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CHAPTER 1 Introduction

Section 1 Learning Outcomes and Overview

ONLINE RESOURCES

Additional resources and references for this course are available at http://NMAreferences.com. Click the specific program link at the top of the web page to jump directly to the references you wish to access. No login information is required.

LEARNING OUTCOMES

Explain and apply HUD and IRS regulations and guidance to the low-income housing tax credit (LIHTC) and RAD Section 8 project-based rental assistance (PBRA) programs to achieve long-term compliance when managing mixed-financing properties.

Upon completion of **Blended Occupancy Management**, you should be able to:

- Identify the key program elements, requirements, regulatory agencies, and documents used in LIHTC/RAD PBRA projects
- Describe important compliance time periods for LIHTC and RAD PBRA
- Manage eligibility for LIHTC/RAD PBRA projects
- Identify the waiting list, tenant selection plan, and occupancy standards requirements for the various programs
- Describe the various program requirements when preparing to rent a unit
- Recognize how unit rents and household rents are determined in LIHTC/RAD PBRA projects
- Recognize and distinguish between the interim and annual recertification requirements for LIHTC/RAD PBRA
- Manage the unit mix in LIHTC/RAD PBRA projects
- Discuss and apply HUD guidance pertaining to appeals and hearings in RAD PBRA
- Describe property inspection protocol for LIHTC/RAD PBRA
- Compare and contrast how income and assets are calculated and verified in various programs

OVERVIEW

Managing rental real estate has always required a high degree of interdisciplinary competency. Competencies include knowledge of regulations and compliance requirements, skills in marketing, customer service, lease enforcement, and supervision, and abilities to apply knowledge and skills.

Managing a single-program property is complicated enough. But properties with multiple layers of funding mean properties with two or more programs in the same property.

Aging housing stock, dwindling funding for preservation, redevelopment, and new development have lead housing authorities, owners, and developers to seek multiple funding programs to finance the construction, rehabilitation, or acquisition of affordable housing.

These blended/mixed finance properties, also known as blended occupancy or combined funding properties, are becoming more and more common. Housing authorities, private owners, and public/private partnerships are leveraging various funding sources to rehabilitate, rebuild, or develop housing that will be viable for years to come.

With combined funding, property managers must not only be highly competent in all the traditional areas of property management but must also ensure the management of compliance for two or more programs in the same property. These differing regulatory requirements can affect every function, from initial application through deciding who moves into a vacant unit. Program rules can be identical and can overlap or may be completely different. Not understanding and managing to the often-conflicting areas of compliance in turn can be very costly-in time, money, and consequences. In a situation where the rules conflict, it is imperative to talk to all the key players involved in the project (the owner, PHA, investors, state HFA, PJ, PBCA/CA, and other regulators) to establish an approach that hopefully satisfies all parties. Ultimately, it is the owner who must choose how to integrate the different programs and the property manager who implements these decisions.

This course focuses on the concepts that you need to master in order to successfully manage blended occupancy projects by developing an understanding of how to maintain continuous program compliance in projects with multiple funding and/or subsidy sources.

COMMON HOUSING TERMS AND ACRONYMS

Acronym	Definition
ACC	Annual Contributions Contract. Annual contracts with public housing authorities for payments towards rents, financing debt service, and financing for modernization.
ACOP	Admissions and Continued Occupancy Policy
ADA	Americans with Disabilities Act (Section 504)
AFFH	Affirmatively Furthering Fair Housing
AFS	Annual Audited Financial Statements
AMI	Area Median Income
APPS	Active Partners Performance System
ARRA	American Recovery and Reinvestment Act
CA	Contract Administrator
CFP	Capital Fund Program
CFR	Code of Federal Regulations
CNA	Capital Needs Assessment
ED	Executive Director
EIV	Enterprise Income Verification
Fair Housing Act	1968 act (amended in 1974 and 1988) providing HUD Secretary with fair housing enforcement and investigation responsibilities
FFY	Federal Fiscal Year
FHA	Federal Housing Administration (HUD Office of Housing)
FHAP	Fair Housing Assistance Program (FHEO program). Program assisting State and local government with processing fair housing complaints.
FHEO	HUD Office of Fair Housing and Equal Opportunity
FMR	Fair Market Rent Maximum rent for Section 8 rental assistance
FSS	Family Self Sufficiency program
HAP	Housing Assistance Payments
HCV	Housing Choice Voucher
HERA	Housing and Economic Recovery Act of 2008
HFA	Housing Finance Agency. State or local agencies responsible for financing and preserving low and moderate income housing within a state.
HUD	U.S. Department of Housing and Urban Development
HUDCLIPS	HUD Client Information and Policy Systems

Acronym	Definition
HUDstat	Internal Reporting System
IMS or (IMS-PIC)	Inventory Management System
IRS	Internal Revenue Service
LGBT	Collectively refers to the lesbian, gay, bisexual, and transgender community.
LIHTC	Low Income Housing Tax Credit
LDP	Limited Denial of Participation
LOCCS	Line of Credit Control System
LURA	Land Use Restriction Agreement
MAHRA	Multifamily Assisted Housing Reform and Affordability Act of 1997
MDDR	Multifamily Delinquency and Default Reporting System
MFHRHIIP	Multifamily Housing Rental Housing Integrity Improvement Project
MSA	Metropolitan Statistical Area
MSA	Minimum Set-Aside
MTSP	Multifamily Tax Subsidy Project
NAUR	Next Available Unit Rule
NCSHA	National Council of State Housing Agencies
NOFA	(HUD) Notice of Funding Availability
NPV	Net Present Value
OCAF	Operating Cost Adjustment Factor
OGC	(HUD) Office of General Counsel
OLHCHH	(HUD) Office of Lead Hazard Control and Healthy Homes
OIG	Office of Inspector General
OMB	U.S. Office of Management and Budget
Operating Subsidies	Payments authorized by the U.S. Housing Act of 1937 for operating costs of low-rent public housing projects.
PBCA	Performance Based Contract Administrator
PBRA	Project-Based Rental Assistance
PBV	Project-Based Voucher
PD&R	HUD Office of Policy Development and Research
PH	Public Housing
PHA	Public Housing Authority

Acronym	Definition
PHAS	Public Housing Assessment System (under REAC)
PIC	Public and Indian Housing Information Center
PIH	HUD Office of Public and Indian Housing
PILOT	Payment in Lieu of Taxes
RAD	Rental Assistance Demonstration Program
RCC	RAD Conversion Commitment
REAC	(HUD) Real Estate Assessment Center
ROSS	Resident Opportunity and Supportive Services
SAVE	Systematic Alien Verification for Entitlements Program
Section 8	Housing Assistance Payment Program (Housing and Community Development Act of 1974)
Section 8	Housing Choice Voucher Program (Housing and Community Development Act of 1974)
Section 184	Loan Guarantee Program
Section 202	Loans for construction/rehab of housing for the elderly or handicapped
Section 203	Basic FHA single family mortgage insurance program.
Section 108	Section 108 Loan Guarantee Program (under CPD)
Section 202/811	Programs for housing assistance to the elderly and people with disabilities.
Section 207	Basic FHA multifamily insurance program
Section 221(d)(2)	FHA Single Family Mortgage insurance for low and moderate income families.
Section 221(d)(3)	FHA mortgage insurance for Multifamily housing for low and moderate income families.
Section 223(e)	FHA mortgage insurance with housing in older declining neighborhoods.
Section 223(f)	FHA mortgage insurance to refinance existing multifamily housing.
Section 231	Mortgage insurance for housing constructed or rehabilitated primarily for elderly persons.
Section 235	FHA single family mortgage insurance with subsidies on interest for low/moderate income families.
Section 236	FHA multifamily mortgage insurance with subsidies on interest for low and moderate income projects.

Acronym	Definition
SWICA	State Wage Information Collection Agency
TANF	Temporary Assistance to Needy Families
TARC	Troubled Agency Recovery Center (under PIH)
TEAPOTS	Title VIII Paperless Office and Tracking System (FHEO system)
TIC	Tenant Income Certification
TPV	Tenant Protection Vouchers
TRACS	Tenant Rental Assistance Certification System
TSP	Tenant Selection Plan
TTP	Total Tenant Payment
UFAS	Uniform Federal Accessibility Standards
UPCS	Uniform Physical Condition Standards
USCIS	United States Citizenship and Immigration Services
VA	Veterans Affairs (U.S. Department of)
VAWA	Violence Against Women Act
WASS	Web Access Security Subsystem

Notes

CHAPTER 2 Overview of the Low-Income Housing Tax Credit (LIHTC) Program

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Explain how the low-income housing tax credit program works on a broad level
- List the benefits for PHAs to participate in the LIHTC program
- Describe how the IRS allocates tax credits
- Identify the placed-in-service date for various types of housing
- Explain the minimum set aside and how it is applied on the project level
- List key regulatory documents
- Identify key compliance time periods
- Discuss inspection requirements
- List consequences for noncompliance

Section 2 Overview of the Low-Income Housing Tax Credit Program

LOW-INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM

The Low-Income Housing Tax Credit (LIHTC) program was created by Congress in 1986 via Section 42 of the Internal Revenue Service's Internal Revenue Code (IRC) to provide the private market with incentives for construction, rehabilitation, or acquisition of low-income affordable rental housing. State and local government agencies, known as housing finance agencies, award and monitor compliance for the Low-Income Housing Tax Credit program.

Low-income housing tax credits may be used for new construction, acquisition, and rehabilitation of affordable rental housing. Unlike many other affordable housing programs, which provide an operating subsidy, the LIHTC program is a capital subsidy. Provided the property maintains compliance with program requirements, investors receive a dollar-for-dollar reduction in their federal tax liability each year over a period of 10 years. The LIHTC program has financed over 3.05 million affordable units between 1987 and 2016. The demand for low-income housing tax credits far exceeds the supply.

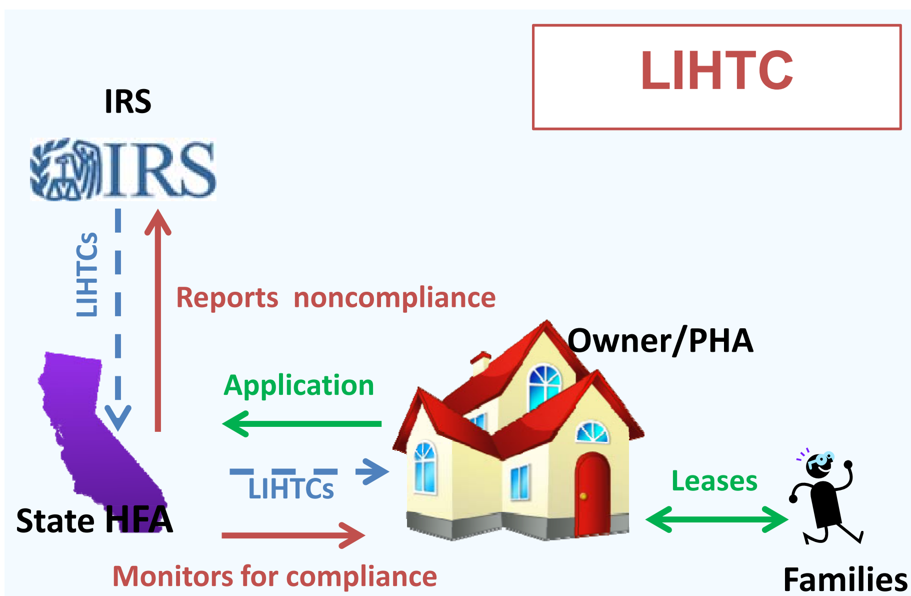
HOUSING FINANCE AGENCIES (HFAS)

Housing finance agencies or HFAs, also known as state allocating agencies, are state-chartered authorities established to help meet the affordable housing needs of the residents of their states. Although they vary widely in characteristics, such as their relationship to the state government, most HFAs are independent entities that operate under the direction of a board of directors appointed by each state's governor. They generally administer a wide range of affordable and community development programs including the Low-Income Housing Tax Credit (LIHTC) program.

