



LIHTC Compliance Manual



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PART 1 | INTRODUCTION

Chapter 1 | TAX CREDIT HOUSING

RIHousing's Mission

RIHousing strives to ensure that all people who live in Rhode Island can afford a healthy, attractive home that meets their needs. A good home provides the foundation upon which individuals and families thrive, children learn and grow, and communities prosper.

To achieve our mission, we:

- Offer fair, affordable and innovative lending programs.
- Provide housing related education to consumers and others.
- Promote and finance sensible development that builds healthy, vibrant communities.
- Provide housing grants and subsidies to Rhode Islanders with the greatest need.
- Team up with partners to improve everything we do.

RIHousing uses its resources to provide low-interest loans, grants, education and assistance to help Rhode Islanders find, rent, buy, build and keep a good home. Created by the General Assembly in 1973, RIHousing is a privately funded public purpose corporation.

This manual supports RIHousing's mission and obligation under Treasury regulations by providing our Low-Income Housing Tax Credit (LIHTC) property owner partners and their management agents (owner/agents) with our policies designed to support the federal LIHTC Code and guidance.

IMPORTANT NOTE!

While setting out RIHousing's requirements under the LIHTC program, this manual was not intended and must not be taken as legal or accounting advice. These materials are for informational purposes only and may not reflect the most current legal developments. The manual has not been reviewed by the IRS. With respect to federal rules, this manual is to be used only as a supplement to the statutes, regulations and other guidance from the IRS and HUD. Complete coverage of all aspects of compliance with the LIHTC program is beyond the scope of this manual. RIHousing's obligation to monitor for program compliance and willingness to provide assistance does not make RIHousing liable for an owner's noncompliance. The responsibility for maintaining compliance with the LIHTC program lies with the owner of the building who has used the funding and accepted the obligations attached. Because of the complexity of the LIHTC program and the need to consider how provisions apply to specific factual circumstances, the informational materials are not intended, and should not be taken, as legal advice on any particular set of facts or circumstances. Owners must seek competent professional legal and accounting advice regarding compliance for their properties.

LIHTC Housing History

The Low-Income Housing Tax Credit (LIHTC) was passed into law with the Tax Reform Act of 1986. The LIHTC funds affordable housing by reducing taxes for owners who build housing for low-income households. The tax credits provided are based on how much is invested in the property by the owner and investors for the purpose of building and/or rehabilitating affordable rental housing. The LIHTC program is governed by Section 42 of the Internal Revenue Code (IRC §42). The IRS uses HUD rules when calculating household income. Otherwise, it is the IRS rules that should be consulted when establishing policies and procedures to meet LIHTC compliance.

The Internal Revenue Service (IRS) administers the program nationwide by partnering with state housing finance agencies (HFAs). Allocating tax credits to owners and regular monitoring for compliance with the LIHTC program are handled on behalf of the IRS by the HFAs. IRS regulation requires that designated state LIHTC HFAs develop and implement a Qualified Allocation Plan (QAP) to determine how tax credits will be allocated. RIHousing's QAP is available on its website. Additionally, HFAs must create policies and procedures for monitoring compliance with the LIHTC program. Provisions in this manual support RIHousing's obligation in this regard.

The tax credit can attract investors who provide equity for a building's initial construction or the rehabilitation of an existing building. The acquisition by purchase of an existing building can also be a basis for claiming tax credits, but only if the building is also rehabilitated.

HELPFUL HINT

If you can remember "IRS", you can remember the basic provisions necessary to maintain compliance with LIHTC rules.

An owner/agent must:

I **Income limits:** Rent to income-qualified households.

R **Rent limits:** Keep rents below required limits.

S **Safe and sanitary:** Meet physical standards (keep the property "decent, safe & sanitary").

Bonus: these basic provisions form the underlying requirements for almost all affordable housing programs. Only the specific rules vary! (See Chapter 12 for details)

Chapter 2 | KEY PLAYER ROLES

The Owner

The owner chooses to utilize the LIHTC program to take advantage of the tax and other benefits provided. In exchange for these benefits, the owner must adhere to certain requirements and accept responsibilities.

These responsibilities include, but are not limited to the following:

A. Commitment and Allocation Requirements

During the LIHTC application process, the owner provides evidence of the economic feasibility of the project. Before the IRS Forms 8609 are issued, the owner's CPA certifies to the total costs for each building and that all program requirements have been met. An *Owner's Certification of Continuing Program Compliance* will also be submitted annually. Any violation of the program requirements or misinformation represented in the application or annual *Owner's Certification* could result in the loss of tax credits. See Chapter 9 for more information on the *Owner's Certification*.

B. Project Knowledge

At a minimum, the project owner and managing agent should be knowledgeable of the following (as applicable):

1. The date of allocation [see Chapter 8].
2. The placed-in-service date for each building [Chapter 8].
3. For an LIHTC acquisition/rehabilitation project [Chapter 11]:
 - a) Date of acquisition.
 - b) Whether any in-place residents were required to move out (temporarily or permanently) and if the building was occupied during the rehabilitation.
 - c) Whether in-place residents are LIHTC qualified and when each was initially qualified.
 - d) If residents were relocated during the rehabilitation process, detailed records of transfers sufficient to support the accuracy of credits claimed.
4. The Building Identification Number (BIN) for each building [Chapter 7].
5. If a project includes more than one building, the number of projects comprising the project and the number of buildings in each project.
6. The minimum set-aside and other set-asides elected: 20-50, 40-60 or Average Income [Chapter 7].
7. The Applicable Fraction: For each building, the percentage of the residential units and the percentage of residential floor space occupied by qualified residents [Chapter 7].
8. The year that the tax credit was first claimed for each building [Chapter 8].
9. The start and end years of the Credit, Compliance and Extended Use Periods [Chapter 8].
10. The terms under which the tax credit reservation was made [Chapter 8].
11. The terms and conditions stated in the *Declaration of Land Use Restrictive Agreement for Low-Income Housing Tax Credits* (LURA) [Chapter 8].

C. Proper Administration and Record Keeping

The owner is responsible for the proper administration of the project. Resident income and rent records must be generated and retained for each building in the project for the duration of the Compliance and Extended Use Periods.

Owners must maintain records necessary for RIHousing to conduct compliance monitoring reviews and for the IRS to conduct any necessary audits. Records for the first year of the Credit Period must be retained for a minimum period established by Tax Code [Chapter 9].

The records must include the following:

1. The total number of all residential rental units (both LIHTC and non-LIHTC) in the building, including the number of bedrooms and the size in square feet of each residential rental unit.
2. The percentage of residential rental units in the buildings that are low-income units.
3. Set-asides used for each unit to determine the Income Averaging for applicable properties.
4. The rent charged for each residential rental unit in the building.
5. The applicable utility allowance and supporting documentation for each residential rental unit.
6. The number of occupants in each LIHTC unit.
7. The unit vacancies in each building.
8. Documentation of when and to whom the next available units were rented (this information must include the unit number, resident name, move-in dates and move-out dates for all LIHTC and non-LIHTC residents).
9. The annual income certification of each eligible resident (as applicable).
10. Documentation to support each eligible resident's income certification.
11. The eligible basis and qualified basis of the building at the end of the first year of the Credit Period.
12. The nature of the nonresidential portion of any building included in the project's eligible basis under Section 42(d) of the code (resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

D. Maintain a Project File

Owners must maintain a project file that contains all pertinent documents for the project.

RIHousing retains the right to inspect the documentation in the project files at any time, with proper notice to the owner/agent. The project file must contain:

1. A copy of the recorded LURA.
2. A copy of the Management Plan.
3. A copy of the Tenant Selection Plan.
4. A copy of the Management Agreement.
5. Forms IRS 8609, 8609 - Schedule A and 8586 for each building for each year tax credits are claimed.
6. Form 8703, as applicable to tax-exempt bond-financed projects.

7. All applicable regulatory documents relating to any other programs used to finance the property, such as HUD Section 8, HOME, etc.
8. Documentation for each utility allowance review, which must occur at least once per calendar year [Chapter 3].

E. Maintain a Resident File for Each Unit in the Project

The resident file requirements are outlined in Part 2 of this manual. Files may be paper or electronic, as discussed in Chapter 9.

F. Reporting and Certification Requirements

1. Owners must submit a copy of fully executed Form(s) IRS 8609 to RIHousing, once Part II is signed and dated.
2. Owners must submit and retain copies of the *Owner's Annual Certification of Continuing Program Compliance*, and related documents for each year of the Compliance Period. The Owner's Certification must be submitted by the deadline published annually in RIHousing Notices.

G. Train On-Site Personnel

It is the owner's responsibility to ensure that the on-site management staff is sufficiently educated and compliant with all LIHTC provisions applicable to the project. At least one member of on-site management staff must attend training for compliance in managing a tax credit project annually. Proof of training must be submitted to RIHousing by January 31 every year in accordance with RIHousing requirements. RIHousing reserves the right to apply a higher level of scrutiny and require additional training of the management agent if Income Averaging is elected as the project's minimum set-aside [Chapter 7].

H. Ensure Proper Maintenance

The owner is responsible to maintain the property in a decent, safe, and sanitary condition, suitable for occupancy, and in good repair. Failure to do so may result in reportable noncompliance.

I. Administration and Notification

The owner must notify RIHousing immediately in writing of any anticipated changes in the ownership composition including the general partner or managing member, or in the management agent. Changes in names, addresses, telephone numbers and federal identification numbers must also be reported.

Upon receipt of notification of such a change from the owner, RIHousing will provide further instructions and forms or a list of documents that need to be completed and returned for approval prior to closing.

The owner is responsible for informing RIHousing of any event that might affect the project's credit throughout all phases of development, rent-up, and the Extended Use Period. This includes but is not limited to the initial phases of construction, placed-in-service dates, and the completion of buildings.

J. Declaration of Land Use Restrictive Agreement (LURA)

Prior to claiming tax credits, an approved RIHousing Declaration of Land Use Restrictive Agreement (LURA) must be recorded and in effect as of the end of the taxable year in which credits are claimed.

The Property Manager

A. General

The management company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease LIHTC units should be thoroughly familiar with federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information to RIHousing, as requested, and submit all required reports and documentation in a timely manner.

B. Noncompliance

If the management company determines that the project is not in compliance with the LIHTC program requirements, the management company should correct the noncompliance upon discovery whenever possible.

Correction of LIHTC noncompliance matters prior to receiving notification from RIHousing of a pending scheduled file and or physical review demonstrates proper due diligence and the noncompliance will not be reported to the IRS by RIHousing on form 8823.

C. Compliance Training

Management staff must remain up-to-date on all IRS Code regulations and RIHousing policy changes that are published. This may be accomplished through the IRS web site, several nationally known LIHTC training/consultation providers and RIHousing's web site.

RIHousing

RIHousing allocates and monitors compliance with the LIHTC program for Rhode Island. The primary compliance-related responsibilities of RIHousing are as follows:

A. Prepare Regulatory Agreements

For LIHTC projects, RIHousing will prepare a Declaration of Land Use Restrictive Covenants (LURA) prior to the issuance of the IRS Form 8609. The LURA is an encumbrance on the property. This document must be recorded before the end of the calendar year in which credits are first claimed. It is typically recorded in conjunction with the closing of the project.

B. Issue IRS Form 8609 (Low-Income Housing Certification) Part I

Upon receiving a CPA-prepared cost certification for each building, RIHousing will complete and execute Part I of an IRS Form 8609 and send it to the owner.

If rehabilitation and acquisition credits are claimed on the same building, the rehabilitation and acquisition credits are each calculated separately. Therefore, the acquisition and rehabilitation will receive separate Forms 8609 [see Chapter 11].

The owner completes and executes Part II of the 8609 and submits it to the IRS when the owner's personal, partnership or corporate tax returns are filed for the first year. Refer to the most current 8609 instructions to determine when and how a copy of the 8609 must be submitted. A copy of each fully executed 8609(s) must be forwarded to RIHousing for their records.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. RIHousing cannot provide legal or tax advice on the filing or completion of tax forms.

C. Review *Annual Owner Certification of Continuing Program Compliance* and other required reporting

RIHousing provides the annual owner's compliance form along with an invoice for compliance monitoring fees to the owner/managing agent. The completed compliance form is analyzed, and the owner is contacted if questions arise. Payments of compliance fees are required annually and are monitored by RIHousing staff.

D. Conduct On-site Monitoring

RIHousing is required by the IRS to conduct in-depth, on-site inspections of all buildings and to review a percentage of household/unit files in each project [Chapter 10].

E. Notify IRS of Noncompliance

RIHousing will provide written notification to the owner for items of noncompliance and assign an allowed correction period. The correction period cannot exceed 90 days from the date of the notice of noncompliance, but often will be less (typically 30 days), depending on the nature of the noncompliance. RIHousing may extend the correction period for up to six months, but only if RIHousing determines there are extenuating circumstances creating good cause for granting the extension. The owner/agent must supply documentation that verifies the project is back in compliance before the end of the correction period.

F. Use of Subcontractors

Treasury Regulations allows RIHousing to delegate compliance monitoring responsibilities. RIHousing may decide to retain an agent or private contractor to perform any of the responsibilities listed above. RIHousing must, however, at all times retain responsibility for notifying the IRS of any noncompliance of which it becomes aware.

G. Administration and Notification

Information regarding compliance is posted on the RIHousing website and updated regularly and includes annual compliance reporting requirements and documentation, required and sample forms, and Policy Notices.

Key Form: 8609

The Form IRS-8609 signifies the official allocation of tax credits for a building. Part I is completed and executed by RIHousing; Part II is completed and executed by the owner. Below are pieces of crucial information found on the form, along with line numbers current to the 2018 Form. Note: these line numbers generally do not change, but check the current form in case of changes.

Information	Form Line#	Why we need to know	See also Chapter
Address	A	Compare to BIN (line E) to ensure that rules are accurately applied to the correct building	7
Building ID# (BIN)	E	Identifies individual buildings	7
Deferral election	10(a)	Combined with the placed in-service date (line 5) establishes 1 st credit year	8
Eligible basis	7	Used with line 8(a) to calculate the applicable fraction	7
Minimum set-aside	10(c)	- Federal income and rent limits - If income averaging applies	3 7
Multi-building election	8(b)	- Determining the start of income limits - To calculate minimum set-aside commitment - Determine if between-building unit transfers are allowed	3 7 6
Placed in service date	5	- Start of household qualification - Start of income limits - Start of 1 st credit year - along with deferral election (line 10(a))	4 & 11 3 8
Qualified basis	8(a)	Used with line 8(a) to calculate the applicable fraction	7
Type of credit	6	- Is the building new construction, acquisition or rehab? - Is the building bond-financed?	11 7 & 12

8609 Low-Income Housing Credit Allocation and Certification
 (Rev. May 2018)
 Department of the Treasury
 Internal Revenue Service
 OMB No. 1545-0988
 Go to www.irs.gov/Form8609 for instructions and the latest information.

Part I Allocation of Credit

Check Addition to Qualified Basis Amended Form

A Address of building (do not use P.O. box) (see instructions) B Name and address of housing credit agency

C Name, address, and TIN of building owner receiving allocation D Employer identification number of agency

E Building identification number (BIN)

TIN ▶

1a Date of allocation ▶ 1b Maximum housing credit dollar amount allowable 1b

2 Maximum applicable credit percentage allowable (see instructions) 2 %

3a Maximum qualified basis 3a

b Check here if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions) 3b 1 %

4 Percentage of the aggregate basis financed by tax-exempt bonds, (if zero, enter -0-) 4 %

5 Date building placed in service ▶

6 Check the boxes that describe the allocation for the building (check those that apply):
 a Newly constructed and federally subsidized b Newly constructed and **not** federally subsidized c Existing building
 d Sec. 42(e) rehabilitation expenditures federally subsidized e Sec. 42(e) rehabilitation expenditures **not** federally subsidized
 f Allocation subject to nonprofit set-aside under sec. 42(h)(9)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

Signature of authorized official Name (please type or print) Date

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions) 7

8a Original qualified basis of the building at close of first year of credit period 8a

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

c If box 8a or box 8b is checked, do you elect to reduce eligible basis under section 42(d)(2)(B)? Yes No

b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)? Yes No

10 Check the appropriate box for each election.
Caution: Once made, the following elections are irrevocable.
 a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶ Yes No
 b Elect **not** to treat large partnership as taxpayer (section 42(i)(5)) ▶ Yes No
 c Elect minimum set-aside requirement (section 42(g)) (see instructions):
 20-50 40-60 Average income 25-60 (N.Y.C. only)
 d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) 15-40

Under penalties of perjury, I declare that I have examined this form and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature Taxpayer identification number Date
 Name (please type or print) First year of the credit period

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63981U Form **8609** (Rev. 05-2018)

PART 2 | QUALIFIED HOUSEHOLDS

Chapter 3 | INCOME LIMITS AND RENTS

Selecting the Correct Income Limits

A very important aspect of determining whether households are eligible for affordable housing is ensuring that their household income is at or below specific income limits; these limits differ by program (LIHTC, HOME, Section 8, etc.).

Annually, HUD publishes median income information for each county or Metropolitan Statistical Area (MSA) in each state. HUD MSAs are larger metropolitan areas that may include multiple counties in one “area”.

The Minimum Set-Aside for a project, which is also abbreviated *MSA* at times by the IRS, should be distinguished from the other MSA based on context (see Chapter 7 for a discussion of minimum set-asides). To avoid confusion, this chapter will spell out *minimum set-aside* in all cases.

The LIHTC and tax-exempt bond programs’ income limits are labeled by HUD as *Multifamily Tax Subsidy Program* (MTSP) limits.

The MTSP income limits can be found on the HUD website. As a service to our partners, RIHousing provides notices each year that list online resources to assist in determining income limits.

HUD datasets contain income limits separated into two categories for each MSA or county:

1. 50% (very-low) and 60% Income Limits
 - Select the 50% or 60% limits based on the property’s minimum set-aside (20-50 properties use the **50%** limits and 40-60 and Income Averaging properties use the **60%**).
 - Calculate the **20%, 30%, 40%, 70%** and **80%** income limits (for Income Averaging properties only) by multiplying the 50% limit by .4, .6, .8, 1.4 and 1.6, respectively.
NOTE: HUD was not publishing these income limits in 2018 when Income Averaging was passed into law; until HUD publishes these limits, owners will need to manually calculate the applicable income limits.
2. HERA Special Income Limits 50% and 60% (if applicable)
 - These limits can only be applied to projects for which at least one building in the project was placed in service prior to January 01, 2009.
 - Not all MSA’s or counties in Rhode Island have projects that are eligible to use the HERA special limits. If the HERA limits are not listed in the datasets for the project’s MSA or county income limits, the project is not eligible. Also, counties with HERA special limits change from year to year so it is best not to assume that if you had HERA special limits one year that you will automatically have them the next (or vice versa).

LIHTC income limits are said to be “*held harmless*”. This means that once a building places in service, it never has to decrease the income limits it uses from one year to the next. Being “held harmless” is

beneficial to projects where income limits might fluctuate from year to year and helps the project to better achieve economic stability. For purposes of this rule, a project “places in service” when the first building in the project places in service. “Project” is defined by the 8609 8(b) multi-building election (see Chapter 7, *Minimum Set-Aside* for further information on the 8(b) election).

Question to determine if holding harmless at a prior year’s limits is appropriate:

- Has any year’s income limit since the later of 2008 or the property placed in service date been higher than current limits?

If “yes”, the property holds harmless at the prior higher limits.

Questions to determine if HERA Special limits are applicable:

- Was any building in the project placed in service prior to January 1, 2009?
- Does HUD list the *HERA Special* option for the area?

If “yes” to both questions above, the property may use the HERA Special limit.

EXAMPLE Held Harmless Limits

2018 Income limits are published

Property 1 places in service and uses the income limits published for 2018.

2019 Published limits for the area decrease

Property 1 continues to use the 2018 limits.
Property 2 in the same area places in service in 2019. It uses the 2019 limits, which are lower than the limits allowable to older **Property 1**.

2020 Published limits decrease again

Property 1 holds harmless at 2018 limits.
Property 2 remains at the 2019 limits.

2021 Income limits go up and exceed the 2018 limits.

Both projects will now use the 2021 limits and hold harmless to those limits if necessary, in the future.



Rent Limits

LIHTC rent limits are based on bedroom size; they are 30% of the income limit calculated assuming 1.5 people per bedroom. As a service to our partners, RIHousing provides notifications each year that list online resources to assist in determining rent limits.

Tenant rent includes amounts a household is required to pay out of pocket (rent and other required charges) plus a utility allowance (if applicable). This amount cannot exceed the applicable rent limit for the appropriate unit size.

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Subsidy received from Section 8, HCVP, Rural Development or other similar sources is not included in tenant rent. At times the gross rent (tenant + utility allowance + rental subsidy) will be more than the LIHTC rent limit. Tenants receiving Section 8 project-based or tenant-based rental assistance pay 30% of the household’s adjusted income; the tenant portion of the rent may exceed the LIHTC rent limit as long as there is a rental subsidy. If at any point the household no longer receives the rental subsidy, the LIHTC rent limit cannot be exceeded.

Gross Rent Floor

The gross rent “floor” establishes a minimum rent for a property based on the owner’s election of the gross rent amount on the date of either credit allocation or the placed in-service date. The election must be made no later than the placed in-service date. Income limits start to apply to a project when it places in service. If the limits have gone down between allocation and the time the property places in service, the owner/agent will not have to charge rents based on the lower income limits but will use the gross rent floor until rents based on the future income limits exceed the floor rents.

Note that income limits become effective once the first building places in service, so the gross rent floor could be higher than the gross rents based on the income limits in place on the placed in-service date. Because income limits hold harmless, there is no benefit to choosing the floor based on the placed in-service date; however, selecting to use the allocation date to determine the gross rent floor may provide benefit the owner in case of income/rent limit decreases after the allocation, but before the project places in service.

EXAMPLE Gross Rent Floor



EXAMPLES Calculating Income and Rent Limits

STATE:RHODE ISLAND		-----I N C O M E L I M I T S-----							
PROGRAM		1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Newport-Middleton-Portsmouth, RI HMFA									
FY 2018 MFI: 94100	VERY LOW INCOME	32950	37650	42350	47050	50850	54600	58350	62150
	60% INCOME LIMIT	39540	45180	50820	56460	61020	65520	70020	74580
	HERA Special 50%*	33100	37800	42550	47250	51050	54850	58600	62400
	HERA Special 60%*	39720	45360	51060	56700	61260	65820	70320	74880

Sample income limits used for the below examples

1. Calculating 20% - 80% HERA Special Income Limits for 1-person households

Set-Aside	50% HERA Special limit x adjusting factor	= Set-aside Limit
20%	x 0.4	= \$ 13,240
30%	x 0.6	= \$ 19,860
40%	x 0.8	= \$ 26,480
50%	\$ 33,100	x 1.0 = \$ 33,100
60%	x 1.2	= \$ 39,720
70%	x 1.4	= \$ 46,340
80%	x 1.6	= \$ 52,960

2. Calculating Rent Limits

Annual Rent Limits for 60% Units with an...

...Odd Number of Bedrooms	...Even Number of Bedrooms
1 bedroom	2 bedroom
1.5-person income limit (1.5 x 1BR) X 30%	3-person income limit (1.5 x 2BR) X 30%
<p>Note: Since $1 + 2 \div 2 = 1.5$: The 1-person limit + the 2-person limit $\div 2 =$ the 1.5-person limit</p>	
$\$39,540 + \$45,180 \div 2 = \$42,360$	
$\\$42,360 \times 30\% = \\$12,708$	$\\$50,820 \times 30\% = \\$15,246$
Annual rent limits are finally converted to monthly amounts by dividing by 12 (if cents are rounded, round DOWN rather than up).	
$\$12,708 \div 12 = \$1,059 - 1 \text{ BR gross rent}$	$\$15,246 \div 12 = \$1,270.50 - 2 \text{ BR gross rent}$ OR $\\$1,270.00$

Utility Allowances

What households pay for rent and utilities must be kept at or below the maximum rent limits. However, in actual practice, it is impossible to know what utility usage will be for any specific month. To deal with this, LIHTC units in which residents pay utilities out of their pockets must have utility cost estimates calculated per unit size. These are *utility allowances* (UA's). Resident-paid utilities commonly include electricity, water, sewer, oil, gas, and/or trash. Costs which are not required as part of tenancy such as telephone, cable TV and internet service are considered optional and are not included in the UA. The rent that a tenant pays plus the UA and other required charges must not exceed the LIHTC rent limits. (See exception above for units with a rental subsidy).

When all utilities are included in the household's rent, there is no UA.

EXAMPLE UAs and Rent

If the maximum LIHTC rent on a unit is \$789 and the tenant pays utilities with a UA of \$68 per month, the maximum rent chargeable to the household is \$721.

\$721 (\$789 - \$68)

UA Calculation Methodologies

When utilities are not included in the household rent, the IRS allows the UA to be calculated using the following methods:

1. UAs calculated for other program purposes.

a. RD-regulated buildings

Rural Development (RD) is part of Rural Housing Services (RHS), a division of USDA that provides housing and other services to rural areas. If a building or any unit in a building receives assistance from Rural Development (RD), the UA that is calculated as part of the RD annual budget for the building will be used for LIHTC purposes for all units. The RD allowance will be used even for units that have HUD project-based or Housing Choice Voucher assistance.

b. HUD-regulated buildings

If a building or any unit in it does not have RD funding (see above) and is regulated by HUD (such as section 8 or HOME), the HUD-regulated project-based UA will apply. The HUD-regulated UA will be used even for households with Housing Choice Vouchers.

NOTE: the HUSM (see below) is specifically allowed in HOME regulations for properties committed HOME funds on or after August 23, 2013, and thus satisfies both LIHTC and new HOME program requirements. These HOME properties are also allowed all other options available to LIHTC properties if they are based on actual utility usage at a property; this excludes the PHA estimate which is not property-specific. Properties committed HOME funds prior to August 2013 retain the option to use the PHA estimates for HOME purposes.

c. PHA estimate

Residents who have a Housing Choice Voucher have a UA that is calculated by a Public Housing Authority (PHA) as part of the Voucher rent calculation. This UA must be used for Voucher holders at buildings that are not otherwise regulated by RD or HUD programs. Owner/agents must contact the PHA to determine if the UA has changed at least every 60 days and notify RIHousing when there is a change. Additionally, the UA estimates from any local PHA that provides Vouchers to the property can be used for all units in a building that are not regulated by RD or HUD. If used, these estimates must be updated within 90 days of their effective date.

2. If a project is not RD- or HUD-regulated, and the owner does not use a PHA estimate, then the following options are available in Rhode Island.

a. **LIHTC allocating agency estimate.** An owner/agent may obtain a utility estimate for each unit type in the building from RIHousing. The estimate is obtained when the building owner receives, in writing, information from RIHousing providing the estimated per-unit cost of tenant-paid utilities for units of similar size and construction for the geographic area in which the building is located.

b. **Utility company estimate.** Any interested party (including a tenant, a building owner or RIHousing) may obtain a UA estimate from a local utility company. The utility company must offer utility services to the building in order for that utility company's rates to be used in calculating a UA. If there are multiple utility companies that offer services to a building, an interested party may select any one of them.

c. **HUD Utility Schedule Model (HUSM).** The owner/agent can calculate the UA using a spreadsheet developed by HUD for LIHTC use, even if the project does not have HUD assistance. HUSM enables users to calculate utility schedules by housing type after entering utility rate information. This model is based on climate and survey information from the Department of Energy and incorporates energy efficiency and Energy Star data, if applicable to a property. The HUSM and user instructions can be accessed on the HUD website below.

www.huduser.gov keyword search "Utility Schedule Model"

d. **Energy Consumption Model (ECM).** RIHousing will approve a UA based on an energy and water and sewage consumption and analysis model prepared by a properly licensed engineer or an otherwise qualified professional; such engineers or professionals must be independent from the project owner. IRS regulations specify building factors that must be included in the energy consumption model. Should the owner/agent choose to employ the services of an otherwise qualified professional without proper engineering licensing, the owner must obtain prior approval from RIHousing. RIHousing reserves the right to approve or disapprove an energy consumption model or require additional information prior to permitting its use.

Sub-metered and renewable energy utilities. Utility charges that are sub-metered are based on a household's actual energy consumption; these are treated as paid by the tenant to the utility company even if the owner collects the sub-metered utility payments because the owner ultimately pays the utility company for the utilities. Owners can, therefore, calculate a UA estimate for utilities that are sub-

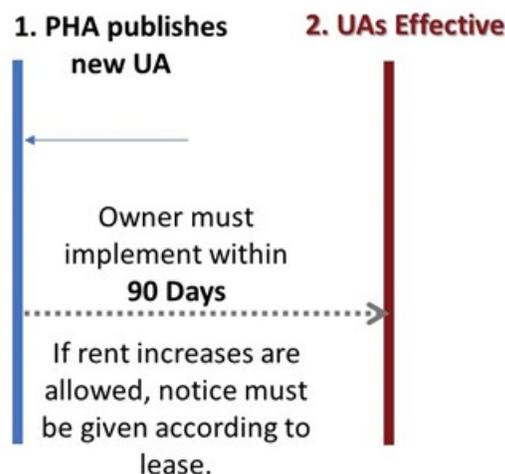
metered. Owners may also charge a very small fee, published by IRS Notice, for the work of submetering. IRS Notices should be monitored for the current allowable fee by owner/agents who submeter.

The regulation extends the principle of the sub-metering rule to property owners that provide households with energy directly acquired from a renewable source and that is not delivered by a local utility provider. UA's can be calculated for these renewable energy utilities if the rates charged for renewable energy are not greater than other options available through local utility providers.

Updates. UAs must be updated once every calendar year. Copies of UA documentation must be retained on site in the project file. The building owner must retain supporting documentation used to calculate allowances used as part of their records.

Tenant notification "the 90-day period." Two types of UA's, those that are RD- and HUD-regulated, must be posted for tenant review according to the applicable RD or HUD rules. For other UA calculation methods, if the applicable UA changes, the owner must begin preparing for the change 90 days prior to the effective date. Owner/agents are required to implement and document the following: (1) households and RIHousing must be timely notified 90 days prior to new UA's being effective, and (2) the new UA must be used to compute gross rents effective the first day immediately following the 90-day period. Any rates and other data used must be current within 60 days of the start of the 90-day period. Failure to implement any changes to the UA may affect the LIHTC gross rents, which could cause the gross rents to exceed the applicable rent limit and create rent noncompliance. For most UA estimate methods, the owner/agent initiates the UA calculation. However, for estimates completed by the local Public Housing Authority (PHA), the PHA calculates and publishes these UA's on their own schedule; for this UA option, the 90-day period begins when the PHA estimates are effective. Rents may need to decrease by the end of the 90-day period in cases where the PHA-published UA's increase. Copies of the notification of UA changes must be retained in tenant files. *It is not required to adjust the TIC between annual certifications.*

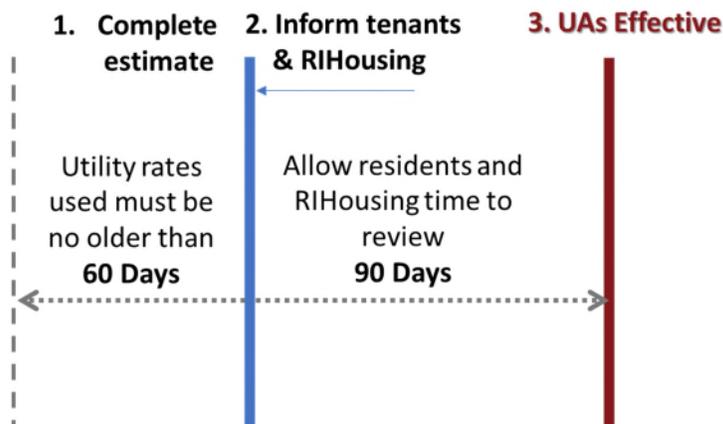
Utility Allowance Timeline (PHA UAs)



EXAMPLE Utility Allowance Timeline

1. **June 3** The PHA makes available a new UA.
2. **Sept 1** UAs take effect and must be used for September rents.

Utility Allowance Timeline (non PHA UAs)



EXAMPLE Utility Allowance Timeline

1. **Oct 1** An estimate is conducted and completed or provided by RIHousing.
(Utility rates used must be in effect no earlier than on August 2).
2. **Oct 3** Residents are informed of new proposed UAs.
(Estimate not provided by RIHousing must be submitted to RIHousing, who will review and comment, if necessary)
3. **Jan 1** UAs take effect and must be used for January rents.

Lease-ups. RIHousing requires that a UA must be established no more than 120 days before the start of a lease up. No review and change to these initial UA's are required until a building has achieved 90 percent occupancy for a period of 90 consecutive days, or by the end of the first year of the credit period, whichever is earlier.

If a UA review is to be completed at the end of the year **using any methods other than the PHA estimate**, the consumption rates as of December 31 of the first year of the credit period apply and can be used to calculate a UA for up to 60 days. Consequently, the 90-day period will begin no later than March 1 of the year after the first year of the credit period and the new UA must be effective for rents in June after the 90 days expire.

If a UA review is to be completed at the end of the year **using the PHA estimate**, the 90-day period will begin January 1 and end March 31 of the year after the first year of the credit period. The new UA must be effective for rents in April.

RUBS utilities. The IRS has offered several alternatives for calculating UA's for LIHTC buildings. However, it does not recognize Ratio Utility Billing System ("RUBS") as an acceptable method for determining UAs. Utilities in a RUB System are simply split among units evenly per a ratio based on the number of total units, square footage or other methods – not based on what a specific unit is likely to consume for utilities. Utilities paid through a RUBS cannot be used when determining UAs for a building. Rather, the RUBS billing would have to be added to the rent for each unit to determine rent compliance each month. An owner would have to cap the RUBS billings so that rents and RUBS charges never exceed LIHTC max rent any specific month. This method creates uncertainty and risk to the tax credit and is highly discouraged in Rhode Island.

HELPFUL REMINDERS

Summary of important UA Rules

- RIHousing publishes the allocating agency estimate UA annually.
- The Owner determines the unit types in each building.
- The Owner decides which UA calculation method to use and uses it consistently throughout the building each year.
- The Owner may change methods from one year to the next
- RIHousing approval is not required unless the ECM method is chosen.
- The owner must give tenants a 90-day notice of a UA change for all UAs other than the PHA estimate.
- New UAs go into effect 90 days after notice for all but the PHA estimate. PHA estimate changes must give enough notice of any resulting rent increases per the lease.
- If using the PHA method, the owner must ask the PHA every 60 days if the UAs have changed and implement any changes within 90 days of the change.
- RIHousing must be notified via email of any change in UAs other than the PHA estimate at least 90 days before implementation. RIHousing must be informed of PHA estimate changes at the same time residents are informed.



