upon all noncompliance by existing developments of which members, partners, or shareholders of the applicant, general partner of applicant, and members, partners, or shareholders of general partner of applicant, or members of applicant and members, partners, or shareholders of members of applicant were or are part of the development team or otherwise involved in the operation of the development as determined by the authority.

(e) **Noncompliance percentage.**

(1) A noncompliance percentage will be used to determine:

- (A) Owner performance;
- (B) Property performance; and
- (C) Management performance.

(2) The noncompliance percentage is determined at the time of review as evidenced by:

- (A) The issuance of the Internal Revenue Service Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition; and
- (B) UPCS inspection standards.

(3) All percentages will be calculated as follows: total number of units noncompliance/total units reviewed = noncompliance percentage %.

(4) The noncompliance percentage of all authority properties reviewed within a three-year period of time will be averaged and given an average noncompliance percentage.

(5) Owners are subject to point deductions, determined by authority allocation, based on the average noncompliance percentage as follows.

**Owner**

Average Non Compliance Percentage	Negative Points
51% or more	20

41-50%	15
31-40%	10
16-30%	5
0-15%	0

(6)(A) Management companies will be given a grade based on the average noncompliance percentage of properties they manage.

(B) The overall management company grade will be updated annually.

(C) The grades will be:

(i) Considered during management change requests, in determining management compliance during the application process, and to review management performance standards; and

(ii) Used for public information.

### **Management**

Average Non Compliance Percentage	Grade
51% or more	F
41-50%	D
31-40%	C
16-30%	B
0-15%	A

### **(7) Disclaimer.**

(A) Grading is strictly based on Internal Revenue Service 8823 reports of noncompliance issuance and failed uniform inspection standards for units cited during the monitoring visit.

(B)(i) Projects in year sixteen (16) and after that trigger noncompliance will still be cited with an Internal Revenue Service Form 8823.

(ii) The Internal Revenue Service Form 8823 will not be sent to the Internal Revenue Service but will remain in the authority's records for noncompliance.

**(f) Noncompliance fees.**

(1) As of January 1, 2012, the units sampled or reviewed with noncompliance issues on the date the site is monitored will pay a noncompliance fee of fifty dollars (\$50.00) per unit.

(2) The fee, billed to the limited partnership entity, will be due no later than thirty (30) days from the billing date.

**(g) Increased monitoring.** The Compliance Department will increase the percentage of units to be monitored on the project, as scheduled, (no less than twenty percent (20%) as Internal Revenue Service suggested) based on the percentage of units previously out of compliance and compliance score.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

"UPCS" means Uniform Physical Condition Standards.

**15 CAR § 86-602. Recapture of tax credits.**

(a) The most serious action the Internal Revenue Service can take against an ownership is the recapture of credits previously claimed.

(b)(1) Only the Internal Revenue Service determines this course of action.

(2) The Arkansas Development Finance Authority does not determine the consequences of reported noncompliance.

(c) If the owner discovers at any time that credits have been claimed in error, miscalculated, or the basis was incorrectly listed, the owner must complete Internal Revenue Service Form 8611.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

## **Subpart 7. Project Changes and Processing Fees**

### **15 CAR § 86-701. Project changes and processing fees generally.**

(a)(1) It is understood and agreed that any changes to the original application must be submitted to the Arkansas Development Finance Authority in writing for review and approval.

(2) A processing fee of five hundred dollars (\$500) must be submitted with each change request per project.

(3) The type of change will require different documentation and time frames for submission.

(4) The authority has categorized the changes that require additional time and additional documentation below.

(5) A general change request will require a written explanation explaining the reason for the change and accompanied with any required documentation as outlined in I.R.C. § 42 as it relates to the change.

(b)(1) Change requests must be submitted to the authority prior to implementing the change.

(2) If the change has already been completed prior to the authority's approval an additional five hundred dollars (\$500) will be required for late submission and not obtaining the authority's prior approval to implement the changes.

(3)(A) If the changes were implemented prior to the authority's approval due to circumstances that required immediate action, the authority will consider a waiver of the five hundred-dollar late submission fee.

(B) An example would be replacement of a management company that did not provide advance notice that they were removing themselves as the managing agent or any immediate project changes due to illegal activities.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-702. Change of ownership.**

(a)(1) Subject to the requirements of I.R.C. § 42 and the LURA, the owner must notify the Arkansas Development Finance Authority in writing thirty (30) calendar days prior to the contemplation of any:

- (A) Sale;
- (B) Transfer; or
- (C) Exchange.

(2)(A) The notification must include a copy of the letter of intent of any buyer, successor, or other person intending to acquire the development or any interest therein.

(B) In addition, the notification should address the requirements of the LURA and provisions allowing the transfer under I.R.C. § 42 and the regulations therein.