- A list of state HFAs can be located on the National Council of State Housing Agencies (NCSHA): **www.ncsha.org**.

In some areas, local governments may also be responsible for awarding and monitoring local tax credits in addition to the state HFA. This class will not discuss local low-income housing tax credit programs. As the administrator of the LIHTC program, the state HFA awards the LIHTC and performs compliance activities throughout the entire compliance period. The HFA conducts tenant file reviews, unit inspections, and reports all noncompliance, even if corrected, to the IRS during the federal compliance period. State-specific requirements are identified in compliance manuals. It is essential that you obtain a current LIHTC compliance manual from your state HFA. Many state HFAs offer free or inexpensive training workshops that elaborate on state-specific compliance issues you need to understand and stay up to date on.

As the administrator of the LIHTC program for the IRS, the HFA is essentially the "eyes and ears" of the IRS as it relates to the project. The HFA relationship is one of the most important relationships your project has if the project has low-income housing tax credits.



Generally, state HFAs award the low-income housing tax credits through a competitive process. Each state describes its competitive process for awarding credits in their Qualified Allocation Plan (QAP). The QAP establishes the selection criteria for how its credits will be awarded. The QAP generally provides preference to projects serving the lowest income tenants and describes the procedures for the HFA to monitor compliance. QAPs are drafted annually by HFAs and must meet certain requirements. QAPs are designed to meet state-specific goals and objectives for meeting the housing needs of low-income tenants in the state.

In order to receive an award or allocation of LIHTCs, owners/developers submit an application to the state HFA describing the proposed project in detail, according to the application requirements and deadlines established by the state.

State HFAs award either 9 percent or 4 percent tax credits, based on a federal economic formula, and if the project is new construction, rehab, acquisition, or receives rent subsidies. Regardless of what type of credit is allocated, compliance requirements are generally the same.

CREDITS VS. DEDUCTIONS – WHAT'S THE BIG DEAL?

Credits	Deductions
Tax credits are subtracted directly from one's tax liability. Credits reduce tax liability dollar-for-dollar.	Tax deductions are subtracted from a taxpayer's total income to compute their tax base. Deductions reduce tax liability by the amount of the deduction times the tax rate.

Example

- $1,000 *credit* in a 15% tax bracket reduces tax liability by $1,000.
- A $1,000 *deduction* in a 15% tax bracket reduces taxable income by $1,000, thereby reducing tax liability by $150.

Why Tax Credits?

Why would a public housing authority (PHA) participate in the tax credit program?

Housing authorities are public agencies as such, they are not subject to payment of federal income taxes and would therefore not benefit from a reduction in federal tax liability.

PHAs sell these credits up-front to entities that would benefit from a reduction in federal tax liability. By selling the credits up-front, the PHA is able to obtain funds from the entity. The funds received by the PHA are then used to accomplish the goals established in the PHA's tax credit application, which may include:

1. Construction of new affordable housing to meet the affordable housing goals of the PHA; or
2. Acquisition of existing units, which the PHA will use to provide additional affordable housing in the community; or
3. Rehabilitation of existing housing units owned by the PHA to extend the life of the units.

The income generated by the sale of the credits does not create a "loan" that must be repaid from future project income.

Why would private sector housing developers want to participate in the LIHTC program?

- PHAs are not the only entities that provide affordable housing. Many private developers desire to increase the affordable housing stock in communities. When a private developer is allocated low-income housing tax credits, the developer may retain the credits and utilize them to offset their future tax liability.
- Generally, developers sell the LIHTCs to generate up-front income to be used for the construction, rehabilitation, or acquisition of affordable rental units.

Again, the income generated by the sale of the credits does not create a "loan" that must be repaid from future project income.

SYNDICATION

While project owners may claim the housing credit directly, most sell the tax credits to raise equity capital for their housing project. Credits can be sold directly to an investor or to a syndicator who assembles a group of investors together and acts as their representative.

Project owners typically need money up front for project development. Selling the credits to a syndicator allows the owner to receive payment for the credits "up front" instead of over a 10-year period. This process is called syndicating the credits, or in other words, selling the rights to the future credits in exchange for money that can be used for development costs. Because the credit purchaser must be part of the ownership entity, a limited partnership or a limited liability company is generally established.

Section 3 Compliance Time Periods

CREDIT PERIOD

LIHTCs provide the investor with a dollar-for-dollar reduction in their federal tax liability each year over a period of generally 10 years, provided the building maintains continuous program compliance over a period of at least 30 years.

IRC §42(f)(1)

The credit period is the 10-year period during which the investor claims the credit on their federal income tax return. The first year of the credit period can be the same year the building was placed-in-service or it can be deferred another year if the owner/investor chooses to do so. It may be deferred for only one year. If the owner/investor elects to defer the start of the credit period, credits will not be available to the investors until the year after the placed-in-service date. The decision to start a credit period is made on a building-by-building basis, and is made by the owner, the investors, and their tax or legal advisors.

Example

If Garden View Apartments received a $1,000,000 allocation of tax credits, the owner can claim $100,000 each year for 10 years

While the credit period is generally 10 years, the *minimum* number of years that a LIHTC building must be kept in continuous program compliance is 30 years. The compliance period is made up of the following two parts:

FEDERAL COMPLIANCE PERIOD

IRC §42(i)(1)

Although the tax credits are taken over a 10-year period, the federal compliance period for a LIHTC building is 15 years, starting with the beginning of the first year of the credit period. During the federal compliance period, instances of program noncompliance, both corrected and uncorrected, identified as part of an on-site review by the state HFA, are reported to the IRS. Failure to maintain compliance with all requirements of the LIHTC program could result in the recapture of a portion of the tax credits previously granted and used or disallowance of current year's credits.

EXTENDED USE PERIOD

IRC §42(h)(6)(D)

The extended use period is a minimum of 15 years beyond the federal compliance period. The extended use period begins in the 16th year of the building's compliance period. Each state has different extended use periods and some may extend beyond 15 years. During the extended use period, instances of program noncompliance are not reported to the IRS but may seriously impact the owner/investor for future allocations of LIHTCs. Under what is called a LURA, or regulatory agreement or extended use agreement, the building is required to meet the low-income requirements particular to them for the initial 15-year federal compliance period and the subsequent extended use period. Buildings with allocations prior to 1990 were not required to have extended use periods.

Minimum Affordability Period

The minimum affordability period for all LIHTC buildings beginning with allocations of credit on or after 1990 is 30 years. The minimum affordability period consists of two parts:

- **Federal Compliance Period** — 15 years from the first year of the credit period.
- **Extended Use Period** — Minimum of 15 years after the federal compliance period ends. The extended use period varies state by state.

Section 4 Minimum Set Aside

LIHTC Basics

To qualify as a LIHTC unit, a unit must meet three requirements. It must be:

1. Suitable for occupancy
   - The code states that a unit will not be considered a LIHTC unit unless it is suitable for occupancy, taking into account health, safety, and building codes, and is used other than on a transient basis.
2. Initially occupied by an income-qualified household
   - Families must initially have incomes at or below the applicable income limit for the unit in which they will live.
3. Rent-restricted
   - Rents are not income-based in the LIHTC program. Rather, the owner must charge a restricted rent that is in compliance with gross rent limit requirements.

Federal Minimum Set-Aside (MSA)

In order to receive an allocation of LIHTCs, an owner must agree to set aside a certain number of units in the project that will be designated as LIHTC units (rented to LIHTC-qualified residents at a restricted rent).

During the application process, the owner is required to select one of four minimum set-aside (MSA) options. Once selected, this election is irrevocable. This election is one way in which the number of units that must be LIHTC, as well as the income and rent limits applicable to the project, are identified. The owner's election is made during the application process and recorded on IRS Form 8609, line 10c.

The 20/50 MSA

If the owner selects the 20/50 MSA, no less than 20 percent of all rental units in the project must be rented to households with incomes that do not exceed 50 percent of the area median gross income (AMI), adjusted for family size.

The 40/60 MSA

If the owner selects the 40/60 MSA, no less than 40 percent of all rental units in the project must be rented to households with incomes that do not exceed 60 percent of the area median gross income (AMI), adjusted for family size.

The 25/60 MSA (New York City Only)

For properties in New York City only, if the owner selects the 25/60 MSA, then at least 25 percent of the units in the project must be rent-restricted and occupied by tenants whose income is 60 percent or less than the AMI based on the number of tenants that occupy the unit.

Average Income Test (AIT)

The MSA is met under AIT if 40 percent or more of the residential units in the project are both rent-restricted and have designated income limitations that collectively average 60 percent or less of AMI. (Note: For projects located in New York City, the requirement is 25 percent rather than 40 percent).

FR Notice 10/12/22

The Consolidated Appropriations Act of 2018, also known as the omnibus spending bill, created an additional set-aside known as the average income test (AIT). In October 2022, the IRS released final and temporary regulations for the AIT.

Only properties who made their MSA election after March 23, 2018, were eligible to choose the AIT MSA option. AIT is not retroactive to any projects that already elected an MSA on the Form 8609 prior to this date.

The AIT MSA option allows certain units in a LIHTC project to be designated at 70 percent or 80 percent of AMI as long as the development-wide average is 60 percent or less. The AIT MSA option applies to how units are designated, not the individual household income themselves. Owners do not need to track individual average household incomes. For example, an 80 percent unit could be occupied by someone whose income is 43 percent of AMI, as long as they were under the 80 percent income limit at move-in.

The owner must designate units in 10 percent increments as follows:

- 20 percent
- 30 percent
- 40 percent
- 50 percent
- 60 percent
- 70 percent
- 80 percent

Owners can determine how best to achieve an average of 60 percent income and rent requirement in various ways. For example:

- One unit designated at both 20 percent income and rent requirement allows:
  - Two units at 80 percent; or
  - Four units at 70 percent
- Two units designated at both 30 percent income and rent requirement allows:
  - Three units at 80 percent; or
  - Six units at 70 percent

Unit designations must be made on or before initial occupancy of the unit. In other words, the owner designates the income limit for each unit prior to a qualified family occupying the unit. The family's income at move in does not drive the income limitation for the unit.