Understand and implement the 90-day rule!

For PHA estimates: Make sure to ask the PHA every 60 days if the UA has changed. If the UA has increased, and the new UA plus the rent plus other required charges are over the LIHTC rent limit, the rent needs to be lowered no later than 90 days after the date of the UA change. *Keep documentation of the PHA's responses to inquiries in the project file.*

All other estimates: RIHousing and tenants must be notified of the new UA 90 days before any change in rent is implemented. *Keep copies of the notifications in household files.*

1. HOME.

As HOME is a HUD-regulated program, HOME UA's must be used for all tax credit units in buildings with HOME funds that are not RD-regulated.

2. Voucher holders

Unless a building is RD- or HUD-regulated (including HOME funds), the PHA UA that comes with a Housing Choice Voucher must be used for units that Voucher holders live in. As mentioned in a previous section, the PHA estimate may also be used for all units within the building, even if the remainder of the units receive no rental subsidy.

Chapter 4 | INITIALLY QUALIFYING HOUSEHOLDS

There are certain measures that can be taken to ensure that a household qualifies for an LIHTC unit. Owner/agents must take the steps listed below to complete the certification process.

Compliance Steps to Qualify an LIHTC Household

1. Accept a completed application including an income and asset questionnaire.
2. Verify eligibility factors.
3. Clarify and verify student status, as necessary.
4. Determine number of household members.
5. Calculate household income.
6. Compare household income to the applicable income limit.
7. Complete a Tenant Income Certification (TIC).
8. Execute a lease and other paperwork, per property policy.

This Chapter will discuss steps 1-3 as well as details about leasing, per step 8. Chapter 5 will discuss steps 4-7. Please note, Chapter 3 discussed the income limits referred to in step 6.

Questionnaire/Applications

Upon beginning the certification process, an interview (or interviews) should be conducted with all adult household members.

Compliance Steps to Qualify an LIHTC Household

- 1. Accept a completed application including an income and asset questionnaire.**
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The basics of the housing program(s) at the property should be explained. Some suggested topics are:

- Income limits.
- Student eligibility rules.
- The anticipated income of all household members occupying the unit must be verified, so this basic information must be included on the application and/or questionnaire with all questions thoroughly answered.
- Eligibility will continue to be reviewed on an annual basis with some level of annual certification. This may include income certification and *always* includes student status.
- Specific to your property and residents: Over time, Agents develop a list of issues that commonly come up at their property. If a property is near a school, for instance, extra time may need to be spent explaining student status rules. Another example may be that some agents find that many people have a hard time understanding the complex alimony/child support rules. Preparing extra

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guidance on such topics may ensure that the household is enabled to provide complete and accurate information for the purpose of a thorough certification.

It is important to ask only questions relative to the eligibility of the household and written screening criteria policies. Only fair-housing compliant screening criteria are allowed, including income minimums, credit checks, and criminal background checks.

A well-designed application/questionnaire will address student status and income and asset eligibility detailed in this chapter, Chapter 5, and HUD guidance. The application must be completed by the household and the file must be sufficiently documented to support household eligibility for purposes of claiming the low-income housing credit under IRC §42. Industry best practice is for the application questions to be in the form of a “yes” or “no” checklist with additional space for further information for answers marked “yes”; this format best establishes a definite answer to each question. RIHousing does not require a specific application packet, recognizing that owner/agents are in the best position to design application forms that meet the needs of their properties and programs.

The application /questionnaire must be signed by all adult household members; no question should be left blank. Questions relating to minor dependents in the household must be answered by the responsible adult.

Occupancy Standards and Other Owner Criteria

An owner must adhere to occupancy standards that establish how many people can occupy a unit in accordance with local and state law. For example two persons per bedroom plus one additional person per unit is common; however, an owner must take into consideration several factors specific to the property such as the size of rooms and total square footage. Occupancy standards must meet Fair Housing guidelines and be consistently applied. RIHousing will not formally approve occupancy standards for an owner but will review them to ensure that they are in place and may question a policy that appears to underutilize units. Occupancy Standards must be indicated in the Tenant Selection Plan.

Tenant Selection Plans

To ensure that each applicant is treated fairly and that program requirements are met, owner/agents must adopt and make public a Tenant Selection Plan (TSP). The TSP must detail policies and procedures used to select, screen and admit applicants. Refer to HUD Handbook 4350.3 Rev 1 Chapter 4 for further guidance. The TSP must also include policies for applying the Violence Against Women Act (VAWA) protections, they must be current and readily available. Note: on April 4, 2016, HUD FHEO issued guidance on “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”. This guidance prohibits the use of arrest records and the blanket denial of persons with felonies – without regard for specific crime types and time since the crime was committed – as screening criteria in a TSP. Owners must implement this and other fair housing guidance when developing a TSP for a property.

RIHousing must review a TSP prior to real estate closing; however, to ensure compliance with Fair Housing and RI General Landlord/Tenant Laws, the owner should seek advice from his/her legal counsel. RIHousing will make recommendations to the owner after completing its review. For ongoing compliance, the TSP will be reviewed annually.

Property/Management Rules (House Rules)

Beyond the LIHTC requirements, an owner/agent will have clear written expectations for property residents, often called *House Rules*, *Property Rules & Regulations*, or similar. Each household is provided these rules and acknowledges receipt prior to occupancy. In many cases, the House Rules are an attachment to the lease agreement.

Any changes to the House Rules should be communicated to residents prior to the changes being implemented. Household receipt of proposed changes should also be documented in the tenant file. Although there may be as many rules as an owner/agent sees fit to implement, none of them may conflict with any compliance provisions of the LIHTC program or the Fair Housing Act.

Availability to the General Public

The Tax code is clear, in that LIHTC units must be “available to the general public,” which has two implications: (1) there is a substantial limit on occupancy preferences or restrictions; and (2) the property must meet Fair Housing standards

Occupancy Preferences or Restrictions

Fair housing does not prohibit restrictions or preferences being applied to applicants that do not relate to federally protected classes. The LIHTC General Public Use provisions, however, are more restrictive than Fair Housing. Housing for certain trade groups, for instance, is prohibited for LIHTC properties, but allowable under Fair Housing. For example, restricting or giving occupancy preference to police or teachers would not be acceptable for LIHTC units, unless these groups are included in one of three exceptions. Occupancy restrictions or preferences are only allowed for LIHTC units for persons (1) with special needs, (2) who are members of a specified group under a federal or state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities. Before an owner/agent implements any occupancy preference or restriction, they should ensure that it meets one of these types.

Fair Housing

Violation of the Fair Housing Act can result in the loss of tax credits when there is a final adverse *determination of actual discrimination* by an agency, including HUD, a state or local Fair Housing agency substantially equivalent to HUD, or a federal court. A violation has not occurred when there is an *accusation* of discrimination or when there is a conciliation agreement between an owner, an applicant/resident and HUD.

The Violence Against Women Act

The Violence Against Women Act (VAWA) is a federal law that provides funding and management requirements designed to protect victims of certain violent crimes. The name of the Act reflects the statistical reality that women are far more often the victims of reported violence, but the provisions of the law apply equally to all victims regardless of gender. VAWA covers victims of domestic or dating violence, sexual assault or stalking.

VAWA reauthorizations in 2005 and 2013 progressively added housing provisions. The 2005 version affected Section 8 programs and public housing. The 2013 reauthorization greatly expanded the housing programs covered by the Act to include most of HUD multi-family housing programs, including HOME,

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LIHTC and Rural Development-funded housing. The final VAWA regulation and forms were released by HUD in November 2016, and follow-up guidance was published in June of 2017 (Federal Register Vol. 81, No. 221 and HUD Notice H-2017-05). The regulation is directly applicable to HUD programs, including HOME and the Housing Trust Fund. Rural Development also adopted the HUD guidance. For technical reasons, the IRS is unlikely to provide any guidance and the tax credits are not directly at risk if an owner does not apply VAWA rules. However, the VAWA law still applies to LIHTC properties and noncompliance creates legal exposure. RIHousing encourages owner/agents to become familiar with the HUD regulations and forms used at application and other times and apply these to their LIHTC properties. Although lack of compliance with VAWA is not grounds for LIHTC noncompliance and loss of tax credits, there have been violations of VAWA that HUD determined were disparate impact discrimination under the Fair Housing Act based on gender, race or national origin. If HUD finds a VAWA violation to also violate Fair Housing, then credits are at risk (see section on “Fair Housing” above). This should make an owner realize the importance of applying VAWA guidance and forms as spelled out by HUD even if the IRS is unlikely to address the matter.

Verification

Crucial eligibility factors must be verified through knowledgeable third-parties, such as an employer for earned income, or a financial institution to

identify types of accounts, their applicable cash value, balance and interest rate. The verification must be an **unaltered**, original written document prepared by the third party. Examples include pay stubs, or a form completed and returned directly by the third party. Note that simple paychecks or copies of paychecks are not sufficient, as these reflect net rather than gross income. The accompanying pay stubs with gross income and all deductions listed is required. If documentation is delivered through the hands of an applicant or resident the owner/agent must review the document for signs of authenticity such as original signatures and authentic contact information. To establish authenticity, printouts from websites must clearly identify the website URL, usually with the company name in it; this is found in the header or footer of the printout from the internet. In all cases, the verifications used must establish enough information to accurately calculate income and determine other eligibility factors.

Compliance Steps to Qualify an LIHTC Household

1. Accept a completed application including an income and asset questionnaire.
- 2. Verify eligibility factors.**
3. Clarify and verify student status, as necessary.
4. Determine number of household members.
5. Calculate household income.
6. Compare household income to the applicable income limit.
7. Complete a Tenant Income Certification (TIC).
8. Execute a lease and other paperwork, per property policy.

EXAMPLE Authentic Verifications

1. An owner/agent uses printouts of an applicant's bank statements to verify information about the household's balance and income. The printout contains the URL, which is *https://: name of the bank.com* in the footer.
2. An owner receives a scanned completed verification via email from an employer. The email address that the verification comes from contains the name of verifier followed by *@name of the employing company.com*.

These are signs that support the authenticity of verifications used.

RIHousing looks for the following methods of verification, in order of preference:

1. **Third party verification.** The owner/agent must obtain the applicant/tenant's consent for the release of information before contacting third parties. For **earned income**, a verification form completed and returned directly by the employer. For **unearned income** such as a pension, social security, unemployment, child support/alimony, temporary disability benefit, etc. a verification form completed and returned directly from the source. For **Assets**, a verification form completed and returned directly by the financial institution. For **student status**, a verification form completed and returned directly by the educational institution.
2. **Alternate documents.**
 1. For **earned income**, two months of recent consecutive pay stubs. The most recent pay stub must be no more than 120 days old on the effective date of a certification. Also allowed is Information obtained from Equifax's *Work Number for Everyone* service or other private or government database documentation. HUD's EIV (*Enterprise Income Verification*) is not an acceptable source to verify income for the LIHTC program.
 2. For **unearned income** such as tips, pensions, social security, unemployment, child support/alimony, temporary disability benefit, the Social Security benefit award letter (dated or un-dated); Unemployment benefit letter, Temporary Disability letter, Child Support printouts, bank statements, or similar documentation.
 3. For **assets**: bank statements, investment statements, real estate listings from RIHousing approved online sources, Mortgage Deed, or similar documentation.
 4. For **student status**, a copy of the report card, quarterly grades, diploma, or official documentation from the educational institution.
3. **Self-Certification.** The preferred verification method is through a third party with written consent from the applicant/tenant. If third-party verification of income or assets has been delayed or attempted to no avail or is not possible; self-certifications made under penalties of perjury will be allowed. Self-certification or self-affidavit forms must be preapproved by RIHousing. Self-certifications of student status is not allowed for a student who attends school part-time and the only person in a household who is not a full-time student. It is also not allowed when determining if an adult dependent is a full-time student and thus eligible for limiting earned income to \$480 annually. Student status must be verified with the school attended in these cases.

Notes:

- If an applicant does not yet have two months of consecutive pay stubs because they have recently started a job, the agent must thoroughly document the file explaining the situation.
- If a verification form is incomplete and missing key information needed to establish eligibility, an owner/agent may document a clarifying phone or email conversation with the verifier. If documenting a phone conversation, the clarification record must include the date and time of the conversation and the name and title of the verifier as well as the clarified information.
- The tenant file must be documented to show failed attempts to obtain third-party verification.

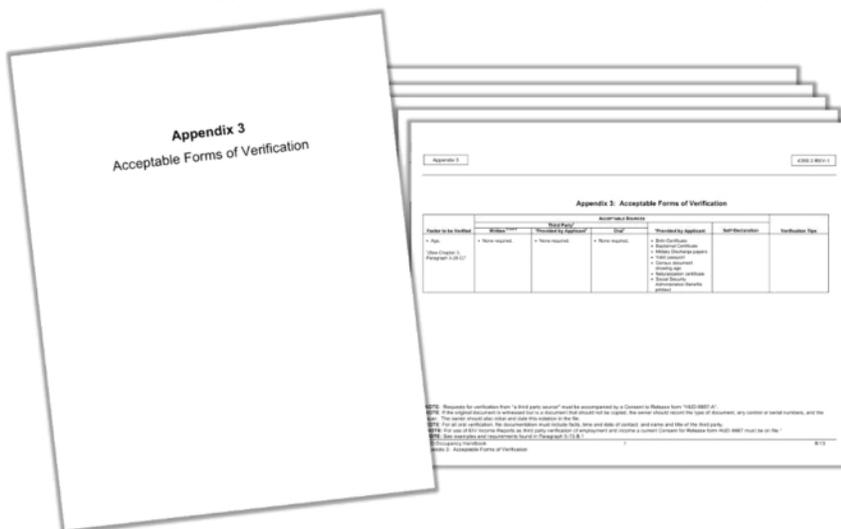
HELPFUL HINT

Minimum Number of Paystubs Needed to cover 2 months

How often paid	Minimum Number of paystubs
Weekly	9
Bi-weekly	5
Semi-monthly	4
Monthly	2

Guidance in *Appendix 3* of the HUD Handbook 4350.3, *Acceptable Forms of Verification*, can be used as

best practices for LIHTC owner/agents relating to what forms of verification are allowed. When reviewing Appendix 3, it is important to note that HUD has an internet-based income verification system, *Enterprise Income Verification (EIV)*. EIV is used to verify income information *at recertification*. EIV is available to HUD property staff; its use is for *HUD purposes only* and the income reports that EIV generates cannot be used as a basis for LIHTC



income calculations. Additionally, EIV reports must not be shown to RIHousing LIHTC compliance staff or other LIHTC independent auditors hired by owners/investors. HUD Forms 9887 and 9887-A are also HUD-specific tenant authorization forms. Any reference to EIV or the 9887 forms in Appendix 3 does not apply

to the LIHTC program and these forms should only be used by LIHTC owner/agents if the property is also HUD-funded.

Verification must be received no more than 120 days prior to the effective date of the certification that the verification relates to. If verifications are not date stamped, the signature or another identifying date on the form will be used to determine compliance with the 120-day timeline; otherwise, a verification's useful life may be limited. It is important to ensure that fax machines have accurate date settings, as tracking information at the top or bottom of a fax can be used to establish when it was received; date stamps are preferable even on faxes. Award letters for annual social security and other fixed income sources are acceptable for certifications effective through the year the award letter covers, even if they are older than 120 days. This does not apply to SSI or other benefits which may change more often than once a year.

Voucher-Holders

A Housing Choice Voucher is a form of tenant-based section 8 rental assistance provided by a local Public Housing Authority (PHA) to individual households. If documentation is received by an owner/agent from the PHA stating the household's income and composition, the documentation is considered third-party verification. The HUD 50058 certification form may be used as verification of income for LIHTC income certification. If it is not possible to obtain the 50058 from the PHA, a signed statement from the PHA indicating all household members and the household's gross annual income may also be used to verify income.

Note: other paperwork such as an application, student status paperwork and a TIC must also be included in the file.

Student financial assistance *income* is covered in the PHA verification of income. However, such verification does not address LIHTC student *eligibility* status. Separate student eligibility verification must still be obtained (see Chapter 5 for further information on student financial assistance as income).

When Household Assets do not Exceed \$5,000

When the cash value of a household's assets is **\$5,000 or less**, third-party verification of assets is not required, and self-certification is allowed. The household is required to complete a *Certification of Assets Less than \$5,000 form (The CAL Form)* indicating that household assets do not exceed \$5,000. RIHousing's form or a pre-approved form supplied by the owner will be acceptable. The household uses The CAL Form to disclose all asset information and/or whether or not assets were disposed of for less than fair market value. The CAL Form must be completed by the household.

CERTIFICATION OF ASSETS LESS THAN \$5,000 (For LIHTC units*)
For households whose combined NET assets DO NOT exceed \$4,999.99
Complete one form per household; include assets from children of the household

Household Name: _____ Unit #: _____ Address: _____

1. My/our assets include:

Asset Type	(A) Cash Value*	(B) Int. Rate%	(A)(B) Annual Income	Asset Type	(A) Cash Value*	(B) Int. Rate%	(A)(B) Annual Income
Savings Account				Real Estate			
Checking Account				Mobile Home			
Cash on Hand				Lump Sum Receipts			
Direct Debit Express/EBT Card***				Safety Deposit Box			
Rep Payee Account				Stocks/Bonds			
IRA*				Keogh Account			
Money Market Funds				Capital Investments			
Trust Funds*				Banking Accounts			
401K Accounts*				Bitcoin/Cryptocurrency			
Certificate of Deposit				GoFundMe/CrowdSourcing			

Asset Type	Source	Cash Value	Interest Rate	Annual Income
Whole Life Insurance				
Other Retirement/Pension Funds*				
Personal property held as an investment**				
Other (Attach list if necessary)				

→ PLEASE NOTE: Certain Funds (e.g. Retirement, Pension, Trust) may or may not be (fully) accessible to you. Include only those amounts which are:
* Cash value is defined as market value minus the cost of converting the asset to cash, such as broker's fees, settlement costs, outstanding loans, early withdrawal penalties, etc.
** Personal property held as an investment may include, but is not limited to, gems or coin collections, art, antique cars, etc. DO NOT include necessary personal property such as, but not necessarily limited to, household furniture, daily use of autos, clothing, assets of an active business, or special equipment for use of the disabled.
*** Examples: Payroll, Social Security or Welfare Accounts. (Do not count food stamp accounts or checking accounts already listed).

The Net Household Assets (as defined in CRF 813.102) listed above do not exceed \$5,000 AND the Annual Income from the Net Household Asset is \$ _____ This amount is included in the total Gross Annual Income.

2. Disposed Assets
 (YES) (NO) I/We have disposed of assets for less than fair market value in the last 2 years. Examples would include such items as charitable donations or giving/selling assets (such as real estate) to family.

3. If No Assets:
 I/We DO NOT have any assets at this time.

Under penalty of perjury I/we certify that the information presented in this certification is true and accurate to the best of my/our knowledge. The undersigned further understands that providing false information herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a Lease Agreement and reporting of fraud to authorities.

Applicant/Tenant signature _____ Date _____

* May not be used for HDME units, where full certification is required RIH form rev 1.24.19

Income from assets declared on The CAL Form will be included in the calculation of annual income. If the information on The CAL Form appears to be questionable or unreasonable, or if the owner/agent has reason to believe false information was disclosed, third-party verification of the assets will be required.

NOTE: The provision allowing the use of self-certification of assets applies to the LIHTC program only. Other programs, such as HOME, monitored by RIHousing, do not allow for such self-affidavit.

EXAMPLE Questionable Asset Certification

A household declares no assets on The CAL Form but pays for an application fee and security deposit with a personal check. The *Certification* is incorrect because a checking account is considered an asset.

The owner/agent cannot reasonably rely on the household asset certification in this instance.

Student Rule and Documentation

Generally, households made up entirely of full-time students do not qualify; the Tax Code also prohibits tax credits from being used to fund dormitories. When determining eligibility,

the owner/agent must begin by requiring the household, in writing, to answer the question: **“Are ALL household members full-time students?”** If the answer is “no”, the household is LIHTC student-eligible and no further action is needed. If the answer is “yes”, there are five exceptions and the household may qualify if they meet one of them.

Full-time student status of an adult dependent will limit his/her earned income to \$480 (see Chapter 5 for more on the adult dependent earned income rule). In these cases, the full-time status must be verified with the school attended.

If an otherwise full-time student household qualifies because one-member attests that they are only a part-time student, that status should also be third-party verified.

It is important to note that household members counted for the student rule include all members, regardless of age (including minor children and unborn children). Although unborn children are explicitly counted for income limit purposes, the Code is silent regarding the student rule and unborn children. Thus, RIHousing has determined that a single pregnant woman who is a full-time student does meet an exception as a full-time student household; the unborn child counts as a non-student for the *single-parent-dependent-child* exception.

A full-time student is defined as any individual of any age who:

- (1) attends a school with facilities and regular student body, including online-based learning;

Compliance Steps to Qualify an LIHTC Household

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- 3. Clarify and verify student status, as necessary.**
4. Determine number of household members.
5. Calculate household income.
6. Compare household income to the applicable income limit.
7. Complete a Tenant Income Certification (TIC).
8. Execute a lease and other paperwork, per property policy.

- (2) attends school all or part of any 5 months of the calendar year, not necessarily consecutively. A person who attended school full-time during any part of five months of a calendar year is a student throughout the remainder of the calendar year, even after they are out of school; this is sometimes referred to as the “5-month look-back.”
- (3) is considered full-time by the educational institution they attend. This will be based on the school’s definition of a full-time workload, not full time as defined by the student, or owner/agent.

EXAMPLE Five-month Student “Look-Back”

In July, a boyfriend and girlfriend apply to live in an LIHTC unit. Although no longer in school, she finished on May 3 and his last day was May 15 of that year. They were both full-time students all year until graduation. If they apply to move in October, will this household be considered a full-time student household, and if so, until when?

Yes, they will be until January 1 of the next year.

Verification

Household student status must be determined during the initial qualification process before move-in. Owners must have sufficient questions on their application and a separate student status affidavit that determines whether the household is comprised of full-time students; if it is, these questions must also determine which exception may be met. Based on the household’s answers, further verification that the full-time student household meets an exception will be needed. If one member is attending school part-time and everyone else is a full-time student, the part-time status must be verified with the school. Student status must be questioned and verified annually after move-in, even if the property is 100% LIHTC and has received approval for an abbreviated annual certification. Student status must be determined no more than 120 days prior to the annual anniversary of move-in.

Exceptions

While the LIHTC student rule generally prohibits full-time student households, there are five exceptions. Full-time student households must meet one of the following exceptions continually in order to live in an LIHTC unit where all members are full-time students.

-
- 1. Any adult household member is married and entitled to file a joint tax return.**
-

Verification needed Copy of a joint tax return or marriage certificate demonstrating that a household member is married and/or files a joint return.

-
- 2. An adult member is a single parent with a minor child in the unit, provided that: 1) the adult is not a tax dependent of any third party, and 2) the child(ren) is/are not claimed as a tax dependent(s) by anyone other than one of their parents (even if the other parent is not in the unit).**
-

Verification needed Copy of tax returns (if possible) or a signed affidavit by at least one of the parents of the child(ren) that the adult in the household is not a dependent of anyone outside the household and that, if the child(ren) is claimed on anyone’s taxes, it is only by one of their parents.

3. *A member receives Rhode Island Works (or TANF) welfare assistance.*

Verification needed A current *Rhode Island Works (or TANF)* award letter.

4. *A member who formerly received foster care assistance (meaning that they were a foster child or adult placed by the foster welfare system).*

Verification needed Written documentation from the placement agency.

5. *A member receives assistance from a program similar to the Job Training Partnership Act (JTPA), including the Workforce Investment Act, which replaced the JTPA in 2000.*

Verification needed To identify JTPA-like programs that are not *Workforce Investment Act* programs, verification from the administrator of the program must establish that the program 1) gets federal, state or local government funding; and 2) has a mission similar to the one for the JTPA program:

Mission Statement for JTPA as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994. Sec. 2

“It is the purpose of this Act to establish programs to prepare youths and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependence, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the Nation.”

EXAMPLE Student Status Single Parent-Dependent Child

A tax-independent woman and her dependent child reside in an LIHTC unit with the woman’s boyfriend. They are all full-time students.

They qualify for a student status exception because they have a parent-child combination even if others reside in the unit.

EXAMPLE Student Status Married, Entitled to File

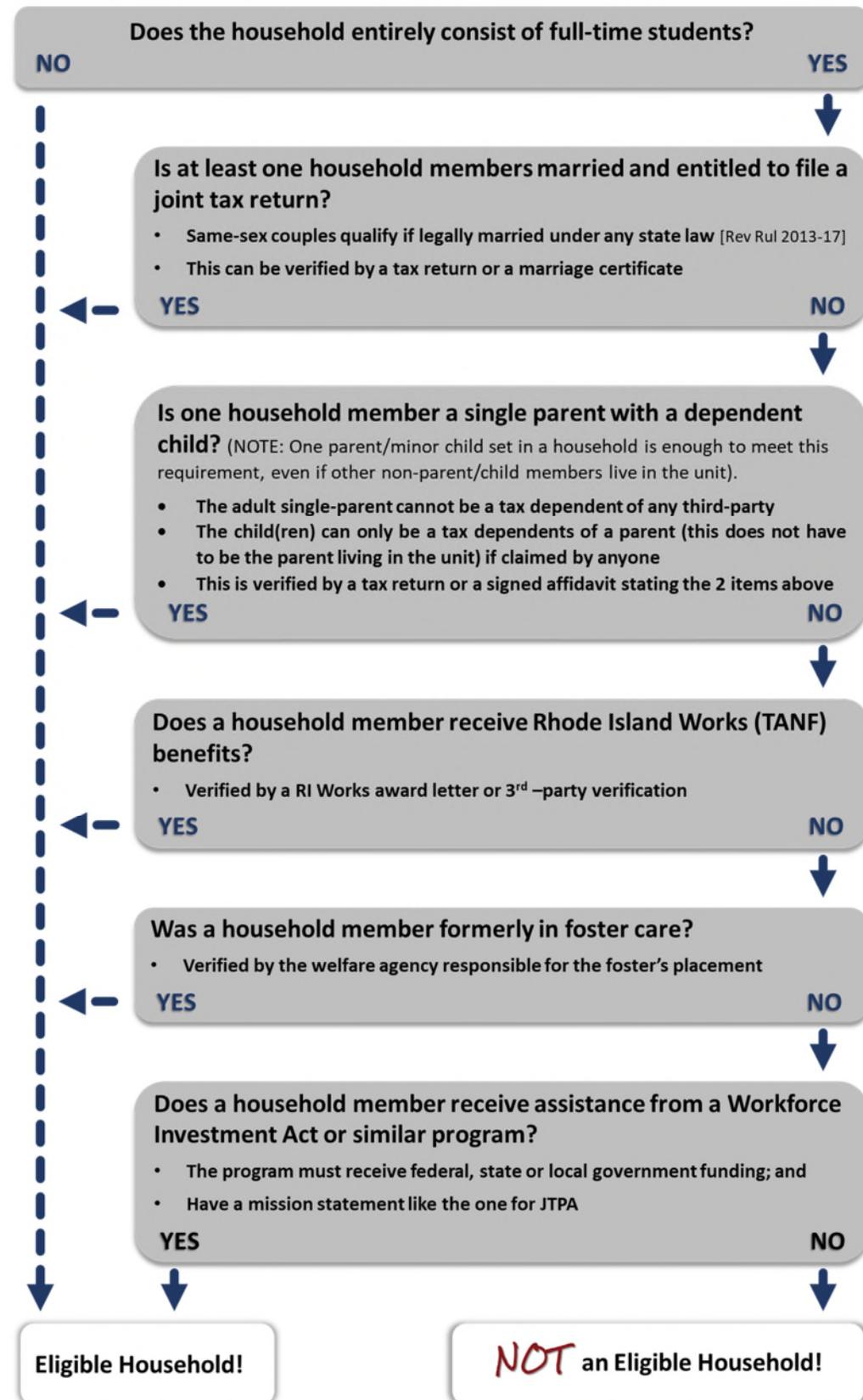
A single woman applies to live in a unit. She is a full-time student. She is married, but she reveals that she has irreconcilable differences with her spouse, and they do not intend to live together anymore. Their financial advisors have suggested that they not divorce because of the complexity of their joint finances with a business they share ownership of, and they are generally amicable. They also continue to file a joint tax return.

She qualifies for a student status exemption because she is married and entitled to file a joint tax return, even if her spouse is also not in the unit.

LIHTC Compliance Manual

Note: These rules are completely different from the student eligibility rules that originate with HUD and are used by Section 8, HOME and other housing programs. A summary of the HUD-type student eligibility rule and a helpful flowchart have been provided in Chapter 12.

Flow Chart: Tax Credit Student Eligibility



Household Members and Nonmembers/Guests

Income limits are based on the number of members in a household.

Household members include all persons who will consider the unit their permanent residence.

Compliance Steps to Qualify an LIHTC Household

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- 4. Determine number of household members.**
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6. Compare household income to the applicable income limit.
7. Complete a Tenant Income Certification (TIC).
8. Execute a lease and other paperwork, per property policy.

Household members may also include:

- Children subject to a verifiable joint custody agreement who will be ***in the unit at least 50% of the time.***
- Dependent ***students away at school.***
- Children ***away in foster care*** who will be returning to the household to live with their parents.
- Children in the process of ***being adopted.***
- Members ***temporarily*** in a ***hospital or nursing home.***
- **Foster children and adults.** Foster adults are usually people with disabilities unrelated to the household who are unable to live alone and placed by a foster agency.

A temporarily absent ***individual on active military duty*** who is the head of the household, spouse, or co-head; or whose spouse or dependent resides in the unit.

- ***A future spouse or roommate.*** Applications must ask if there are any definite plans to add any such members, and their income must be verified.
- ***Unborn children.*** It is only acceptable to verify the existence of unborn children through self-affidavit from the pregnant woman. ***No further verification is allowable.*** If adding an unborn child is necessary for income-limit eligibility and the child does not come to term, the household's LIHTC qualification will not be affected as long as the self-affidavit establishing the pregnancy was in the file at the time of move-in.

When determining a household's size for income limit purposes, the following individuals are excluded (even though they reside in the unit):

- ***Live-in aides.*** The necessity of such an aide must be verified by a professional third party. Note: although not used for income limit purposes, a live-in aide may be counted when determining unit size.
- Children subject to joint custody who will be ***in the unit less than 50% of the time.***
- ***Temporary visitors and/or guests.*** An owner must establish in their lease or House Rules a reasonable period that a guest can visit before needing to be considered a household member.

Because of the uncertainty of some informal custody and guardianship arrangements, in order for a child to be counted as a household member for determining household size and income eligibility, management must prove the child's permanent residency in the household and establish that the child is not a "guest."

Verification of the permanent residency of the child can include documentation from an attorney, court records, Department of Children Youth and Families, doctor's records, child support, school records, school bus passes or similar.

Absent Members

Temporarily absent household members include, for example, dependent students away at school and military members assigned out of town that have a spouse or a dependent child residing in the unit. These individuals must always be counted as household members along with their income as applicable.

When a household member is **permanently absent** because they are confined to a care facility such as a hospital or nursing home, the household has the right to decide whether to count the confined household member or not. This decision will affect both the number of persons for income limit purposes and whether income from the confined member is counted.

HUD and IRS guidance requires reasonable leniency be applied for those absent on active military duty with a **dependent** child in a unit. For instance, it may be reasonable to determine that a person in the military and their child are not household members when the child is temporarily relocated to an LIHTC unit. This may be because the grandparent is temporarily caring for the child while the parent is on active duty, even though the military member's dependent is in the unit. Additionally, the income of a guardian that is in a unit temporarily to care for the children of a head of household who is on active duty may be excluded. Note that these exceptions only apply to dependents. If a person residing in a unit has a **spouse** on active duty, HUD requires that the absent spouse, and their income, be included.

EXAMPLE Resident on Active Duty with Spouse in Unit

An adult daughter is living with her father and mother in an LIHTC unit while her husband is absent on active duty.

Both she and her husband, and their income, must be counted (in addition to her mother and father's income)

EXAMPLE Resident on Active Duty with Dependents in Unit – 1

The single-parent head of household goes on active duty and her adult sister moves into her LIHTC unit to provide care for her three children while she is gone.

The head and children are still counted, but the temporary caregiving sister, and any income she has, should be excluded.

EXAMPLE Resident on Active Duty with Dependents in Unit – 2

A single parent goes on active duty and moves her children into her parent's unit to care for her children while she is gone.

Neither the person on active duty, her children, nor any of their income is counted.

Documentation must be maintained in tenant files establishing the reason for the exclusion of household members such as live-in aides, those confined permanently to a care facility, or absent military personnel with their dependents in a unit.

EXAMPLE Household Size

The head of a household lives with her two children who are subject to joint custody and only in her LIHTC unit part-time. Her son resides in the unit except for half of the major holidays and the summer. Her daughter is in the unit for the summer. For income limit purposes, how many people are in this household?

Two - The head and her son. The daughter is not physically present in the unit at least 50% of the year.

Changes in Household Size

Generally, an owner/agent must follow state law and their own policy with respect to tenant leases when adding or removing household members. This section will cover the compliance-related steps to take (at a minimum) as described by the IRS and RIHousing. Other funding programs may require additional steps, such as complete recertification of all household members whenever household composition changes. See Chapter 12 for a discussion of other program rules when combined with LIHTC.

When adding members to the household after initial move-in, the IRS requires that the new member's income be verified and added to the rest of the household's income that was verified on the household's most recent certification. Other paperwork required of new move-ins will also need to be completed for the new member, including background checks and an application with student status and income and asset questions. Once the income is totaled, the owner/agent will apply the Next Available Unit Rule (NAUR) if the new additional income puts the household over the 140% limit. The NAUR has little meaning at 100% LIHTC properties (see Chapter 6 regarding the NAUR). However, the move-in income for the new member will possibly be quite relevant later if all original household members ever vacate the unit, as described below.

When household members leave, wait until the next annual certification date, and simply reflect the smaller household composition on the TIC at that time.

If all original household members vacate a unit, the member(s) left in the unit that was added after the initial household moved in will need to qualify as a new household at that time, unless one of the following applies:

1. The household was entirely recertified and qualified under income limits when any new member moved in or any time thereafter. This essentially created a new qualified "original household" including the new members.
2. The remaining person was individually income-qualified at move-in.

EXAMPLE Adding Household Members

A single resident qualified and moved into her LIHTC unit in 2017. In 2019, her boyfriend passes the usual background checks and moves into the unit. His personal income is verified to be over the 2019 income limit.