(3)(A) This information must be presented to the authority for approval.

(B) Approval is not guaranteed.

(b) The owner agrees that the authority may void any sale, transfer, or exchange of the development:

(1) If the buyer or successor or other person fails to assume in writing the requirements of the Internal Revenue Code and the LURA; and

(2) For other valid reasons.

(c)(1) It is understood and agreed that any changes to the original application must be submitted to the authority in writing for review and approval.

(2) Any changes made without prior approval could jeopardize the:

- (A) Issuance of tax credits for the project; or
- (B) Owner's continued participation in the program.

(d) The authority is required to issue Internal Revenue Service Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, for all building dispositions to advise the Internal Revenue Service of a change in ownership.

(e) Owners must advise the authority in writing the name, tax identification number, address, and telephone number of the new owner.

(f) The new owner must obtain first-year records and all other pertinent records from the previous owner.

(g) Owners who are considering disposing of their buildings or an interest therein should consult a tax adviser about posting a disposition bond or other requirements related thereto.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LURA" means land-use restriction agreement.

**15 CAR § 86-703. Change in management.**

(a) Arkansas Development Finance Authority staff must be informed on a current basis of the management entity and personnel responsible for ensuring compliance with all applicable laws, rules, policies, etc.

(b)(1) To facilitate that notification requirement, the process for requesting the authority's approval of any change in management will include the submission of:

(A) The proposed management plan; and

(B) Previous Participation and Owner's Certification and Authorization.

(2) The required forms can be located on the authority's website.

(c)(1) In order to obtain Board of Directors of the Arkansas Development Finance Authority approval, the project owner must submit the request forty-five (45) days before the anticipated effective date of the new management contract.

(2) The owner should not enter into a formal contract without the authority's approval.

**Subpart 8. Forms**

**15 CAR § 86-801. Forms.**

(a) The Arkansas Development Finance Authority has adopted certain standardized forms for its compliance monitoring.

(b) You may access the website for samples or call the Compliance Department of the Arkansas Development Finance Authority.

(c) If no sample is provided for a specific form, the authority will accept the owner's forms or forms utilized by the Department of Housing and Urban Development or United States Department of Agriculture Rural Development, provided such forms substantially comply with LIHTC rules for data collecting.

(d) Use of the LIHTC Tenant Income Certification is mandatory.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

## **Subpart 9. LIHTC Properties and Other Programs**

### **15 CAR § 86-901. LIHTC properties and other programs generally.**

(a) Housing credit properties may receive assistance from other federal or state housing programs.

(b) The Arkansas Development Finance Authority is the monitoring agency for the HOME Investment Partnerships Program (commonly known as HOME).

(c) The authority also is the monitoring agency for authority-issued tax-exempt bonds.

(d) If the housing credit requirements differ from those of other programs, owners or managers must follow the most restrictive requirements.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

### **15 CAR § 86-902. Combining low-income housing tax credits with HOME funds.**

(a) Rental projects that combine HOME funds with low-income housing tax credits (LIHTCs) must be structured to ensure compliance with the requirements of both programs.

(b)(1) Tax credit projects must meet one (1) of two (2) minimum set-asides:

(A) 20/50; or

(B) 40/60.

(2) 20/50 means that at least twenty percent (20%) of the units must be rented to tenants with incomes at or below fifty percent (50%) of the area median income.

(3) The 40/60 set-aside means that at least forty percent (40%) of the units must be rented to tenants earning at or below sixty percent (60%) of area median income.

(c) When combining HOME and tax credits, occupancy requirements depend on the type of:

(1) Credit taken; and

(2) HOME funding provided.

(d)(1) In order to take the nine percent (9%) credit in conjunction with below-market HOME loans, joint HOME/tax credit projects must meet a higher occupancy standard than either the tax credit program or the HOME program.

(2) Together, they require forty percent (40%) of the units to be occupied by tenants with incomes at or below fifty percent (50%) of area median income.

(3) Such projects are not eligible for the one hundred thirty percent (130%) increase in basis for projects in qualified census tracts or difficult development areas.

(4) To receive the one hundred thirty percent (130%) increase, the project must either:

(A) Take the four percent (4%) credit; or

(B) Use the HOME funds at or above the applicable federal rate.

(e)(1) In all other cases (when HOME funds are provided in some for other than a below-market interest rate loan) projects must ensure that they meet both sets of program rules.

(2) For example, a project receiving a market rate loan can comply with both sets of rules by establishing a twenty percent (20%) set-aside for households with incomes at or below fifty percent (50%) of the area median income (as long as all remaining HOME-assisted units are leased to tenants with incomes at or below eighty percent (80%) of the area median income).

(3) If there is an additional LIHTC set-aside (thirty percent (30%) unit designation), thirty percent (30%) LIHTC units may not be used to satisfy affordability requirements of any additional funding sources including but not limited to HOME-assisted housing units.