The owner may subsequently change the unit's designation for the following reasons:

- In accordance with any procedures established by the IRS in forms, instructions, or guidance published in the Internal Revenue Bulletin;
- In accordance with state allocating agency requirements;

- To enhance protections set forth in the Americans With Disabilities Act of 1990 (ADA), Public Law 101-336, 104 Stat. 328; the Fair Housing Amendments Act of 1988, Public Law 100-430, 102 Stat. 1619; the Violence Against Women Act of 1994, Public Law 103-322, 108 Stat. 1902; the Rehabilitation Act of 1973, Public Law 93-112, 87 Stat. 394; or any other state, federal, or local law or program that protects tenants and that is identified by the IRS or an agency in a manner described in (1) or (2) above;
- To allow for transfers of income-qualified tenants to different units in the project
  - Units would "swap" status
- To restore compliance with average income requirements
  - See the discussion of qualified grouping of units below

In order to effectuate the change in the unit's designation, the IRS requires that the owner record the designation in their books and record and communicate the change to the state allocating agency.

Although there is no federal requirement to designate a pro-rata share amount for bedroom sizes, individual state allocating agencies may have more restricted requirements, so check with your state.

If an owner elects the AIT MSA, the temporary regulations implement certain reporting and record keeping requirements to the allocating agency. Each year, the owner is required to report to the state allocating agency the qualified group of units in the project that meets the MSA and also to report the qualified group of units that is used to determine the applicable fraction for each building. Check with your allocating agency for how the AIT MSA is to be reported in your state.

MSA Basics

Minimum set-asides are minimums. While each project must select one of the federal MSA elections, nearly every tax credit project carries a higher actual set-aside.

Example: Project Set-Asides

Pacific Coast Apartments is a 100-unit building. The owner elected the 40/60 federal MSA. The owner has also agreed in the regulatory agreement with the state allocating agency to rent all 100 units to LIHTC-qualified families at or below the 60 percent area median gross income.

- The federal MSA requires 40 units be rented to families at 60 percent or less of area median gross in-come
- The actual set-aside requires 100 units be rented to families at 60 percent or less of area median gross income.

What Happens if I Fail to Meet the MSA?

The MSA must be met by the end of the first year of the credit period and maintained throughout the entire compliance period (30+ years). A project's failure to meet its federal MSA election by the end of the first year of the credit period is an uncorrectable deficiency. In other words, no credits can ever be claimed.

The failure of a project to maintain its federal MSA in any subsequent year of the federal compliance period can result in a recapture of previously claimed tax credits back to year one, and disallowance of credit for the tax year for which the noncompliance was recorded. Low-income housing credits continue to be disallowed until the federal MSA is restored.

What Happens if a Unit is Out of Compliance with the AIT MSA?

In order to demonstrate compliance with the AIT MSA, a qualified group of units in the project must meet minimum requirements. A qualified group of units:

- Is a group of units in the project that represents 40 percent of the total units in the project;
- Are LIHTC eligible units; and
- Have an average income limit across those units that does not exceed 60 percent of AMI

For example, Garden Grove is 100-unit LIHTC project. The owner selected the AIT MSA and maintains the project as 100 percent LIHTC. To meet the AIT MSA, the owner would need to identify a qualified group of 40 units in the project that have an average income limit that does not exceed 60 percent of AMI. The owner will likely be able to identify this group of units in different ways since all units in the project are LIHTC units.

If the owner identifies a unit or units in the project that are out of compliance, the owner may remove the unit from the qualified group of units and/or may change unit designations of units included in the qualified group to meet the AIT MSA.

Additional Set-Asides

The regulatory agreement between the state housing finance agency and the owner may also require the owner to reach other, lower income levels. It is very typical for a project to be required to meet lower set-asides and a larger number of affordable units. For example, many projects will reach families with incomes at or below anywhere from 10 to 30 percent of AMI. These projects are not considered “deep rent skew” projects by the IRS and this election is not indicated on the 8609. It is part of the written agreement (LURA/Use Agreement, etc.) with the credit agency. If the AIT MSA was selected, it’s possible that there are additional state-required set-asides apart from the AIT MSA, which may be confusing.

If during the federal compliance period an owner is noncompliant with the lower set-asides, but maintains the federal MSA, this would not be reported as noncompliance with the federal minimum set-aside. However, there would likely still be state-specific consequences for failing to meet the required set-asides.

Owners selecting the AIT election will have violations of income averaging reported to the IRS during the federal compliance period.

LIHTC Projects

The owner is required to meet the minimum set-aside at a project level. The definition of what is considered a project can be confusing. In the LIHTC program, a "project" is not automatically multiple buildings with the same name in the same location. The owner determines what the project is by completing line 8b on the Form 8609. Line 8b on the Form 8609 allows the owner to determine if the building is part of a multi-building project or if the building is a project all by itself.

The IRS considers each building its own project unless the owner indicates on line 8b that the building is part of a multi-building project. If the owner determines that the building is part of a multi-building project, then "YES" is selected on line 8b of Form 8609. If this is selected, the MSA is determined on a project-wide basis, which includes multiple buildings. If the owner determines that each building is its own project, then "NO" is selected on line 8b of Form 8609. If this is selected, the MSA is determined by using the units in each building.

If an owner elects YES on line 8b to treat a building as part of a multiple building project, then a statement identifying all the buildings that are to be included in the multiple building project must be attached to the Form 8609. A common failure among owners is forgetting to submit this attachment to the Form 8609 when electing to include the building in a multiple building project. If the attachment is not included, each building will be treated as a separate project even if the box on line 8b is checked YES.

Form **8609**
(Rev. October 2014)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ **Information about Form 8609 and its separate instructions is at *www.irs.gov/form8609.***

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ 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

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a	Date of allocation ▶ ______ **b** Maximum housing credit dollar amount allowable .	**1b**	
2	Maximum applicable credit percentage allowable (see instructions)	**2**	%
3a	Maximum qualified basis	**3a**	
b	If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions)	**3b**	1 ___ ___ %
	☐ Building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone ☐ Section 42(d)(5)(B) high cost area provisions		
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)(5)

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
9a	If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(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(j)(5)) . . . . ▶ ☐ Yes
c Elect minimum set-aside requirement (section 42(g)) (see instructions) ☐ 20-50 ☐ 40-60 ☐ 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. 10-2014)

Example

Green Acres Apartments consists of a 100-unit building. The owner of Green Acres Apartments, Ms. Chavez, has elected the 40/60 minimum set-aside (MSA) option on the Form 8609. How many units must be rent restricted and at what area median income level?

100 Percent vs Mixed Use LIHTC Projects

Tax credit projects are either considered 100 percent or mixed-use LIHTC. It's important to understand what your project is, as some compliance requirements differ. The regulatory agreement will describe whether your project is 100 percent LIHTC or mixed-use.

- 100 percent tax credit projects are projects in which all units in all buildings included in the development are tax credit, regardless of whether other sources of funding or subsidy are present.
  - For example, a 50-unit project in which all 50 units are LIHTC, and 25 of those units are also RAD PBRA, is considered a 100 percent LIHTC project since all 50 units are LIHTC.
- A mixed-use project is one in which there is a mixture of LIHTC and non-LIHTC units. The non-LIHTC units might be market and have no income or rent restrictions or might have a funding or subsidy source such as RAD PBRA.
  - For example, a 50-unit project where 35 of the units are LIHTC and the remaining 15 are market is considered a mixed-use project since all 50 units are not LIHTC.

Building Identification Numbers

Building Identification Numbers (BINs) identify LIHTC buildings so that state HFAs and owners can report to the IRS. The BIN is similar to an individual's Social Security Number or a business' Employer Identification Number. The BIN consists of a two-character state designation following by a two-digit designation identifying the year the credit was allocated and a five-digit numbering designation. The BIN must be unique to the building and must be used for all allocations of credit.

Section 5 Calculating Tax Credits

QUALIFIED BASIS

The calculation of the qualified basis determines how many credits each building in a project can potentially claim annually. Basically, the state allocating agency considers the development costs for each building and the total number of eligible affordable units in each building. In other words, the higher the development costs and number of affordable units, the larger the amount of credits claimed.

To calculate the qualified basis:

1. Total project cost is calculated.
2. ***Eligible basis*** is determined. This is determined by subtracting all non-depreciable costs, such as land, permanent financing costs, rent reserves, and marketing costs. If the building is located in a HUD difficult to develop area (DDA) or a HUD qualified census tract, the calculation is bumped up 30 percent to allow for more credits.
3. The result is then multiplied by the applicable fraction.

Qualified Basis = Eligible Basis X Applicable Fraction

4. Once calculated, the qualified basis is then multiplied by the applicable tax credit rate.
   - There are two applicable tax credit rates, 4 percent and 9 percent.
     - 4 percent credits: Supports the acquisition of eligible existing buildings, and to federally subsidized new construction or rehabilitation projects.
     - 9 percent credits: Supports the new construction or rehabilitation for projects that are not federally subsidized.
     - *NOTE:* Section 8 is not considered federal subsidy in this instance. Federal subsidy is considered tax exempt bonds or a below market federal loan.

- These rates are approximations of the actual rates. The US Department of the Treasury publishes the exact credit rates monthly to reflect changes in market interest rates.

APPLICABLE FRACTION

IRC 42(c)(1)(B)

The percentage of qualified low-income units in a building is referred to as the *applicable fractio*n. The applicable fraction is the lower of two percentages:

- Unit fraction: Low-income units to total units (all units in the building that are available to rent as personal residences); or
- Floor space fraction: Total floor space of the low-income units in the building in relation to the total floor space of the residential rental units in the building (excluding hallways and other common areas).

The HFA monitors the applicable fraction on a building by building basis. At the time each building is first occupied, a minimum applicable fraction for that building is established and the owner must maintain that applicable fraction for the entire compliance period. If the owner fails to achieve the projected applicable fraction, each year of the federal compliance period, the amount of credits is reduced.

Example: South Side Apartments

12-unit mixed-use building

50 percent of the units are LIHTC (six units) and 50 percent are market (six units)

The LIHTC units are smaller by square footage, making up only 40 percent of the floor space

What's the applicable fraction?

MSA VS. APPLICABLE FRACTION

Both the MSA and the applicable fraction must be met during the first year of the credit period and maintained throughout the compliance period. Both concepts are critical to maintaining program compliance and will be reviewed by the state agency.

Example: Elmwood Court

Elmwood Court is 50-unit tax credit project consisting of one building. The owner chose the 40-60 MSA on the Form 8609 but maintains the building as 100 percent tax credit. The applicable fraction on which the tax credits are based is 100 percent.

- To meet the MSA, 20 units (40 percent of 50) must be LIHTC
- To meet the applicable fraction, 50 units must be LIHTC

All 50 units must be maintained as LIHTC units throughout the compliance period.

Example: Green Acres

Green Acres is a 50-unit mixed-use LIHTC project consisting of one building with a mix of tax credit units and market units. The owner chose the 40-60 MSA on the Form 8609. The applicable fraction on which the tax credits are based is 50 percent.

- To meet the MSA, 20 units (40 percent of 50) must be LIHTC
- To meet the applicable fraction, 25 units (50 percent of 50) must be LIHTC

The project must maintain at least 25 LIHTC units throughout the compliance period.