First, the Next Available Unit Rule (NAUR) must be tested. Since the project is not 100% LIHTC and subject to full income recertification, the manager adds his move-in income to the existing household income that was verified at the most recent annual certification, five months earlier. The household is determined to be over the 140% limit for a two-person household. The NAUR is in effect and an eligible household must be moved into the next available unit in the building they live in until the applicable fraction is restored.

Second, as he is personally above the income limit for one person when he moves in, he will NOT qualify in the future for continued occupancy if his girlfriend ever moves out because he would not have qualified if he had entered the property by himself in 2019. This will be true unless:

1. At a future recertification (if such is required), they together are below the income limit OR
2. The boyfriend is below the income limit at the time that the girlfriend leaves the unit.



Review applications closely before accepting them! Carefully ensure that all questions are answered by the household, with all fields and checkboxes completed.

A national review of compliance findings determined that almost 30% of compliance issues are with files relating to incomplete applications that were accepted by an owner/agent.

It is much more difficult and very risky to obtain missing information once the household moves in, and especially years later, when an auditor may review the file.

Chapter 5 | HOUSEHOLD INCOME

Chapter 4 discussed steps 1-3 of the household certification process (below) and leasing (step 8.) This Chapter discusses steps 4-7. Chapter 3 also discussed income limits in detail (see step 6).

Calculating Household Income

Compliance Steps to Qualify an LIHTC Household

1. Accept a completed application including an income and asset questionnaire.
2. Verify eligibility factors.
3. Clarify and verify student status, as necessary.
4. Determine number of household members.
- 5. Calculate household income.**
6. Compare household income to the applicable income limit.
7. Complete a Tenant Income Certification (TIC).
8. Execute a lease and other paperwork, per property policy.

Anticipated Income

According to Treasury regulation, income is not calculated for LIHTC housing based on IRS taxable income rules. Rather, it is calculated per HUD Section 8 rules. For this reason, the HUD Handbook 4350.3 is the legal authority with respect to income calculation for the LIHTC program. Chapter 5 of that Handbook addresses HUD's income calculation rules.

HUD **anticipates** income for the 12-month period following the certification date, **based on current circumstances**. Changes that are **verifiable and determinable** (not those that are just *possible*) must be addressed in anticipated income. An owner is not required to “guess” what might change in the future or include income that is possible, but unsecured. To do so is not *anticipating* income per HUD rules. Of course, if a reasonable person would question an income determination (such as if the income calculated is so low as to make covering the rent for a year improbable), further information may need to be gathered. This could include exploring the likely possibility of gifts or other income.

Conservative Methodologies

According to IRS regulation “*tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the U.S. Housing Act of 1937.*” [Treas. Reg. §1.42-5(b)(1)(vii)] RIHousing is aware that some LIHTC professionals and state LIHTC agencies have developed very restrictive calculation methodologies that are more stringent than the Section 8 program requires. While viewed as more “conservative,” these methods are not consistent with Section 8 rules. RIHousing only requires compliance with the regulation and does not add additional rules that could exclude otherwise eligible households. Some of these non-HUD methodologies include using the highest in a range of hours supplied by an employer or basing income determinations on the HIGHER of information provided by the employer and a calculation of annual income based on year-to-date information. Generally, HUD would use the average of the hours given and use anticipated information supplied by the employer. It is understood that the use of non-HUD methodologies is often required by investor/owners. While RIHousing does not forbid these methodologies, **it does not feel it is in the best interest of the program to exclude households that qualify based on Section 8 methodologies but do not qualify based on more conservative methods**. RIHousing will not find an owner/agent who uses averages in a range or other basic HUD methodology to

be out of compliance if a household is qualified by the owner/agent using HUD methods, even if another method would determine the household to be over-income. Of course, as a matter of Fair Housing, the approach used by an owner/agent must be consistently applied for each household in the development.

EXAMPLE Range of Hours

An applicant's employer anticipates that the applicant will work 36-40 hours a week. What number of hours should be used in calculating annual income?

38: An owner/agent may use the average.

EXAMPLE Year-to-Date

An employer anticipates that an applicant will make \$25,478 a year. The applicant's year-to-date income annualizes to \$27,000 a year. What annual income may be used?

\$25,478: There are many reasons the recent past income may not reflect what is anticipated in the future. If this is crucial to eligibility (because the income limit is below \$27,000), an owner/agent should determine why there is a discrepancy through further interaction with the employer. However, excluding the household automatically as over-income is not recommended by RIHousing.

Dependent Income

Generally, income belonging to most household members is counted when determining household income. However, **earned** income is counted differently for some household members. Specifically, this is true for children under age 18 and adult dependent full-time students. See *Whose Income Do We Count?* chart for more details. Note: minors verified to live in a unit are always counted as dependents unless they are BOTH emancipated and the head or spouse of the head.

Whose Income Do We Count?		
Household Member	Earned Income Counted	Unearned and Asset Income Counted
Head, spouse and/or co-head	Yes	Yes
Other adult household member	Yes	Yes
Foster adult	Yes	Yes
Foster child	No	Yes
Household Dependents:		
Child under age 18	No	Yes
Full-time students over age 18 (not head, co-head or spouse)	No, after first \$480	Yes

EXAMPLE Minor Dependent Income

Craig is a 16-year-old living with his mother in an LIHTC unit. He works at a local surf shop and makes \$12,300 a year. He also gets survivor's Social Security benefits totaling \$10,080 a year from his father, who is deceased. How much income is counted for Craig?

All employment income is disregarded as earned income from a minor.
All the unearned Social Security income is counted.

EXAMPLE Adult Dependent Income

Mike is the head of a household. His spouse, Rachael, is a full-time student. Both work full-time jobs and make \$30,000 each. The agent limits the adult full-time student Rachael's income to \$480 a year. Was this accurate?

No: Though she is an adult full-time student, Rachael is a spouse and not eligible to be a dependent and have her earned income limited to \$480. Household income was understated by over \$29,000!

Income Exclusions

Based on various laws and regulations, HUD has produced an extensive list of income sources that are included and excluded for housing purposes. This is printed as Exhibit 5-1 of the HUD Handbook 4350.3. The end of this chapter includes this list (with several updates included since the last edition of the Handbook was published) as a supplement. If an item is not specifically excluded, it must be counted.

Earned Income

On HUD's list of income sources are three types of *earned* income. These include employment, self-employment and military income. To the extent that these may apply to a minor, they are excluded when calculating household income. If they apply to an adult dependent full-time student, they are limited to \$480 a year. Any wage raises, or other changes verified must be used in the calculations.

Some sources of income are more difficult to determine than others, such as those that are sporadic, seasonal or that vary greatly from one pay period to another. An owner/agent is expected to exercise good judgment to make a reasonable determination of income based on the facts of a person's situation. Looking back and including income from the past year for sporadic or seasonal work, for instance, may be reasonable if circumstances are anticipated to be similar in the coming year. However, if circumstances are clearly different, this would not be appropriate.

Employment

HUD's Description | Exhibit 5-1 Inclusions (1) & 4350.3 5-5 C

"The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services...Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgement as to the most reliable approach to estimating what the tenant will receive during the year."

Annualizing Income

Once it is determined how much someone is paid per pay period, the amount must be multiplied by the appropriate amount, per HUD direction. The correct multipliers can be found on the *How to Annualize Wages* chart. Periodic non-employment income also is annualized using the same multipliers.

How to Annualize Wages
4350.3 5-5 B

For full-time employment, multiply by the following:

• 40 hours a week	2,080
• Weekly wages	52
• Bi-weekly wages	26
• Semi-monthly wages	24
• Monthly wages	12
• Annual salary	1

EXAMPLE

Employment

A resident works 38-40 hours a week. He makes \$10 an hour and no raise is anticipated in the next year. What income should be counted?

\$20,280: 39 x \$10 x 52.

EXAMPLE Employment with Raise and Overtime

A resident works 40 hours a week at \$10 an hour. She also averages 2 hours weekly overtime at time-and-a-half. At move-in, it is verified that she is anticipated to get a raise of 10% starting the 21st week after move-in. If there is no other income associated with the job, what is the anticipated income?

Before Raise	
\$8,000	\$10 wage x 40 hours x 20 weeks.
\$600	\$15 OT wage x 2 hours x 20 weeks.
After Raise	
\$14,080	\$11 x 40 hours x 32 weeks.
<u>\$1,056</u>	\$16.50 x 2 hours x 32 weeks.
\$23,736	

EXAMPLE Semi-Monthly vs. Bi-Weekly Pay

A property has a one-person income limit of \$25,900. Lenore applies for an apartment and has a job making \$1,000 semi-monthly. Kim applies for a different unit. She is employed and is making \$1,000 bi-weekly. Is each of them LIHTC qualified?

Lenore qualifies: $\$1,000 \times 24 = \$24,000.$

Kim does not qualify: $\$1,000 \times 26 = \$26,000.$

EXAMPLE Seasonal Income

Peter has a disability and generally does not work. However, each summer he works part-time for three months cleaning rooms at a local bed-and-breakfast during their busy tourist season. He makes \$560 a month at this. How much annual income should be counted for this job?

\$1,680: \$560 x 3 months. As there is a clear pattern of seasonal work, the anticipated annual income is limited to the 3 months income likely to be earned the next year.

Religious Order Income

Members of religious orders generally receive a stipend to meet monthly expenses. They may also be employed, with the money from employment usually going to the religious order. The primary financial relationship is with the religious order, and the amount of the stipend received by the person should be counted as income.

EXAMPLE Religious Order Stipend Exceeds Earning

A missionary serving a language group in a city is part of an order and receives a stipend of \$2,050 a month. He is also employed and makes \$1,900 a month, which goes directly to the order. How much monthly income should be counted?

\$2,050

EXAMPLE Religious Order Stipend Does Not Exceed Earning

A nun is part of an order and receives a stipend of \$1,320 a month. She is also employed and makes \$5,000 a month, which goes directly to the order. How much monthly income should be counted?

\$1,320

Self-Employment

HUD's Description | Exhibit 5-1 Inclusions (2) & Exhibit 5-2 (A)(3)

"The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family."

NOTE: If the person's main business is real estate, then count any income as business income. Do not count it both as an asset and business income."

As discussed in Chapter 4, income from self-employment may be documented using last year's tax return if the business owner filed one. Alternatively, a resident can provide information to annualize income from net income for the current year's business activity based on the number of full months in business, with the totals documented on a Schedule C (or form E or F, respectively, for net income from rental property or a farm).

How to annualize net business income based on a partial year

$$\text{Net Income Year-to-Date} \div \text{Number of Months in Business during the Current Year} \times 12$$

Internet-Based Businesses

Examples of these include app-based rideshare services (Uber or Lyft) or websites that provide individual jobs to people. (Fiverr.com or FreeLance.com). These types of businesses are generally considered self-employment. Printouts from the website that the person works with can provide the gross income from the business, and perhaps some information on expenses (such as mileage for ride-share services). If the person can provide additional documentation of expenses, these also may be factored in to establish net income.

Office in the Home. An LIHTC tenant may use a portion of their unit exclusively and on a regular basis as a principal place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant’s primary residence. If the tenant is providing daycare services, the tenant must be properly licensed or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law.

CAUTION! Business income line items that can affect calculations

If this is a new business, this box is checked, and the income on the return may reflect a partial year. Calculate accordingly.

Depreciation must be calculated on a straight line basis. If it is not, the business owner must supply calculations completed as if depreciation were claimed on a straight line basis.

Wages or contract labor paid to someone in the household may need to be included as employment income. If these are paid to persons outside the unit, this is not an issue.

Business losses do not offset other household income and should be counted as \$0

EXAMPLE Business Income Based on a Partial Former Year

Kathy owns a business that began on July 1 of the prior year. Her last year's tax return and schedule C show a total gross income for the year of \$4,000, and net income of \$2,000. The business is anticipated to do similarly this year. What is the anticipated income for this year?

\$4,000: $\$2,000 \times 2$. Net income from half of last year, doubled.

EXAMPLE Annualized Current-Year Business Income

In September, a person applies for a unit at an LIHTC property. He has not filed taxes for his business, but he prepared a Schedule C, supported by documentation of income and expenses for the current year – from January 1 through August 31. To date, the potential tenant had net income of \$24,000. What is the anticipated income?

\$36,000: $\$24,000 \div 8 \times 12$.

EXAMPLE Business Losses

Jamie started a new business on January 1 of last year. Tax returns showed a loss of \$4,004 for last year. It is anticipated to do similarly this year. Jamie's husband has employment income which is anticipated to total \$30,000. They have no other income. What is the total anticipated household income?

\$30,000: $\$0 + \$30,000$. Jamie's net business losses do not offset other household income.

EXAMPLE Internet-Based Service

Glen started working for an app-based ride-share service June 1. He applies for an apartment the following November. He provides a printout from the ride-share website showing that he had made \$19,000 through October 31. The printout also shows mileage that, when multiplied by the current IRS business mileage rate, totals \$4,030. He can provide no other evidence of expenses. What is his income from the job?

\$35,928: $[\$19,000 - \$4,030] \div 5 \times 12$

Rental Income

If a person simply owns rental property, generally the property represents an asset, with the net rental income being asset income (see "Real Estate" section of this chapter). If the person's main business is real estate, then count any income as business income. Do not count it both as an asset and business income.



Real Estate as a Business

How to Calculate Net Annual Income

Annual rental payment

- Less annual mortgage interest payments
- Less allowed expenses from Schedule E (taxes, insurance, maintenance etc.)

Annual Net Income

Military Pay

HUD's Description | Exhibit 5-1 Inclusions (8) & Exclusions (7)

"All regular pay, special pay, and allowances of a member of the Armed Forces, except...the special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm)."

Military paystubs are called *Leave and Earnings Statements* (LES). These are usually how military pay is best verified. How can paperwork be completed, and income verified if the person is unavailable, such as when they are out of the country? When a person goes on active duty, they generally grant someone Military Power of Attorney (POA) to handle business affairs while they are away. This person can generally conduct transactions on behalf of the absent person, including securing housing, signing renewals, Tenant Income Certifications and other LIHTC paperwork. This person can also generally secure LES documents.

EXAMPLE Military Pay

Susan is the head of an LIHTC household but is away from the unit on active duty. Her husband has power of attorney for her and secures the four most recent Leave and Earnings Statements. Among the monthly allowances listed on the LES are:

\$150 Hazardous Duty Incentive Pay
\$225 Hostile Fire Pay
\$1,623 Basic Allowance Housing.

How much income is counted for these items?

\$1,773: \$150 HDIP + \$1,623 BAH. The HFP is the only excluded military allowance.

Unearned Income

Unlike earned income, unearned income is counted for all household members, including minors and adult dependent full-time students.

Social Security and Other Periodic Benefits

HUD's Description | Exhibit 5-1 Inclusions (4) & Exclusions (13)

"The full amount of periodic amounts received from social security, 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 (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action)." However, not counted are "deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts."

Social security payments are counted before any amount is deducted for Medicare or garnishments for past due child support or alimony. However, benefits received for delayed benefits are not counted as income, whether these are paid as a lump sum or in monthly installments. Additionally, when social security benefits are being reduced for prior overpayment, the amount after the adjustment is counted. Finally, if a state or local government, social security or other private pension is split due to a divorce or court action, count only the payment that is court ordered to the person.

EXAMPLE Social Security Delayed Benefits

After several appeals of denial for social security disability benefits, a person is finally determined to be disabled and is deemed eligible for benefits since their original application. They begin to receive \$1,100 a month in benefits. This includes current \$750 monthly benefits as well as the owed benefits from the past in \$350 monthly installments. What income should be counted?

\$750: The delayed benefits are excluded.

EXAMPLE Social Security Prior Overpayments

Because of past under-reported earned income, an SSI recipient has their SSI reduced from \$750 monthly to \$650. This will continue for the next two years until the prior overpayment is paid back. The owner/agent counts the gross benefit of \$750 a month. Was this accurate?

No: The amount after the adjustment for prior overpayment should have been counted.

EXAMPLE Social Security with COLA

A social security recipient is anticipated to move into an affordable housing unit on November 1, 2018. In September, it was verified that she had 2018 monthly social security benefit income of \$931. The 2.8% COLA for 2019 was announced on October 11, 2018. What would the annual income calculation be?

Step 1: Calculate the remaining 2018 income.

$$\$931 \times 2 = \$1,862 \text{ (income for November and December 2018)}$$

Step 2: Calculate the 2019 monthly income with COLA.

$$\$931 \times 1.028 = \$957.07 \text{ (2019 monthly benefit)}$$

Step 3: Calculate the total 2019 income.

$$\$957.07 \times 10 = \$9,570.70 \text{ (income for January-October 2019)}$$

Step 4: Add 2018 and 2019 benefit income.

$$\$1,862 + \$9,570.70 = \$11,432.70 \text{ annual benefit income}$$

EXAMPLE Supplemental Security Income (SSI) with COLA

An SSI recipient is anticipated to move into an affordable housing unit on December 1, 2018. When his income is being verified, he brings in the benefit letter that he received in October 2018 that included the 2.8% COLA for 2019. The monthly SSI benefit listed in the letter is \$750. What would the annual income calculation look like?

\$9,000: $\$750 \times 12$. No COLA calculation is necessary, as the COLA is already included in the letter.

EXAMPLE Social Security Garnished

Eric receives gross social security benefits of \$1,390. His Medicare deduction at move-in was \$134. He was also being garnished \$450 for past-due child support. What monthly amount should be counted?

\$1,390: The amount before the Medicare premium and garnishment.

Payments in Lieu of Earnings

HUD's Description | Exhibit 5-1 Inclusions (5)

"Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except...lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses."

These types of benefits are annualized unless future employment is verified. It is possible that an applicant may regularly receive unemployment each year during their off-season. This may occur for persons in construction, teachers, fishermen and similar.

EXAMPLE Unemployment Benefits

A printout from the unemployment agency indicates that unemployment benefits a person receives are to be paid for 22 more weeks at a rate of \$230 per week. No future job has been secured. What annual income will be counted for the benefits?

\$11,960: \$230 x 52 weeks.

EXAMPLE Unemployment Benefits with Job Secured

Scott is a teacher, who works nine months during the school year and is eligible for unemployment benefits during the three summer months. He moves in at the start of summer and is claiming unemployment benefits at that time. The owner/agent verifies that he is anticipated to start back to work when the school year begins. Should his weekly unemployment be annualized for 52 weeks in this case?

No: As a pattern of three months of claiming unemployment has been established along with the re-start of employment, the unemployment should only be anticipated for the three summer months and the employment for the other nine.

Welfare

HUD's Description | Exhibit 5-1 Inclusions (6)

- (a) "Welfare assistance received by the family.
- (b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 - (c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage."

Food Stamp benefits (aka SNAP), although often listed by households as welfare income on their questionnaires, are excluded as income.

EXAMPLE Welfare

Melissa's welfare verification shows a TANF benefit of \$420 a month and food stamps of \$445 monthly. What is Melissa's total annual income from welfare?

\$5,040: \$420 x 12. The food stamp benefit is not counted, but TANF is.

Alimony, Child Support or Gifts

HUD's Description | Exhibit 5-1 Inclusions (7)

"Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling."

Alimony and child support ordered by the court are income unless:

1. Full payments are not being made; and
2. The applicant is taking reasonable actions to collect the amounts due, including filing with the appropriate courts and agencies responsible for enforcing payment.

If the above two statements are true, then only an average of the amounts that are received are counted. Notice that alimony and child support are treated the same. It has been noted that many owners ask about child support court orders, but not about alimony. This is discriminatory against families with children and must be avoided.

EXAMPLE Alimony

Kate has a court order to receive alimony of \$750 a month. Her ex-husband has not paid, and Kate has made no efforts to pursue collection of the arrears. How much monthly alimony must be counted?

\$750: As no efforts to pursue collection has occurred, the full amount must be counted as income.

EXAMPLE Child Support – Full Amount Not Received

Billy has a court-ordered right to receive child support of \$803 a month. His ex-wife has paid sporadic amounts every month even though Billy has pursued the case through child support enforcement. A printout from the enforcement agency shows the following payments. What annual child support should be counted?

Jan:	\$ 1,010
Feb:	\$ 350
Mar:	\$ 550
May:	\$ 1,060
Jun:	\$ 400
Total	\$ 3,370

\$6,740: $\$3,370 \div 6 \times 12$.

EXAMPLE Child Support in Excess of Court Order

Rob has a court-ordered right to receive child support of \$850 a month. His ex-wife is catching up on arrears and is paying \$1,000 a month. How much annual child support must be counted?

\$12,000: Full amounts received are counted.

Income includes regular contributions to the household received from organizations or from persons not residing with the household. This includes amounts paid for bills that would normally be considered a

household expense. All periodic cash and non-cash contributions to the household are counted as income except:

- Groceries that are given to the household (NOT the money to buy groceries, which IS counted).
- Childcare paid directly to the care provider for children in the household.
- Amounts received in reimbursement of medical expenses.

EXAMPLE Gift Income

Thomas and his daughter live in a unit. Thomas's mother (who does not live in the unit) anticipates paying Thomas's utilities of \$80 a month. She also writes a check to Thomas's daycare provider for \$500 a month. Thomas's aunt (also not part of the household) gives Thomas \$160 a week in cash that Thomas uses to buy groceries and anticipates that she will also buy about \$30 a month in clothes for Thomas and his daughter. How much of the contributions from Thomas's family should be counted as income to Thomas?

\$9,640: [Utility payments of \$80 x 12 = \$960] + [Money for groceries of \$160 x 52 = \$8,320] + [Clothes for \$30 x 12 = \$360].

Only childcare paid directly to the provider is excluded. Groceries that are given to the household are not counted as income, but money given to the household is. Thomas has discretion over how cash is used.

EXAMPLE Use of Vehicle

A tenant uses her ex-husband's car to transport their son to medical examinations conducted on a regular basis. The title to the car is in the ex-husband's name, he makes the car payment, and he is responsible for maintenance. Should the use of the car be considered a regular non-cash contribution to the household?

No: This is not counted unless the tenant has exclusive use of the vehicle or the vehicle is in the tenant's name.

Student Financial Assistance

HUD's Description | Exhibit 5-1 Inclusions (8) & Exclusions (6)

"For Section 8 programs only...any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income. (Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)"

For those not receiving section 8 assistance, "the full amount of student financial assistance paid directly to the student or to the educational institution" is excluded as income."

EXAMPLE Student Financial Assistance - Project-Based Section 8

James is age 40 and a student who lives in an LIHTC unit with project-based Section 8 rental assistance. His tuition is \$16,300 a year. He has a Pell Grant and other financial assistance totaling \$19,000. He lives with his two dependent sons, Clark (age 14) and Kent (age 22). Kent's tuition is \$18,430 a year and his grandfather, who is not living in the household, contributes \$20,000 a year toward his schooling expenses. What student financial assistance is counted as income for this household?

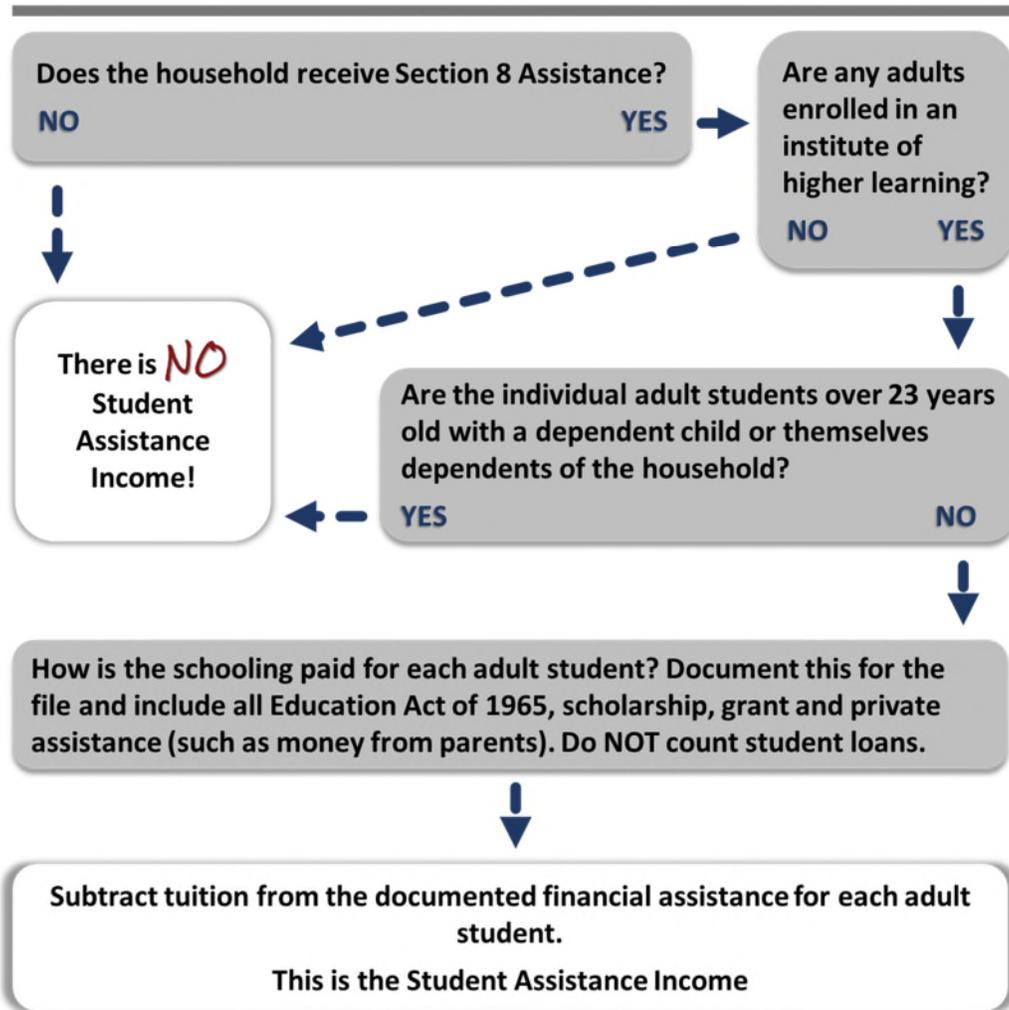
\$0: James is over the age of 23 and has dependents; Kent is a dependent of the household, so nothing is counted for either household member.

EXAMPLE Student Financial Assistance Voucher Holder

Guy is 20 years old and lives in a unit with his dependent daughter. They have rent assistance through a Section 8 voucher. He goes to school part-time. His tuition is \$6,500 a year and his mother pays \$8,000 annually toward his tuition and other school expenses. What student financial assistance will be counted?

\$1,500: Student assistance of \$8,000 less tuition of \$6,500. Guy is not over age 23. Even though he has a dependent, he must also meet the age requirement to exclude his assistance.

Flow Chart: Calculating Student Assistance Income



Asset Income

Assets are items of value that may be turned into cash. They have a market value, which is the money that another person would pay to acquire the asset. The cash value is the market value less the costs to convert the asset to cash. The actual value of assets is not crucial to eligibility and there is no limit on the assets a person may own. However, the **income** that is generated from the assets is added to total household income and thus may affect household income eligibility.

NOTE: For assets that have income calculated based on an interest rate, the rate is applied to the market value (see Certificate of Deposit Example below).

Asset Exclusions

HUD's Description | Exhibit 5-2 (B)

Net family assets DO NOT include the following:

IMPORTANT: The owner does not compute income from any assets in this paragraph.

1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).
2. Interests in Indian trust land.
3. Term life insurance policies (i.e., where there is no cash value).
4. Equity in the cooperative unit in which the family lives.
5. Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation.
6. Assets that are NOT effectively owned by the applicant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets. NOTE: Nonrevocable trusts (i.e., irrevocable trusts) are not covered by this paragraph. Net family assets do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.
7. Assets that are not accessible to the applicant and provide no income to the applicant. Nonrevocable trusts are not covered under this paragraph.

EXAMPLE Assets Part of an Active Business

Renelder and Melvin own a copier and courier service. As part of the business, they use expensive copiers, fax machines and computers and a fleet of bicycles.

None of the equipment that they use in their business is counted as an asset, but the income from the business is counted.

EXAMPLE Assets Not Effectively Owned

Xavier Smith and his daughter, Sophia Jones, have a bank account with both names on the account. Sophia's name is on that account for the convenience of her father in case an emergency arises that would result in Sophia handling payments for her father. Sophia has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned.

Sophia does not own this account. If Sophia applies for LIHTC housing, the owner should not count this account as her asset. This asset belongs to Xavier and would be counted entirely as the father's asset should he apply for LIHTC housing.

EXAMPLE Asset Not Accessible

A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

The owner/agent rightly concludes through due diligence that the house is not accessible to the battered spouse and excludes it as an asset.

Cash, Checking, Savings

HUD's Description | **Exhibit 5-2 (A)(1)**

"Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets."

For most assets, the value is determined using the current balance the day it is verified. For checking accounts, the six-month average is used. If statements are used to verify checking, they must cover 6 consecutive months. When analyzing these statements, watch for regular unexpected deposits or deposits that exceed verified income. Also, it should be ensured that no pages are missing from the statements. If printouts have been used, the financial institution's website URL must appear on the bottom of the print-outs.

Debit Cards. Many social security, SSI, unemployment and welfare recipients receive their benefits from a "Direct Debit Express" or similar debit card. For accounts of this type, this debit card is the only evidence of this asset. The balance existing on the debit card is considered an asset and it is verified like a savings account asset using the *current balance* via documents such as ATM slips showing the balance, a management-created affidavit completed after calling the online account service, or paper statements from the applicant. Note, original ATM slips on thermal paper should be photocopied to preserve the data.

EXAMPLE Checking and Savings

A family has a checking account that has a 6-month average balance of \$350 and a current balance of \$1,100. They also have a savings account that has a 6-month average of \$540 and a current balance of \$103. If these are the household's only assets, what is the total value of the accounts?

\$453: [The checking 6-month average of \$350] + [the current savings balance of \$103].

EXAMPLE Internet Fund Account

A family has a GoFundMe account set up on their behalf that they have access to. The fund raised \$1,020 and GoFundMe took \$89. What is the value of the account?

\$931: \$1,020 - \$89

Trusts

HUD's Description | Exhibit 5-2 (A)(2)

"Revocable trusts. Include the cash value of any revocable trust available to the family."

A trust is an account in which a bank or a custodian holds funds for a specific purpose. If an applicant or tenant has set up a trust, determine if it is "revocable" or "irrevocable".

Irrevocable trusts. If the applicant has set up an irrevocable trust and is not receiving anything in return, this may be considered an asset "disposed of for less than market value." If the applicant is receiving something in return for the trust (such as a funeral trust, where the applicant will receive burial), this would not be considered a disposed of asset.

Revocable trusts. Revocable trusts are considered a household asset. An owner/agent must verify the cash value and any income via third-party verification or statement.

Trust Checklist

Secure the trust agreement. Determine:

- Is the applicant/resident the **creator** or **beneficiary** of the trust?
- Is the trust **revocable** or **irrevocable**?

Results:

- If revocable, it remains an asset for the creator.
- If irrevocable, it may or may not be accessible to the beneficiary. If created in the last two years, it may be a *disposed of asset* to the creator.
- Who has access to the trust balance? This is an asset to this person.
 - This could be the beneficiary, the creator or neither.
- Who receives any periodic distributions? This is income to the person.
 - This could be the beneficiary, the creator or neither.

EXAMPLE Trust – Beneficiary

Stephen is 23 and applies for a unit. He lists a trust as an asset on his application. The owner/agent secures the trust agreement. Stephen is the beneficiary of the trust, which was created by his parents. It is worth \$756,000. One term of the trust is that he will not have access to any balance amount until he reaches age 45. However, he receives \$400 a month from the trust until age 45. What are the asset value and annual income that must be counted for Stephen, if any?

\$0 and \$4,800: As he has no access to the account, it is not an asset. The monthly payments are income.

EXAMPLE Trust – Creator

George and Martha are Stephen’s parents (from above) and they apply for a unit. They also list the trust as an asset on their application. The owner/agent secures the trust agreement. They created the trust 20 months prior to the anticipated move-in date. The trust is irrevocable and is worth \$756,000. They retained no access to any balance and are not getting any periodic amounts from the trust. What is the asset value that must be counted for George and Martha, if any?

\$756,000: The amount put into inaccessible trust is counted as a disposed of asset for 24 months, which continues 4 months after move-in. Income will be pro-rated and imputed at the current passbook savings rate for 4 months after move-in (see disposed of assets, below).

Real Estate

HUD’s Description | Exhibit 5-2 (A)(3)

“Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

NOTE: If the person’s main business is real estate, then count any income as business income. Do not count it both as an asset and business income.”

When multiple rental properties are a person's main business, see example below.



Real Estate as Rental Property	
Value	Income
Fair Market Value	Annual rental payments
- Less the outstanding mortgage principal	- Less annual mortgage interest payments
- Less the cost to sell	- Less allowed expenses from Schedule E (taxes, insurance, maintenance etc.)
Cash Value	Annual Net Income

EXAMPLE Assets NOT Part of an Active Business

To supplement her social security income, Alice Washington rents out the home that she and her husband lived in for 42 years.

This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the value of the home and the annual income that Alice receives from it.

EXAMPLE Real Estate Rented

Minka owns a home that she is renting out. She receives \$1,200 a month in rent (\$14,400 annually). The market value of the home is \$200,000. She has an outstanding mortgage balance of \$110,000 and monthly mortgage payments of \$1,400. Total interest payments on the mortgage will be \$9,200 in the coming year and principal payments will total \$7,600. If she were to sell the home, a broker determines the costs to be 10% of the market value, or \$20,000. The cost to maintain the home is \$657 a month (\$7,884 annually). What is the:

- a) cash value and
- b) income that will be counted from the real estate?

a) \$70,000: Market value of \$200,000 less outstanding mortgage balance of \$110,000 less cost to convert to cash of \$20,000.

b) \$0: Annual rent of \$14,400, less interest payments on the mortgage of \$9,200, less maintenance and other costs of \$7,884 for a loss of \$2,684.

EXAMPLE Real Estate Not Rented

Ursula owns a home that is sitting unused now that she is living in an LIHTC unit. The market value of the home is \$300,000. She has an outstanding mortgage balance of \$210,000. If she were to sell the home, a broker determines the costs to be 10% of the market value, or \$30,000. Ursula presents mortgage and maintenance expenses so that the owner/agent could decrease the value of the home. Her monthly mortgage payments are \$1,400. Total interest payments on the mortgage will be \$9,200 in the coming year and principal payments will total \$7,600. The cost to maintain the home is \$557 a month (\$6,684 annually).

- a) Can the presented expenses be taken off the value of the land?
- b) What is the cash value of the home?

a) No. Operating expenses, such as mortgage interest, ongoing taxes and maintenance payments, are not deductible unless they offset rental income (see *Real Estate as Rental Property* Chart above).

b) \$60,000: Market value of \$300,000 less outstanding mortgage balance of \$210,000 less cost to convert to cash of \$20,000.