(4) The owner must identify separate units to satisfy the thirty percent (30%) and fifty percent (50%) designated units as outlined in the agreements.

**Rules For Combining HOME Funds And LIHTC**

	Tax Credit Rule	Combining Tax Credits with HOME
Occupancy Requirements	At least 20 percent of units must be reserved for households with incomes at or below 50 percent of area median income OR 40 percent of the units must be reserved for households with incomes at or below 60 percent of area median income.	If HOME funds are provided at below the market interest rate, at least 40 percent of the units must be reserved for households with incomes at or below 50 percent of area median income to qualify for the 9 percent credit. Otherwise, at least 20 percent of units must serve households at or below 50 percent of area median income to meet HOME requirements.

<p>Rent Requirements</p>	<p>Rents for qualified units must not exceed the rent limit set for the LIHTC program. HUD limits are set by bedroom size and are based on the qualifying incomes of an imputed household size.</p>	<p>For units to qualify as both tax credit and HOME-assisted units, rents cannot exceed either program limit. Low HOME rent units are subject to Low HOME rents and tax credit limits, whichever is lower. High HOME rent units are subject to High HOME rents and tax credit limits, whichever is lower.</p>
<p>Establishing Tenant Eligibility</p>	<p><u>Documentation:</u> All sources of income must be verified. Acceptable documentation of income must be provided.</p> <p><u>Definition:</u> The tax credit program defines income using the Section 8 definition of annual gross income.</p> <p><u>Asset Income:</u> Assets of \$5000 or less: tenants certify asset amount and income. Use actual income. Assets above \$5000: verify amount and income. Use larger of actual income from assets or imputed asset</p>	<p><u>Documentation:</u> Initial tenant eligibility documentation for both programs is the same. Use the Section 8 definition of income.</p> <p><u>Definition:</u> Use the Section 8 definition of income.</p> <p><u>Asset Income:</u> Follow more stringent HOME rules and verify all asset income.</p>

	income.	
Reexamination of Income	Re-examinations are performed annually following the same procedures as at initial certification.	The project must follow the more stringent tax credit requirements.
Over-Income Tenants	Rent for over-income tenants remains restricted.	HOME rules defer to tax credit rules-rent remains restricted. In no case can the rent exceed limits set by the tax credit program.
Monitoring	Over-income is defined as 140 percent of the project rent limit.	ADFA will monitor HOME/tax credit projects in accordance with guidelines of each program. In case of a conflict, the more stringent rule will apply.
	Projects are monitored within 180 days following the initial credit year and once every three years throughout the affordability period. A random selection of 20 percent of tenant files and units will be	ADFA will monitor rental projects based on total number of units and annually for other HOME- assisted projects.

reviewed.	
<p><u>Affordability Period:</u> IRS mandates a 15-year affordability period. Developers will extend the affordability period an additional 15 years, for a total of 30 years, by terms of a land use restriction agreement.</p>	<p>The HOME affordability periods are as follows: up to \$15,000=5 years \$15,000-\$40,000=10 years; \$40,000 or more= 15 years. For a refinance of Rehabilitation project=15 years; New construction = 20 years</p>
<p>Owners must submit a statement of compliance annually, and must update ADFA's web-based computer system</p>	<p>Recipients must update ADFA's web-based and submit annual statement of compliance.</p>

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**15 CAR § 86-903. Tax-exempt bonds.**

(a)(1) The Arkansas Development Finance Authority, as issuer of certain tax-exempt bonds, will monitor those projects that combined tax credits and tax-exempt bonds.

(2) The authority will monitor those projects in accordance with the terms and conditions of specific regulatory agreements and applicable LIHTC program requirements.

(b)(1) The bond issuer, rather than the project owner, may make the election to satisfy the 20/50 test or the 40/60 test at the time the bonds are issued.

(2)(A) This election may be entirely separate from the choice of minimum set aside for LIHTC purposes.

(B) Thus, it is not impossible that an issuer will elect the 20/50 test for a bond issue, while the project owner elects the 40/60 test for the LIHTC project financed by those bonds.

(C) Of course, the project would have to satisfy both the 20/50 test for bond purposes and the 40/60 test for LIHTC purposes.

(3) The rent restriction must comply with the terms of the regulatory agreement but must not exceed the LIHTC limit.

(c)(1) The property that is financed with both tax-exempt bonds and low-income housing tax credits must comply with both programs.

(2) While some rules overlap, such as the 20/50 or 40/60 minimum set aside, the programs do not exactly match.

(3) The owner is responsible for knowing and complying with both sets of requirements.