Tax Credit Calculation Example

Mr. Watkins, the owner/developer, is constructing 100 units of low-income rental units in Yourtown, USA consisting of one building. Mr. Watkins is proposing to set aside 40 percent of the units (and 40 percent of the square footage) for low-income households. No other federal funding will be used. The building is not located in a QCT or DDA. The total development costs have been estimated as follows:

Land Acquisition	$1,000,000
Dwelling Construction	3,400,000
Site Improvements	535,000
Architectural/Engineering	40,000
Other Eligible Soft Costs	25,000
Total Development Costs	$5,000,000

What is the eligible basis of the proposed project?

What is the applicable fraction of the proposed project?

How many low-income housing tax credits are needed?

Section 6 Placed-In-Service Dates

The placed-in-service date is an important date that establishes the date from which a unit in a building has the potential to generate a low-income housing tax credit. The placed-in-service date is determined on a building-by-building basis. The definition of when a building is placed in service differs based on the type of eligible activity. New construction and substantial rehabilitation are defined differently from other types of rehabilitation and acquisition.

The placed-in-service date generally marks the beginning of the credit and compliance periods, (although remember, the first year of the credit period can be deferred for one year).

It is possible for different buildings in the project to have different PIS dates. Each building, however, only has one PIS date. The date is specified on line 5 of the Form 8609.

New construction or substantial rehabilitation: The PIS date is the date on which the building is ready and available for its specifically assigned function. This is generally the date that the new construction or existing building that undergoes substantial rehabilitation receives its certificate of occupancy (CO) from the local building inspector. The PIS date is not the date that the unit was occupied by a LIHTC-qualified tenant, but the date that the unit was ready to be occupied.

For example, if certificates of occupancy were issued for a newly constructed building on May 1, 2023, and the first household moved into a unit in the building on August 15, 2023, the placed-in-service date would be May 1, 2023. Once a building places in service, units in that building have the potential to generate a low-income housing tax credit. A unit can generate a credit once:

- A unit is placed-in-service for a full calendar month; and
- A unit is occupied by a LIHTC-qualified tenant as of the last day of the month with a restricted rent amount.

Example: If a unit is placed in service on June 1, it can produce a credit for June if occupied by a LIHTC-qualified tenant by June 30th. If that same unit is not placed in service until June 2nd, it can generate its LIHTC in July if occupied by a qualified household on or before July 31st.

Other Rehabilitation Expenditures: The placed-in-service date for a project that undergoes some, but not significant rehabilitation may not be as clear because a CO may not be issued. These types of rehabilitation expenditures are placed in service at the close of any 24-month period after the minimum rehabilitation expenditures have been met and as determined by the owner. The owner must expend the greater of either 10 percent (prior to 2009) or 20 percent (after calendar year 2009) of the adjusted basis of the building, or $3,000 (prior to 2009) or $6,000 (adjusted for inflation, after calendar year 2009) per low-income unit in order to meet expenditure requirements. In addition, state agencies typically have more restrictive expenditure requirements. Check with your HFA to see what their minimum rehabilitation threshold is. The rehabilitation building is considered placed-in-service when the units are ready and available for their intended use.

Acquisition/rehab: There are two placed-in-service dates for acquisition/rehab buildings: one when the owner buys the building and one when the rehabilitation is completed. Acquisition credits may begin as early as the date of purchase, but since the acquisition credits must start the same year as the rehab credits, if the rehab is placed in service the following year, the acquisition credits are deferred until that year. In this type of project, the IRS allows owners 120 days before and after acquiring a building to certify the existing in-place tenants as LIHTC-qualified and make the Tenant Income Certifications (TICs) effective on the date of acquisition.

Section 7 Acquisition/Rehab

Low-income housing tax credits may be used to build, acquire or rehabilitate rental housing. When tax credits are used for acquisition of an existing building, typically that building is also rehabilitated as well. This is referred to as acq/rehab. The owner receives two separate allocations of credits and two separate 8609s: one for the acquisition and one for the rehabilitation. Although the owner receives two separate allocations, they are not able to claim the acquisition credits until the rehabilitation credits are placed in service. There will be two placed-in-service dates for acq/rehab buildings: one when the owner buys the building and one when the rehabilitation is completed.

Rev. Proc. 2003-82

When an owner buys a building in which families are already living, the units may be considered eligible LIHTC units and begin generating credits during the first year of the credit period, even if some of the in-place families are over income at the start of the credit period. In order for units in the building to generate credits, the following must occur:

- Families must have incomes at or below the applicable income limit either on the date the building was acquired or the date the family first started occupying the unit, whichever is later.
  - An in-place family who qualified at the time of acquisition continues to qualify if their income goes up between the date of acquisition and the start of the credit period.
- If the initial TIC for the family is completed more than 120 days prior to the start of the credit period, the owner must test the family's income for purposes of the next available unit rule.
  - If the effective date of the initial TIC is 120 days or less before the start of the credit period, the test does not apply.
- The rent for the units must be restricted from either the date the building was acquired or the date the family started occupying the unit, whichever is later, through the beginning of the credit period.

INITIAL CERTIFICATIONS

8823 Guide, Chapter 4

When the owner completes the initial income certification for in-place families, there are two possibilities for the effective date of that certification:

- If the initial TIC is completed within 120 days of the date of acquisition, the effective date of the initial TIC is the date of acquisition.
- If the initial TIC is completed more than 120 days before or after the date of acquisition, the household must be treated as a new move-in, even though they are already living in the building. Since there is no move-in date, the effective date is the date the last adult household member signed the TIC.
    - Income limits in place at the time of the certification are used.

This means that the owner has a window in which to certify in-place families that extends from 120 days prior to the date of acquisition up to 120 days after the date of acquisition. If the owner certifies families during this time, the effective date of the family's initial certification is the date of acquisition, not the date the certification was completed. This is good news because if the owner certifies the family within this 120-day window, the owner may be able to claim credits all the way back to the acquisition date.

For example, a building was acquired on March 1. The owner certified an in-place family 119 days after March 1. The effective date of the certification would still be March 1, and the owner has the potential to claim credits back to March 1. If the owner certified another in-place family 125 days after March 1, the owner would not be able to claim credits back to March 1. The effective date would be the date the last adult signed the initial TIC.

This also means that owners should not certify in-place families any earlier than 120 days prior to the date of acquisition since those certifications will not allow the owner to use the date of acquisition as the effective date. Because there may be unexpected delays, it is advisable to start the process about 60 days before the expected date of acquisition. The only benefit of certifying a family more than 120 days before the date of acquisition is that, if they experience an increase in income and are recertified during the 120-day window, they will still qualify as an income-eligible household.

Once initial certifications are conducted at acquisition, no recertification is necessary when the rehabilitation is placed in service. The recertification effective date will be based on the initial effective date which will be the date of acquisition.

When are units in an acq/rehab project counted toward the applicable fraction?

- If the owner completes the rehabilitation in the same year the building is acquired, units in the building may start producing tax credits as of the date of acquisition, not the date the rehab is completed. The date of acquisition is known as the look back date.
- If the owner completes the rehabilitation in the year after the building is acquired, units cannot begin producing tax credits until January 1 of that year. In this case, January 1 becomes the look back date.

In other words, units in the building are eligible to be counted toward the applicable fraction and begin generating credits at the later of the acquisition date or January 1 of the year rehabilitation is completed. So, if rehab is completed in the same year as the acquisition, and the owner certifies existing in-place tenants within 120 days of the date of acquisition, units in the building have the potential to generate tax credits as of the acquisition date.

Only certain units are counted toward the applicable fraction in the first year of the credit period:

- Units occupied before the beginning of the credit period that are LIHTC-eligible at the beginning of the credit period
- Units (whether rehabilitated or not) occupied after the start of the credit period by new LIHTC-eligible families
- Units occupied by LIHTC-eligible families after the start of credit period who have transferred from other units in the project

Units that are not counted toward the first-year applicable fraction include:

- Units with ineligible households
- Vacant units that were last occupied by nonqualified households
- Units that are not suitable for occupancy
  - This includes units that are being remodeled
  - After the rehabilitation is completed and the unit is again suitable for occupancy, the unit counts toward the applicable fraction when a qualified household moves in

Learning Activity 2-1: Acq/Rehab: Putting it all Together

Meadowbrook is a 100-unit project located in Austin, TX. The O/A purchased Meadowbrook on March 1, 2023. The Kline family is an in-place family living in unit 101 at the time of acquisition. The family consists of Walter Kline and his wife Sylvia. The owner completes an initial TIC for the Kline family on May 1, 2023. Their annual income is $25,100. The two-person income limit for Green Valley is $31,400. In September, Sylvia gets a new job and the family's annual income increases to $42,500 per year. The rehabilitation on the building was completed and placed in service on October 1, 2023.

1. What is the effective date of the Kline family's initial TIC?

2. What would the effective date of the TIC be if the owner instead certified the family on February 15, 2023? What about if the owner certified the family on September 1, 2023?

3. Is the family income-eligible to live at Meadowbrook?

4. As of what date is unit 101 eligible to start producing tax credits?

5. If the rehabilitation was instead completed in February 2015, how would that affect the tax credits?

Section 8 Rent Limits

Rents in the LIHTC program are not income-based, rather they are restricted. These restricted rents may never exceed the maximum LIHTC gross rents. Residents without any other form of rental assistance pay the full contract rental amount to the owner. Residents who receive Section 8 pay rent according to the rules for their subsidy, which may be an income-based rent. This is not because the unit is a LIHTC unit, rather because the family has rental assistance. Units receiving low-income housing tax credits must be rent restricted throughout the building's compliance period. The contract rent for the unit, plus the utility allowance (if any), plus non-optional charges (if any) may not exceed the allowable maximum LIHTC gross rent limit for the unit.

Example: Grove Gardens

Grove Gardens is located in Anytown County.

The two-bedroom, 60 percent LIHTC gross rent limit for a unit in Anytown County is $850. The two-bedroom utility allowance at Grove Gardens is $50. There are no non-optional charges. The owner must charge a contract rent of $800 or less to remain in compliance with the maximum gross rent limit.

Residents without any other form of rental assistance pay the full contract rental amount to the owner. Residents who receive Section 8 pay rent according to the rules for their subsidy, which may be an income-based rent. This is not because the unit is a LIHTC unit, but rather because the family has rental assistance. Units receiving low-income housing tax credits must be rent restricted throughout the building's compliance period.

While HUD publishes income limit tables annually, they do not publish rent limit tables. Typically, state HFAs calculate and publish rent limits on their websites annually, but owners should also calculate rent limits annually to be certain they are in compliance.

There is one exception that will be discussed in a later chapter. The maximum LIHTC gross rent limits are calculated using the income limits.

Contract Rent + Utility Allowance + Non-Optional Charges = Gross Rent

Section 9 Important Documents

The LIHTC program is governed by Section 42 of the Internal Revenue Code (IRC) and related regulations. Changes to the program are done by IRS revenue rulings. Unlike other housing programs, changes to the LIHTC program may or may not be retroactive depending on the year of the revenue ruling.