Reverse Mortgages

Reverse Mortgages are a type of home equity loan in which a homeowner can borrow money against the value of his or her primary residence. No repayment of the mortgage (principal or interest) is required until the borrower dies, or the home is sold. The transaction is structured so that the loan amount will not exceed the value of the home over the life of the loan. The real estate cash value on a property with a reverse mortgage is the market value less the outstanding reverse mortgage (this will generally decrease over time as funds are disbursed).

Payments received by the homeowner from the reverse mortgage are NOT considered income. They are the proceeds of the reverse mortgage against the real estate and simply decrease the cash value of the asset.

EXAMPLE Reverse Mortgage

Carol is receiving payments from a reverse mortgage. She moves out of her home to live in an LIHTC unit but did not sell the home. When she moves into the apartment, her house has a market value of \$230,000 and the outstanding reverse mortgage balance is \$80,000. Costs to sell the home are anticipated to be \$25,000. She receives \$1,000 a month from the reverse mortgage. The owner/agent counts the monthly payments as income, for a total of \$12,000 of income attributed to the home.

- a) Is the owner/agent's income calculation correct?
- b) What is the cash value of the home?

a) No: The proceeds from a reverse mortgage are loans and are not income.

b) \$125,000: \$230,000 market value – \$80,000 outstanding reverse mortgage – \$25,000 costs to sell

Foreclosure and Short Sales

Foreclosure may occur after a borrower fails to make their mortgage payments. Assets lost to foreclosure are not considered to be “disposed of,” as the disposal is not considered an owner’s choice (see section on assets disposed of, later in this chapter).

If a home owned by an applicant is *in* foreclosure, and the foreclosure is not final, this is counted as an asset until the foreclosure is concluded. NOTE: for a home in foreclosure, the actual cash value may often (but not always) be zero due to the outstanding mortgage exceeding the value of the property.

A short-sale is a sale of real estate in which the proceeds from selling the property fall short of the debts secured against the property. The bank or lien holder(s) agree to receive less than the amount owed. By definition, an asset in a short-sale has zero cash value and is not counted. Paperwork relating to the short sale, or a tax form 1099-C received by the seller should establish that a short sale occurred, and the asset is no longer counted.

Deeds of Trust

HUD’s Description | Exhibit 5-2 (A)(10)

“A mortgage or deed of trust held by an applicant.

- (a) Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.
- (b) This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)
- (c) To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.
- (d) To count the imputed income for this asset, determine the asset value as of the effective date of the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification.”

EXAMPLE Deed of Trust Income

A tenant sells her home and holds the mortgage for the buyer. When she moves into an LIHTC unit, the principal balance of the mortgage is \$60,000. The combined payment of principal and interest expected to be received for the year after move-in is \$5,000. The amortization schedule breaks that payment into \$2,000 in principal and \$3,000 in interest.

- 1) What is the projected annual income from the asset?
- 2) What will the value of the asset be at the first annual recertification?

1) \$3,000: The anticipated interest payments.

2) \$58,000: \$60,000 – \$2,000 principal payment.

Stocks, Bonds, T-Bills, CDs, etc.

HUD's Description | Exhibit 5-2 (A)(4)

"Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after [income] is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received."

Some of the above accounts accumulate income based on an interest rate.

Stocks and Mutual Funds. At times people own interest in companies represented by stocks. Stocks are owned in pieces called shares. Mutual funds are groups of stocks collected together. Interest in these is also owned in shares. Income in stock-based investments is paid in dividends per share.

The below chart demonstrates how to establish values and income for various types of assets.

Type of Asset	Market Value	Cash Value	Actual Income
Individual Stocks	# of shares owned X price per share	Market value less the cost to sell (commissions)	Annual dividend X # of shares
Mutual Funds	# of shares owned X price per share	Market value less the cost to sell (commissions)	Annual dividend X # of shares
CDs Certificates of Deposit	Current Balance	Market value less fees for withdrawal	Market value X interest rate
Money Market	Current Balance	Market value less fees for withdrawal	Market value X interest rate
Bond	Redeemable value*	Redeemable value*	Interest rate X market value

Savings Bonds. Are government investments purchased at less than their denomination and accumulating income based on an interest rate.

EXAMPLE Certificate of Deposit

A certificate of deposit has a market value of \$10,220. The penalty for early withdrawal is \$1,040, resulting in cash value of \$9,180. The interest rate is 1%. What is the anticipated annual income on the CD?

\$102.20: Market value of \$10,220 x 1%.

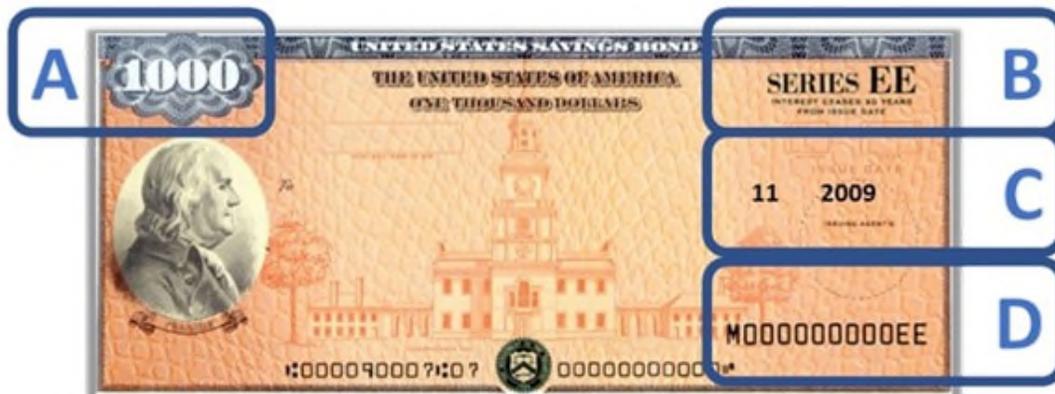
EXAMPLE Stocks

A resident owns 933 shares of stock in a company. The stock value is \$4.50 per share and the dividend paid is \$.25 quarterly. What is the:

- a) market value and
b) income from the stock?

a) \$4,198.50: 933 shares x \$4.50.

b) \$933: 933 shares x \$.25 x 4.



*To calculate the current cash value of savings bonds, go to savingsbonds.gov, Savings Bond Calculator then ENTER the following items as requested:

- A. Denomination
- B. Series type
- C. Issue date
- D. Serial number (optional)

Retirement Accounts

HUD's Description | Exhibit 5-2 (A)(5)&(4) & 4350.3 5-6 (P)

"The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. Lump sum receipts from pension and retirement funds are counted as assets. ***If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.***

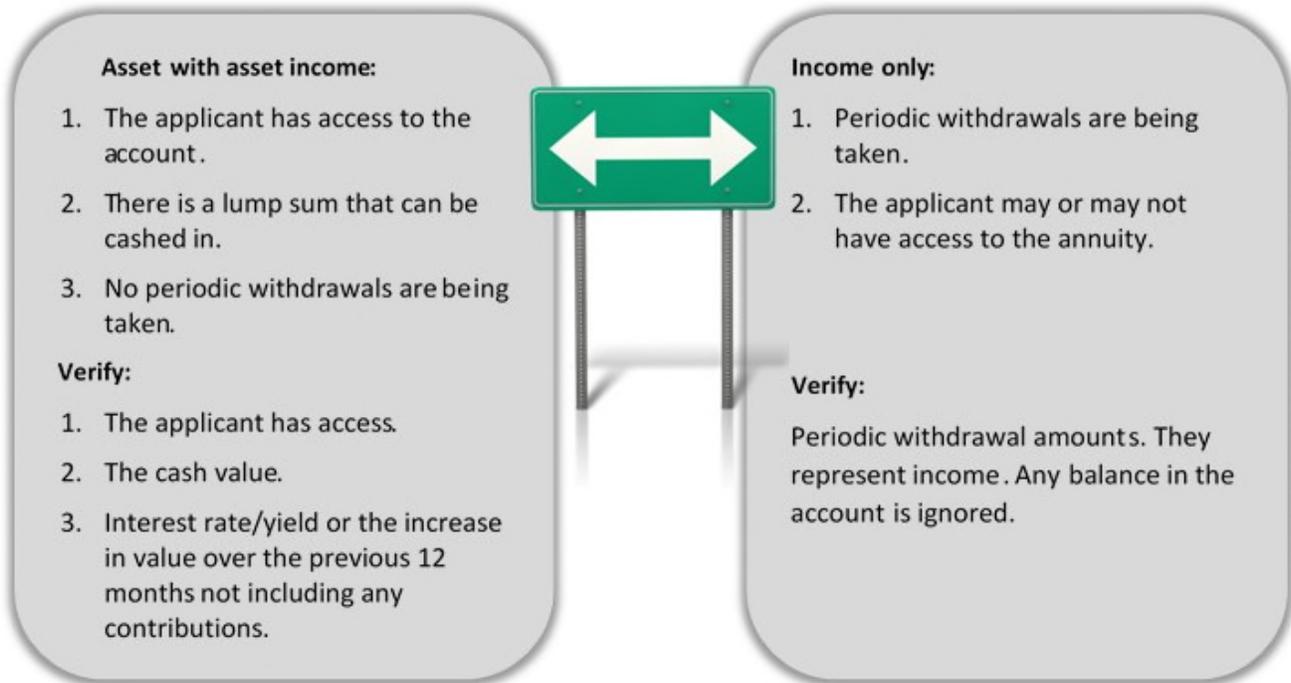
Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months (do not count withdrawals as income) ...***if benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.***

Retirement and pension funds.

- (a) While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs...
- (b) At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.
 - (1) If benefits will be received in a lump sum, include the lump sum receipt in net family assets.
 - (2) If benefits will be received through periodic payments, include the benefits in annual income. **Do not count any remaining amounts in the account as an asset.**
 - (3) If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset...and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. **Do not count the remaining amount as an asset.**

NOTE: This paragraph...assumes that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset."

SUMMARY Steps to Take for Retirement Assets / Annuities



EXAMPLE Retirement Accounts without Access

Michele is working for an employer that provides a pension fund. It is valued at \$6,090. It is verified that Michele will not be able to collect the money until she retires in many years. What is the asset value?

\$0: If a person must quit a job or retire to access a retirement account, it is not considered accessible or an asset.

EXAMPLE Retirement Account with Periodic Withdrawals

A 401(k) account that a retired person has full access to has a balance of \$210,000. The resident is withdrawing \$500 monthly from the account.

- 1) Is the account counted as an asset?
- 2) What is the annual income associated with the 401(k)?

1) **No:** As periodic withdrawals are being made, the balance is not counted as an asset on the Certification.

2) **\$6,000:** \$500 monthly withdrawals x 12 months. This is listed on the periodic income portion of the Certification form, not the asset section.

EXAMPLE Retirement Account with No Periodic Withdrawals

An IRA that a retired person has full access to has a balance of \$110,000. The resident is not making periodic withdrawals, but the IRA verification lists an interest rate of 1.5%?

- 1) Is the account counted as an asset?
- 2) What is the annual income associated with the IRA?

1) Yes: As the resident has access to the balance, and they are not making periodic withdrawals, the IRA shows as an asset on the Certification.

2) \$1,650: $\$110,000 \times 1.5\%$. This shows up on the asset section of the Certification form.

Whole Life

HUD's Description | Exhibit 5-2 (A)(7)

"Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death."

EXAMPLE Life Insurance

Brittany has two life insurance policies. One is term life, with a death benefit of \$1,000,000. The second policy is whole life. It has a death benefit of \$300,000. Its cash value is \$26,000 with an interest rate of 2.5%. What is the income that will be counted for her life insurance policies?

\$650: For the whole life policy, the income is the value of $\$26,000 \times 2.5\%$. The term life insurance is not counted.

Personal Property Held as an Investment

HUD's Description | Exhibit 5-2 (A)(8)

"Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset."

For this type of asset, the intent of the owner to eventually sell the property is key.

EXAMPLE Property Held as an Investment

A person holds a stamp collection appraised at \$32,000. He intends to sell specific stamps when their values peak.

- 1) Is this an asset to the household?
- 2) What income is counted?

1) Yes

2) There is no income to count directly on property held as an investment. However, if the total household assets' cash value exceeds \$5,000, the value of the personal property will be included and affect the imputed asset income.

EXAMPLE Property NOT Held as an Investment

A person inherited an antique automobile with a value of at least \$350,000. The owner/agent automatically considered this personal property held as an investment. Was that correct?

No: High value does not automatically make the personal property an investment. The holder's intent is the important factor.

Lump-Sum One-Time Receipts

HUD's Description | Exhibit 5-2 (A)(9)

"These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments."

These types of assets are usually deposited and verified as part of another account (checking or savings, etc.).

EXAMPLE Lump-Sum Receipts

A month before moving in, Emily gets a one-time insurance settlement for \$64,000. The money is put into her savings account (her only asset). Subsequently, the balance of the savings account is verified to be \$76,234. The owner/agent only counts the savings account balance as an asset and does not count the lump-sum. Was this correct?

Yes: The lump-sum went into an account that was verified and should not be double-counted.

Disposed of Assets

Assets given away for less than their market value are counted for 2 years after they are disposed of. For disposed of assets, the cash value is counted and added to total household assets. The cash value is the market value less the cost to convert the asset to cash (such as paying off any mortgages) and any amount they received for the asset.

NOTE: Assets that have been lost because of a division of property in a divorce, separation settlement, bankruptcy or foreclosure are not disposed of assets.

EXAMPLE Disposed of Asset

Bob sold a house worth \$230,000 to his daughter for \$100,000. Reasonable realtor and legal fees are \$23,000. What is the disposed of asset value?

\$107,000: Market value of \$230,000 - costs to sell of \$23,000 - money received \$100,000.

EXAMPLE Disposed of Asset

Jake cashed in a CD worth \$54,000, bought a new car worth \$27,000, went on a vacation for \$9,000 and donated \$4,000 to his church. The remaining \$14,000 was put in his checking account. What, if any, of the money from the CD was disposed of?

\$4,000: Using cash assets to buy personal property and other things that are not counted as assets is not “disposing of” assets. The charitable donation is the only asset disposed of.

Imputing Asset Income

Residents in affordable housing with a substantial amount of assets are anticipated to earn at least a minimal income on their assets. If the total cash value of a household’s assets is more than \$5,000, imputed income must be calculated using the current HUD passbook rate, which is based on the average FDIC passbook rate for the country. The greater of the actual income or imputed income must then be included in the household’s total income. Refer to HUD Multi-family Notice for the current passbook rate.

EXAMPLE Imputing Income

A household has the following assets.

Asset	Market Value	Cash Value	Actual Annual Income
Checking (6-mo. average)	\$ 500	\$ 500	\$ 0
Certificate of Deposit	\$ 4,320	\$ 3,700	\$ 201
Stocks	\$ 1,200	\$ 1,000	\$ 0
Real Estate	\$200,000	\$20,000	\$2,400
TOTAL	\$206,020	\$25,200	\$2,601

What income is counted for these assets? The applicable passbook savings rate was .06%

\$2,601: Cash value \$25,200 X .06% = imputed income of \$15.12. As the actual income exceeds the imputed income, actual income will be used.

EXAMPLE Imputing Income

A household has the following assets.

Asset	Market Value	Cash Value	Actual Annual Income
Checking (6-mo. average)	\$ 800	\$ 800	\$0
Real Estate	\$890,000	\$4,000	\$0
TOTAL	\$890,800	\$4,800	\$0

The applicable passbook savings rate was .06%. What income from assets will be used?

\$0: Since the cash value of assets does not exceed \$5,000, actual income will be used to calculate income.

EXAMPLE Imputing Income with Disposed of Asset

Robin and Richard moved into a unit on 01/01/2018. They had given a home to their children on 06/01/2016. The home's cash value was \$170,000

- a) The owner/agent must count the value of the home as if they still owned it until when?
- b) Assuming a HUD Passbook Rate of .06%, what is the amount of imputed income that should be included for the disposed of asset on their move-in certification?

a) 06/01/2018.

b) \$42.50: $\$170,000 \times .06\% (.0006) = \$102.00 \div 12 \times 5$. As the 24-month period ended during the first certification year, the imputed income was prorated for the months until the asset is no longer counted.

EXAMPLE Charitable Donations

Theresa moved into a unit on 01/01/2018. She had made a charitable donation to her church totaling \$700,000 on 07/01/2017.

- a) The value of the disposed of cash must be counted until when?
- b) Assuming a HUD Passbook Rate of .06%, what is the amount of imputed income that was included on their move-in certification?

a) 07/01/2019.

b) \$420: $\$700,000 \times .06\% (.0006)$

Final Certification Steps

Chapter 3 thoroughly discussed details about income limits referred to in step 6.

Chapter 4 also discussed details about leasing, per step 8.

Compliance Steps to Qualify an LIHTC Household

1. Accept a completed application including an income and asset questionnaire.
2. Verify eligibility factors.
3. Clarify and verify student status, as necessary.
4. Determine number of household members.
5. Calculate household income.
- 6. Compare household income to the applicable income limit.**
- 7. Complete a Tenant Income Certification (TIC).**
- 8. Execute a lease and other paperwork, per property policy.**

The Tenant Income Certification (TIC)

Once the owner/agent has gathered and verified all household composition and income information, the information is summarized on a Tenant Income Certification (TIC). RIHousing offers a sample TIC and may also allow the use of a TIC that is produced by an owner/agent's software. Prior written approval from RIHousing authorizing the use of an alternative TIC must be obtained. All adult household members and the owner/agent must sign and date the TIC. Backdating is never acceptable.

File organization.

To maintain compliance, owner/agents must practice good organizational skills. Neat and consistent files also help file audits to go smoothly.

1. The following documents are required for **all initial certification files**.

Documents in ALL CAPS and quotation marks are RIHousing-specific forms. Alternate forms may be used with the prior written approval of RIHousing. NOTE: The owner/agent may also require their own documents in addition to these:



- "TENANT INCOME CERTIFICATION" (TIC).**
 - Current RIHousing version or approved alternate.
- "LIHTC PROGRAM STUDENT STATUS AFFIDAVIT."**
 - o Third party **verification of student status** from an educational institution (when applicable).
 - For initial certification and at each annual certification.
- "RECURRING GIFTS AFFIDAVIT"**
- "CERTIFICATION OF ZERO INCOME"** (if applicable)
- "CHILD SUPPORT SELF AFFIDAVIT" (if applicable)**
- "ALIMONY AFFIDAVIT" (if applicable)**
- Worksheet for income & expenses or calculation tapes.**
 - To demonstrate how annual income was calculated.
- Verification of income** prepared by a 3rd-party, including but not limited to:
 - Employment, Wages, Salaries, Commission, Tips, Unemployment, Child Support, TDI, FIP, Pension, Workman's Comp, Veterans Benefits, Social Security, SSI, SSDI, Self-employment, etc....
- "CERTIFICATION OF ASSETS LESS THAN \$5,000"**
 - If total cash value does not exceed \$5,000
- OR**
- Verification of assets** or statements.
 - If the total cash value exceeds \$5,000.
- Clarification notes (as applicable).
- Rental application** (time & date stamped when received) **Permanent information, must remain with IC package.**
 - Must have application/certification questionnaire for in-place tenants.
- Lease Agreement & RIHousing's "LIHTC LEASE ADDENDUM."**
 - Original and all subsequent leases.
- Unit Inspection documentation.**
 - For move-in and annually thereafter.
- Release of information consents.**
 - For each household member age 18 and older.
- EPAs Lead Hazard Information Pamphlet and Disclosure form. Permanent information must remain with the IC package.**
 - If building built prior to 1978 (acknowledgment of receipt of the pamphlet is acceptable).
- Race and Ethnicity Self-Certification. Permanent information must remain with the IC package.**
 - Appropriate Field on TIC must be populated. NOTE: Applicant has the right to decline or not disclose.

2. The following are documents required for **all annual certification files in non-100% LIHTC projects**. Documents in ALL CAPS and quotation marks are RIHousing-specific forms. Alternate forms may be used with the prior written approval of RIHousing. NOTE: The owner/agent may also require their own documents in addition to these:



- “TENANT INCOME CERTIFICATION” (TIC).**
 - Current RIHousing version or approved alternate.
- “LIHTC PROGRAM STUDENT STATUS AFFIDAVIT.”**
 - o Third party **verification of student status** from an educational institution (when applicable).
 - For initial certification and at each annual certification.
- “RECURRING GIFTS AFFIDAVIT”**
- “CERTIFICATION OF ZERO INCOME”** (if applicable)
- “CHILD SUPPORT SELF AFFIDAVIT”** (if applicable)
- “ALIMONY AFFIDAVIT”** (if applicable)
- Worksheet for income & expenses or calculation tapes.**
 - To demonstrate how annual income was calculated.
- Verification of income** prepared by a 3rd-party, including but not limited to:
 - Employment, Wages, Salaries, Commission, Tips, Unemployment, Child Support, TDI, FIP, Pension, Workman’s Comp, Veterans Benefits, Social Security, SSI, SSDI, Self-employment, etc....
- “CERTIFICATION OF ASSETS LESS THAN \$5,000”**
 - If total cash value does not exceed \$5,000

OR
- Verification of assets** or statements.
 - If the total cash value exceeds \$5,000.
- Clarification notes (as applicable).
- Lease Agreement & RIHousing’s “LIHTC LEASE ADDENDUM.”**
 - Original and all subsequent leases.
- Unit Inspection documentation.**
 - For move-in and annually thereafter.
- Release of information consents.**
 - For each household member age 18 and older.

3. The following documents are required for **all annual certification files when a project is 100% LIHTC and an abbreviated annual certification has been authorized by RIHousing**. Documents in ALL CAPS and quotation marks are RIHousing-specific forms. Alternate forms may be used with the prior written approval of RIHousing. NOTE: The owner/agent may also require their own documents in addition to these:



- “TENANT INCOME Certification” (TIC)**
 - Current RIHousing version or an approved alternative.
- “LIHTC PROGRAM STUDENT STATUS AFFIDAVIT.”**
 - o Third party **verification of student status** from an educational institution (when applicable).
- Self-affidavit of annual income** (including income from assets)
- Clarification notes (as applicable)
- Lease Agreement & RIHousing’s “LIHTC LEASE ADDENDUM.”**
- Unit Inspection documentation.**
 - For move-in and annually thereafter.
- Release of information consents.**
 - For each household member age 18 and older.

4. The following documentation is not required to be in a tenant file but must be to on-hand for any file review or agency request.



- *Utility Allowance chart.**
Including breakdown on how UA total was determined.
- *Income Limits.**
Documentation of limits used.
- *Rent Limits.**
Documentation of limits used.

WARNING! Avoiding Noncompliance Income Calculations



Helpful reminders to assist in avoiding mistakes that can result in the loss of tax credits

Below is a list of areas to be aware of where mistakes are commonly made in affordable housing tenant income calculations.

Employment

Don't confuse semi-monthly and bi-weekly pay! Calculating bi-weekly pay as if it were semi-monthly results in missing two pay periods and could well result in an over-income household moving in.

Check verification paperwork carefully! Raises and other anticipated changes can be very easy to miss. Review all verifications carefully to have all information on-hand when doing calculations.

Self-Employment

When using last year's tax return, ensure that it covers a full year! Annualizing partial year income is important to ensure that a full year's income is being anticipated.

Check tax returns carefully! Some items may show up on a tax return schedule that, if missed or misinterpreted, could affect calculations.

Social Security

Be sure when to know when it is required to count net income from social security! These include delayed benefits, adjustments for prior overpayments and court-ordered divorce adjustments.

Check printouts and benefit letters carefully! SSI and other income are often listed toward the bottom of SS printouts and are easy to miss.

NOTE: SSI and Social Security award letters must provide net and gross amounts and include detail of all adjustments.

Supplement | Income Exclusions

Based on 24 CFR 5.609(b) and (c) and HUD Handbook 4350.3 Exhibit 5-1 Exclusions, with 2014 revision [FR-5741-N-01] amendments included.

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in 24 CFR 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
- (8)
 - (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);
 - (b) 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-Sufficiency;
 - (c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time; or
 - (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;

- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
- (14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- (15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);
 - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
 - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
 - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
 - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
 - (f) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04);
 - (g) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
 - (h) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1407-1408), including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-11, section 327) (as amended);
 - (i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;
 - (j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

- (k) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- (l) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- (m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);
- (n) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- (o) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
- (p) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05) children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1821), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);
- (q) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- (r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931) (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);
- (s) Any amount received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);
- (t) Payments, funds or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));
- (u) Payments from any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts as provided by an amendment to the definition of annual income in the U.S. Housing Act of 1937 (42 U.S.C. 1437) by Section 2608 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 42 U.S.C. 4501);
- (v) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101) and administered by the Office of Native American Programs; and
- (w) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);
- (x) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

- (y) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a)); and
- (z) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by the States, local government, and disaster assistance organizations (42 U.S.C. 5155(d)).

Chapter 6 | ONGOING COMPLIANCE

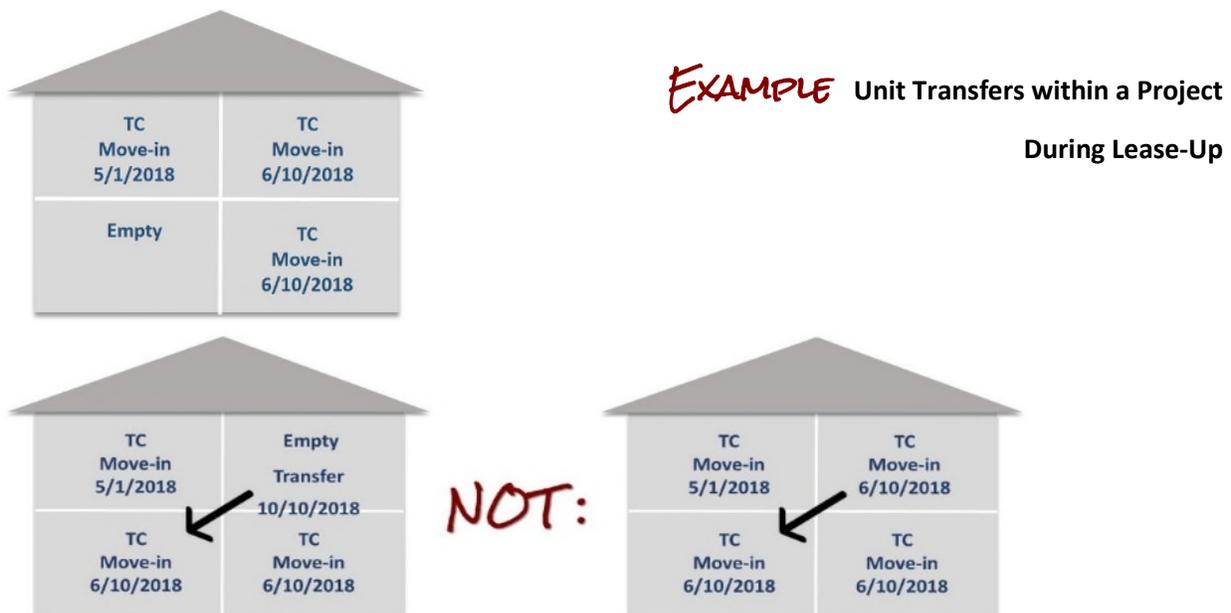
Unit Transfers

When a household transfers from one unit to another within the same building, the owner/agent does not need to requalify or recertify the household. The two units involved in the transfer simply switch status. This is most important if the household is moving to a non-LIHTC unit, or if the units have different set-aside designations at a property that had elected Income Averaging. The unit the household is going into will assume the original qualifying status of the first unit and the unit they are leaving assumes the status of the unit they are going into had just prior to them occupying the new unit.

For unit transfers occurring between buildings that are part of the same multi-building project, as defined by the 8609 line 8(b) elections, the same rule applies with one exception; at properties that are not 100% LIHTC, households that are over the 140% limit at their most recent income recertification cannot transfer to a unit outside of the building they reside in, unless they are treated as a new move-in to a market unit, and the unit they vacate is treated as over-income until an LIHTC-qualified household reoccupies the unit. The Next Available Unit Rule will remain in effect for their original building until the new household moves into the over-income unit. 100% LIHTC projects are not subject to full income recertification and transfers are allowed between buildings in the project without income examination.

Although a full recertification is not required, RIHousing requires that the owner/agent produce a new TIC for the unit transfer. A new Lease and applicable addendums will need to be executed along with any other paperwork needing change per RI state and local law and owner policy.

Important for first-year lease-ups: A household cannot initially qualify for more than one unit at a time. Per the transfer rules, the unit they were in and the unit they go to switch status. If they transfer from a unit that they initially qualified to a unit that has never been LIHTC-qualified, the unit they move to becomes a qualified unit, but the unit they vacate becomes non-qualified starting on the date of transfer.



LIHTC Compliance Manual

An LIHTC resident lives in a four-plex in which three units have been LIHTC-qualified, and one is considered “empty” – not yet LIHTC-qualified. The resident transfers to the empty unit. The units involved in the transfer switch status and there are still three LIHTC units and one empty unit. After the transfer, the household continues to be used to qualify only the unit in which they reside.

In an LIHTC property where a transfer takes place, the owner/agent may continue using the effective date of the original move-in for the recertification cycle (see *Annual Recertifications* below). It is not required that the effective date be changed to the unit transfer date. The household may continue to be recertified by the anniversary of the original date it moved into the project. For 100% LIHTC projects not subject to full income recertification, student status verification continues to be due on the anniversary date of original move-in after a transfer occurs. This rule regarding effective dates and recertification may not apply to properties with other funding such as HUD or Rural Development. Such programs may require adjustment to effective dates or interim certifications at transfer.

A household moving to a building that is not part of the same 8609 8(b) multi-building project must be fully certified and qualify as a new LIHTC household prior to transfer. Even if the buildings are part of the same development, from a compliance perspective the household is moving to another project. The unit they vacate is now considered “vacant” and the units involved in the transfer do not switch status.

Annual Recertifications

All LIHTC households are subject to some level of recertification each year. For 100% LIHTC properties, this means completion of an abbreviated certification and re-verification of student status (if approved by RIHousing). For properties that have non-LIHTC (market) units, this means full income and student status recertification, mirroring what was done at move-in. Recertification does not directly affect a household’s right to continued tenancy. The LIHTC program is specifically designed to allow households to benefit from increases to their income without penalty after they move-in. However, owner/agents at projects that contain non-LIHTC units are obligated to rent non-LIHTC units that become vacant to LIHTC-qualified households to replace units occupied by LIHTC households that are “over-income” when recertified. This is called the Next Available Unit Rule (NAUR). This rule may also sometimes be referred to as the 140% Rule.

The Next Available Unit Rule (NAUR)

100% LIHTC Properties

At properties where all units (100% according to the LURA and Cost Certification) are LIHTC, owner/agents must demonstrate due diligence when moving in new households to ensure that all units that become available are rented to LIHTC eligible households. Failure to do so could result in the loss of several or even all units to noncompliance. Thus, owners must take due diligence measures very seriously. See Chapter 10 for further discussion of due diligence and noncompliance.

For Income Averaging Properties: The NAUR is followed by renting each unit that comes vacant to a household that is at or below the set-aside that is designated to determine the 60% average required by the Income Average Test minimum set-aside. As properties that are less than 100% LIHTC are not eligible for the Income Averaging Election in Rhode Island, this Manual will not discuss the NAUR for Income Averaging properties that are less than 100% LIHTC.

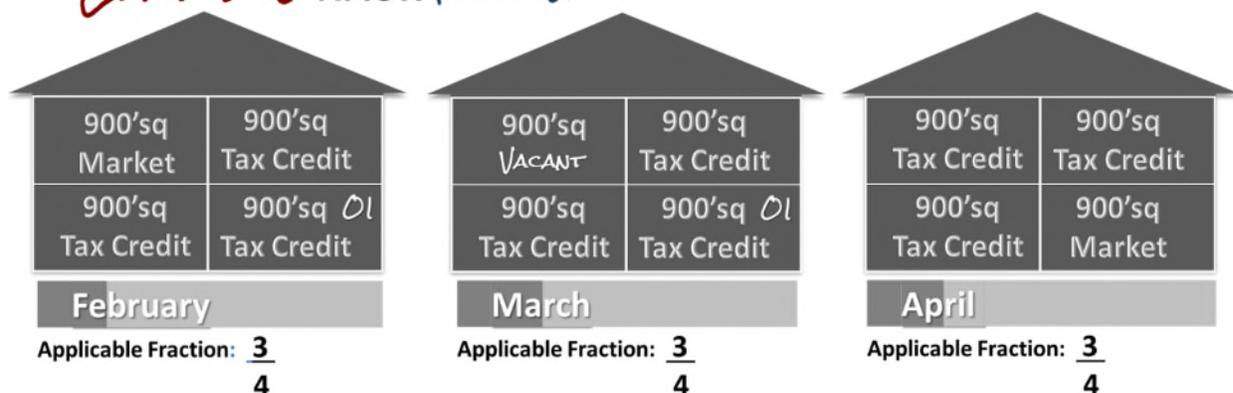
Less than 100% LIHTC Properties

DEFINITION "Over-income"

At Move-in	Over the current income limit
At Recertification	Over 140% of the current income limit

LIHTC units at properties with even one non-LIHTC (market) unit are subject to full income recertification every year. When recertified, if a household's income exceeds 140% of the current income limit, they become "over-income". Credits continue to be claimable on the over-income unit if the next available unit (of comparable or smaller size) **in the same building** is rented to an LIHTC household. The purpose of this is to restore the applicable fraction, not counting the over-income unit. Therefore, more than one market unit may need to be rented to LIHTC households when an over-income unit is larger than the next available unit. Over-income units must remain in compliance with rent limits until the next available unit(s) are rented and all over-income LIHTC units are replaced. If the rule is violated, and the next available unit is not rented to an LIHTC household, all comparable or larger 140% units will no longer be LIHTC for both the applicable fraction for the building and the project's minimum set-asides. A unit is no longer "available" if a legally binding agreement is in place prior to the effective date of the recertification that

EXAMPLE NAUR FOLLOWED



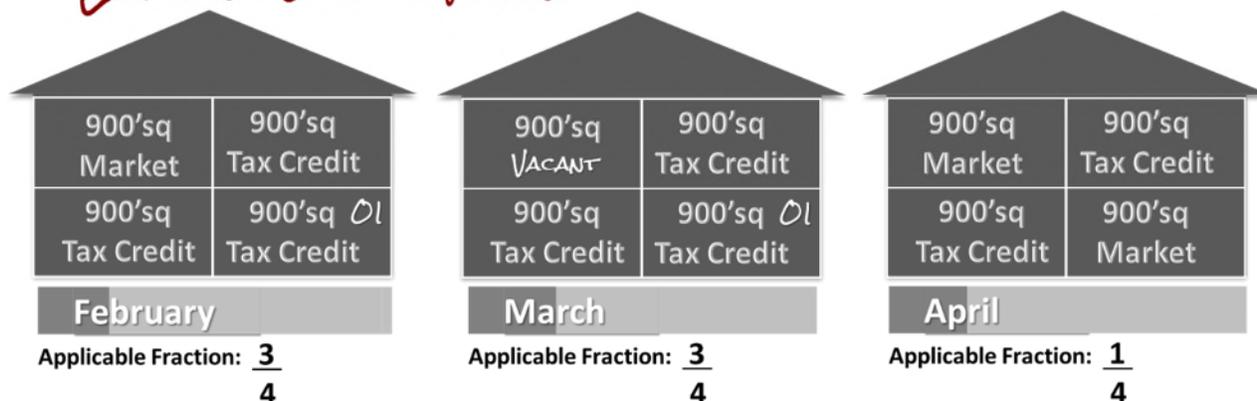
determined the household to be over-income. For instance, if a lease is signed by a non-LIHTC (market) household, but they have not moved in, the unit is not "available" for purposes of the NAUR. In this example, it would be acceptable to move in the market household after the over 140% income recertification is effective. However, non-LIHTC units not legally reserved are subject to the NAUR. Once all over-income units are replaced with new LIHTC units per the NAUR, the over-income households can be treated as market and rents can be raised to market-rate as soon as the lease allows. These units are no longer subject to annual income recertification. They cannot be evicted solely because their income has increased.