### **Rules for Combining LIHTC and Tax-Exempt Bonds**

	LIHTC Rule	Tax Exempt bonds
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Compliance Period	<p>The compliance period for LIHTC projects is a period of 15 taxable years beginning with the first taxable year of the credit period.</p> <p>Additionally, 15 or more years are mandated in extended use agreements.</p>	<p>The compliance period (qualified project period) is the period beginning on the date of issuance of the bonds and ending on the latest of:</p> <ul style="list-style-type: none"> <li>(a) the date which is 15 years after the date on which 50% of the dwelling units are occupied;</li> <li>(b) the first date on which no tax- exempt private activity bond (as that phrase is used in Section 142(d)(2) of the Code) issued with respect to the Mortgaged Property is outstanding;</li> <li>(c) the date on which any assistance provided with respect to the Mortgaged Property under Section 8 of the Housing Act terminates.</li> </ul>
Occupancy Requirements	<p>At least 20 percent of units must be reserved for households with incomes at or below 50 percent of area median income OR 40 percent of the units must be reserved for households with incomes at or below 60</p>	<p>At least 20 percent of units must be reserved for households with incomes at or below 50 percent of area median income OR 40 percent of the units must be reserved for households with incomes at or below 60</p>

	percent of area median income.	percent of area median income. The project may have to satisfy <u>both</u> requirements. See the Regulatory Agreement.
Rent Requirements	Rents for qualified units must not exceed the applicable rent limit for the LIHTC program.	There is no rent restriction on bond-financed properties. However, if combined with tax credits, the rent must not exceed the tax credit rent limit.
Income	The rules for determining income-certified tenants are the same for both programs.	The rules for determining income-certified tenants are the same for both programs. See the Regulatory Agreement for specific requirement.
Reexamination of Income	Re-examinations are performed annually following the same	Re-examinations are performed annually following the same
	procedures as initial certification.	procedures as initial certification.
Interim Recertifications	The LIHTC program does not require interim recertifications. Changes in household composition or changes in income need to be reported only at the time of	Recertifications are required if the number of occupants in a unit changes (other than the birth of a child).

	recertification. This may change in the future.	
Over-Income Tenants	Over income tenant is an existing tenant whose income, at recertification, is determined to exceed 140% of the applicable income limit. An increase in a tenant's income does not necessarily disqualify the unit as a low-income unit, provided the next available unit of comparable or smaller size is rented to a qualified low-income household.	Over income tenant is an existing tenant whose income, at recertification, is determined to exceed 140% of the applicable income limit. An increase in a tenant's income does not necessarily disqualify the unit as a low-income unit, provided the next available unit of comparable or smaller size is rented to a qualified low-income household.
Next Available Unit Rule	The next available comparable unit rule is applied on a building-by-building basis.	The next available comparable unit in the building must be rented to a qualified household.
Full Time Student Household	Full time student status must be checked annually. Units occupied by full time students are not allowed unless one of the exceptions applies.	Full time student status must be checked annually. Units occupied by full time students are not allowed unless one of the exceptions applies.

(d)(1) Owners of qualified tax-exempt bond properties must comply with all regulatory agreements and program rules and regulations.

(2) Owners' files must include the following:

(A) Initial and annual income certifications, income verifications/documents, etc.;

(B) Complete records of unit history/occupancy reports;

(C) Leases (six-month minimum term, as property cannot be used on a transient basis);

(D) Interim recertifications are required if number of occupants in the unit changes for any reason other than the birth of a baby to an occupant of the unit;

(E) Copy of Certificate of Continuing Program Compliance; and

(F) Copy of Internal Revenue Service Form 8703.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

## **Subpart 10. Housing and Development Software**

### **15 CAR § 86-1001. Housing and development software.**

(a)(1) The Arkansas Development Finance Authority has implemented the mandatory use of its web-based compliance and monitoring software.

(2) Entering data online is utilized in place of the written status reports and is statutorily required by the authority pursuant to Treas. Reg. § 1.42-5, recordkeeping and record retention provisions.

(b)(1) Data pertaining to move-ins, transfers, move-outs, recertifications, etc., must be entered no later than the fifteenth day of the month following the event.

(2) Failure to enter data will be reported to the Internal Revenue Service as noncompliance.

(c)(1) Online entry applies to:

(A) All active projects;

(B) Applicable foreclosed properties; and

(C) Applicable projects that received a partial release of the terms of the LURA.

(2) A separate procedures manual is available.

(3) Training dates are listed on the authority's website.

(d)(1) Additionally, the authority is developing a web-based housing locator.

(2) By submitting an application for tax credits, all applicants agree to participate in, provide information for, and cooperate with the authority in the creation and maintenance of such web-based housing locator.

**Authority.** Arkansas Code §§ 15-5-207, 26-51-1705.

**Codification Notes.** "LIHTC" means low-income housing tax credit.

## **Appendix A. Forms**

### **Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/67/15CARpt.86Appendix.pdf>