In addition to complying with the Code, blended occupancy projects must comply with a variety of complex agreements, forms, handbooks, and guidance. Understanding these documents and having copies of these documents at the property level is essential. It is recommended that you keep a binder of all important regulatory documents.

The following list is not all inclusive, but describes some of the more common agreements in the LIHTC program:

- The **Qualified Allocation Plan**, or **QAP** is the document that the state allocating agency publishes on an annual basis to describe the LIHTC allocation process and application scoring criteria and methodology. Because QAPs are revised annually, it is recommended to keep the QAP under which the credits were awarded for future reference.
- The **Tax Credit Application** is the actual application prepared by the project owner and submitted to the state allocating agency.
- The **Land Use Restricted Agreement (LURA) / Regulatory Agreement / Extended LIHTC Commitment / Declaration of Restricted Covenants** is the legally binding document that commits the project owner and his/her successors to occupancy and affordability requirements for the project. (Tax credit projects awarded credits in 1987-1989 may not have extended use provisions, as they were not mandatory.)

- A regulatory agreement is a contract between an owner of multifamily real estate and an HFA. The owner agrees to "give up" some of their land use rights in exchange for participating in the LIHTC program. The restrictions are documented in this contract and recorded in the public record. If the property is sold during the term of the agreement, generally the restrictions continue with the land and apply to the new owner. The regulatory agreement will outline the number of affordable units required for the compliance period and will also indicate any lower set-asides.
- The ***Low-Income Housing Credit Allocation and Certification, Form 8609*** lists the owner's minimum set aside elections. The owner also elects on this form on Part II, line 8b if the building is part of a multi-building project. This election is critical for property managers to know so that they can properly manage the unit mix.
- The **State-specific LIHTC compliance manual** outlines the state policies, procedures, timelines and required form(s), if any, and is a critical document for ensuring compliance.
- Although an IRS program administered by state agencies, the LIHTC program relies on HUD for defining and calculating income and assets, using Chapter 5 of the **HUD Handbook 4350.3 REV-1, CHG-4**.
- The ***Guide for Completing Form 8823: Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition*** provides state allocating agencies with written guidance to help determine when the state agency should report noncompliance to the IRS on the Form 8823 during the federal compliance period.
- The ***General Explanation of the Tax Reform Act of 1986*** (also commonly referred to as the "Blue Book") provides an explanation of the Act.
- Income, rent, and family composition information is recorded at initial certification and annual certification (when applicable) on a state-specific **Tenant Income Certification (TIC)**. While no standardized TIC is provided by the IRS, many states use the National Council of State Housing Agencies' (NCSHA) recommended TIC.

Section 10 Program Assessment

Treas. Reg. §1.42-5(c)(2)(ii)(A) and (B)

State agencies are responsible for monitoring LIHTC properties for compliance with Section 42 of the Internal Revenue Code and state-specific requirements. As part of the qualified allocation plan (QAP), state agencies must state their procedures for compliance monitoring, including record keeping and retention, certification and review of projects, physical inspections of the project, and notification of noncompliance.

During the federal compliance period, site visits must be conducted no later than the second calendar year following the year during which the last building in the project is placed in service and then at least once every three years thereafter, although the HFA can audit more frequently.

Remember, instances of noncompliance are reported to the IRS during the federal compliance period only. In addition to allocating the low-income housing tax credits, state HFAs are also responsible for monitoring the buildings throughout the entire compliance period, both the federal compliance period and the extended use period.

Treas. Reg. §1.42-5(c)(2)(ii)(A) and (B)

Compliance monitoring typically takes three forms:

- Desk audits
- Site visits
- Review of the building's tenant files

Desk Audit

Federal Register Notice 2/26/19

During a desk audit, the owner submits HFA-requested documents such as occupancy reports or tenant ledgers to the state agency to review at their offices. The desk audit typically takes place prior to the site visit.

Site Visit

The site visit consists of two parts: a property inspection and a review of tenant files.

The HFA must give the owner reasonable notice that a property inspection will occur so that the owner may notify residents. The IRS defines *reasonable notice* as generally no more than 15 days from the date the agency informs the owner that an onsite inspection will occur. Previously, *reasonable notice* had been defined as 30 days. Exceptions may be granted for extraordinary circumstances, such as natural disaster and severe weather conditions.

The HFA may not give advance notice to the owner that specific units or files will be inspected and may only notify the owner on the day of inspection which units and files will be reviewed.

The site visit consists of two parts: a property inspection and a review of tenant files. HFAs are no longer required to conduct physical inspections and reviews of certifications on the same units. The HFA must select units and files separately and in a random manner. The HFA generally may not select the same units for inspection as it selects to review the certifications since this would give the owner advance notice. If the HFA does choose to select the same units for inspection and file reviews, they must complete both the inspection and the review before the end of the day on which the units are selected. HFAs may conduct physical inspections and file reviews on more than the minimum number of units if they believe it is appropriate. The HFA may conduct more physical inspections than file reviews, or vice versa, if the minimum number is conducted.

Federal Register Notice 7/7/20

In 2016, the IRS proposed a change to the minimum of units that must undergo a physical inspection and file review. This change would have gone into practical effect no later than January 1, 2021, and would have matched the sample size required by HUD for REAC inspections. Instead, in 2020, the IRS issued proposed regulations that relaxed the sampling requirements. As of July 7, 2020, the minimum number of low-income units that must be included in the random samples for both physical inspection and file review is the lesser of the applicable REAC number or 20 percent of the low-income units in the project, rounded up to the next whole number.

The sample size reference chart is below:

Number of Low-Income Units in the Project	Number of Low-Income Units Selected for Low-Income Certification Review
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

Bright Line

The owner is required to correct any noncompliance within a reasonable time after the noncompliance is discovered or reasonably should have been discovered. Not all types of noncompliance are correctable. In some cases, such as violating the next available unit rule, if the noncompliance is corrected within a reasonable period, there is no recapture. In other cases, such as overcharging rent, credits are lost for the entire year, regardless of whether the owner took steps to correct the noncompliance.

Federal Register Notice 2/26/19

Under the all-buildings rule, the HFA must inspect all buildings in a project. However, if the randomly selected minimum number of units to be inspected fails to include at least one unit in one or more buildings in a project, the HFA may satisfy the requirement by inspecting some aspect of each omitted building, such as the building exterior, common area, HVAC system, etc.

First-Year Records

Owners can begin to take credits beginning the year the building was placed in service, but credits cannot be claimed until the minimum set-aside and applicable fraction is met. Determination of the minimum set-aside is documented in large part in the first-year tenant file. If it cannot be determined that the tenant was qualified, the credits may be at risk.

In accordance with IRS regulations, all first-year records must be kept for six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the federal compliance period. This means that first-year tenant files must be kept for **21 years**. All other records are required to be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

NONCOMPLIANCE

After the state agency conducts a compliance review, they provide the owner with a summary report of any findings. If the report indicates noncompliance, the owner is expected to respond to the state agency within a maximum of 90 days to provide clarification or document that issues of noncompliance have been addressed. The HFA may require a shorter response time, such as 30-60 days, or may extend the response time up to six months for good cause. Once the owner provides the necessary information, the state agency determines whether the owner was always in compliance, has corrected the noncompliance, or remains out of compliance.

If the owner was always in compliance, findings are not reported to the IRS using the Form 8823.

However, if the HFA determines that the owner remedied noncompliance or remains in noncompliance, then the state agency must report noncompliance to the IRS within 45 days after the end of the correction period by sending both the IRS and the owner a Form 8823 with the following information:

- If noncompliance remains uncorrected, the "out of compliance" box is checked, and the date is indicated on line 8.
- If noncompliance was corrected within the correction period, both the "out of compliance" and "compliance corrected" boxes are checked, and dates are indicated on lines 8 and 9.

The IRS processes the Form 8823 where the "back in compliance" box is checked without contacting the owner. Those with the "out of compliance" box checked are assigned to IRS technicians to prepare letters to owners. As long as the noncompliance is corrected within three years, a "back in compliance" Form 8823 will be filed with the IRS by the HFA.

The IRS immediately evaluates forms received by the HFA and determines the need for an audit of the owner's tax return. Remember, there are certain types of noncompliance that cannot be corrected.

Serious noncompliance can lead to recapture or disallowance of the credits by the IRS. During the extended use period, the state HFA is not required to notify the IRS of the owner's noncompliance. The consequences for noncompliance during the extended use period vary by state. Failure to maintain continuous program compliance can affect the owner's eligibility for future allocations of LIHTCs in many states.

Section 11 Property Inspections

Treas. Reg. §1.42-5 (C)(2)(ii)(B); Form 8823 Guide Chapter 6

During the affordability period, all rental units, building exteriors and systems, common areas, and the property site must be suitable for occupancy. The state agency is required to conduct physical inspections of LIHTC properties using either HUD's Uniform Physical Condition Standards (UPCS) or local inspection standards to verify that tax credit projects are decent, safe, and sanitary, and in good repair. While the state agency should identify which standard will be used in the qualified allocation plan (QAP), most state agencies choose to use UPCS as the required inspection protocol. State HFAs cannot combine selected portions of UPCS with portions of local standards. If UPCS is selected, state HFAs are not required to use the Real Estate Assessment Center (REAC) protocol. This means that while some issues may appear minor in nature, all levels of deficiencies must be reported during the federal compliance period. In other words, no levels of severity need be noted as would happen in a REAC inspection in HUD programs.

Even if UPCS is used, a development must also still satisfy local health, safety, and building codes since UPCS does not preempt local health, safety, and building codes. State agencies, however, are not required to determine by inspection whether the project meets these local standards. Instead, the owner is responsible for certifying that state or local authorities responsible for making inspections did not issue a violation report for any building or project. If a violation notice or report was issued, the owner is required to attach a statement to their annual certification to the state agency. Note that in some cases, local codes will conflict with requirements under UPCS. If this is the case, the conflict should be brought to the attention of your state HFA.

During the onsite inspection, vacant units must be suitable for occupancy or "rent ready." It is important to check with your state to find out what they determine to be a reasonable period to clean a vacated unit or repair damages caused by a prior tenant. Failure to "turn" your vacant units around in a reasonable period, as defined by your state HFA, will result in a report of noncompliance to the IRS.

Owners should typically have at least one employee available for the on-site physical inspections to accompany the state inspector during the process. Tenants should also be provided adequate notice that an inspection will occur. It's also a good idea to have one or two back-up units ready for inspection, just in case.

REAC PROTOCOL

Federal Register Notice 2/26/19

The HFA may satisfy inspection requirements for the program and not conduct their own physical condition inspection if an inspection is performed under HUD REAC protocol and meets the following requirements:

- Both vacant and occupied units are included
- The inspection complies with HUD REAC requirements
  - Including using most recent software
- The inspection is performed by HUD or a HUD REAC inspector
- Results are sent to HUD, reviewed and scored within HUD, and the report is made available
  - If this option is used, the "all-buildings rule" does not apply. The state agency must still, however, conduct a review of tenant files.