A unit is recertified to be over 140% of the current income limit in February and the NAUR immediately went into effect. The next month, a comparable unit becomes available. This unit is rented to an LIHTC household. Since the applicable fraction has been restored, the over-income household may become a market unit as soon as the lease allows. In this case, that was in April.

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A unit is recertified to be over 140% of the current income limit in February and the NAUR immediately went into effect. The next month, a comparable unit becomes available, but it is rented to a market household. Since the NAUR was not followed, all over-income units (in this case one unit) are no longer LIHTC.

EXAMPLE NAUR VIOLATED



Vacant Unit Rule

Vacant units that were formerly occupied by LIHTC households continue to be LIHTC-qualified if reasonable attempts are made to rent the vacant LIHTC units before any vacant market units in the project are rented. This is called the *Vacant Unit Rule (VUR)*. At any time, there are vacant LIHTC units the owner/agent should keep evidence of advertising via newspaper, internet or flyers, as well as signs and banners at the property and any other marketing efforts used to fill vacancies.

Additionally, the VUR requires that units must be made rent-ready in a reasonable time, whether there is a waiting list or not. Vacant units that continue to qualify as rent-ready cannot be utilized to store maintenance supplies or be used to conduct repairs on items for other units. Appliances and fixtures from a vacant unit should not be “cannibalized” to supply occupied units. While a violation of the VUR can happen earlier, if a unit is vacant for more than 45 days, an owner/agent must immediately notify RIHousing and be prepared to attest that the unit is rent-ready and that marketing is being conducted. If the unit is not rent-ready, extraordinary extenuating circumstances will need to be documented.

If the VUR is violated, each unit of comparable or smaller size to the vacant LIHTC unit that is rented to non-LIHTC (market) households prior to renting to an LIHTC qualified household will be reported to the IRS as noncompliant.

Vacant units that were previously LIHTC-qualified are still qualified LIHTC units while a building is in lease up. In most cases, all “empty” units that have not been occupied by an LIHTC-qualified household should be rented before any newly vacant unit is rented to a second LIHTC household

Rent Adjustments

Because LIHTC income and rent limits hold harmless (see Chapter 3), these limits will always stay the same or increase each year; therefore, adjustments to reduce gross tenant rent is never necessary. An increase in the utility allowance (UA) will require that the tenant portion of rent be decreased after the 90-day

notice. Decreased utility allowances may result in an increase in tenant rent. Rent increases may be limited by provisions of the lease agreement and shall not violate RIGL 34-18 (“Residential Landlord Tenant Act”). See Chapter 3 for more on rents and UAs.

Rent adjustments must comply with all Section 42 requirements and other federal and state program rules that may apply. Please refer to current RIHousing guidance.

Fees

Non-Optional Fees

Any fee that is non-optional and charged to residents as a condition of occupancy must be included in the gross rent and indicated in the lease. Charging an application fee is acceptable if the fee is reasonable. The fees charged must be for reimbursing owners for actual average out-of-pocket costs paid when screening. They should not be designed to make a profit or to discourage applicants from applying to a property or requesting a service or reasonable accommodation. For instance, the average costs to run credit and criminal background checks are an allowable basis for an application fee but charging a larger fee to discourage households from applying is not.

Optional Fees

Optional fees may be charged for a service available at a property or for part of the property not included in eligible basis, provided that the service is not a condition of occupancy and reasonable alternatives to the service are available free of charge. It is not required to include *one-time refundable* security deposits or pet deposits in the gross rent. These deposits are allowable provided they are reasonable and comply with state and local laws. See the table below for additional details.

Fees Not Permitted

When owners/agents charge fees that are not permitted under IRS guidelines, these charges will be reported as noncompliance to the IRS regardless of whether they cause the gross rent limit to be exceeded.

EXAMPLES Fees that are not permitted

- Fees for the use of residential facilities, such as swimming pools, parking areas, storage or recreational facilities, **when the cost of the facilities was included in a building’s eligible basis.**
- Fees that an owner requires residents to pay as a condition of their occupancy, even if these fees are not paid to the owner. Examples are requiring mandatory renter’s insurance or fees for month-to-month tenancy.
- Fees for the routine “turning” of units to make rent ready. Mandatory carpet cleaning fees, for instance, are not acceptable. Carpets must be left unusually dirty or damaged beyond normal wear and tear to justify charging a tenant for their cleaning.

If it is determined that an LIHTC resident has been overcharged rent or has been charged inappropriate fees at any point within a certification year, RIHousing will require the owner to refund the excess rent or

fee amount to the resident for all months affected. The IRS has indicated that they will likely disallow credits on the affected unit for the taxable year that rent was overcharged. The earliest an LIHTC unit that was overcharged rent or charged inappropriate fees will be considered back in compliance is the start of the following tax year, provided the unit is rent-compliant at the start of the new year.

"CAN I CHARGE THIS?" Fees at LIHTC Properties

Acceptable		Not Acceptable	
Fee Type	Notes	Fee Type	Notes
Application Fees	Must not exceed the average out-of-pocket costs to run background checks.	Fees to Pay for 3rd-party Verification	If there is a cost for verification directly from a 3 rd -party, documentation supplied to the household by the third party can be used. If an owner opts to require verification that costs money, the owner must bear the cost. NOTE: This is not to be confused with fees for recouping actual costs for processing background checks at application.
Unit Transfer Fees	Must not exceed the average out-of-pocket costs to process a unit transfer and may not include expenses to make-ready either unit involved in the transfer.	Month-to-Month Tenancy Fees	The IRS considers this a non-optional fee even if the tenant is given the option to sign a longer-term lease.
Security Deposits	The security deposit due to the tenant shall be the entire amount given by the tenant as a security deposit, minus any amount of unpaid accrued rent, the amount due, if any, for reasonable cleaning expenses, the amount due, if any, for reasonable trash disposal expenses and the amount of physical damages to the premises, other than ordinary wear and tear, which the landlord has suffered by reason of the tenant's noncompliance with Rhode Island General Law (RIGL) § 34-18-24.	Required Renter's Insurance	An owner may suggest that residents secure insurance, but only if the insurance is optional and not a condition of occupancy.
Pet Deposits and Monthly Pet Rent	Pet deposits must be fully refundable if the unit is left reasonably clean and the pet did not cause damage beyond normal wear and tear.	Assistance Animal Deposits	<i>Assistance animals</i> help persons with disabilities, are not pets and are not legally subject to deposits. However, actual costs to repair damage caused by such animals beyond normal wear and tear may be charged.
Coin Operated Laundry Machines or other vending machines.	If the area where the machines are is accessible to all residents and the machines are not in eligible basis.	Community Room Usage or Rental Fee	Community facilities in eligible basis must be available without charge. A deposit may be charged if fully refundable if the room is left clean & undamaged. A clear written policy must exist.
Late Rent Fees	May be charged if the rates are explicitly spelled out in writing.	Parking or Storage Fees	Only acceptable for LIHTC projects if the parking lot or

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<p>Service Fees for example lockout or key loss)</p>	<p>May be charged if the rates are explicitly spelled out in writing.</p>	<p>storage units are not in eligible basis.</p> <p>Make-Ready fees (also known as cleaning, turnaround, preparation, mandatory carpet cleaning, and unit turnaround fees)</p> <p>Only costs beyond normal wear-and-tear* may be charged. Helpful hint: pictures are very effective in documenting the state a unit was left in and demonstrating damage beyond normal wear and tear.</p>
<p>Maintenance completed by the owner that is normally required to be completed by the household (such as changing unit light bulbs or removing furniture).</p>	<p>May be charged if the rates are explicitly spelled out in writing.</p>	
<p>Lease breakage fees</p>	<p>Having a contingency lease breakage fee does not make a lease transient. This is true even if the tenant breaks the lease less than six months after move-in if the initial term of the lease was at least six months.</p>	

LIHTC owner/agents must guard against a practice of deducting too much from security deposits for items that are displaying normal wear and tear, or such charges could be determined to be unacceptable fees. When developing security deposit refund policies, owner/agents will want to consider the provisions contained within RIGL § 34-18 along with the following guidance based on direction from HUD.

<p>✓ Normal Wear & Tear</p>	<p>Vs. ✓ Tenant Damage</p>
<p>Normal costs of turning an apartment after a household vacates may not be charged to either the former or the next household. Costs an owner incurs for the basic cleaning and repairing of items necessary to make a unit ready for occupancy are part of the costs of doing business.</p>	<p>Tenant damages usually require more extensive repair, and at a greater cost than “normal wear and tear” and are often the result of a tenant’s abuse or negligence and not the result of normal living activities.</p>
<p>Walls & Ceilings</p> <ul style="list-style-type: none"> <input type="checkbox"/> Small chips in plaster <input type="checkbox"/> Nail holes, pinholes, or cracks in walls <input type="checkbox"/> Fading, peeling, or cracked paint 	<ul style="list-style-type: none"> <input type="checkbox"/> Gaping holes in walls or plaster <input type="checkbox"/> Holes in the ceiling from removed fixtures <input type="checkbox"/> Drawing, crayon marking, or wallpaper that the owner did not approve <input type="checkbox"/> Seriously damaged or ruined wallpaper
<p>Doors & Windows</p> <ul style="list-style-type: none"> <input type="checkbox"/> Door sticking from humidity <input type="checkbox"/> Cracked windows from faulty foundation/building settling 	<ul style="list-style-type: none"> <input type="checkbox"/> Doors ripped off hinges <input type="checkbox"/> Broken windows
<p>Floors</p> <ul style="list-style-type: none"> <input type="checkbox"/> Floors needing a coat of varnish <input type="checkbox"/> Carpet faded or worn thin from walking <input type="checkbox"/> Loose grouting and bathroom tiles 	<ul style="list-style-type: none"> <input type="checkbox"/> Chipped or gouged wood floors <input type="checkbox"/> Holes, stains, or burns in the carpet <input type="checkbox"/> Missing or cracked bathroom tiles
<p>Fixtures</p> <ul style="list-style-type: none"> <input type="checkbox"/> Worn or scratched enamel in old bathtubs, sinks, or toilets <input type="checkbox"/> Partially clogged sinks caused by aging pipes <input type="checkbox"/> Rusty shower rod <input type="checkbox"/> Dirty or faded lamp or window shades 	<ul style="list-style-type: none"> <input type="checkbox"/> Chipped and broken enamel in bathtubs and sinks <input type="checkbox"/> Clogged or damaged toilet from improper use <input type="checkbox"/> Missing or bent shower rods <input type="checkbox"/> Missing fixtures



Conduct annual certifications (recertifications) at LIHTC properties – and do them timely! LIHTC projects with even one non-LIHTC (market) unit must complete full annual certifications for all LIHTC units, **even in buildings in which all units are LIHTC**. Late or missing recertifications at these properties are also a matter of federal noncompliance that must be reported to the IRS.

Late recertifications also expose the owner to the risk of violation of the NAUR if it is discovered that the rule was not followed because the owner/agent did not *know* that a household had gone over-income until they completed the recertification. This risk is in addition to the loss that could result from noncompliance with the recertification rule itself.

Vacant Unit Rule

Keep an advertising file at each property! Any time an LIHTC unit is vacant, it is required that an owner attests to the fact that they are taking all reasonable efforts to market the unit. Examples of all marketing efforts must be retained.

RIHousing requires that all LIHTC developments advertise on <http://www.housingsearchri.org/>

PART 3 | QUALIFIED PROPERTIES

Chapter 7 | TAX CREDIT FUNDAMENTALS

Building Identification Numbers (BINs)

Each LIHTC building has an assigned identification number. This is called a Building Identification Number, or BIN. All tax credits are claimed by building and tax forms often reference the BIN. The BIN is located on line E at the top of the form 8609.

EXAMPLE Building Identification Number

Every Building Identification Number (BIN) in the country has a specific format. The first part is the two-letter state postal code. The second part is the year credits are allocated. Finally, there is a five-number identifier that is assigned by the state agency.

The BIN listed below is for a project in Rhode Island that was allocated credits in 2019.

RI – 19 – 00001

Note: BINs are not always the same as the physical structure of a building. Sometimes individual floors or wings may define separate BINs within a building. In these cases, all compliance rules are applied to the BIN as defined by the 8609s, not the physical structure.

Tax Credit Calculations

Few tax credit managers ever actually have a need to calculate the tax credits that are claimed for a property. Understanding how credits are calculated and the repercussions to the owner if non-compliance is found can help LIHTC professionals understand why many things are done the way they are with respect to compliance.

How tax credits are calculated for each building

Step	Accounting Term
1. Determine how much was spent on the building	Eligible basis
2. Determine the percentage of the building that is tax credit	x Applicable fraction
3. Determine the portion of building costs that were used for LIHTC units	= Qualified basis
4. Apply the appropriate rate	x Applicable Credit % Annual max tax credit

Credits are claimed for each building based on how much depreciable money is spent on the building. Land is not depreciable, therefore is not included. The term used by the tax credit program to describe this amount of money is the **eligible basis**.

Example: The allowable expenses that were spent on a building totaled \$2,000,000

Now that it has been determined how much was spent on constructing the building, it must be known how much of the money went to provide housing for low-income households. This is done by calculating the percentage of the units in the building that are tax credit qualified units. The term used to describe this percentage is the **applicable fraction**. If the units are of differing sizes, the percentage of units will be calculated based on the number of units and the square footage of those units. The lower resulting percentage will be used when claiming tax credits.

The building has 10 units of differing sizes with a total of 10,000 square feet. 6 of the units are LIHTC and total 5,000 square feet. The 4 non-LIHTC units also total 5,000 square feet.

Calculations: the unit fraction is 6/10 (60%). The square footage fraction is 5,000/10,000 (50%).

The lower [50%] is the applicable fraction.

Now that it is known how much was spent on the construction of the building and how much of the building houses low-income households, how much money is represented by the low-income units can be calculated. This is the **qualified basis**.

Calculation: \$2,000,000 X 50% = \$1,000,000 qualified basis

Finally, the qualified basis is multiplied by a rate that the project locks into during development. This rate is called the **applicable credit percentage**. The two categories of credit percentage are 4% and 9%, and the actual rates used will be roughly near or at 4% or 9%. Multiplying the amount of money spent on low-income units (the qualified basis) by the applicable credit percentage results in the maximum amount of annual tax credits that can be claimed for the building for a ten-year Credit Period.

Calculation: \$1,000,000 X 9% = \$90,000 annual tax credits

X 10 years = \$900,000 credits claimed total

Note: The applicable fraction calculation will be different for the first year of the Credit Period and will be based on a prorated monthly average fraction. An owner/agent should work closely with investors to meet financial expectations and to maximize first year credits.

What does the tax credit calculation mean for non-accountants?

1. The factor in the calculation most relating to a site manager's daily duties is the **applicable fraction**. Keeping units in the applicable fraction means keeping them in LIHTC compliance. This includes renting to qualified households, keeping rents affordable and maintaining the property decent, safe and sanitary (see Chapter 1). These are substantial components of management's responsibility, both the property manager and those in supporting roles (maintenance, janitorial, supervisor).
2. It is also important for managers to protect the **eligible basis**. Parts of the building included in eligible basis are subject to rules prohibiting the charging of fees beyond rent. Also, removing amenities

included in eligible basis lowers the value of the property and may have a negative impact on the tax credit calculation.

EXAMPLE Removed Amenity

A basketball court was built next to a building and included in its eligible basis. The court is well-used by residents and in the fifth year of the credit period falls into disrepair because of management neglect. Rather than fix it, the owner removes the basketball court and hoops and plants grass on the spot.

This action decreased the value of the building and is an eligible basis violation.

Employee Units

Properties with a unit occupied by a full-time employee who is not income qualified may treat the unit essentially the same as a “common area” if the property requires the employee to live on-site. To meet the requirements of being designated a common area unit, the unit must benefit all rental units in the property and the employee occupying the unit must be full-time at the property. They cannot work for another property or properties. In addition to full-time site managers this can also apply to full-time maintenance and security staff. Charging rent to an employee does not disqualify a unit as an employee unit.

EXAMPLE Applicable Fraction & Employee Units

In a building consisting of 200 units, 198 units are occupied by low income tenants and two units are each occupied by a full-time manager and a full-time maintenance tech. The applicable fraction would *not be* $198/200$ or 99%. Rather the employee units are removed from both the numerator and the denominator of the applicable fraction. Below is the correct applicable fraction.

$198 / 198$ (100%)

Please note that, for this rule, the term “full-time” is not directly related to an arbitrary number of hours worked (such as 40 hours a week). *Full-time* is defined as a substantial amount of time and should be determined based on the specific needs of the property. Needs to consider include the number of units overseen and the duties the full-time employee performs—including being on call during non-business hours such as nights and weekends for emergencies.

Model Units

It is often beneficial during lease-up to show prospective tenants the amenities of the property’s units. The cost to construct a fixed model unit must be included in the eligible basis and included in the denominator of the building’s applicable fraction; however, it cannot be included in the numerator of the applicable fraction until rented to an LIHTC household at the end of the lease-up. At all other times, any designated permanent model units must be considered market-rate and cannot be LIHTC units.

purposes of section 42?” The answer to this question determines how the number of units that are needed to meet the minimum set-aside are calculated.

- If the 8(b) election is “yes,” the minimum set-aside for the project is based on the total number of units for the entire project (see Example 1 below). ***A list must be attached to every 8609 indicating which additional buildings are part of the project. If this is not done, the 8(b) election will default to “no,” even if it is actually checked “yes.”***
- If the 8(b) election is “no,” this means that each building is a project and the minimum set-aside must be met by each building (Example 2).

Two or more qualified low-income buildings may be included in a multiple-building project only if they:

1. are located on the same tract of land (unless all of the dwelling units in all of the buildings being aggregated in the multiple-building project are low-income units (see IRC §42(g)(7));
2. are owned by the same person for Federal tax purposes;
3. are financed under a common plan of financing; and
4. have similarly constructed residential units.

Depending on the multi-building elections on form 8609 8(b), a four-building development may be:

1. One project.
2. One three-building project and one single-building project.
3. Two two-building projects.
4. Four single-building projects.

EXAMPLE Minimum Set Aside for a Multi-BIN Project

A development consists of 10 duplexes. All buildings are included in the same multi-BIN project. The minimum number of units required by a 40-60 Minimum Set Aside is:

8 Units: 20 units x 40%

EXAMPLE Minimum Set Aside for Single-BIN Projects

A development consists of 10 duplexes. Each building is considered a single-BIN project. The minimum number of units required by the 40-60 Minimum Set Aside is:

10 Units: 2 units per BIN x 40% = 1 unit x 10 projects

This election also relates to other compliance rules such as the selection of income limits (see Chapter 3), unit transfers (Chapter 6) and other important provisions.

If the project does not meet the minimum set-aside during the first year of the Credit Period, the owner cannot ever claim tax credits. Subsequent violations of the Minimum Set Aside result in the loss of credits for the year that the Minimum Set Aside is not met as well as the tax penalty called *recapture* on previously claimed credits.

HOW THE MINIMUM SET-ASIDE WORKS

10 Check the appropriate box for each election.
Caution: Once made, the following elections are irrevocable.

a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶ Yes No

b Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) ▶ Yes

c Elect minimum set-aside requirement (section 42(a)) (see instructions):

20-50 40-60 Average income 25-60 (N.Y.C. only)

20-50
 20% of units, minimum, must be LIHTC
 50% is the income and rent limit for ALL LIHTC units

40-60
 40% of units, minimum, must be LIHTC
 60% is the income and rent limit for ALL LIHTC units

Average Income
 40% of units, minimum, must be LIHTC
 60% is the average income and rent limit designation for ALL LIHTC units, which may be 20-80% (10% increments).

Income Averaging Details

In 2018, the Income Averaging Minimum Set Aside option was added by Congress. RIHousing allowed projects that had not recorded a LURA when the law passed to select income averaging.

Additionally, RIHousing reserves the right to impose the following state rule: Owners that elect Income Averaging must have an average income targeting that does not exceed 58% MTSP. The purpose of this provision is to ensure that projects remain safely in compliance with the federal maximum requirement of the 60% average under Income Averaging.

EXAMPLE Income Averaging Minimum Set-Aside

40-60 (ave)					
80% TC	40% TC	50% TC	70% TC	Market	TC MSA 7/10 units Exceeds 40% $\frac{[(1 \times 80) + (2 \times 70\%) + (1 \times 60\%) + (1 \times 50\%) + (1 \times 40\%) + (1 \times 30\%)]}{7} = 57\%$ Averages less than 60%
70% TC	30% TC	60% TC	Market	Market	

EXAMPLE Income Averaging Minimum Set-Aside - Multi-Building

40-60 (ave)					
80% TC	40% TC	50% TC	70% TC	Market	TC MSA 7/10 units Exceeds 40% $\frac{[(1 \times 80) + (2 \times 70\%) + (1 \times 60\%) + (1 \times 50\%) + (1 \times 40\%) + (1 \times 30\%)]}{7} = 57\%$ Averages less than 60%
70% TC	30% TC	60% TC	Market	Market	

RIHousing reserves the right to disallow any clear unit skewing by unit size and requires applicants to provide reasonable parity between different bedroom sizes at each targeted income set-aside utilized in the project. Income Averaging will only be permitted by RIHousing in a project if 100% of residential units are designated LIHTC and the project does not contain any market-rate units. LIHTC for this purpose is defined as units affordable to persons earning 80% MTSP or less.

Owners of multi-building projects must elect on the Forms 8609s to treat all the buildings as part of a multiple building project (checking "Yes" on line 8(b) of the current form). RIHousing reserves the right to deny the implementation of Income Averaging at its discretion, solely based upon previous compliance related performance of the owner/agent.

Properties that elect the Income Averaging set-aside are subject to additional education requirements for property management staff and additional third-party reporting requirements to RIHousing.

Any owner seeking to implement Income Averaging must also be able to demonstrate that:

1. The proposed rents are achievable based on a RIHousing-commissioned appraisal and owners are strongly encouraged to underwrite at rents that are less than the maximum 80% rents.
2. The limited partner has approved the proposed income averaging, and this is reflected in their *Letter of Intent* and Limited Partnership Agreement.
3. The owner incorporates income averaging into their Tenant Selection Plan and other related management documents.
4. The selected property manager has demonstrated the ability to effectively manage properties subject to federal housing compliance regulations. The property manager must disclose any noncorrected 8823 findings currently outstanding on properties in their portfolio as well as all open Management and Occupancy Reviews for applicable HUD projects with an unsatisfactory or failing compliance score.
5. Prior to closing, owners must provide a matrix showing the designated set-aside percentage(s) by unit size. Owners are encouraged to let the units float to ensure overall continuing compliance.

Income averaging: Calculation methodology of set-asides. It is believed that HUD will eventually publish the various set-asides allowed in the amended law. Per federally published guidance, 50% tax credit limits equal the HUD very-low limit, 40% tax credit limits equal 80% of the HUD very-low limits and 60% tax credit limits equal 120% of the HUD very-low limit. Extrapolating from this standard, the federal set-asides based on the HUD very-low 50% limits can be determined. *See the chart and example of calculation in Chapter 3.*

Income Averaging and Noncompliance. When units are lost to noncompliance at set-asides of 20% through 50%, additional units may have to be removed from the applicable fraction and Minimum Set Aside to restore the average. Re-designation of set-asides is one possible solution to address noncompliance, if existing households are income and rent appropriate for another set-aside than originally designated. Vacant units may also be re-designated once rented to another household at another set-aside (note: a vacant unit retains the status of the last household that resided in it, so re-designation can only occur at the next move-in).

Income Averaging and Bond Properties. Congress modified the LIHTC Minimum Set Aside to allow for Income Averaging, but it did not make any change in IRC Section 142, which covers tax exempt bonds. However, Income Averaging may still be used in bond-financed LIHTC developments as long as the development satisfies both the Income Averaging minimum set-aside election and one of the minimum set-aside elections applicable to tax-exempt bond financing (20-50 or 40-60). Thus, units with income limit designations above 60% or 50%, as applicable, do not count for purposes of bond compliance.

EXAMPLE Bond and Income Averaged Minimum Set-Aside

Bond 40-60 TC: 40-60 (ave)				
80% TC	40% TC	60% TC	70% TC	Market
	Bond	Bond		
80% TC	30% TC	60% TC	Market	Market
	Bond	Bond		

Bond MSA
4/10 units = 40%

40-60 (ave) MSA
14/20 units - 70%

Exceeds 40%
 $[(4 \times 80) + (2 \times 70\%) + (4 \times 60\%) + (2 \times 40\%) + (2 \times 30\%)] / 14 = 60\%$
Averages 60%

40-50 Set-Aside

Before a law change in 2008, HOME and NAHASDA (a Native American HUD housing program) funding resulted in 4% credit percentage when combined with the LIHTC. However, there was a special set-aside created that allowed some of these projects to claim 9% tax credits. The set-aside required that 40% of the units in **every building** be rented to households at or below the 50% limit. *NOTE:* Rents are not required to be based on 50% limits and can be charged based on the minimum set-aside limit (see the project's LURA for further clarification).

- 6 Check the boxes that describe the allocation for the building (check those that apply):
- a Newly constructed and federally subsidized
 - b Newly constructed and **not** federally subsidized
 - c Existing building
 - d Sec. 42(e) rehabilitation expenditures federally subsidized
 - e Sec. 42(e) rehabilitation expenditures **not** federally subsidized
 - f Not federally subsidized by reason of 40-50 rule under sec. 42(i)(2)(E)
 - g Allocation subject to nonprofit set-aside under sec. 42(h)(5)

This rule applies if a building's Form 8609, line 6(f) indicates that the building is subject to the "40-50 rule."

The adjusted law in July of 2008 eliminated the need for this rule for buildings placed in service from then on. Only tax-exempt bond funding and acquisition credits now limit credits to 4%. However, older HOME and NAHASDA properties that are 9% because of this exception will still need to maintain the 40-50 mix.

It is important to note that this is an LIHTC, not HOME, rule. Because HOME rules also require 50% *low-HOME* units, managers have at times allowed the number of 50% units to decrease below 40% in some buildings when they moved the 50% designated unit to another building. HOME units usually float, and HOME often requires fewer very-low units than 40% per building. If the 40-50 rule is violated, over half of the credits may be disallowed by adjusting the 9% to 4% credits. Also, the IRS indicates that there may be no way to correct such noncompliance. This makes it crucial for owner/agents of 40-50 properties to understand this election.

Owner set-asides

Owners may elect to have set-asides that are lower than the amount allowed by the minimum set-aside. This could be for LIHTC or for other program reasons. For instance, an owner of a 40-60 project could have agreed to have 50% units for favorable consideration during the LIHTC application process or because they have brought HOME Funds or section 8 into the development mix of the property. Noncompliance with set-asides elected for LIHTC reasons will be monitored by RIHousing and noncompliance could result in adverse consequences other than loss of tax credits for an owner. Other program set-asides are monitored separately, and consequences vary by program. Important note: properties that had LURAs registered prior to March of 2018 do not have the Income Averaging option. Set asides for more recent Income Averaging properties where the set aside designations are part of the minimum set-aside are a matter of federal concern and may affect tax credits compliance.

Lease Requirements

Non-Transience. LIHTC housing is not intended to be “transitory” (temporary). To prevent this, tax credit properties are required to have an initial lease of at least six months for each new household. This is a minimum, so the initial term can be more than six months. After the initial term, owner/agents are free to apply any term they like provided no lease provision violates LIHTC requirements or Fair Housing law. Other programs, such as project-based Section 8 or HOME, often dictate that a specific lease must be used. These leases do not conflict with LIHTC requirements and can be used if the initial term is at least six months. Additionally, RIHousing requires the use of its LIHTC LEASE ADDENDUM for all LIHTC properties, except those that are subject to a HUD Model Leases. For non-HUD properties, the Addendum is required regardless of the lease form used. The LIHTC LEASE ADDENDUM is not a stand-alone document and must be executed whenever a new lease is executed.

Single Room Occupancy (SRO) units and projects developed for transitional housing have been allowed exceptions to the six-month lease term rule. The minimum initial lease term for these special cases is at least one month. For SRO or transitional housing project, the LURA or RIHousing may be consulted to ensure that the project meets one of the exceptions to apply the shorter initial lease term.

LIHTC Lease Termination

LIHTC rules prohibit “the eviction or the termination of tenancy (other than for good cause)” of LIHTC residents during the entire period of compliance, including the Extended Use Period and three years after. Eviction or termination of tenancy mid-lease without good cause is clearly prohibited.

What if a lease is up for renewal? Is not renewing a lease that has expired “eviction” or “termination of tenancy”? The IRS has clarified that “neither the owner nor the tenant is obligated to renew a lease once it expires” and that nonrenewal of leases does not necessarily equate to “termination of tenancy.” [8823 Guide 26-4] If an owner intends to non-renew a lease, they will have to ensure that doing so is acceptable as “good cause” under RI State Law.

WARNING! Avoiding Noncompliance Employee Units



Helpful reminders to assist in avoiding mistakes that can result in the loss of tax credits

Ensure that employee units are only occupied by full-time employees of that particular property! Regional managers and site or maintenance managers who manage multiple properties may not be eligible for employee units. Please consult with your RIHousing Compliance Specialist to discuss this provision.

Do not use LIHTC units for non-residential use! A vacant LIHTC unit that is converted to an office, storage area for maintenance supplies or other facility is not the same as creating a “common area” employee unit. Rather, it is an unused “residential unit” to be included in the numerator of the applicable fraction. Before such a conversion is considered, RIHousing should be consulted.

Leases

Double-check lease dates! It is crucial that dates be entered correctly to avoid lease noncompliance. Owner/agents should have systems in place to review leases before they are executed.

Chapter 8 | LIFE OF A TAX CREDIT PROPERTY

Development Deadlines

Reservation and Allocation

Upon approval for an allocation of tax credits, RHousing issues a reservation of credits; this holds a portion of the credits allocated to the state in reserve for the owner in anticipation of successful construction and occupancy of the project. If a building can be placed in service the year of the allocation, an IRS Form 8609 is issued by the state and becomes the official allocation document. In most cases however, the allocation of credits is extended to a later year via a **carryover allocation**. Carryover documents must be executed no later than December 31 of the year in which the credits will be allocated. RHousing will inform developers of the specific deadline each year. Forms used are state-specific, but include provisions required by federal tax code. The 9% rehabilitation credit is set at 9%. If receiving allocated acquisition credits, the owner must decide whether to “lock-in” the applicable credit percentage (which is published each month by the IRS) with a written agreement on or before a *Carryover Allocation Agreement* is signed. If the rate is not locked-in, then the credit percentage rate will float until the placed-in-service date of the project. Similarly, a gross rent floor based on the income limits in effect at the time will apply to a property based on the placed in-service date, unless the owner elects the allocation date. As income limits hold harmless, there is no benefit to selecting a gross rent floor based on the placed in-service date and the allocation date should be elected (see Chapter 3 for more on the Gross Rent Floor).

To continue to qualify for the carryover, 10% of the Reasonably Expected Basis (REB) must be incurred within one year of the date that allocation documents are issued. REB is the value of the land and depreciable buildings in a project expected at the time the building is placed in service. RHousing has form “10% Test” documentation. Finally, the building must be placed in service by December 31 of the second year after carryover.

Placing In-Service and Lease-up

When a building is *ready for its intended purpose*, the IRS considers it to be placed in-service, and leasing can begin. For **new construction** this generally happens when a *Certificate of Occupancy* is issued that allows an owner to legally rent at least one unit in a building. In many cases, tax credits can be claimed for units occupied by LIHTC-qualified households starting the first full month after the building is placed in-service. For credits based on the **acquisition** of a building that is already occupied, the placed in-service date is the date that the building is purchased per IRC §179.

Rehabilitation credits are placed in-service when enough money is spent to meet Tax Code required minimums and to achieve the eligible basis on which the credits will be claimed (see Chapter 11 for further details an acquisition/rehab credits).

Because of several crucial timing factors, construction schedules can help or hurt planned credit delivery. These must be monitored closely.

Upon placing a building in-service, key events should be in-process. These include a cost certification, registering a LURA and leasing up.

EXAMPLE Allocation/Construction Timeline



Cost Certification. The owner must submit a report on the actual project costs audited by a Certified Public Accountant for approval by RIHousing before the tax credits are allocated. This cost certification details the costs associated with the building components included in the property’s eligible basis. After approval of the cost certification, RIHousing will issue IRS Form 8609 for each building to the owner, with Part 1 of the form completed and signed by RIHousing.

LURA. A *Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits* (LURA), is recorded in the local land records for the property by the time it is placed-in-service. Property management should be familiar with this document because it establishes the occupancy and affordability requirements for the project as well as other obligations that go beyond the LIHTC regulations (see Extended Use Period, below).

Lease-up. The lease-up period starts once buildings place in-service. For new construction projects, the lease-up generally follows a period during which the owner/agent has marketed the units and accepted household applications.

For acquisition and rehabilitation projects the lease-up period starts at:

- 1) acquisition, when it is determined if in-place households qualify or
- 2) when new applicants are determined to be LIHTC eligible and are approved for move-in.

The management agent is responsible to ensure that the exact number of committed LIHTC units are delivered so that the owner can claim the credits. Failure to do so may result in the recapture or disallowance of credits which will likely have financial consequences for the owner. – Chapter 11 discussed acquisition/rehabilitations in greater detail.

During the lease-up period RIHousing requires that the *Initial Qualifying Tenant Report* (IQT) be completed. The IQT summarizes critical information on the unit, household and occupancy to be used in the lease-up stage of the credit period (see Chapter 7 for further details on the IQT Report).

Credit Deferral and Income Testing. Once a building is placed in-service, the owner may choose to begin claiming tax credits that year, or they may choose to claim credits the next year. Claiming the year after the year placed in-service is called *deferring* credits. The decision to defer credits is often made when a building is not LIHTC-occupied to the level needed to support the planned tax credits by the end of the placed-in-service year.

To defer or not to defer? The choice to defer often comes down to whether tax credit qualification goals are met.

EXAMPLE Decision...defer!

Projected tax credits for a building are based on qualifying all 100 of its same-size units as tax credit. It is placed in service on 10/31/2018. By 12/31/2018, 41 of the 100 units have been qualified.

The owner chooses not to claim credits in 2018 with 41% qualification. Instead she defers to 2019 to allow time to achieve higher tax credit occupancy by the end of 2019, which is the deadline to start claiming credits.

EXAMPLE Decision... don't defer!

An 83-unit building has a target tax credit based on 100% qualified occupancy. The building is placed in service on 02/08/2018. By 12/31/2018, all 83 units are qualified.

As the goal that would support the desired tax credits has been met by the end of the year that the building was placed in service, the owner had no need to defer credits to 2019.

When credits are deferred, there are often households that were LIHTC-qualified the year the building was placed in service that are still in-place at the start of the next year. These are still LIHTC households even though they were qualified before the start of the credit period. If the project is not 100% LIHTC and these households moved in more than 120 days prior to the start of the credit period, then a test must be done to determine if the Next Available Unit Rule (NAUR) is triggered. See Chapter 6 for further details on the NAUR).

The “test” consists of confirming with the household that sources and amounts of income included on the original *Tenant Income Certification* (TIC) form is still current. If changes are reported by the household, a new TIC must be generated based on documentation that the household supplies, such as paystubs. It is not necessary to collect third-party verifications and only income sources reported as changed need to be checked.

If the household is over 140% of the current income limits, the NAUR is triggered. As with all households that were qualified at move-in but have had future increases in income, their housing is not in jeopardy. The income test does not establish a new annual recertification date. Future recertifications will continue to be based on the initial qualification date for the household. Owner/agents of projects that are 100% LIHTC always intend to rent the next available unit to LIHTC households and so income testing is not required for these projects.

EXAMPLE When income testing is required

A project that is not 100% LIHTC includes a building with a placed in-service date of 06/30/2018. Credits were deferred to start in 2019. Among the units in the building, Unit 10 was occupied by a qualified household starting on 07/15/2018 and Unit 15 housed an LIHTC household starting 10/18/2018. Which of these is subject to income testing? When will they be fully income-recertified?

Unit 10 must be tested, because they moved in more than 120 days prior to the start of the credit period. Both will be fully recertified by the anniversary of their move-in to the project.

The Three Periods of Compliance

Once the lease-up of a building is complete and credits are claimed, three LIHTC time periods begin and run concurrently. These three periods are called the:

1. **Credit Period**
2. **Compliance Period**
3. **Extended Use Period**

Note that for multiple-building LIHTC projects, each building will have its own unique periods, and these may be different than other buildings in the same project.

Credit Period – through year 10

The LIHTC provides a fifteen-year tax credit that is usually “accelerated” or claimed over ten years. The Credit Period is the period over which these credits are claimed by the owner. It starts the first taxable year that credits are claimed and continues nine additional years, for a total of ten years.

Compliance Period – through year 15

The Compliance Period continues an additional five years after the end of the Credit Period. Therefore, it also starts with the first year of the Credit Period, but it continues fourteen additional years, for the total fifteen years. During this time, the IRS monitors the property via its compliance monitoring agencies (RIHousing). The law requires compliance with federal LIHTC provisions for the full fifteen years. During this time, the tax credits, even if previously claimed, are in jeopardy (see Chapter 10 for more information on compliance monitoring and noncompliance).

Extended Use Period – through year 30 (minimum)

For properties allocated credits after 1989, the owner must agree to at least an additional fifteen-years of compliance. The total thirty – or more – years thus committed comprise the Extended Use Period. As with the other periods, the Extended Use Period begins with the first year that credits are claimed. It then continues at least twenty-nine additional years. The IRS does not monitor LIHTC projects that are in the Extended Use Period. RIHousing will continue to monitor the property in accordance with the LURA and will impose penalties as necessary.

EXAMPLE Determining the End of LIHTC Periods

The first year of the credit period for a building is 2018. The project has an extended use period of the minimum-required 30 years. When is the end of the Credit, Compliance and Extended Use Period?

The last year of the Credit Period is 2027

$$2018 + 9 \text{ years} = 10 \text{ years}$$

The last year of the Compliance Period is 2032

$$2018 + 14 \text{ years} = 15 \text{ years}$$

The last year of the Extended Use Period is 2047

$$2018 + 29 \text{ years} = 30 \text{ years}$$

CREDIT PERIOD						
COMPLIANCE PERIOD						
EXTENDED USE PERIOD						
2018	2023	2028	2033	2038	2043	2048

HELPFUL HINT

To determine when a building's credit, compliance and extended use periods began.

Compare the building's form 8609

Line 5: Placed in service date &

Line 10(a): Deferral election

If 10(a) is:

No – Credits started placed in-service year.

Yes – Credits started year *after* placed in-service year.

Note: For acquisition/rehabs, use the 8609 for the rehab costs to make this determination for when both acquisition and rehab credit periods began.

WARNING!

Avoiding Noncompliance Lease-up Issues



Helpful reminders to assist in avoiding mistakes that can result in the loss of tax credits

Watch lease-ups closely! Noncompliance and decisions that are made can have a greater impact on the tax credits if these happen in the early days of a project.

EXAMPLE First Year-Errors

A project consists of two buildings. One building contains 15 units and the other has 4. The applicable fraction used on the cost certification for each building was 100%. The LURA also states that 100% of the units will be LIHTC. During lease-up, a unit in the 4-unit building was used as an office. Rather than rent the unit toward the end of lease-up, the owner continued to use the unit as an office. It is not being used to house an employee and so does not qualify as a “common area” unit. Similarly, a unit was exclusively reserved as a model unit after lease-up was done. The owner claimed tax credits on all units in both buildings.

Two years later, two households in the 15-unit building were found to have been over-income when they moved-in during lease-up.

As the applicable fraction is the lesser of the floor space fraction or unit fraction, the correct applicable fraction (in the box) is calculated, as below.

The owner cannot claim credits based on 100% LIHTC occupancy. This represents a loss of 13.33% of the credits claimed for each year in BIN 1 and 50% of the credits per year in BIN 2. An additional penalty, called recapture, will also apply. Future credits will not be allowable until the nonqualified households move out and are replaced with LIHTC households. Finally, there will be substantial penalties on the tax credits for the future LIHTC-qualified households.

Building 1			
LIHTC Units	13	LIHTC Sq.Ft.	9,352
Total Units	15	Total Sq.Ft.	10,701
Unit %:	86.67	Sq. Ft. %:	87.39

Building 2			
LIHTC Units	2	Total Sq.Ft.	1,208
Total Units	4	LIHTC Sq.Ft.	2,304
Unit %	50	Sq. Ft. %	52.43

Chapter 9 | OWNER RECORD KEEPING

Annual Owner's Certification

Federal LIHTC regulations state that the owner of an LIHTC development is required to certify to RIHousing that the development met the requirements of Section 42 for the preceding 12 months. Any provisions that have not been met must be disclosed and explained. Treasury regulations list twelve specific requirements that must be addressed in the *Certification*. State agencies have the right to add additional items, as appropriate. RIHousing requires owners to report on the form *Owners Certification of Continuing Program Compliance*. On this *Certification form*, the owner certifies, under the penalty of perjury, that the information provided is true, accurate, and that the property is compliant with the requirements of the LIHTC program. The *Certification* must be submitted as directed by RIHousing's annual notice. RIHousing also requires evidence that management staff has completed annual LIHTC program training. This evidence must *be* submitted with the *Owners Certification* each year (see Chapter 10 for RIHousing's training policy.)



Ongoing Reporting

RIHousing will monitor occupancy and move-in move-out activity using an online reporting system.

Owners are required to submit vacant unit, turnover information and waitlist numbers in the prescribed format at the end of each quarter. Monthly and quarterly reporting to RIHousing may include:

- Move in and move out activity
- Number of vacancies and turnover time
- Financial and asset management reports
- Units designated as HOME

Occupancy Reporting and Tenant Data Collection

Owners must also report additional information utilizing RIHousing's online reporting system. This reports household-level data.

RIHousing regularly reviews LIHTC household occupancy and demographic data. RIHousing must, by law, collect this data and transmit it to HUD annually in accordance with federal requirements. Tenant data is

gathered by the owner/agent from each household on the *Tenant Income Certification* form and transmitted to RIHousing electronically.

The owner is considered noncompliant if the *Certification* and/or online reporting is inaccurate, incomplete, or if the owner discloses program noncompliance.

Record Keeping and Record Retention

The owner is responsible to keep records for each qualified low-income building in the project that show for each year in the compliance period and the Extended Use Period, the number of residential rental units, the rent charged on each residential rental unit, the utility allowance charged (if applicable), the annual income certification of each low-income tenant and the documentation to support each of these items.

Owners must maintain records necessary for RIHousing to conduct compliance monitoring and for the IRS to conduct any audits. Records for the first year of the Credit Period must be retained for six years after the deadline for filing the tax return for the last year of the Compliance Period. Records for all other years in the fifteen-year Compliance Period must be kept for a minimum of six years following the deadline for filing that year's tax returns for the property.

The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the buildings that are low income units.
3. The rent charged for each residential rental unit in the building, supporting documentation, and the applicable utility allowance.
4. The number of occupants in each LIHTC unit.
5. Unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, resident name, move-in dates and move-out dates for all residents, including market residents).
6. The annual income certification of each eligible resident (as applicable).
7. Documentation to support each eligible resident's income certification.
8. The eligible basis and qualified basis of the building at the end of the first year of the Credit Period.
9. The character and use of the nonresidential portion of any building included in the building's eligible basis that are resident facilities available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities (or facilities otherwise reasonably required by the development).

EXAMPLE First Year Record Retention

A project was placed in service in 2019 and credits are deferred and first claimed in 2020. This makes 2034 the final year of the Compliance Period. Until when must the first-year files and other records be kept?

April of 2041.

This is six years after the April 2035 deadline for filing the 2034 taxes.

WARNING!
Avoiding
Noncompliance
Annual Reporting



Helpful reminders to assist in avoiding mistakes that can result in the loss of tax credits

Submit annual reporting in a timely fashion! Not submitting the annual *Owners Certification* on the schedule determined by RIHousing is reportable noncompliance to the IRS.

Chapter 10 | COMPLIANCE MONITORING

Annual Inspections – File and Physical

Annual Review. IRS regulations require that, at least once every 3 years, state agencies conduct on-site inspections of all buildings in the project; inspecting at least a sample size in accordance with IRS guidance, of the project’s low-income units and review the certifications and supporting documentation along with the rent records for all the tenants living in the units. Properties directly financed by RIHousing and/or monitored under other federal or state programs administered by RIHousing (such as HOME or Section 8) will be reviewed annually. Additionally, LIHTC projects whose operations do not meet RIHousing’s financial and operating management standards may be subject to more frequent examinations.

Initial Review. IRS regulations require that state agencies conduct on-site inspections of all buildings in the project; inspect a percentage of the project’s low-income units and review the certifications and supporting documentation along with the rent records for all the tenants living in the units by the end of the second calendar year following the year the last building in a project is placed in service. RIHousing will conduct an initial on-site review to evaluate owner compliance with LIHTC requirements. The initial first review takes place within two years of the last building’s placed in service date.

EXAMPLE First inspections

A two-building project had BIN # 1 placed in-service on October 1, 2019 and BIN # 2 placed in service March 30, 2020. When is the latest RIHousing will inspect the project?

December 31, 2022: That is no more than two years after the year the last BIN is placed in-service.

RIHousing will give the owner/agent 15 days’ notice before an on-site visit. While on-site or via desk audit, RIHousing also will review other property management documents such as rent rolls, marketing materials and other information to assess compliance with LIHTC requirements. Owners/agents must provide RIHousing compliance staff with access to all documents regarding continuing compliance and other relevant materials. RIHousing will evaluate the state of continuing compliance and report the results to the owner/agent upon conclusion of the LIHTC review.

File inspection

RIHousing will review tenant files for compliance with the LIHTC student rule and income and rent limit rules. Each household must be at or below the applicable income limits and be charged appropriate rents. Full time student households are not eligible unless an exemption is met. Proper procedures and forms must be implemented. See Chapters 4 and 5 for further details on tenant file requirements.

Physical Inspection

All buildings and a sample percentage of units are inspected during site visits in accordance with guidance from the IRS. RIHousing will inspect any vacant units that are reported as rent-ready or that have been vacant for 30 days or more. Physical Inspections are conducted using HUDs Uniform Physical Conditions Standards (UPCS) protocol. The UPCS is the standard also followed for HUD REAC (Real Estate Assessment

Center) inspections. However, LIHTC inspections do not use the over-all scoring for a project that is part of REAC.

HUD has published a *Dictionary of Deficiency Definitions* that explains which specific UPCS deficiencies are noncompliant. The *UPCS Dictionary* then defines specific severity codes for physical problems on a scale from 1 to 3, in ascending order of seriousness. *The Dictionary* also defines special issues that are *Health and Safety* concerns.

HELPFUL HINT

The *UPCS Dictionary* can be found by going to the website www.hud.gov and searching by keywords “UPCS Dictionary.”

UPCS is a complex protocol. The following is a quick overview of UPCS, however there are many additional details provided in HUD guidance.

SITE

Site components must be free of health and safety hazards and be in good repair.

- Fencing and gates
- Grounds
- Mailboxes
- Project signs
- Market appeal
- Parking lots/driveways/roads
- Play areas and equipment
- Refuse disposal
- Retaining walls
- Storm drainage
- Walkways/steps

~~WARNING~~ Possible site concerns!

- Abandoned vehicles
- Dangerous walkways or steps
- Poor drainage
- Septic tank back-ups
- Sewer hazards
- Excess accumulated garbage/debris
- Vermin or rodent infestation
- Fire hazards

BUILDING EXTERIOR

Each building on the site must be structurally sound, secure, habitable and in good repair

- Doors
- FHEO & Uniform Federal Accessibility Standards (UFAS)
- Fire escapes
- Foundations
- Lighting
- Roofs
- Walls
- Windows

WARNING Possible building exterior concerns!

- Damaged soffits/fascia
- Missing/damaged downspouts/gutters
- Splashblocks missing
- Walls stained/peeling/need paint
- Wall cracks, gaps, damaged or missing pieces
- Back up lighting fails when tested
- Bushes/trees touching buildings

BUILDING SYSTEMS

Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC and sanitary system must be free of health and safety hazards, functionally adequate, operable and in good repair.

- Domestic water
- Electrical systems
- Elevators
- Emergency power
- Fire protection
- HVAC
- Roof exhaust systems
- Sanitary systems

WARNING Possible building system concerns!

- Blocked access to the electrical panels by furniture or other items
- Open breaker/fuse ports
- Water heater pressure relief valve discharge tube does not extend to within 18 inches of the floor

COMMON AREAS

Common areas must be structurally sound, secure and functionally adequate for the purposes intended.

- Basements/garages/carports
- Closets/utility & mechanical rooms
- Community room
- Day care facilities
- Halls/corridors/stairs
- Kitchens
- Laundry rooms
- Lobbies
- Offices
- Other community spaces
- Patios/porches/balconies
- Pools and related structures
- Restrooms
- Storage facilities
- Trash collection areas

WARNING Possible common area concerns!

- Clothes dryers not properly vented in public laundry room
- Expired certification, missing, damaged or discharged fire extinguisher

UNITS

Each dwelling unit within a building must be structurally sound, habitable and in good repair. The dwelling unit must be free of health and safety hazards, functionally adequate, operable and in good repair

- Bathrooms
- Calls-for-aid
- Ceilings
- Doors
- Electrical systems
- Floors
- Hot water heaters
- HVAC systems
- Kitchens
- Laundry areas
- Lighting
- Outlets/switches
- Patios/porches/balconies
- Smoke detectors
- Stairs
- Walls
- Windows

WARNING Possible unit concerns!

- Lack of hot and cold running water
- Lack of an adequate source of potable water
- Lack of at least one working smoke detector on each level of the unit
- Bathrooms that are not in proper operating condition, including being:
 - Usable in private
 - Adequate for personal hygiene

HEALTH AND SAFETY ITEMS

All inspectable areas must be free of health and safety hazards. Health & Safety (H&S) issues are any hazardous conditions that pose a threat to the health and safety of residents and others.

- Air quality
- Electrical hazards
- Elevators
- Emergency/fire exits
- Flammable materials
- Garbage and debris
- Hazards
- Infestation

WARNING Possible H&S concerns!

- Sharp edges
- Infestation by rats, mice or vermin
- Trip hazards
- Blocked egress
- Electrical, natural or fire hazards.
- Improper ventilation
- Noncompliance with requirements related to lead-based paint hazards or unavailable certifications thereof

Exigent Health & Safety (EHS) deficiencies pose risk of potential harm or death to residents or others, and are especially of concern. They must be corrected immediately.

- Mold observed or propane, natural, sewer or methane gas odor
- Inoperable smoke detectors
- Blocked egress

- Improperly stored flammable materials

Preparing for an LIHTC site UPCS inspection. An inspection will go more smoothly if the owner/agent prepares well. Conducting walk-throughs in advance of the inspection can help to identify issues that need to be addressed. It is important to give sufficient notice of the inspection to the tenants.

After the physical inspection. The inspector will notify the owner/manager of EHS deficiencies immediately upon conclusion of the physical inspection. EHS findings must be corrected within 24 hours of the inspection if life threatening and 48 hours if non-life threatening. Evidence of correction must be submitted within the timeframe allowed.

25 COMMON UPCS DEFICIENCIES

1. **Missing Electrical Panel Covers**
2. **Flammable Materials Improperly Stored**
3. **Hazards, Tripping**
4. **Damaged Sinks/showers**
5. **Doors Surface Damage**
6. **Doors, Damaged Frames**
7. **Doors Damaged Seals**
8. **GFCI does not test**
9. **Access Blocked to the Electrical Panel**
10. **Open Breaker/Fuse Ports**
11. **Water Heater Pressure Relief Valve Tube Doesn't Discharge Near the Floor**
12. **Leaking Plumbing**
13. **Refrigerator Door Gasket Seals Damaged**
14. **Clothes Dryers Not Properly Vented**
15. **Outlet and Switch Plate Covers Missing, Cracked or Broken**
16. **Smoke Detectors Missing or Will Not Test**
17. **Blocked Egress**
18. **Fences: Damaged/Falling/leaning**
19. **Fire Extinguisher Certification Expired**
20. **Roofs – Damaged Soffits/Fascia**
21. **Roofs – Missing Guttering/Downspouts**
22. **Walls Damaged or Paint Peeling**
23. **Auxiliary Lighting Does Not Test**
24. **Overgrown Vegetation Touches Building or Blocks Walkways.**
25. **Sanitary Sewer Covers Damaged**

Note: Generally, if an item is installed or present, it must function and have all parts as designed— For example, screen doors are not required by program rule; however, if installed, they must be complete, with full screens and if a closer is used it must function as designed. Similarly, pull cord call-for-aid systems are not required, but if present they must function, and the pull cords must extend to the cove base.

8823 Reporting

RIHousing has an obligation and is responsible for monitoring LIHTC projects for compliance with the requirements of Internal Revenue Code (IRC) §42. When noncompliance is identified, either in tenant files or during a UPCS or REAC physical inspection, or if a building is disposed of, RIHousing is required to notify the IRS using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

Typically within ten business days, RIHousing will provide the owner and management agent with a written report of all findings of noncompliance. The report may also identify administrative or technical issues, or recommend changes for improvement. For UPCS findings other than EHS, owners are given 30 days to provide evidence of corrected deficiencies, i.e. signed work orders. If additional time is needed to correct deficiencies, the owner must request the extension in writing and provide evidence as to why an extension is necessary, along with estimated repair commencement and completion dates.

The IRS limits the time that a state can give for any correction extensions before the state must report the matter to the IRS, so swiftly resolving findings is best. When the owner submits proof of correction or when deadlines to report set by the IRS expire, RIHousing will submit an 8823 for each noncompliant building to the IRS to update the Service on the noncompliance found. At a minimum, 8823s are issued for all EHS issues.

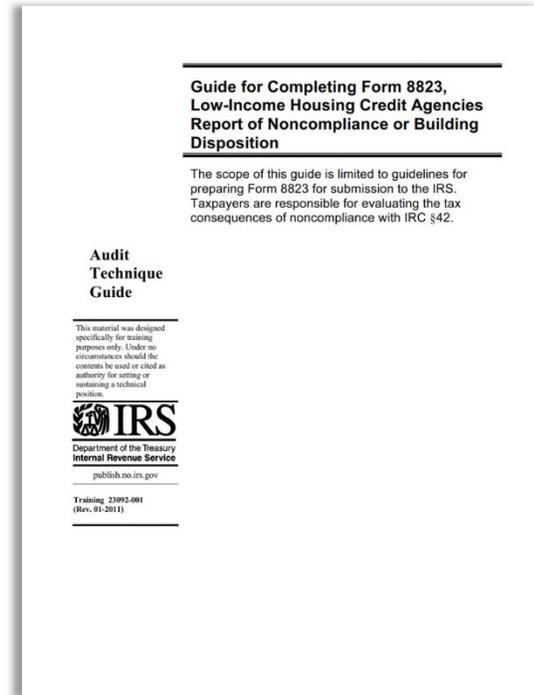
Based on the information provided by the owner, RIHousing will determine whether the owner was always in compliance, has corrected the noncompliance, or remains out of compliance. Within 45 days of the owner’s response, RIHousing will file Form 8823 with the IRS reporting any noncompliance and whether it was corrected. RIHousing will also send a copy of the 8823 to the owner. Depending on the nature of the noncompliance (and whether it was corrected in the initial correction period), the IRS will determine if an audit is warranted.

If the owner discovers and corrects noncompliance before notice is given of an LIHTC review, **with the exception of UPCS violations, RIHousing will not report the noncompliance to the IRS and loss of credits is unlikely to occur.**

For 8823s that were filed showing uncorrected noncompliance, RIHousing will file a “corrected” Form 8823 with the IRS upon receipt of proof of correction from the owner. Corrected Form 8823’s are only allowable if the noncompliance is corrected within three years after the end of the original correction period.

Correcting Federal Noncompliance

To provide state agencies with guidelines for evaluating LIHTC compliance and reporting noncompliance to the IRS, the IRS has produced the *Guide for Completing Form 8823* (the 8823 Guide). RIHousing uses the 8823 Guide as a resource to help determine if federal noncompliance has occurred. Each chapter of the 8823 Guide addresses a different type of noncompliance, providing examples of what is – and is not – noncompliance and how noncompliance can be resolved. Below is a chart that provides a roadmap to the categories of noncompliance, where these are addressed in the 8823 Guide.



DEFINITIONS Results of noncompliance

Disallowance

When there is outstanding noncompliance on the last day of the taxable year, the unit(s) involved cannot support tax credits and are removed from the units counted toward both the applicable fraction for the building and the minimum set-aside for the project. This reduces the tax credits claimed and these credits are said to be *disallowed* in such cases.

Recapture

The 15-year housing tax credits can be claimed in 10 years. They are said to be *accelerated*. The effect is that every year the owner claims 1/3 more credits because of the accelerated credit claimed that would otherwise be claimed in years 11-15. These accelerated credits may be retained as long as compliance is maintained. In cases where there is non-compliance and the qualified basis decreases from one year to the next, there is a significant penalty on the decrease and all accelerated credits claimed on the decreased amount will have to be paid back or *recaptured*.

Examples of **NONCOMPLIANCE**

Description	8823 Guide Chapter
The household is above the minimum set-aside income limit upon move-in.	4
Late or not-completed annual recertification at properties That are not 100% LIHTC.	5
Violations of UPCS standards.	6
Failure to submit complete annual Owner's Certification of Continuing Program Compliance.	7
Changes in eligible basis (for instance charging inappropriate fees or removing amenities).	8
Failure to keep the number of units in compliance as required by the minimum set-aside.	10
Rents charged over the limit based on the minimum set-aside.	11
Project not available to the general public.	12 & 13
Violations of the Next Available Unit Rule.	14
Violations of the vacant unit rule.	15
Failure to execute the LURA by the time credits are claimed.	16
Units occupied by nonqualified student households.	17
Utility allowance was calculated incorrectly, and as a result, a household is above the federal rent limit.	18
Owner fails to respond to agency notifications of inspection.	19
LIHTC units used on a transient basis (initial leases less than 6 months).	20
Building no longer participating in the LIHTC program.	21

Due Diligence

Noncompliance discovered by the owner/agent or RIHousing should be corrected as promptly as possible to avoid potential recapture or disallowance of tax credits. Uncorrected noncompliance may affect the applicable fraction and minimum set-aside which are determined by the number of units in compliance as of the last day of a taxable year (most often December 31). Keep in mind two important matters with respect to the importance of timely correction of noncompliance:

- ***Noncompliance that is corrected by the last day of the taxable year in which it occurs will not result in the loss of credits.***
- ***With the exception of UPCS violations, if noncompliance is corrected prior to the notification of an audit, RIHousing will not report the noncompliance to the IRS and loss of credits is unlikely to occur.***

RIHousing has a responsibility and an obligation to monitor for compliance and to report noncompliance to the IRS. In most cases, RIHousing has a financial interest in the property and thus has a responsibility to protect its investment.

The Owner also has an obligation and a responsibility to protect the investment/property and can do so by demonstrating due diligence; this can be accomplished in many ways, including establishing strong internal controls, business practices and compliance systems. These tools will assist the owner in proactively preserving the property- both bricks and mortar and records/files.

Internal controls and compliance systems can include:

1. Separation of duties
2. Adequate supervision of employees
3. Management oversight and review (internal audits)
4. Third party verifications of tenant income
5. Independent audits and timely recordkeeping
6. Utilizing compliance software that effectively and efficiently manages and streamlines the asset management and compliance processes.

Casualty Loss

Unfortunately, disasters or accidents sometimes damage or destroy LIHTC units or properties. Such losses that are sudden, unexpected and not gradual or the result of owner negligence, are called casualty losses. A hurricane or a kitchen fire can result in a casualty loss. When these occur, it is the responsibility of the owner/agent to report the loss to RIHousing as soon as possible after an incident that results in a unit or building going off-line. Furthermore, the owner must submit a plan to RIHousing that sets a timeframe for restoration of the lost buildings or units.

Casualty loss that is not part of a presidentially declared disaster invokes no recapture if the loss is returned to a good condition within a *reasonable period*. This period is no more than 24 months after the end of **the year** that loss occurred. However, credits cannot be claimed while the unit(s) or building(s) are offline. For presidentially declared disasters, both recaptured and disallowance of credits are avoided if the loss is restored in a *reasonable period*. In the case of a declared disaster, the maximum reasonable period is 25 months **after the month** that a disaster is declared. For either type of casualty loss, RIHousing may impose a lesser reasonable period based on specific details as to the severity of loss.

For LIHTC projects, RIHousing must report the loss and restoration to the IRS. If the units have not been fully restored, RIHousing will submit a copy of the owner's plan and timeframe for replacement along with an uncorrected 8823 to the IRS. Once all units have been restored and are available for occupancy, RIHousing will issue a corrected Form 8823 to show the units are back in compliance.

If an owner fails to report a casualty loss to RIHousing promptly, RIHousing will report the incident as noncompliance to the IRS using Form 8823 as soon as compliance staff becomes aware that a loss event occurred.

Displaced Persons. For a period after a presidentially declared disaster, LIHTC properties across the nation may house persons displaced by the disaster *regardless of their income and without any income certification*. RIHousing will issue bulletins following specific disasters, along with directions and how long the temporary allowance to house disaster victims will last.

Annual Compliance Monitoring Fees

As allowed for by Treasury Regulation, the cost of monitoring for program compliance is generally offset by monitoring fees charged by the LIHTC state agency. RIHousing will charge annual per-unit fees specific to the type of property. These include different fees for: 1) traditional properties that are in their Compliance Period, 2) those still in the Extended Use Period, but that are post-year 15, and 3) properties that elect the Income Average Test. See recent RIHousing bulletin for the current fees.

Training Policy

It is the owner's responsibility to ensure that the on-site management knows, understands, and complies with all applicable federal and state rules, regulations, and policies governing the development. The Owner must certify that at least one member of the on-site management staff attends training for compliance in managing a tax credit project at least once annually. Proof of training (such as certificates of attendance) must be submitted to RIHousing by January 31 of each year.



LIHTC Training Certification for FY _____

Please complete and return this form to Rhode Island Housing no later than January 31, 2018, to the attention of your LIHTC Compliance Specialist.

Name: _____ Position/Title: _____

WARNING!

Avoiding Noncompliance Physical Repairs



Helpful reminders to assist in avoiding mistakes that can result in the loss of tax credits

Conduct repairs in a good and workmanlike manner! Inferior repairs are not acceptable. Materials used to address physical deficiencies must be suitable for the purpose and defect free.

EXAMPLES Acceptable Physical Repairs

Type of Deficiency	Acceptable Repair	INSUFFICIENT REPAIR
Cracks in Brick Wall	Tuck-pointed using mortar	Caulking
Drywall Repair	Sheetrock with mud and/or tape	Covering hole or damaged drywall with plywood or Laminate
Wooden Door Repair	Wood or wood veneer	Sheetrock mud or plywood
Downspouts	Same materials, shape and design	Plastic or PVC piping on metal

Timely Response

Respond timely to audit findings! Correcting issues during the correction period may significantly reduce the risk of IRS audit. If 8823s must be submitted to the IRS, it is best if they go in initially as “corrected.” This happens when issues are corrected in the correction period given by RIHousing in the findings letter after an LIHTC review.

PART 4 | ACQUISITION/REHABS & RESYNDICATION

Chapter 11 | SPECIAL RULES FOR ACQUISITION/REHAB

Rehabilitation costs can be a basis for claiming tax credits. Additionally, if an owner is planning on rehabilitating a property, they can also receive tax credits based on the cost of acquiring or purchasing the building or buildings. These combined credits are referred to as acquisition/rehab credits.

In some cases, the owner may elect to only take rehabilitation credits based on a variety of factors determined during the allocation process. Regardless, the property is generally still acquired or purchased by the ownership entity and the date of acquisition will still play a part in the compliance process.

Generally, the day-to-day compliance operation of acquisition/rehab and rehab only properties are the same as new construction; however, there are some significant differences. This chapter discusses the key differences between new construction and acquisition/rehab tax credits.

IMPORTANT NOTE

In this chapter we present some basic compliance provisions relating to acquisition/rehab projects. These projects can be complex and RIHousing recommends that competent consultation is sought to ensure that the requirements are applied most effectively.

Placed in Service Dates and Annual Certification Dates

A building is placed in-service when it is *ready for its intended purpose*. For new construction or existing buildings being used for housing for the first time, this is generally the date when the first unit in a building can legally be occupied. In most cases, this is evidenced by a certificate of occupancy (CO) or similar. However, with acquisition/rehab projects, these rules are less obvious.

Acquisition

For buildings that are **acquired with households living in-place**, the building is ready for its intended purpose upon acquisition. Therefore, the date of acquisition by purchase (as defined by section 179 (d)(2) depreciation rules) becomes the placed in-service date for the tax credits.

For buildings in which there are no occupied residential units **at time of acquisition**, the placed-in-service date is determined once the units are ready for occupancy as evidenced by a CO, similar to new construction.

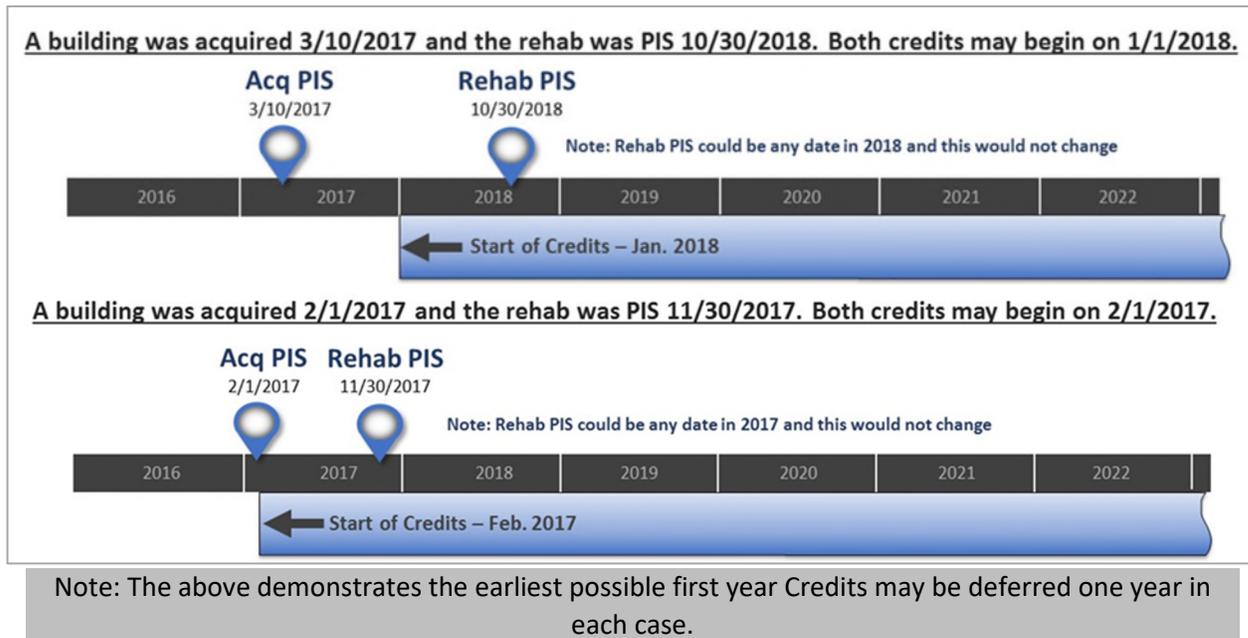
Rehab

The **rehabilitation** placed in-service date does not directly relate to occupancy. Rather it is an expenditure test to determine what *year* credits can be claimed and when the eligible basis that can support the planned credits is met. Technically speaking, rehab credits can be placed in-service at the close of any 2-year period, over which the rehab expenditures are made. The greater of 20% of the adjusted basis of the project or a minimum set by the IRS must be spent. RIHousing may require a higher minimum.