NONCOMPLIANCE

Form 8823 Guide, Chapter 6

The reportable "out of compliance" date on the Form 8823 is the date the project failed to meet the inspection standard, if known, or otherwise, at the earliest documented date that the standard was not met. The state HFA must provide the owner with prompt written notice if the project is not in compliance. The state HFA also identifies the correction period for any compliance issues. If any of these deficiencies are life-threatening, before leaving the property, the state HFA's inspector should notify the owner to take immediate corrective action and provide a list of hazards that need immediate remedy.

Properties are considered back in compliance when violations are corrected. The state HFA may require that owners disclose the date of repair, that a state HFA inspector make a visual inspection of the repair, or that the owner provide a certification that the repair was made. Remember that state agencies are required to report any noncompliance on Form 8823 during the federal compliance period.

Section 12 Chapter 2 Post-Test

1. Which of the following statements is true about the credit period?
    a. The credit period is for 15 years
    b. The credit period is for 10 years
    c. The credit period is for 30 years
    d. The credit period varies by state
2. The federal compliance period is for:
    a. 10 years
    b. 30 years
    c. 15 years
    d. 25 years
3. The extended use period is for a minimum of:
    a. 0 years
    b. 30 years
    c. 15 years
    d. 25 years
4. The placed-in-service date for a new construction building is:
    a. The date that the first qualified LIHTC tenant moved into the unit
    b. The date the Certificates of Occupancy were issued
    c. The date the project received an allocation of LIHTCs
    d. The first of the month following the month the project received an allocation of LIHTCs.

5. Which of the following is true about a LIHTC project with a 20/50 MSA?
    a. 20 percent of the units must be rented to households at or below 50 percent of
    b. 20 percent of the units must be rented to households at or below 60 percent of area median income
    c. 50 percent of the units must be rented to households at or below 20 percent of area median income
    d. 20 percent of the units must be rented to market rate tenants
6. Green Acres Apartments consists of two buildings. The MSA must be met over both buildings if:
    a. "No" is marked on line 8b of each building's IRS Form 8609
    b. "Yes" is marked on line 8b of each building's IRS Form 8609
    c. The owner selects the 20/50 MSA only
    d. The buildings are newly constructed
7. Low-income housing tax credits may be used for new construction of affordable housing only.
    a. True
    b. False
8. PHAs apply for LIHTCs because they receive a dollar-for-dollar reduction in the PHA's federal income tax liability.
    a. True
    b. False
9. A tax credit is subtracted from a taxpayer's total income to compute their tax base.
    a. True
    b. False
10. Only properties who make their MSA election after March 23, 2018 are eligible to choose the AIT MSA option.
    a. True
    b. False

11. Different units in the same building may have different placed-in-service dates.
    a. True
    b. False
12. The credit period always begins the same year the building is placed in service.
    a. True
    b. False
13. The length of the extended use period is listed on the IRS Form 8609.
    a. True
    b. False
14. Green Bay is a new construction LIHTC project, consisting of one building. The certificates of occupancy are issued on June 5. The Kamry family is the first family to occupy a unit at Green Bay and they move in on June 25.
    - What is the placed-in-service date? ____________
    - In what month will the Kamry family's unit generate a tax credit? ____________

CHAPTER 3 RAD PBRA Program Basics

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Explain at an introductory level the basics of the rental assistance demonstration (RAD) and the project-based rental assistance (PBRA) programs
- Identify the key program elements and requirements for RAD PBRA properties
- Identify key documents and regulations for the RAD PBRA program
- Describe income limits and rent setting at an introductory level

Section 2 Overview of the Standard PBRA Program

The Section 8 project-based rental assistance program falls under HUD's Office of Multifamily Housing. It was authorized by Congress in 1974 to provide rental subsidies for eligible resident families living in newly constructed ("New Construction"), rehabilitated ("Substantial Rehabilitation"), and existing rental and cooperative properties. HUD provides Section 8 rental assistance to certain mortgaged properties through the execution of a Housing Assistance Payment (HAP) contract. All rental assistance at these properties is project-based. This means subsidy is committed by HUD to specific assisted units for a fixed period of time based on the HAP contract and mortgage signed between the owner and HUD. This type of assistance differs from the tenant-based Section 8 program (referred to as the Housing Choice Voucher (HCV) program) where subsidy is tied to the family and is portable. Most HAP contracts were initially signed for 20-40 years. At the end of the term, HAP contracts may be renewed, typically in one, five, or 20-year increments, or project owners may opt-out of the contracts.

In 1983 Congress repealed the statutory authority for the New Construction and Substantial Rehabilitation Programs. As a result, no new projects may be completed or contracted under the program. The one exception to this is that new HAP contracts are being signed under HUD's Rental Assistance Demonstration (RAD) program. Under the first component of the RAD program, projects funded under the public housing program may convert assistance to long-term project-based Section 8 rental assistance contracts under the PBRA program.

The property's HAP contract will specify how many units will receive Section 8 rental assistance. HUD provides rental assistance to the owner for each subsidized unit in the project. Rental assistance is the difference between the HUD-approved contract rent for the unit and the tenant's income-based rent contribution. Contract rents must be comparable to unsubsidized projects in the area where the Section 8 property is located, to the extent possible. The tenant rent contribution is typically the greater of 30 percent of the family's monthly adjusted income, 10 percent of the family's monthly gross income, or a minimum rent of $25.

Section 3 The Rental Assistance Demonstration (RAD) Program

According to a 2011 HUD analysis, it would take about $26 billion to repair public housing developments that provide shelter for over two million residents. Meanwhile, the federal budget for housing assistance fell by over six percent or $2.5 billion between 2010 and 2012. Given inflation, little financial improvement is expected in the near future. At the same time, other HUD affordable housing programs were expiring that assisted families in privately owned properties with HUD-insured mortgages. When the contracts end, assisted families are eligible to receive tenant protection vouchers to remain at the property or move. Since most of the properties are 20 to 40 years old, renovation and repairs are essential. To deal with these crises, in 2012 HUD launched the Rental Assistance Demonstration program, better known as RAD.

The purpose of the Rental Assistance Demonstration (RAD) program is to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term project-based Section 8 HAP contracts under either:

- Project-based rental assistance (PBRA) under the Office of Multifamily Housing
- Project-based vouchers (PBVs) under the Office of Public and Indian Housing (PIH)

As of October 2022, over $15 billion dollars has been added in capital improvements to previous public housing properties through the RAD program. The average per unit investment is now over $144,000 per unit. Over 185,000 units have been preserved.

The 2015 Appropriations Act authorized up to 185,000 units to convert assistance through RAD, the 2017 Appropriations Act raised that cap to 225,000 units, and the 2018 Appropriations Act raised it again to 455,000 units. The 2018 Appropriations Act also added a new class of properties to be eligible for conversion under RAD, which includes Section 202 Project Rental Assistance Contracts (PRACS) and 202 PRACS. This class covers over 120,000 units across 2,800 properties serving the very low-income elderly.

Under RAD PBRA, rental assistance is provided to PHAs through the HAP contract. The initial terms of the contracts are for a term of 20 years with mandatory renewals thereafter. RAD PBRA projects are treated as Pre-1981 Act Projects. Any future changes in HUD requirements that are inconsistent with a RAD PBRA HAP contract are not applicable.

Some rules for the standard PBRA program are different or do not apply to RAD PBRA. In particular, existing in-place tenants at the time of conversion from public housing to PBRA often follow different requirements. As such, owners of RAD PBRA properties should develop a system for identifying these households.

For public housing conversion to PBRA under RAD, regulations governing the program are found at 24 CFR Part 880, as amended for RAD requirements in Notice H 2019-09. Future changes to Part 880 apply to RAD PBRA as long as they are not provisions that have been stricken by HUD in Notice H 2019-09. Other important PBRA RAD references are the *Policy Quick Reference Guide to Multifamily Housing (PBRA) Requirements* (September 2020) and *RAD Welcome Guide for New Awardees: RAD 1st Component* (revised 3/13/15).

New RAD Notices

Notice H 2019-09 was issued September 5, 2019, and was effective immediately. Projects continue to be governed by the notice in effect at the time of conversion.

RAD Notice Timeline

PIH 2012-32 — Effective 7/26/12

PIH 2012-32 REV-1 — Effective 7/2/13

PIH 2012-32 REV-2 — For projects that closed on or after 6/15/15 through 1/12/17

H 2017-03 REV-3 — For projects that closed on or after 1/12/17 through 9/4/19

H 2018-05 — Effective 7/2/18 (amended REV-2 and REV-3)

H 2019-09 - Final Implementation — For projects closing on or after 9/5/19

Additional RAD References

Public Law 112-55, which established RAD

Public Law 113-76, which extended RAD's second component authority

RAD Conversion Guide for Public Housing Agencies

Policy Quick Reference Guide to Multifamily Housing (PBRA) Requirements (September 2020)

Overview of the Rental Assistance Demonstration Program (6/2014)

RAD Welcome Guide for New Awardees RAD First Component (3/2015)

RAD Resource Desk FAQs may be accessed at:

- http://www.radresource.net/search.cfm

Section 4 Roles of HUD and CAs/PBCAs

Housing and Urban Development (HUD)

Congress is responsible for passing annual appropriations and authorization legislation for national housing programs. Housing legislation is signed by the president, and funds are allocated and agreed upon by House and Senate subcommittees and approved by both houses. The Office of Management and Budget (OMB) apportions the funds made available by Congress and reviews HUD regulations and operations. HUD headquarters in Washington, D.C. interprets the housing legislation enacted by Congress. HUD headquarters' primary role is in writing, establishing, and updating program regulations to implement federal laws. HUD contracts with public housing agencies (PHAs) in the public sector and owners in the private sector to actually build, manage, and maintain properties and administer rent subsidy programs. The Section 8 Project Based Rental Assistance (PBRA) program falls under the Multifamily Housing Programs office, which also provides financing subsidies, direct loans, and capital advances, in addition to project-based rental subsidies.

HUD program offices oversee the various assisted housing programs. Their primary role is making payments and monitoring program compliance. Each Multifamily property has a HUD Account Executive (AE) that will assist with answering questions and resolving issues, as well as potentially completing contract renewals and other necessary contractual agreements and may perform management and occupancy reviews (MORs).

A listing of HUD's field offices may be found on HUD's website: www.hud.gov/localoffices.cfm.

Owners typically do not work directly with the HUD AE. Rather, a Performance-Based Contract Administrator (PBCA/CA) or traditional Contract Administrator (CA) will provide direct oversight in many cases.

PERFORMANCE-BASED CONTRACT ADMINISTRATORS (PBCA) AND CONTRACT ADMINISTRATORS (CA)

While HUD ultimately has the primary responsibility for contract administration for multifamily properties, Contract Administrators (CA) and Performance Based Contract Administrators (PBCAs) monitor program compliance through a contractual relationship with HUD. PBCAs/CAs are generally housing agencies that contract with HUD to oversee the multifamily programs. Entities that perform this function include:

- State financing agencies
- Local housing authorities
- Other agencies specializing in this type of work

There are two types of contract administrators that assist HUD in performing contract administration functions:

- **Traditional Contract Administrators (CAs):** These Contract Administrators have been used for over 30 years and have annual contributions contracts (ACCs) with HUD. Under their ACCs, traditional contract administrators are responsible for asset management functions in addition to HAP contract compliance and monitoring functions. They are paid a fee by the owner for their services.
- **Performance-Based Contract Administrators (PBCAs):** The use of PBCAs began as an initiative in 2000. Under a performance-based ACC, the scope of responsibilities of a contract administrator is more limited than that of a traditional contact administrator. A PBCA's responsibilities focus on the day-to-day monitoring and servicing of Section 8 HAP contracts. PBCAs are generally required to administer contracts on a statewide basis and have strict performance and reporting requirements as outlined in their ACCs.