Start of Acq/Rehab Credit Periods

Tax credits for both the rehab and acquisition can be claimed as early as the later of the acquisition date or the start of the year a building rehabilitation is placed in-service. If not claimed that year, credits may be deferred one year.

EXAMPLES Starts of Acq/Rehab Credits



Existing Households

120-day Certification Rule

As with new construction, new residents that move in after the acquisition of an existing property have effective dates based on move-in date and all paperwork must precede that date. However, there may be existing residents as of the date of acquisition. Acquisition and rehab credits are BOTH satisfied with one set of certification paperwork. This means that once a certification is completed for acquisition, another one does not need to be done separately for the rehab.

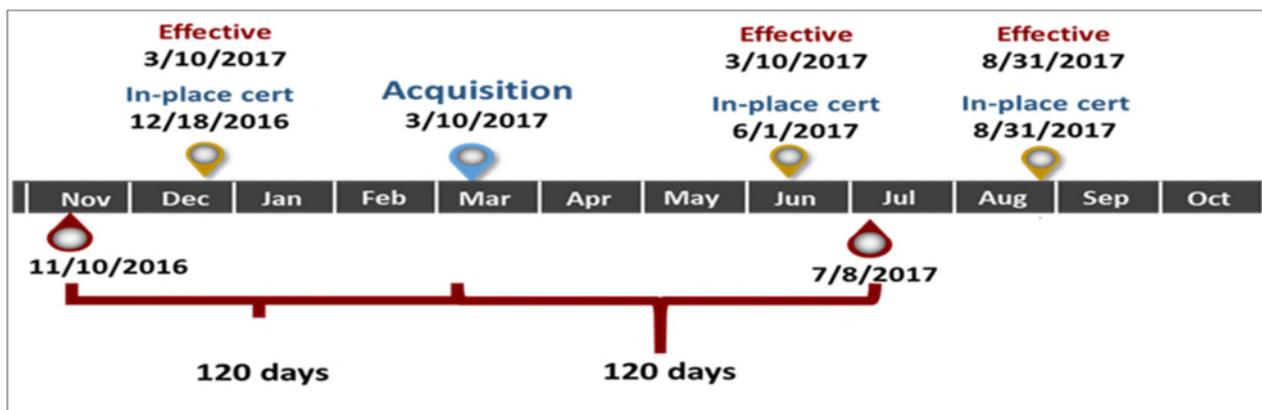
The effective dates for these tenants can be retroactive to the acquisition date, even if the paperwork takes up to 120 days to complete. Income certifications for households who are in-place on the date of acquisition that are completed no more than 120 days **before or after** the date of acquisition may have an effective date as of the acquisition date. Certifications completed after the 120 days are effective the date the last adult signs the certification.

In many cases, credits will be claimed going back to acquisition. This can be true for units with households that were in-place at acquisition and that are certified within the 120-day deadline. Even if credits are not going to be claimed the year of acquisition, completing the certifications at acquisition still accomplishes some very important things. First, households that are qualified at acquisition are then protected against disqualification if their income increases in the future. Once a household is certified after acquisition, they

are considered a qualified LIHTC household and will not have to move out if their income increases in the future. If an owner/agent waits until later to certify the household, their income may have increased over the limits and they will not be considered a qualified household. Additionally, in a 100% LIHTC development, if an in-place household does not qualify at acquisition, the unit is not eligible for credits until it is occupied by a qualified household.

Effective Dates for Tenants In-place at Acquisition date	
If certified:	The effective date is:
120 before or after acquisition	The date of acquisition
After 120 days	The date the TIC is signed

EXAMPLE 120-day Acquisition Grace Period



Note: Regardless of effective dates allowed, every cert must have paperwork that is no more than 120-days old **on the date it is signed**.

Safe Harbor Income Testing

Acquisition credits are deferred when the rehab is not placed in service the year of acquisition. both acquisition and rehab credits will begin at the start of the year that the rehab is PIS. Any tenant qualified up through January 31st of that year starts credits for their unit for that entire year.

When credits are deferred, units qualified before the start of the credit period with households who are still in-place at the start of the credit period will not need to be re-qualified. If they have been in the property more than 120 days before the start of the first year, however, an “income test” may need to be run on the household at the start of the first credit year. The income test is self-certification by the household as to whether their income has changed since they were initially qualified. The household will provide supporting documentation to allow for new calculations if their income has changed. The household's eligibility to stay is not in question, but the Next Available Unit Rule (NAUR) will be applied to any units that are over the 140% limit at the time of the start of the credit period. Because of how the NAUR works, this only applies to projects that are less than 100% tax credit.

Transfers

Because of complex construction schedules, household transfers are often necessary during rehabilitation. The unit transfer rules found in Chapter 6 apply to acquisition/rehab as well as new construction projects. At times an owner may elect to identify a combination of buildings as “projects” within a rehabbed development. Each building may be designated as its own project, or some buildings may be combined into projects. It very important to know the 8609 8(b) multi-building election for a project, along with what buildings are included in the project(s), to determine whether transfers between specific buildings in a development will require recertification or not.

Resyndication

When an owner of a tax credit property finishes the 15-year compliance period, they may consider rehabilitating the property and applying for new tax credits based on projected acquisition/rehab costs. Since general partner/investor relationships are established through *syndicators*, this process is often referred to as “resyndication.” The IRS generally calls resyndication a “subsequent allocation of credits.”

After the end of the compliance period, there is still an agreement in place to continue affordable housing restrictions for at least an additional 15 years beyond the end of the compliance period. This results in a total of at least a 30-year extended use agreement. For a subsequent allocation of credits, the new credits will also have a new extended use agreement for at least 30 years, and it will start with the new credits. In other words, the extended use periods will likely overlap by several years.

EXAMPLE Extended Use Period Overlap



Grandfathering of Residents

According to the IRS’ 8823 Guide, “households determined to be income-qualified under IRC §42 during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for **any subsequent allocation** of IRC §42 credit.”

The 8823 Guide goes on to illustrate:

“An owner received IRC §42 credits to construct new low-income housing. The owner placed the buildings in-service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005. In 2007, the owner applied for and received an allocation of credit to rehabilitate the existing low-income buildings. The rehabilitation is completed, and the owner starts claiming the credit in 2009.

“On February 1, 2004, John and Mary are determined to be income qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2008. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.

“The unit is a low-income unit on January 1, 2009, when the owner (a calendar year taxpayer) begins claiming the credit. If the unit was determined to be an over-income unit under IRC §42(g)(2)(D) at the time of the household’s last income recertification in January of 2008, then the owner is subject to the Next Available Unit Rule.

“NOTE: Similarly, vacant units previously occupied by income-qualified households continue to qualify as low-income units if the units are suitable for occupancy. However, the owner is subject to the Vacant Unit Rule.”

In other words, people who income qualify for tax credits for the first set of credits and are in-place at the start of the second set of credits automatically continue as LIHTC-qualified for the second set, regardless of income at the time of the start of new credits. Sometimes this is referred to as “grandfathering” those residents into the new credits.

The IRS does not specify what paperwork is required to prove that an in-place household qualified; however, at minimum, the original tenant income certification (TIC) and backup documentation proving that the household qualified at move-in should be retained with the new file establishing the second set of credits. The owner/agent must review the original certification documents to ensure that there is sufficient evidence of income qualification. If these documents are not available, the principles for move-in compliance established in the 8823 Guide indicate that a subsequent recertification file demonstrating that the household qualified under limits in effect at the time of a recertification establishes a point that the household qualified, even if that time was after move-in. Alternatively, a certification created retroactively to the move-in date can accomplish the same thing. Either approach in cases where the original file is missing or insufficient should establish that they qualified at some point during the first extended use period and continue to qualify for the second set of credits. An owner may discover that older files at a resyndicated property do not well-establish household eligibility, as verification requirements have become more clearly understood over time. In order to ensure a clean file that meets modern verification standards and bolsters investor confidence, an owner may complete an initial recertification on in-place households. If the household qualifies under current income limits for the new credits, no further work is necessary. If the household is over the current income limits, then the above paperwork, along with a note explaining why the older paperwork is being used, can be placed in the file to take advantage of the grandfathering provision. RIHousing allows either relying on original paperwork or a certification current to resyndication as evidence of initial qualification.

Income and Rent Limits

Income Limits. Since grandfathered households continue to qualify based on their original certification, income limits at the time of the start of new credits are not fundamentally relevant to their status with the new credits. Of course, if an existing household is being certified at the time of resyndication, then current limits will be used. Households who move in after the acquisition date will also be held to the current income limits. Subsequent tenant income certifications for all households must reflect current income limits.

Rents. Households who are in-place as of the date of acquisition may automatically income-qualify for the new credits, but their rent may not be correct and will need to be adjusted to be eligible for tax credits. This is because resyndication establishes a new placed in-service date for the second set of credits (the date of acquisition). For BOTH residents who are in-place at acquisition and who move in afterwards, the rent restrictions will be calculated based on the current income limits applicable to the project, or the gross rent floor in-place with the second allocation, whichever is higher (see Chapter 3 for information on the Gross Rent Floor). Income limits will hold harmless from the new placed in-service date on.

EXAMPLE Resyndication and Income Limits

An owner acquires an existing LIHTC property with existing LIHTC residents on 8/13/2021. The five existing LIHTC buildings are rehabbed using resyndicated credits. Additionally, the owner builds two new buildings. All buildings will be part of the same LIHTC project. Existing residents are grandfathered in.

- a) What income limits are used *for new move-ins* to any of the seven buildings after acquisition?
- b) What rent limits must be used for *all LIHTC* units?

a) & b) – Those in effect as of 8/13/2021

Held Harmless and HERA Special Limits. Income limits are held harmless starting when a project is placed in service. With resyndication comes a new placed in-service date (which is the acquisition date); therefore, the former placed in service date from the original tax credits no longer applies. Consequently, any previous income limits that were held harmless cannot be used; rather the current published income limits in effect as of acquisition would replace the old limits. Similarly, HERA Special limits are an option for projects that were in-service in 2008 or earlier. Since the new credits establish a new placed in-service date, HERA special limits and rents are no longer an option.

Resyndication and students. Although households who qualified in the past are income-eligible at resyndication, the IRS does not indicate that they are grandfathered regarding *student status*. This is consistent with the fact that households never lose tax credit eligibility regardless of income increases after move-in, but they always can lose their tax credit status if they become ineligible students. Student status must be verified at acquisition to establish if households that are grandfathered in for income reasons are also student eligible.

EXAMPLE Resyndication and Existing Households

The Munch household moved into an LIHTC unit in 2005. The property was constructed in 1997 and was eligible for HERA Special limits as it placed in-service prior to 2009. It was also still in its Extended Use Period when it was awarded new acquisition/rehab credits during the 2017 allocation round.

The Munch household is asked to recertify using all required forms current to the 2017 acquisition date, however, the household is over-income when applying the 2017 MTSP limits. The owner locates the original 2005 Munch move-in paperwork. Per the IRS, the household remains a qualified household, but the 2017 MTSP rents are lower than the HERA Special Limits that were being used prior to resyndication and the owner will be required to lower the tenant's rent at the time of acquisition.

Limits may decrease...

HERA SPECIAL

STATE: RHODE ISLAND		-----INCOME LIMITS-----				
PROGRAM		1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON
Placed in service: 10/10/1999	Newport-Middleton-Portsmouth, RI HMFA					
	FY 2018 MFI: 94100					
	VERY LOW INCOME	32950	37650	42350	47050	50850
	60% INCOME LIMIT	39540	45180	50820	56460	61020
HERA Special?	HERA Special 50%*	33100	37800	42550	47250	51050
<input checked="" type="checkbox"/> Applicable to area?	HERA Special 60%*	39720	45360	51060	56700	61260
<input checked="" type="checkbox"/> PIS 2008 or earlier?						
Acquisition: 3/14/2018						
HERA Special?						
<input checked="" type="checkbox"/> Applicable to area?						
<input checked="" type="checkbox"/> PIS 2008 or earlier?						

Before Acquisition...

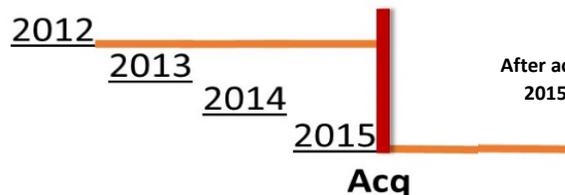
HELD HARMLESS LIMITS



If income limits decrease in 2013, 2014 and 2015, limits will hold at the highest (2012) level.

After Acquisition...

HELD HARMLESS LIMITS END



After acquisition, limits will drop to 2015 levels and hold harmless starting there.

Safe Harbor Income Testing

For resyndication projects that are less than 100% LIHTC, grandfathered households and those who have moved in since will not need to be re-qualified at the start of the credit period. If they have been in the property more than 120 days before the start of the first year of the credit period, however, an “income test” will need to be run on the household at the start of the first credit year. The income test is self-certification by the household as to whether their income has changed since they were initially qualified. The household will provide supporting documentation, such as paystubs, to allow for new calculations if their income has changed. The household's eligibility to stay is not in question, but the Next Available Unit Rule (AUR) will be applied to any units that are over the 140% limit at the time of the start of the credit period.

The Uniform Relocation Act (URA)

Acquisitions of properties involving federal funding (such as HUD or HOME) trigger a federal law called *The Uniform Relocation Act (URA)*. This Act provides important protections and assistance for households affected by the acquisition/rehab of federally funded projects. The URA does not consider the LIHTC to be federal funding, but it comes into play where other programs are involved. This law was enacted to ensure that households occupying properties that are acquired, or who move as a direct result of projects receiving federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

Some of the URA responsibilities toward displaced households include:

- Provide relocation advisory services to displaced tenants and owner occupants
- Provide written notice to vacate within minimum time frames prior to requiring possession
- Reimburse for moving expenses
- Provide payments for the added cost of comparable replacement housing

Further discussion of the URA is beyond the scope of this manual. However, please be advised that this requirement can seriously affect how you lease up an LIHTC acquisition/rehab that is combined with other federal programs and the associated costs involved with its implementation. Termination of tenancy will often not be an option for households that do not qualify for LIHTC units.

Because of the major implications of the URA, it is vital to refer to HUD URA guidance long before acquisition to help determine whether the URA covers a program involved in a project and what the implications are.

COMPARISON CHART New Construction v. Acq/Rehab Tax Credits

Rule	New construction	Acq/rehab
Date placed in-service	Generally, the building is placed in-service when a certificate of occupancy is received, and new residents can be moved in.	Acquisition: Date of acquisition. Rehab: Determined based on an expenditure test conducted after construction.
Effective dates of household certifications	When each household moves in. All paperwork must be completed no more than 120 days <i>before</i> move in.	For households in-place at acquisition, the effective date is the acquisition date if the paperwork is completed within 120 days <i>before or after</i> the acquisition date. New move-ins after acquisition are treated the same as for new construction. No certs are necessary at rehab placed in-service dates, so effective dates do not apply.
Initial lease term	The initial lease term must be at least six months after move-in and initial qualification	A new LIHTC lease is required to be executed with an existing resident at acquisition. An exception exists for HUD properties with a Model Lease in place. The HUD Model Lease can be handled according to HUD rules and this will satisfy LIHTC requirements.
IRS form 8609	There is one form for each building.	There in one form for acquisition credits and one for rehab credits for each building. The two 8609s will have different amounts for the eligible basis and qualified basis as well as for credit percentages. They will share the same applicable fraction, however.
Tax credit calculations	Each building has an eligible basis, and applicable fraction and a credit percentage.	Each building has two eligible basis figures (one for acquisition costs and one for rehab costs). The credit percentage will be 4% for the acquisition credits and may be 4 or 9% for the rehab credits, depending whether the rehab was financed with tax-exempt bonds. The applicable fraction is the same for both sets of credits.
Credit deferral	Credits may be claimed the year a building is placed in-service, or they may be deferred to the following year depending on if the building has met the planned LIHTC occupancy by the end of the year.	As with new construction, deferral may occur because buildings are not qualified by the end of the year the rehab is placed in-service. Acquisition credits must never be claimed before rehab credits are claimed.
Building Identification Numbers (BINs)	The building will receive a new BIN.	For re-syndications only: the original BINs will apply to any later credits.

PART 5 | OTHER PROGRAMS

Chapter 12 | TAX CREDITS WITH OTHER PROGRAMS

Tax credits are often combined with other funding sources. When this is done, it is the owner/agent's responsibility to ensure that all program requirements are met. These programs are not always designed to work together and create compliance challenges.

When determining how to comply with multiple housing programs layered at a property, the first step is to understand comparable rules for each program. Federal and state guidance and individual regulatory agreements for a property should be gathered and read carefully. Once this is done, analysis can be performed to establish which interaction is appropriate to maintain compliance with all programs. Rules for other funding programs are complex and beyond the scope of this manual. However, RIHousing has provided a Multi-Program Guide (See Exhibit XXXX) and a basic discussion of program interactions to assist owner/agents in understanding the provisions and complexities of other programs when combined with the LIHTC.

Note: The Multi-Program Guide simply lays out the various provisions of the programs covered. It does not provide the interpretive actions to take when combining programs, as these vary based on many project- and owner-specific factors. Below, examples of possible interactions are presented for educational purposes.

Monitoring requirements



When reconciling program requirements, it is very important to understand the difference between federal requirements and those imposed by the regulatory agency. More restrictive income and rent set-asides or specific calculation methodologies are examples of requirements that regulatory agencies may impose.

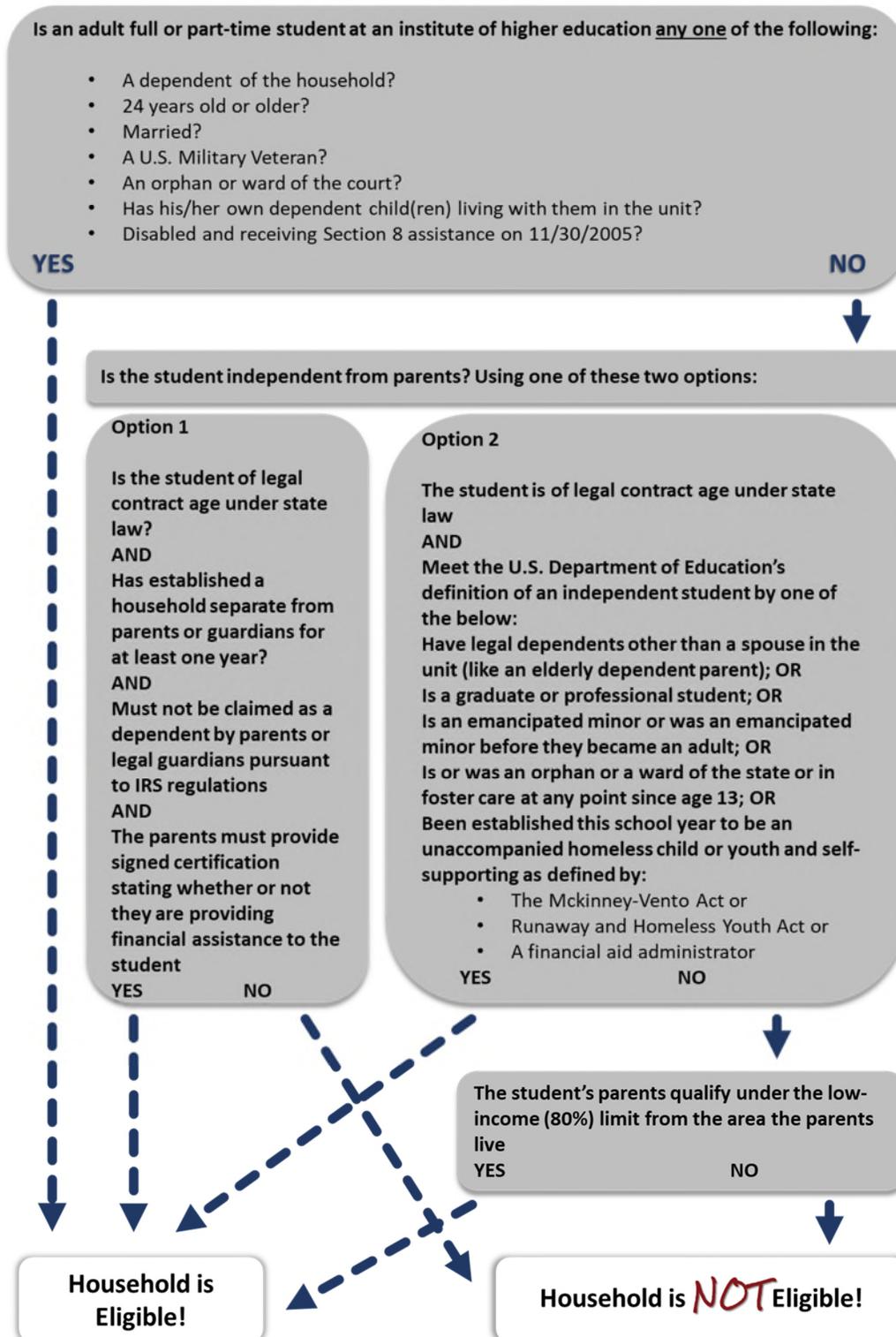
MULTI-PROGRAM INTERACTION SUMMARY

Result of Rule Comparison	Action to Take	<i>EXAMPLES</i>
A. One program has a requirement that the other does not.	Apply the requirement.	HUD – Citizenship, criminal background, and numerous specific forms. RD – Complex wait list requirements. HUD, RD or HOME – Conduct an affirmative marketing plan.
B. Both programs have similar requirements and:		
a. The rules have built-in reconciliation provisions.	Apply the reconciled rule.	LIHTC with HUD or RD – Use HUD or RD utility allowances. LIHTC with HOME – Do not use income-based rent for over-income households.
b. One requirement is more restrictive.	Apply the more restrictive rule.	LIHTC with HUD, RD or HOME – Use lowest applicable Income limits. LIHTC with HUD or RD – Conduct annual income certifications at 100% LIHTC properties. LIHTC with HUD or RD – Apply minimum 1-year lease term. LIHTC with HUD – Do not charge application fees.
c. The requirements are different and don't reconcile.	Apply both rules.	LIHTC with HUD, RD or HOME – Apply both student rules.
4. The requirements conflict.	Contact key persons to discuss risks and decide on an approach. - Owners - Investors - RIHousing & other agencies.	LIHTC with RD or HUD – Displacing over-income households per RD rules or per LIHTC rules for existing households at a HUD acquisition/rehab. HUD or RD with LIHTC – Use of conservative calculations to determine eligibility (highest-in-range or year-to-date, for example).

Multi-Program Student Rules

Chapter 4 discussed the LIHTC student eligibility rules and included a helpful flow chart. Tax exempt bonds share the LIHTC student rules. However, most other major housing programs have a different set of student eligibility rules, based on Section 8 provisions. These include the Housing Choice Voucher, project-based Section 8 and HOME programs. Many Rural Development offices also apply these rules. Below we provide a flow chart to provide a comparison of the Section 8 and LIHTC student rules.

Flow Chart: HUD/RD/HOME Student Eligibility



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MULTIPLE PROGRAMS GUIDE

A SIDE-BY-SIDE SUMMARY OF SPECIFIC HOUSING PROVISIONS

– 2019

Tax Credits | HUD | Rural Development | HOME | Tax Exempt Bonds

NOW INCLUDES HOUSING TRUST FUND PROVISIONS

Developed by:



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Note on the Housing Trust fund:

HTF provisions are inserted along with similar HOME provisions following a line

STUDENT ELIGIBILITY

TAX CREDIT	HUD	RD	HOME	BOND
<p>In general, households made up of full-time students of any age do not qualify. There are five exceptions to this general rule. They are for students who are:</p> <ol style="list-style-type: none"> 1) Married and entitled to file a joint tax return* 2) Single parents with dependent child(ren) 3) Title IV welfare recipients (TANF or similar program) 4) Former foster care recipients 5) Participants in a Job Training Partnership Act (JTPA) or similar program** <p>* Same-sex couples qualify for "married and entitled to file" if legally married under any state law. **The "Workforce Investment Act" has replaced JTPA.</p>	<p>HUD Section 8 Rule: Any individual who attends an institute of higher learning (full OR part-time) must be one of the following:</p> <ol style="list-style-type: none"> 1) A dependent of the household living with a parent 2) Over age 23 3) A veteran 4) Married 5) A parent with a dependent child in the unit 6) A disabled individual who was receiving assistance prior to 11/30/2005 or 7) Be independent from parents or have parents who are income eligible. <p>Certain vulnerable youths also count as independent under HUD and DOE rules.</p> <p>Non-Section 8 programs: Each student at an institute of higher learning must meet ALL of the following requirements</p> <ol style="list-style-type: none"> 1) Be of legal contract age under state law 2) Have established a separate household from parents for at least a year OR meet the U.S. Dept. of Education definition of an independent student 3) Not be claimed on a parent's tax return 4) Must disclose if they get financial assistance from parents. 	<p>Same as HUD Section 8 Rule</p>	<p>Same as HUD Section 8 Rule (regardless of commitment date)</p>	<p>Same as tax credit. In general, households made up of full-time students of any age do not qualify. Prior to HERA, the only exception that qualified a full-time student household was 'married, entitled to file a joint tax return'. Per HERA, the same five student exceptions that apply for LIHTC apply to bond qualification.</p>
<p>§42 (i)(3)(D) & 8823 Guide 17-1 & 2 & Exhibit 17-1; 4350.3 Exhibit 5-1 Rev. Rul. 2013-17</p>	<p>4350.3 3-13</p>	<p>Unnumbered letter dated 1/11/2007</p>	<p>HOME Reg §92.2 (2013)</p>	<p>§42 (i)(3)(D) §142 (d)(2)(C)</p>

INCOME ELIGIBILITY DETERMINATIONS

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Income eligibility is determined using the Section 8 method for determining gross annual income found in the HUD Handbook 4350.3 Chapter 5. No deductions to annual income apply to the tax credit program.	Follow the HUD Handbook 4350.3. Allowances and Deductions apply.	Follow the RD HB-2-3560 chapter 6. These rules are based on the HUD regulations.	<p>HUD allows PJs to choose from two methods for determining income, these will be stated in the HOME regulatory agreement and may include:</p> <ol style="list-style-type: none"> 1) 1040 tax return definition 2) Section 8 method from the 4350.3 Chapter 5* 3) The 2013 regulation change eliminated the Census Long Form as an option. <p>*The most widely used and the only option available to tax credit properties.</p> <hr style="width: 50%; margin-left: 0;"/> <p style="color: #4F81BD;">HTF allows for the same two options as post 2013 HOME.</p>	Income eligibility is determined using the Section 8 method for determining annual income found in the HUD Handbook 4350.3 Chapter 5. The LURA will determine what method is used to verify income (see verification).
IRS Notice 88-80, Treas. Reg. 1.42-5(b)(1)(vii), 8823 Guide chapter 4	4350.3 chapter 5 and Exhibits 5-1 & 5-2	HB-2-3560 chapter 6	HOME Guide 3.2 D Home Reg § 92.203(b)(2) (2013) HTF 24 CFR 93.151 (b)	§ 142 (d)(2)(B)

CHILDREN – ADOPTED OR UNBORN

TAX CREDIT	HUD	RD	HOME	BOND
Children in the process of adoption and unborn children are included when counting household members. (pregnancy verified by self-affidavit by mother)	Children in the process of adoption and unborn children are included when counting household members. (pregnancy verified by self-affidavit by mother)	Children in the process of adoption and unborn children are included when counting household members.	Older guidance indicated that children in the process of adoption and unborn children were not included when counting household members. This guidance is no longer available and appears to have been rescinded. It is HIGHLY recommended that the property's PJ be consulted to determine if they still employ this policy. Many PJs use the widely-accepted policy for other HUD programs to include these children.	Children in the process of adoption and unborn children are included when counting household members.
8823 Guide 4-3 4350.3 Appendix 3, Page 20	4350.3 Appendix 3, Page 20	HB-2-3560 Attachment 6-C, page 1	4350.3 Appendix 3, Page 20	

INCOME LIMITS

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>HUD-published Multifamily Tax Subsidy Program (MTSP) income limits are used. 20-80% MTSP limits apply, depending on the minimum set-aside selected for a project. Income limits are property specific and HERA designates a "hold harmless provision" for a specific property, a provision that allows the income limits to never go below the highest limit that has applied to the area since the project placed in service. Households must qualify based on gross annual income.</p>	<p>Income limits based on area median income (AMI) are used and vary based on which HUD program and the county location or MSA. Limits may go up or down any given year. Households must qualify based on gross annual income. For Section 8: the very-low 50% AMI limits generally apply, but 40% of new move-ins must be at the extremely low (30% AMI) limits.</p>	<p>RD program income limits based on area median income (AMI) are used based on which RD program and the county location or MSA. Limits may go up or down any given year. Applicants are given priority based on whether they are very-low (50% AMI), low (80%) or moderate (low limit + \$5,500) income. Households must qualify based on adjusted income.</p>	<p>HUD HOME income limits based on area median income (AMI) are used. HOME limits are county or MSA specific and may go up or down any given year. The HUD very low (50% AMI) limits apply to Low HOME units. High HOME limits are the HUD low income (80%) limits.</p> <p>HTF income limits are HUD's extremely low limits, which are the higher of the 30% limits or the poverty level for an area, capped at the very low (50%) limits.</p>	<p>HUD-published Multifamily Tax Subsidy Program (MTSP) income limits are used. 50 or 60% MTSP limits apply, depending on the minimum set-aside selected for a project. Income limits are property specific and HERA designates a "hold harmless provision" for a specific property, a provision that allows the income limits to never go below the highest limit that has applied to the area since the project placed in service. Households must qualify based on gross annual income.</p>
Treas. Reg. 1.42-5(b)(1)(vii), 8823 Guide 4-2	4350.3 3-6	HB-2-3560 6.2	HOME Guide 3.2 A HTF 24 CFR 93.302 (a)&(b)	§ 142 (d)(2)(B)

CERTIFICATION FORM

TAX CREDIT	HUD	RD	HOME	BOND
Tenant Income Certification or "TIC" is commonly used.	Form HUD-50059	Form RD-3560-8	No specific form required. PJs commonly allow tax credit TICS.	Tenant Income Certification (TIC) or Certificate of Tenant Eligibility (CTE) forms are commonly required by bond monitors.
	4350.3 5-31 B	HB-2-3560 6.11 A		

ZERO INCOME HOUSEHOLDS / UNSECURED INCOME

TAX CREDIT	HUD	RD	HOME	BOND
<p>HUD allows zero income households but makes provision for interim certifications when income changes. The tax credit certification must establish a household's income for the next 12-month period with no interim certifications. This difference in program regulations creates a “grey” area that is open to interpretation between the programs, state agencies and project owners. Some agencies require that future, unsecured income be counted based on the household’s income history. While some require that only imminent and verifiable income be counted. The 8823 Guide opts for using a 12-month history for zero or sporadic income households and thus unknown and unverifiable income is not included on the certification. Check with your state HFA.</p>	<p>HUD allows zero income households and unsecured income is not counted. Changes to this status must be reported immediately and an interim certification conducted.</p>	<p>RD does not consider zero-income households to qualify. Basic expenses that the household must meet are verified and counted as income. A Zero Income Checklist must be completed to determine cash and non-cash contributions to the household that will be used to meet the expenses.</p>	<p>HOME guidance allows zero-income households but does require that the past 12-month average income (if any) be included on the certification.</p>	<p>The bond regulations do not speak to this issue. Typically, it is handled per the tax credit program approach.</p>
8823 Guide 4-33	4350.3 5-5 A, Appendix 3, page 22	HB-2-3560 6.9 A 4, Attachment 6B	HOME GUIDE 6.2 E	

EMPLOYMENT INCOME VERIFICATIONS WITH A RANGE OF HOURS, WAGES ETC.

TAX CREDIT	HUD	RD	HOME	BOND
HUD uses "average hours" when determining employment income. (e.g. 35 hours for 30-40 hours listed on a verification) By regulation we count tax credit income as does the Section 8 program. However, it has generally been accepted as best practice by most state HFAs that the tax credit program should use the more conservative approach of using the HIGHEST in a range (i.e. 40 for the 36-40 hours). Some states apply the HUD method, however. The IRS has not addressed this issue.	HUD uses "average hours" when determining employment income (e.g. 35 hours for 30-40 hours listed on a verification)	RD does not directly address this issue. Typically, the HUD approach is used. (e.g. 35 hours for 30-40 hours listed on a verification)	HOME uses the HUD method to calculate employment income (i.e. "average hours") (e.g. 38 hours for 36-40 hours listed on a verification)	Bond technically uses the HUD "average hours" calculation for employment income. Typically, the best practices accepted by many bond issuers implement the more conservative approach of using the HIGHEST amount listed as a range on the employment verification. (e.g. 40 hours used for 36-40 hours listed on a verification)
	4350.3 Appendix 6-C		HOME Technical Guide page 6	

VERIFICATION OF ASSETS / IMPUTING INCOME FROM ASSETS

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
If the household's assets are \$5,000 or less, assets may be verified via self-affidavit. Household assets more than \$5,000 must be 3 rd -party verified. Imputed income from assets using the Hud passbook rate is calculated, if assets exceed \$5,000.	Assets are 3 rd -party verified at move in and every third year thereafter. Intervening years may use a self-affidavit from the household if assets do not exceed \$5,000. Imputed income from assets using the Hud passbook rate is calculated.	Assets are 3 rd -party verified. Imputed income from assets using the Hud passbook rate is calculated.	Assets are 3 rd -party verified or "source documents are used for initial program entry and then every 6th year of the affordability period. Income self-certification or verification from a RA voucher provider can be used for years 2-5. Imputed income from assets using the Hud passbook rate is calculated. HTF allows the same verification methodology and cycle as HOME.	The bond regulations do not specifically address asset verification requirements. The project LURA may have specific requirements or allow self-affidavits to be used when household assets are \$5,000 or less. This is not specifically allowed on a federal level like it is for the tax credit program.
8823 Guide 4-7, 4350.3 5-18 B, Rev. Proc. 94-65	4350.3 5-13, Appendix 3, 24 CFR § 5.659	HB-2-3560 6.11 A	HOME Guide 3.2 E 2 & 5, F3, Attachment 3-5 HOME Technical Guide 15 HTF 24 CFR 93.151 (d)	

VERIFICATION METHODS (GENERAL)

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>Regulation requires review of income documentation, such as w-2s or tax returns. Further IRS guidance provides more detailed verification rules. The below verification options are generally applied to tax credit properties, in the order of preference:</p> <ol style="list-style-type: none"> 3rd-party verification direct from the party. Documentation provided by the household. Household self-certification. <p>Verifications are good for 120 days from receipt.</p>	<p>There are 4 basic types of verification available for HUD in order of preference:</p> <ol style="list-style-type: none"> UIV – Upfront Income Verification with the mandatory use of EIV after move-in and optional use of UIV non-EIV verification Third-party verification from the source (written) Third-party verification from the source (oral) Family certification by household written statement <p>Verifications are good for 120 days from receipt and must be no more than 120 days old at time of receipt. Fixed income sources must be verified every 3 years. COLAs can be applied other years.</p>	<p>The below verification options are generally applied to tax credit properties:</p> <ol style="list-style-type: none"> 3rd-party Documentation provided by the household Household self-certification <p>Verifications are good for 90 days from receipt and can be extended an additional 90 days with verbal clarification.</p>	<p>At move-in and every 6th year of the HOME affordability period, “source documents” must be used. These are written documents generated by a 3rd party, that verifies the income sources that the applicant reports. At least 2 months of history must be covered by the documentation. For other years, self-certification or verification from other sources, such as local PHAs is acceptable.</p> <p>Verifications are good for 6 months.</p> <p>HTF allows the same verification methods and cycle as HOME.</p>	<p>The bond regulations do not specifically address verification requirements. The project LURA may have specific requirements and verification lifespans.</p>
8823 Guide 4-21, 4350.3 5-16 B	4350.3 5-13 A, 5-16 B, Appendix 3, HUD MF Notice H-2016-09	HB-2-3560 6.8 & 11	HOME Guide 3.2 D 3 & E 3 & 5; 24 CFR 92.203 (2013) HTF 24 CFR 93.151 (d) and 93.302 (e)	

SECTION 8 VOUCHER CERTIFICATION IN LIEU OF INDIVIDUAL INCOME/ASSET VERIFICATION

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Check with state HFA. Some states allow a letter from a RA voucher issuer stating that the household's income is below the income limit.	Not allowed	Not allowed	Not allowed for initial certification. PJ's might allow use in years other than every 6th year of the affordability period when full 3rd-party verification is not necessary. (see "recertifications"). HTF allows the same verification methods and cycle as HOME.	Not specifically allowed. The LURA may allow for this type of verification.
IRS Reg 1.42-(b)(1)(vii)			HOME Guide 3.2 D 3 & F 3 HTF 24 CFR 93.151 (d) and 93.302 (e)	

HOUSEHOLD FILE RECORD RETENTION

TAX CREDIT	HUD	RD	HOME	BOND
Files for households that qualified units in the 1 st year of the credit period are vitally important for the audit of any year's records. They must be retained for a total minimum of 21 years after the first-year credits are claimed. Files for households qualified in years 2-15 must be kept for a minimum of 6 years beyond deadline for filing the tax returns for a year.	Applications must be kept for 3 years after denial. EIV reports and other forms and verifications that go into tenant files must be retained in the tenant file for the term of tenancy plus three years. EIV Master Binders keep 3 years of information.	Tenant certification forms and supporting documentation must be retained in the tenant file for the longer of 3 years or until the next Agency monitoring visit or compliance review.	Individual tenant income, rent, and inspection information must be kept for the most recent 5 years throughout the period of affordability, until 5 years after the end of the affordability period.	Records should generally be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds.
Treas. Reg. 1.42-5 (b)	HUD 4350.3 4-22; 5-23; 9-14	RD HB-2-3560 6-11 B 5; Attachment 6-J	HOME Guide Exhibit 6-1, 6.2 C 7 & 24	1.148-5(d)(6)(iii)(E) of the arbitrage regulations

ADDING HOUSEHOLD MEMBERS TO AN EXISTING HOUSEHOLD / INTERIM INCOME INCREASES

TAX CREDIT	HUD	RD	HOME	BOND
<p>No Interim Certifications are required. Individuals added to an existing household during a certification year are income-certified individually and their income is added to the most recent TIC. The total household income is then checked to determine eligibility. This may trigger the AUR rule. The household is considered the same household so long as one original member remains. Some HFAs do not allow additional household members to be added during the Initial Certification year. *See "Increase in Income and Determining Eligibility" for more information.</p>	<p>Adding household members triggers an interim certification. Increases in income do not require a household to move out.</p>	<p>Adding household members triggers a new certification. If this increases the household's income to more than the moderate-income limit, (low (80% AMI) limit + \$5,500) the household may be required to move out.</p>	<p>No Interim Certifications are required. Increases in income do not require a household to move out. *See "Increase in Income and Determining Eligibility" for more information.</p>	<p>No Interim Certifications are required. The regulations do not discuss adding household members. The regulatory agreement may discuss this. Increases in income do not require a household to move out. *See "Increase in Income and Determining Eligibility" for more information.</p>
8823 Guide 4-4	4350.3 7-10	HB-2-3560 6.28 B, 6.30	HOME Guide 3.5 & 6	

RECERTIFICATION

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>Projects that are less than 100% tax credit must recertify each household's income and student status annually. 100% tax credit projects must recertify student status annually. Typically, recertifications are due on the original certification anniversary date. A few states require one full income recertification.</p>	<p>Recertifications are due on the certification anniversary date. Interim certifications must be conducted when household income increases by \$200 a month or decreases by an amount that would change the TTP. It is only required that household composition or income items that have changed since the annual certification must be re-verified. Fixed-source income must be verified at least every 3 years.</p>	<p>Recertifications are due on the certification anniversary date. If certain income and household changes occur (including increases of \$100 per month or decreases of \$50), a new certification is done, and all items are 3rd-party verified. A recertification must then be completed no later than a year from the anniversary of the new certification.</p>	<p>HOME households must be certified at move in and every 6th year of the affordability period, with some annual recertification requirements in years 2-5. The HOME program does not mandate dates for the annual cycle, allowing all recertifications to be conducted at once for a year. There are no provisions for interim certifications.</p> <p><u>HTF applies the same recertification standards as HOME.</u></p>	<p>Projects that are less than 100% bond must recertify each household's income and student status annually. Like the tax credit program, 100% projects need to recertify student status each year.</p>
<p>§142(d)(3)(A) (see §42(g)(4)), Treas. Reg. 1.42-(b)(1)(vi), 8823 Guide chapter 5</p>	<p>4350.3 chapter 7, 7-11 A 4</p>	<p>HB-2-3560 6.28</p>	<p>HOME Guide 3.2 F 6 HTF 24 CFR 93.151 (d) and 93.302 (e)</p>	<p>§142(d)(3)(A)</p>

DEDUCTIONS AND ALLOWANCES

TAX CREDIT	HUD	RD	HOME	BOND
Deductions and allowances are not used. Rent is not based on income.	<p>HUD has 5 types of deductions and allowances used to determine adjusted income and rent. Open to all applicable households are:</p> <ol style="list-style-type: none"> 1) Dependent deduction (\$480 per dependent per year) 2) Child care expenses and 3) Disability assistance expenses <p>Available to households where the head or co-head is elderly or disabled are:</p> <ol style="list-style-type: none"> 1) Medical expenses and 2) Elderly household deduction (\$400 per household per year) 	RD uses the 5 HUD deductions and allowances.	HOME uses HUD's 5 deductions and allowances for those over-income households paying rent based on their income.	Deductions and allowances are not used. Rent is not based on income.
	4350.3 Chapter 5 section 2	HB-2 3560 5.9 C	HOME Guide Attachment 3-4	

EFFECTIVE DATES OF CERTIFICATIONS

TAX CREDIT	HUD	RD	HOME	BOND
<p>The effective date for move-in is the actual date of move-in.</p> <p>The effective date for in-place residents at Acq/Rehab properties is the date of acquisition (for households certified within 120 days of the acquisition date). After the 120-day period, the effective date is the date of the last signature on the certification.</p> <p>The effective date of recertification is the anniversary of the effective date of the original tenant income certification (for less than 100% LIHTC projects where recertification is required).</p>	<p>The move-in date is the date of move-in.</p> <p>The effective date of the initial certification where an in-place resident gets rental assistance is the date that subsidy is assigned to the tenant.</p> <p>Interim Certifications with a rent increase reported in a timely manner, is the first of the month after the end of a 30-day notice.</p> <p>The effective date of interim certifications with rent decreases or when increases in income are not reported timely is the 1st of the month after the income is verified.</p> <p>The annual recertification effective date is the first of the month on the anniversary of original move-in certification. HUD may approve alternative anniversary dates.</p>	<p>The effective date of all RD certifications will always be the 1st of the month. The effective date of a move-in cert is the 1st of the month. If the tenant did not move-in on the 1st, the effective date is 1st of the next month after move-in. The effective date of recertification is the anniversary date of the last certification.</p>	<p>Effective dates are not discussed.</p> <p>Initial income certification must be completed 6 months prior to move-in.</p> <p>Annual recertification is necessary but does not have to be on the anniversary date of the last certification.</p>	<p>Effective dates are not discussed. Typically, the Tax credit rules are followed.</p>
8823 Guide 4-22, 4-25, 5-1	4350.3 7-5, 7-13, 7-5 C	HB-2-3560 6.28	HOME Guide 3.2 E 1, 6	

MINIMUM REQUIRED PERIOD IN THE PROGRAM

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>The tax credit period in the program is generally accelerated to 10 years with a 15-year compliance period. State Housing Finance Agencies (HFAs) also include an extended use period, which can vary, though it is a 30-year minimum total, including the compliance period.</p>	<p>Program type, financing and other regulations establish the required period in the program.</p>	<p>Program type, financing and other regulations establish the required period in the program.</p>	<p>The HOME agreement establishes the parameters of the program. The affordability period in the HOME program can vary depending on the type of HOME project and the average HOME unit investment. It is at least 20 years for most properties.</p> <hr/> <p>HTF has a minimum affordability period of 30 years. Grantees may impose a longer period.</p>	<p>The bond qualified project period begins once 10% of the units in a property are occupied and ends the latest of: a) 15 years after 50% of the units are occupied, b) the day no tax-exempt bond is outstanding or c) the day Section 8 assistance, if any, terminates.</p>
<p>§42(i)(1), (f)(1), (h)(6)(D), 8823 Guide chapter 16</p>			<p>HOME Guide 7.1 HTF 24 CFR 93.302 (d)(1)</p>	<p>§142(d)(2)(A)</p>

INCREASES OF INCOME AND DETERMINING ELIGIBILITY

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>For less than 100% tax credit properties, household income that is over 140% of the current income limit at recertification is "over-income". Over-income households continue to qualify as Tax Credit households if the next available unit of the same or smaller size <i>IN THE BUILDING</i> is rented to a qualified tax credit household. This continues until the applicable fraction is restored not counting the over income households. Once the applicable fraction is restored, the household may be raised to market rent, but cannot be required to vacate the unit. This is often called either:</p> <ul style="list-style-type: none"> • the AUR "Available Unit Rule"; • the NAUR "Next Available Unit Rule"; or • the "140% rule" 	<p>Rent increases up to the maximum rents. Households that are at the maximum rent and not receiving RA are NOT required to move out of the unit.</p>	<p>Rents increase up to the maximum rents. Households that exceed the moderate-income limits must vacate the unit. Overage (the amount of the tenant's rent that exceeds Basic Rent up to Note Rent) must be paid to RD.</p>	<p>Income and subsequent rent increases may result in re-classification from LOW to HIGH HOME rents. Rents switch to 30% of adjusted income once the household's income exceeds the 80% limit. LOW HOME households that exceed the HOME 50% limits and HIGH HOME households that exceed the HOME 80% limits are "over income". Resulting actions are then determined by the program and depends on whether the project is "fixed" or "floating" HOME. Households at the maximum rent are not required to move out of the unit. For projects that have tax credit funding also, rent for over-income households is not based on adjusted income, but may be raised to tax credit limits.</p> <hr style="width: 50%; margin-left: 0;"/> <p style="color: #4F81BD;">HTF units that exceed the HTF limits are in temporary non-compliance and the next available comparable unit must be rented to an HTF-eligible tenant for floating HTF units. If fixed HTF, the unit(s) will need to be re-occupied with an HTF-eligible household once the over-income household chooses to vacate.</p>	<p>For less than 100% bond properties, household income that is over 140% of the current income limit at recertification is "over-income". Over-income households continue to qualify as bond households if the next available unit of the same or smaller size <i>IN THE PROJECT</i> is rented to a bond household. NOTE: For bond/tax credit projects, this rule becomes a <i>BUILDING</i> rule to conform to the tax credit regulations.</p>
<p>§42(g)(2)(D)(ii), Treas. Reg. §1.42-15, 8823 Guide chapter 14</p>	<p>4350.3 chapter 8</p>	<p>HB-2-3560 6.30</p>	<p>HOME Guide 3.5 & 6, Attachment 3-4 & Attachment 3-5 §92.25 3 (c) (2013) HTF 24 CFR 93.302 (f)</p>	<p>§142(d)(3)(B) & (C)</p>

TRANSFERRING HOUSEHOLDS

TAX CREDIT	HUD	RD	HOME	BOND
<p>For less than 100% tax credit properties, households with income above the 140% limit at recertification may only transfer to units in the same building. At 100% tax credit properties and for households with income below the 140% limit, transfers can take place between buildings in the project without the household qualifying under current income limits. See IRS form 8609 to determine which buildings are in a project. Transfers between units cause the units to switch status, especially for purposes of initial tax credit rent up.</p>	<p>Transfers are allowed between buildings within a project. Households that overcrowd or under occupy a unit may be required to move to an appropriately sized unit (if that unit is available) or stay and pay contract rent. The effective date of the household's recertification after transfer is the anniversary date of their original move-in date to the property.</p>	<p>Transfers are allowed between buildings in a project. Households that overcrowd or under occupy a unit may be required to move to an appropriately sized unit (if that unit is available). If an appropriate unit is not available, tenancy may be terminated. A recertification is completed at transfer, and the transfer date becomes the new anniversary date.</p>	<p>HUD guidance does not discuss unit transfers for HOME. Generally, households must re-qualify at transfer for the new unit. "Floating" HOME units can switch their designation. "Fixed" HOME units do not switch.</p>	<p>Bond rules do not discuss unit transfers.</p>
<p>Treas. Reg. 1.42-15(d), Rev. Rul. 2004-82, Q&A #8, 8825 Guide 4-24</p>	<p>4350.3 chapter 7 section 3</p>	<p>HB-2-3560 6.21, 6.30 A</p>		

SUBSIDY AND RENT LIMITS

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Section 8 RA and RA from similar programs is exempt when determining household income. Household rent may exceed the tax credit max rents for households receiving assistance and whose income has increased. Tenant rents may also exceed the tax credit limit for households receiving RD assistance for which RD "overage" is paid.	N/A	Rental assistance, if available at a property, pays rent up to basic rent. When tenant rent exceeds basic rent, overage is paid to RD equal to the difference between the tenant rent for a unit and the basic rent.	<p>Include any subsidy when determining compliance with HOME rent requirements. There is an exception for project-based subsidy in LOW HOME units where tenants pay 30% of their income toward rent. For these units, the full subsidy program rents may be collected.</p> <hr/> <p>For HTF units with PROJECT-based federal or state subsidy, maximum rents are the rents allowable under the subsidy program.</p>	The bond program does not impose rent requirements. The bond agreement may have some project specific requirements.
§42(g)(2)(B)(i) & (iv), 8823 Guide 11-5 & 6		HB-2 7.4 C, 7.11 A-C	HOME Guide 3.3 C HTF CFR 24 93.302 (b)(ii)(2)	

UTILITY ALLOWANCES

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>Projects with RD or HUD funding use the UA for those programs. There are 5 additional choices for other properties:</p> <ol style="list-style-type: none"> 1) Local PHA published UAs 2) Estimate from a Utility Company 3) Estimate from an HFA 4) HUD Utility Schedule Model (HUSM) 5) Engineer Model <p>The UA for voucher holding households is the PHA published UA that their rent calculation is based on.</p>	<p>UA for a property is calculated based on actual consumption at a property every 3rd year and adjusted by a HUD published rate the other years.</p>	<p>UA for a property is calculated based on RD policy. If there is more than a 15% rate increase, owners should collect a “significant sampling” of tenant data. If any increase 15% or less, “a sampling” is required. Each state Agency sets further policy.</p>	<p>The PJ establishes a UA. Since the 2013 change in HOME regulations, UAs provided by Public Housing Authorities are no longer acceptable. UAs must now be:</p> <ol style="list-style-type: none"> 1) Calculated based on actual project consumption; or 2) Use the HUD Utility Schedule Model (HUSM) <p>NOTE: This is only applicable to HOME projects committed funds after 8/23/2013. The method for HUD projects is acceptable. Tax credit options are also acceptable except PHA estimates.</p> <hr/> <p>For the HTF, the grantee must establish UAs each year.</p>	<p>The bond program does not impose rent limits, thus a UA is irrelevant. The bond agreement may impose further rent restrictions.</p>
<p>Treas. Reg. 1.42-10, 8823 Guide Chapter 18</p>	<p>MF Notice H-2015-4</p>	<p>7 CFR 3560.202 HB-2-3560 4.26/4-29; 7.3 / 7-3</p>	<p>HOME Guide 3.3 D; 24 CFR 92.252 (d) (2013) CPD HOME FAQ 11-13, Homefires Vol. 13 No. 2 HTF 24 CFR 93.302 (c)</p>	

RENT LIMITS

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Rent limits are calculated based on income limits. There is a gross rent “floor,” established at the date of allocation or placed in service date, so that the rents do not have to fall below the “floor” for a project, even if the HUD published Income Limits go down from year to year. Rent limits are calculated imputing 1.5 persons per bedroom.	Market (or contract) rents are calculated for a specific property and will be spelled out in regulatory and HAP agreements.	Basic and market rents are calculated for a specific property and will be spelled out in regulatory and other agreements.	HUD publishes the HOME high and low rent limits. Rents do not decrease below the originally-approved HOME rents. 2013 HOME regulation requires that PJs approve all rents annually at each HOME project that they monitor. <u>For the HTF the grantee must approve rents each year.</u>	The bond program does not have rent limits. Specific bond agreements may impose limits.
§ 42 (g)(2)(C), Rev Prc 94-57, 8823 Guide 11-2 Example 1			HOME Guide 3.3 §92.2 52(f)(2) (2013) HTF 24 CFR 93.302 (a) - (c)	

LEGAL AUTHORITY AND PROGRAM GUIDANCE

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Legal Code: Internal Revenue Code §42, Treasury Regulation 1.42, Revenue Rulings, Revenue Procedures, and IRS Notices. Although not regulatory, “The Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition” AKA “The 8823 Guide” and IRS Newsletters provide additional guidance. Private Letter Rulings indicate IRS thinking but cannot be cited as precedent for any, but the individual cases involved.	HUD Handbook 4350.3 “Occupancy Requirements of Subsidized Multifamily Housing Programs.” Additional MF Housing Notices provide updates. HUD also has a RHIP Listserve where guidance and announcements are often first published.	HB-2-3560 “Multi-Family Housing Asset Management Handbook,” RD also provides updates through Administrative Notice (AN) and Unnumbered Letters (UL).	24 CFR Part 92 regulation, “Compliance in HOME Rental Projects: A Guide for Property Owners” AKA the “HOME Guide.” A HOME Technical Guide and Online Calculator provide income calculation guidance. <u>The HTF regulations are at 24 CFR Part 93</u>	Internal Revenue Code §142, Revenue Rulings, Revenue Procedures, and IRS Notices.
www.irs.gov	www.hud.gov	www.rd.usda.gov	www.hudexchange.info	www.irs.gov

VACANCIES

TAX CREDIT	HUD	RD	HOME	BOND
<p>Vacant units are considered tax credit units if: A) the unit was previously occupied by a qualified household; B) the unit was ready to lease in a reasonable amount of time; and C) the owner/manager can prove that the unit was marketed before any non-tax credit units of the same or smaller size were leased. (Vacant Unit Rule VUR)</p>	<p>Vacant units do not impact program compliance unless vacant units are excessive in quantity or duration. Vacancy claims can be made to HUD to recoup lost rents.</p>	<p>Vacant units do not impact program compliance unless vacant units are excessive in quantity or duration. Rental Assistance that remains unused after 6 months due to vacancies may be removed from a property by RD.</p>	<p>A few, short term vacant units do not impact program compliance. NOTE: HOME units that are not leased within 6 months of project completion could become an issue. Within 18 months HOME funds must be paid back on those units that were not leased to HOME qualified households.</p>	<p>Vacant units are considered bond units if the unit was previously occupied by a qualified household. When the next household leases the unit, qualification is determined for that household.</p>
<p>Treas. Reg. 1.42-5(c)(1)(ix), Rev. Rul. 2004-82, Q&A #9, 8823 Guide chapter 15</p>		<p>HB-2-3560 9.15/9-33</p>	<p>§92.525 (2013)</p>	<p>IRS Reg. 103.8 (b)(5)(ii)</p>

MINIMUM SET-ASIDE AND REQUIRED NUMBER OF UNITS IN PROGRAM

TAX CREDIT	HUD	RD	HOME	BOND
<p>Typically, properties have a 20-50 or 40-60 minimum set-aside. The first number designates the minimum percentage of units at the property that must be designated “tax credit” units. The second number represents the MTSP income and rent limit for those units. Tax credits are claimed based on the actual percentage of tax credit units to all the units in a building; this is called the “applicable fraction.”</p> <p>Starting for new set-aside elections in 2018, the 40-60 set-aside option includes an “Income Average Test” version where units may be set aside at 20 to 80% MTSP set-asides (in whole 10% increments), as long as these average 60%.</p> <p>NOTE: New York City adds minimum set-aside options of 25-50 and 25-60 (Average).</p> <p>State agencies can determine additional set-asides.</p>	<p>This is based on the HUD program type and the regulatory agreement in place for the property.</p>	<p>This is based on the RD program type and the regulatory agreement in place for the property.</p>	<p>The HOME units in a property are determined by the amount of HOME Funds given to the property in proportion to the cost to build. These are designated “low” and “high” HOME units.</p> <p>Typically, 20% of units must be “low” HOME units with a 50% income and rent limit. The remainder of the HOME units are “high” HOME with an 80% rent and income limit.</p>	<p>Typically, properties have a 20-50 or 40-60 minimum set-aside. The first number designates the minimum percentage of units at the property that must be designated “bond” units. The second number represents the MTSP income and rent limit for those units. The bond units must meet the minimum set-aside at the property, but do not need to exceed the minimum. During lease-up once a property reaches 10% occupancy the minimum set-aside must be maintained among the occupied units. This may cause a hold on leasing to non-bond households until the bond minimum set-aside is reached.</p> <p>NOTE: New York City adds a third minimum set-aside of 25-60. State agencies can determine additional set-asides.</p>
<p>§42(g)(1), 8823 Guide chapter 10, IRS form 8609(s) line 10C shows the designation</p>			<p>HOME Guide 1.8</p>	<p>§142(d)(1) Rev. Proc. 04-39</p>

INITIAL LEASE AND LEASE TERM

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Other than in SRO or transitional housing projects, households must not be “transient.” This generally means that the initial lease term must be at least 6-months. Termination or non-renewal must be for good cause under state law.	The initial lease term must be 12-months. The HUD lease must be used. Termination or non-renewal must be for good cause.	The initial lease term must be 12-months or the end of the HAP contract, if sooner. The lease is developed by the owner and must be certified by the owner’s attorney and approved by RD. Termination or non-renewal must be for good cause.	The initial lease term is typically 12-months, unless a lesser term is agreed upon, which can’t be less than 30-days, except in cases of threat to the tenants, employees or property. The lease is developed by the owner avoiding 9 prohibited clauses. The lease must be approved by the PJ. Termination or non-renewal must be for good cause. HTF has the same initial term and prohibited lease terms as apply to HOME. Termination of tenancy must be for cause and in a timeframe dictated by local law.	The bond program leaves the lease and initial lease term up to other program funding, unless the bond agreement mandates some lease requirements. The minimum term is generally at least 31 days.
§ 42(i)(3)(B)(i) & “Blue Book” 8823 Guide chapter 20; § 42(i)(3)(B)(iv)	4350.3 chapter 6, Appendix 4 A-G	HB-2-3560 Attachment 6-E & 6-F	HOME Guide 4.3 B, Attachment 4-1 24, CFR 92.253 (b) (2013) HTF 24 CFR 93.303 (a) - (c)	Bond Agreement

APPLICATION, SCREENING AND MONTHLY FEES

TAX CREDIT	HUD	RD	HOME	BOND
Applicants can be charged an averaged fee for the actual costs to run the checks. Non-optional monthly fees must be added when determining gross rent compliance.	Applicants must NOT be charged for the costs of screening. Monthly fees must be approved by HUD.	Fees to applicants are discouraged but allowed and limited to the actual cost of the screening. Monthly fees must be approved by RD.	Application, screening and other fees must be approved by the Participating Jurisdiction (PJ). Any allowed monthly fees must be deducted from the HOME rent limit to determine the maximum rent charged for a unit. Fees that are not customary in rental	Application fees and costs to screen applicants are not addressed.

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			housing are prohibited. Reasonable application fees may be charged or fees for services or meals, as long as the services are voluntary.	
8823 Guide 11-2 to 11-3	4350.3 4-7 A-C, E 2	HB-2-3560 6.18 B, 6.19	Home Guide 3.3 D 4 HOME Regs § 92.214(b) (2013) HTF: 24 CFR 93.204(b)	

CRIMINAL BACKGROUND CHECKS

TAX CREDIT	HUD	RD	HOME	BOND
Owners may screen for criminal background.	Owners are required to screen for criminal and drug-related criminal activity. Applicants must be screened for lifetime sex offender registration and those registered are prohibited entry.	Owners may screen for criminal background. Owners may deny admission for criminal activity. If rejected for occupancy, the letter must outline the reason.	Owners may screen for criminal background. Applicants rejected must receive a written explanation.	Criminal background checks are not addressed.
8823 Guide 11-2 to 11-3	4350.3 4-7 A-C, E 2	HB-2-3560 6.18 B, 6.19	HOME Guide Exhibit 4-1	

RELEASE OF INFORMATION FORMS

TAX CREDIT	HUD	RD	HOME	BOND
No specific form is required.	HUD uses form 9887 and 9887-A. These are signed at initial and annual recertification.	The owner is required to develop a Release of Information form. No specific form is required.	No specific form is required.	No specific form is required.
	4350.3 3-11	HB-2-3560 6.11 2		

CITIZENSHIP REQUIREMENTS

TAX CREDIT	HUD	RD	HOME	BOND
The Internal Revenue Service (IRS) does not establish citizenship requirements. The HFA or the owner may establish some non-citizen restrictions.	Only U.S. citizens or eligible non-citizens may receive assistance. Non-citizens must provide documentation that is verified through the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services' SAVE system. Households that consist of non-eligible and eligible members will have their assistance pro-rated.	Only U.S. citizens or eligible non-citizens may receive benefits. RD guidance on how to establish this is still pending.	The multi-family HOME program does not have established citizenship requirements.	The bond program does not have established citizenship requirements.
8823 Guide 13-2	4350.3 3-5 F, 3-12, Exhibit 3-5	§3560.152 (a)(1)		

RACE / ETHNICITY REPORTING REQUIREMENTS

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
Race and ethnicity data collection and reporting procedures are established by the State Housing Finance Agency (HFA). The HFA is required to report this data to HUD.	Applicants have the option to report their race and ethnicity using the form HUD-27061-H, though this is NOT a required form. Management must NOT complete the form on the applicant's behalf. Race and ethnicity data is NOT placed on the waiting list.	Application forms and waiting lists must include race and ethnicity data. If the applicant will not supply the data, management is required to complete the race and ethnicity information based on observation.	The PJ must establish race and ethnicity data collection and reporting procedures. The PJ must review the data collected each year. <i>As affirmative marketing rules apply, HTF would require monitoring of race and ethnicity.</i>	The bond program does not have race and ethnicity data collection or reporting procedures.
The Housing and Economic Recovery Act of 2008 (HERA) section 2835	4350.3 2-11 A, 4-14 A 4, Exhibit 4- 3, 4-16 D 4	HB-2-3560 6.18 A, Exhibit 6-5	HOME Guide 4.2 B 5 HTF 24 CFR 93.350	

AFFIRMATIVE FAIR HOUSING MARKETING

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
The Internal Revenue Service (IRS) does not address affirmative marketing.	HUD requires an Affirmative Fair Housing Marketing Plan (AFHMP) on HUD form 935.2A. This is updated by the owner/manager at least every 5 years and must be approved by HUD or the Contract Administrator (CA).	RD requires an Affirmative Fair Housing Marketing Plan (AFHMP) on HUD form 935.2A. This must be approved by RD and updated every 5 years.	The PJ must establish affirmative marketing procedures. The PJ is responsible to make sure that the established affirmative marketing plan is followed by the site. <i>Grantees must establish and monitor affirmative marketing plans for HTF properties.</i>	The Internal Revenue Service (IRS) does not address affirmative marketing.
	HUD.gov form 935.2A	HB-2-3560 6.17, HUD.gov form 935.2A	HOME 4. 2 B HTF 24 CFR 93.350	

ONLINE SYSTEM USED BY PROGRAM

TAX CREDIT	HUD	RD	HOME	BOND
The Internal Revenue Service (IRS) does not have an online system. Individual State Housing Finance Agencies (HFAs) may have a unique online system.	HUD has Tenant Rental Assistance Certification (TRACS) and Enterprise Income Verification (EIV).	Management Agent Interactive Network (MINC).	The Participating Jurisdiction (PJ) uses the Integrated Disbursement and Information System (IDIS) to report to HUD.	The IRS does not have an online system.

ADMINISTERING AGENCY

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
The Internal Revenue Service (IRS) and State Housing Finance Agencies (HFAs). NOTE: Each state has an HFA; however, they are not all specifically called Housing Finance Agencies.	Housing and Urban Development (HUD) Multi-family Division and Contract Administrators (CAs) which are 'contracted' by HUD.	Rural Development (RD) / Rural Housing Services (RHS) under the United States Department of Agriculture (USDA).	Housing and Urban Development (HUD) under the Office of Community Planning and Development (CPD). CPD appoints Participating Jurisdictions (PJs) that commit the HOME funds to owners and monitor compliance. <hr/> HUD CPD. CPD appoints state Grantees that commit the HTF funds to owners and monitor compliance.	The Internal Revenue Service (IRS) and bond issuers.
IRS.gov and individual state HFA websites	HUD.gov and individual CA websites	RurDev.USDA.gov	HUD.gov and individual PJ and Grantee websites HTF 24 CFR 93.100 and 92.404	IRS.gov

INSPECTIONS – FILE REVIEW AND PHYSICAL

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
<p>Inspections are done on a minimum 3-year cycle. At least one aspect of 100% of buildings is inspected (such as building exterior or HVAC). The number of files and units inspected is listed on a chart published in IRS regs and based on HUD REAC standards. UPCS (Uniform Physical Conditions Standards) or local standards are used for the Physical Review. NOTE: Section 504 is not applicable to tax credit funding where other federal funding is not involved. Fair housing standards apply.</p>	<p>MORs (Management Occupancy Reviews) are performed on varying schedules. REAC Physical inspections use UPCS and are conducted on a 1 to 3-year schedule based on the previous REAC score: >89 = 3-year schedule 80-89 = 2-year schedule <80 = 1-year schedule Some HUD programs use HQS (Housing Quality Standards) Protocol. Section 504 and fair housing standards apply for review of accessibility.</p>	<p>Annual Physical Inspections: 5% of occupied units (minimum of 2) and 5% of vacant units (minimum of 2). Tri-annual Supervisory Visits review units based on size: 1-5 units = all units inspected 6-30 units = 6 inspected 31-74 units = 10 inspected >74 units = 15 inspected Vacant units = 5% inspected (minimum of 2 units) RD 3560-11 is the form used for Physical reviews. Section 504 and fair housing standards apply for review of accessibility.</p>	<p>Reviews are based on the total number of units in a property, NOT just the HOME units, with a 3-year inspection cycle. The inspector selects a “Reasonable Sample.” The PJ must choose between local and state codes or UPCS or HQS* for the physical reviews. Section 504 and fair housing standards apply for review of accessibility. *UPCS replaced HQS with the 2013 HOME regulations. Further guidance is forthcoming.</p> <hr/> <p>HTF tri-annual inspections are based on a sample as set forth by HUD notice. For projects with 1-4 HTF-units, all of the HTF units are inspected. HTF properties must meet the HUD UPCS standard and Section 504.</p>	<p>No inspection schedule is required by code. NOTE: Section 504 is not applicable to bond funding. Fair housing standards apply.</p>
<p>Treas. Reg. §1.42-5(c)(1)(vi) & (2)(ii)(B) 8823 Guide 6-1 & Exhibit 6-1</p>	<p>4350.1 chapter 5, see also www.hud.gov for further REAC, UPCS and HQS information</p>	<p>HB-2-3560 9.9 F, 9.10 F, RD 3560-11</p>	<p>HOME Guide Exhibit 6-1, 6.2 C 7; HOME Guide Exhibit 5- 1 24 CFR 92.504 (d) (2013) HTF 24 CFR 93.301 (e) and 404 (d)</p>	

REPORTING REQUIREMENTS

TAX CREDIT	HUD	RD	HOME	BOND
IRS form 8609 must be filed with the IRS, the first year of the credit period. Form 8609A is filed other years of the compliance period. An annual owner certification of program compliance must be submitted to the state HFA.	Reporting and HAP processing is submitted monthly through TRACS.	Reporting and RA processing is submitted to RD monthly through MINC by the 10 th of the month.	Annual occupancy and other reports are submitted to the PJ.	Form 8703 must be filed with the IRA annually.

VIOLENCE AGAINST WOMEN ACT (VAWA)

TAX CREDIT	HUD	RD	HOME [HTF]	BOND
VAWA applies to tax credit properties since 2013. The IRS is unlikely to issue guidance. HUD guidance may be used as a model.	Applies since 2005 to Section 8 and since 2013 for most other HUD programs. HUD has issued sample notice of rights (Form HUD-5380), victim cert. (5382), model emergency transfer plan (5381), model emergency transfer request (5383). A lease addendum (91067) is required.	RD applied HUD 2016 guidance.	HUD 2016 guidance applies to HOME. HUD 2016 guidance applies to HTF.	VAWA does not apply.
	Fed Reg Vol 81 No. 221 Wed Nov 16, 2016	Admin Notice 4814 dated 1-18-17; Fed Reg Vol 81 No. 221 Wed Nov 16, 2016	Fed Reg Vol 81 No. 221 Wed Nov 16, 2016 HTF 24 CFR 93.356	