PBCA/CAs are tasked with two different functions; program compliance and asset management, although the asset management functions for CAs differ from the asset management functions for PBCAs.

Monitoring program compliance for both PBCA/CAs includes:

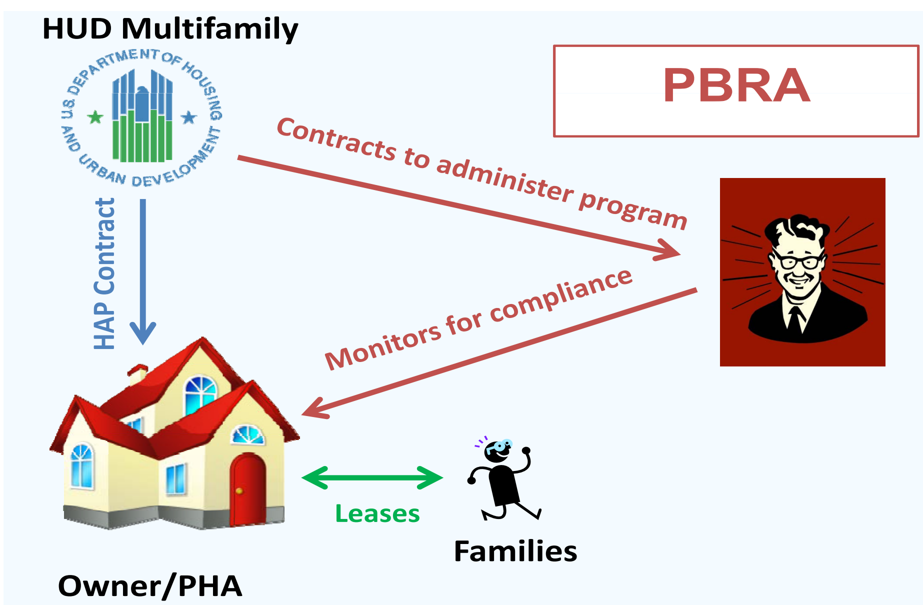
- Ensuring assigned properties are serving eligible families at the correct level of assistance
  - The management and occupancy review (MOR) evaluates the owner's operating policies, procedures, and practices related to compliance with the HAP contract. The PBCA/CA assigns a score based on the results of the MOR.
- Managing contract renewals and annual utility allowance analysis/rent increases
- Processing monthly TRACS and voucher submissions for assigned properties

The asset management functions for both PBCA/CAs includes monitoring:

- The physical health of properties
  - This includes review and follow-up of all REAC inspection findings

HUD has the following additional asset management function:

- The financial health of properties
  - This includes annual review of submitted financial information and property budget



MANAGEMENT AGENTS

HUD Handbook 4381.5 REV-2

The owner must seek out and select a management agent, subject to HUD approval. There are four types of management agents:

- Owner/manager
  - Owner and management agent are the same business entity
  - Known as “self-management”
- Identity of interest (IOI) management agent
  - An individual or entity that provides management services to the project has a relationship with the project owner that is such that the selection of the management agent and determination of the management fee will not be determined through an arms-length transaction
- Independent fee management agent
  - A management company or individual that has no identity of interest relationship with the owner and no financial interest or involvement with the project other than earning a fee for providing management services
- Project administrator
  - An individual who directs the day-to-day activities of a project designed for elderly or disabled residents and who reports to the Board of Directors
  - Generally an employee of the project rather than a contractor
  - Receives a salary rather than a management fee

Section 5 Key Documents

CODE OF FEDERAL REGULATIONS (CFR)

The Section 8 Project-Based Rental Assistance Program is governed by the following parts under Title 24 of the *Code of Federal Regulations* (CFR):

- Part 1: Title VI of the Civil Rights Act of 1964
- Part 5: General Program Requirements
- Part 8: Nondiscrimination
- Parts 100 and 108: Fair Housing Act (Title VIII of the Civil Rights Act of 1968)
- Part 146: Age Discrimination Act of 1975
- Part 245: Tenant Participation Regulations
- Part 880: New Construction, as amended by RAD requirements

HUD HANDBOOKS

The **HUD Handbook 4350.3 REV-1 CHG-4, *Occupancy Requirements of Multifamily Housing Programs*** provides the rules governing eligibility and occupancy requirements and procedures in HUD-subsidized multifamily housing programs. It contains HUD interpretations of mandatory rules and regulations as well as advisory guidance.

Not all requirements apply to all properties or residents. Furthermore, some properties are assisted under multiple programs and are subject to multiple sets of requirements. Assisted properties may also be subject to federal, state, or local laws, some of which may conflict with HUD requirements. It is wise for each owner to carefully read all contracts and loan agreements applicable to the property and to seek guidance from the local HUD Field Office or their CA/PBCA when questions arise.

Since laws governing HUD-assisted multifamily housing change frequently, HUD issues changes to handbooks from time to time. When changes are released, they are accompanied by a transmittal letter that explains the content of the change and when it is effective. Occasionally, HUD will issue a revision and will replace an entire handbook. This occurred in 2003 when the 4350.3 had a major revision and is referred to as revision one (REV-1). The most recent change to the 4350.3 was issued in August 2013 and revised in November of 2013. This is referred to as Change 4. Thus, the most current version of the handbook is now referred to as *HUD Handbook 4350.3, REV-1, CHG-4.* The most recent changes are designated in the text by an asterisk before and after each change as well as "8/13" at the bottom of each affected page.

The handbook is organized by program function. Each chapter contains a list of relevant citations to applicable laws and describes the key requirements and procedures relevant to that topic. The handbook provides examples, figures, exhibits, appendices and a glossary, which contains definitions of key technical terms used in the 4350.3. The handbook has the following chapters:

- Chapter 1: Introduction
- Chapter 2: Civil Rights and Nondiscrimination
- Chapter 3: Eligibility for Assistance and Occupancy
- Chapter 4: Waiting List and Tenant Selection
- Chapter 5: Determining Income and Calculating Rent
- Chapter 6: Lease Requirements and Leasing Activities
- Chapter 7: Recertification, Unit Transfers, and Gross Rent Changes
- Chapter 8: Termination
- Chapter 9: Enterprise Income Verification (EIV)

As this handbook is over 900 pages long, finding the answers you are looking for can be cumbersome. The addition of the electronic version of the handbook has made finding things easier than ever. It is a best practice to keep a link to the electronic version of the handbook on your desktop favorites. This will enable you to quickly reference the materials, choose your chapter, and do keyword searches for specific items such as interims, terminations, etc. Also, highlighting and tabbing specific passages in the paper version of the manual will make for easier reference in the future.

Additional HUD handbooks include:

- **HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing:*** Provides general guidance for most of the tasks associated with HUD's involvement in the affairs of multifamily projects.
- **HUD Handbook 4381.5, *The Management Agent Handbook:*** Provides guidance regarding most aspects of HUD's relationship and interaction with owners and management agents of HUD-insured and HUD-assisted properties. It also includes guidance regarding the involvement of residents and their representative organizations in key decisions concerning their projects and the importance of supporting resident efforts to organize.
- **HUD Handbook 8025.1, *Implementing Affirmative Fair Housing Marketing Requirements for Multifamily Housing:*** Provides guidance for the implementation of the AFHMP Regulations and the AFHMP requirements in HUD's programs.

Housing Notices

HUD headquarters publishes Multifamily Housing Notices (referred to as H-Notices) to provide guidance, extensions, instructions, clarifications, announcements, and other policy information to owner/agents. These notices provide guidance and updated regulations relating to multifamily housing. The Office of Multifamily Housing Programs is responsible for publishing the notices, which may be accessed online through HUDClips under the Housing section. Each notice is considered mandatory while it is current, and notices are often extended. After expiration, the notice is considered discretionary and may continue to be followed as long as no new guidance has been issued to supersede the previous notice.

You can find links to the following important references at www.hud.gov:

- Searchable HUD Handbook 4350.3
- Student Rule FAQs
- RHIIP Listserv
- Memorandum Regarding Homeless Preference Fees
- The Special Claims Processing Guide
- The Section 8 Contract Renewal Guide
- Notice H 2015-04 - Utility Allowance Methodology
- Notice H 2016-08 - Family Self-Sufficiency Program in Multifamily
- Notice H 2017-03, REV-3 - RAD Final Implementation Notice
    - Applicable to projects that closed on or after January 19, 2017
- PIH 2012-32 REV-2
    - Applicable to projects that closed prior to January 19, 2017
- Notice H 2019-09 - RAD Final Implementation Notice
- RAD Quick Reference Guide to Multifamily Housing Requirements
- RAD Welcome Guide for New Awardees
- Notice H 2016-17 Fair Housing, Civil Rights, and Relocation Requirements for RAD
- 24 CFR – VAWA Regulations

FEDERAL REGISTER NOTICES

HUD headquarters writes and publishes regulations in the *Federal Register* to further enact and promulgate laws passed by Congress. Notices may be accessed online on the *Federal Register* site. *Federal Register* notices are the mechanism through which new regulations are added to the Code of Federal Regulations as well as the method used to update, amend, or remove existing regulations as necessary. The typical cycle of a *Federal Register* notice may include HUD issuing a proposed rule to solicit public input and feedback, amending the rule in accordance with public comments, and then, sometimes after several revisions, publishing a final rule, although this is not always the case. Rules issued in the *Federal Register* are organized as follows:

- List of regulations affected
- Subject
- Rule status
    - Interim rules
    - Proposed rules are for comment only
    - Final rules must be implemented by the effective date listed in the notice
- Summary
- Date
    - Implementation date for final rules
    - Comments due date for proposed rules
- Contact person for comments
- Preamble
    - HUD publishes its response to comments from the public in the preamble of final rules
- Text of new or revised regulations

MULTIFAMILY FSS INFORMATION

Current Public Housing and Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) participants will continue to be eligible for FSS at the time their housing is converted under RAD. All owners will be required to administer the FSS program for current participants until either those households graduate or leave the program. The PHA and new owner may collaborate, allowing the PHA to continue to operate the FSS program for currently participating households. The PHA will continue to provide the necessary services to the participants, while the owner will be required to submit quarterly reports to HUD, manage the escrow accounts, and create monthly Owner/Agent Request (OARQ) adjustments to the TRACS HAP voucher.

Please note that following conversion, public housing grant funds cannot be used to provide services to new participants who lived in the property prior to conversion. Once the RAD transaction is complete, all current residents become part of the PBRA program.

For example, Ms. J moved into the public housing property in May 2018. She has never participated in an FSS program. The property completes its RAD transaction and conversion takes effect in February 2019. Ms. J decides to enroll in the FSS program in September 2019. Public housing grant funds cannot be used to provide service coordination to Ms. J. The owner would have to find other funding sources to pay for the hours of service coordination provided to Ms. J once she joins the program.

Once the property is converted, the owner must notify HUD at MF_FSS@hud.gov with the unit number, head of household’s last name, and start and end dates of the contract of participation (CoP) for all current FSS participants. This initial notification is required until modifications can be made to TRACS. HUD staff will retrieve the remaining FSS participant information from the PIH Information Center (PIC).

Once units are converted to PBRA, the owner may also establish a new Multifamily FSS program, pursuant to the requirements at 24 CFR Part 984, the participants’ CoP, and Notice H 2016-08, *Family Self Sufficiency Program in Multifamily*.

Upon conversion, already escrowed funds for FSS participants shall be transferred into a PBRA escrow account and be considered PBRA funds, thus reverting to PBRA if forfeited by the FSS participant or the owner. All forfeited escrow account funds must be remitted to HUD. If the owner has established an FSS program, forfeited escrow account funds must be used to benefit FSS participants, as specified in 24 CFR 984.305(f)(2). Please see Notice H 2016-08 for additional details, including FSS coordinator funding eligibility under a RAD conversion. Owners can refer to Notice H 2016-08 or contact their local HUD office with questions.

The escrow accounts for households participating in the program must be calculated in accordance with the PIH regulations at 24 CFR Part 984. During the Year of Conversion, the FSS escrow account is funded from PIH as part of the conversion. For subsequent years, an owner is permitted to obtain the escrow amount by creating monthly OARQ adjustments on the property's HAP voucher and then must deposit the money in the corresponding escrow account. In order for HUD to identify information relating to FSS, and until future updates can be made to TRACS, all FSS OARQ adjustments must indicate the voucher month and year for the escrow credit, unit number, head of household's last name, and the words *FSS participant* in the comments section. The owner shall deposit the FSS account funds of all participating families into a single depository account.

Current Resident Opportunity and Self Sufficiency-Service Coordinator (ROSS-SC) grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants, nor will its residents be eligible to be served by future public housing ROSS-SC grants.

If the PHA converts their entire public housing and Housing Choice Voucher program stock to PBRA, then the owner must continue to administer the FSS program and honor all executed CoPs for current FSS participants. The owner is not required to enroll new participants but may choose to do so following the guidance found in Notice H 2016-08. Additionally, since the PHA has gone out of business, the owner is no longer eligible to apply for future funding under the PIH Grant Program. Previously, there was no grant funding available for Multifamily assisted housing owners. However, the FSS Final Rule, effective June 16, 2022, has stated that future notices of funding opportunity (NOFOs) will make FSS grant funding available for Multifamily FSS. Further, the final rule added a provision at 24 CFR 984.113(a) stating that owners may also or alternatively use residual receipts to pay for reasonable FSS program operation costs, including hiring an FSS coordinator or coordinators for their FSS program.

See the PBRA Quick Reference Guide for sample worksheets.

THE 50059

Form HUD-50059 is the Certification form showing household information, income, assets, rent, utility allowance, etc. It is used to provide information to HUD or the CA for monthly voucher billing. The voucher shows correct current tenant rent and monthly HAP for each tenant. When recorded in TRACs, this enables HUD and the CA to monitor the owner/PHAs performance.

For RAD PBRA properties, owners must begin submitting 50059s and 50059As starting on the HAP contract effective date. HUD recommends starting to create 50059s and 50059As in the time between the RAD Conversion Commitment (RCC) and HAP contract effective date in order to work through discrepancies early.

Each 50059 must be signed and dated by the head, spouse, and cohead, and all household members 18 and older. It must also be signed and dated by the owner.

The information the owner submits on the 50059 is the information that is submitted to TRACS. If there are errors on the 50059, there will be errors in TRACS and on the voucher. Each field on the 50059 directly relates to information being submitted to TRACS. TRACS data feeds EIV, so if there is an error on a 50059, there will also eventually be an error in EIV.

A 50059 certification form is created for all full certifications, which include move-in certifications (MI), initial certifications (IC), annual recertifications (AR), and interim recertifications (IR). The 50059 serves as the owner's certification that the tenant's eligibility, rent, and assistance have been determined in accordance with HUD regulations. It serves as the tenant's certification that the information contained on the form, as reported by the tenant, is true and correct to the best of their knowledge.

A 50059A certification form is created for all partial certifications, and the certification only consists of one page. Partial certifications include gross rent changes (GR), unit transfers (UT), move-outs (MO), and terminations (TM) of assistance or tenancy. Forms 50059A must be signed and dated by the head, spouse and cohead, and all household members 18 and older, except in the case of a gross rent change where the tenant's rent or utility reimbursement amount does not change, and at move-out (MO). Forms 50059A must always be signed and dated by the owner and maintained in the tenant's file.

Section 6 Income Limits and Rents

INCOME LIMITS

Tenants participating in the PBRA program must have incomes that are at or below the applicable income limit.

HUD establishes and publishes income limits for each county or Metropolitan Statistical Area (MSA) in the country. The income limits are based on the median income of the geographic area for which the limit is established. Therefore, the income limit for one city or county is likely to be very different from the income limit for another city or county.

Income limits are published annually and are available from the local HUD office or online at www.huduser.gov.

Standard Section 8 PBRA projects, depending upon the effective date of the initial housing assistance payments (HAP) contract for the property, use either the low- (80 percent AMI) or very low-income (50 percent AMI) limit.

Projects with HAP contracts initially effective on or after October 1, 1981, must admit only very low-income families unless HUD has approved an exception to admit families whose incomes are above the very low-income limit.

Projects with HAP contracts initially effective prior to October 1, 1981, may admit families up to the low-income limit.

Notice H 2019-09

Properties converting under RAD are to be treated as pre-1981 HAP Contracts, meaning owners may admit families up to the low-income limit (80 percent).

Current households at the time of conversion are not subject to income eligibility. A unit with a household that was over-income at the time of conversion would continue to be treated as an assisted unit.

Rents

Notice H 2019-09

The calculation of tenant rent and HAP as well as the voucher billing process are the same in the RAD PBRA program as in the standard program. However, contract rents are set differently under RAD. No additional incremental funding is provided. HUD initially calculates contract rents for every public housing project based on each project's subsidy under the public housing program. HUD has discretion to establish contract rents with additional flexibility and rents may be adjusted based on factors such as MTW funding, rent bundling, and tenant-paid utility savings. Initial contract rents are capped at 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, after subtracting any utility allowance. The PHA may request an exception up to 150 percent of FMR, provided a rent comparability study (RCS) is performed and shows that initial rents would be below comparable market rents.

Section 7 The HAP Contract

Notice H 2019-09

RAD PBRA projects have an initial HAP contract term of 20 years. Under RAD PBRA, upon expiration of the initial contract and each renewal contract, HUD must offer, and the project owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations. There is no option for opt out for RAD properties. Renewal contracts must be for the prescribed number and mix of units but may, upon request of the owner and subject to HUD approval, be on one or more transfer of assistance sites in lieu of the project site subject to the expiring contract.

From the time of HAP contract execution, the property must maintain the same number and type of RAD units, but upon request of the owner, units in a project that is partially assisted may have assistance float between units within the project that have the same bedroom size and the same contract rent.

Section 8 The MOR Process

In accordance with existing Multifamily guidance, a full management and occupancy review (MOR) should be conducted within six months of the effective date of the HAP contract, subject to available funding. If funding is not available, the Multifamily Regional Center/Satellite Office will conduct a limited MOR (commonly termed a "desk review").

The MOR process is divided into two basic parts, the desk review and the on-site review.

For the desk review, HUD or the CA will request a list of major policies and other documents, such as the property's tenant selection plan (TSP), EIV policies and procedures, etc., as listed on form HUD- 9834, Addendum C. These should be sent to HUD or the CA approximately two weeks prior to the scheduled date of the MOR, so that the auditor has time to review the documents thoroughly.

During the on-site review, the auditor will conduct an interview with the owner or a designated staff member using the form HUD-9834 questionnaire. The 9834 is 48 pages of questions for the owner or agent, and includes the Addendum A file review checklist, the Addendum B fair housing data collection forms, Addendum C, which lists the documents to be provided in the desk review, and Addendum D, which collects sex offender data for the property.

The auditor will audit 10 percent or more random current tenant files, a sampling of move-out files, and a sampling of rejected applications. While on site, the auditor will follow up on the property's most recent REAC inspection, to ensure deficiencies have been corrected, as certified by the owner.

For the file review portion of the review, the owner should ensure the files are organized, properly maintained, and easily audited. The files must contain all HUD-required documentation and be kept physically secure.

The owner should be prepared to answer questions regarding property security, inspections, maintenance, file access and security, tenant/management relations, and any general management practices. The best practice is for the owner to review the HUD-9834 questionnaire, and have answers prepared in advance.

The owner should review files in advance to ensure all correct and current forms are being used, that they are properly signed and dated, that owner-created documents include all HUD-required information, and that the owner's policies and procedures are followed consistently. The owner should also review the files to ensure all HUD regulations and documentation requirements are met, in accordance with the HUD Handbook 4350.3, REV-1, Change 4, and subsequent H Notices.

The on-site review will include observation of the following categories, per the 9834 guidelines:

- General appearance and security
- Follow-up monitoring of project inspections
- Maintenance and standard operating procedures
- Financial management/procurement
- Leasing and occupancy
- Tenant/management relations
- General management practices

The tenant files must contain the following documentation, properly executed by all required parties, including, but not limited to:

- Original lease, certification documentation, application, and MI inspection
- Race and ethnic data form (for all household members)
- Form HUD-92006 (for all adult household members)
- Citizenship status documentation:
    - Owner's Notice to Family (Exhibit 3-3)
    - Family Summary Sheet (Exhibit 3-4)
    - Citizenship Declaration (Exhibit 3-5)
    - Verification Consent Form (Exhibit 3-6)
    - Owner's Summary of Family (Exhibit 3-7)
- 9887/9887As and owner-created verification consent forms
- Screening verifications

- Acknowledgment that applicant/tenant received:
  - HUD-9887 Fact Sheet (at move-in (MI) and every annual recertification (AR))
  - Lead-Based Paint Disclosure (if applicable, only at MI)
- Resident Rights and Responsibilities Brochure (at MI and AR)
- *EIV & You* Brochure (at MI and AR)
- Fact Sheet, "How Your Rent is Determined" (at MI and AR)
- VAWA Notice of Occupancy Rights (form 5380)
- VAWA Certification (form 5382)
  - At application
  - When served a notice of denial of application or assistance
  - When served a notice of termination of assistance or eviction

After the on-site review, within 30 days, HUD or the CA will issue an MOR score of Superior, Above Average, Satisfactory, Below Average, or Unsatisfactory. Owners may appeal a score of Below Average or Unsatisfactory within 30 days of the score issuance. A Satisfactory MOR cannot be appealed.

Section 9 Inspections

Projects receiving PBRA assistance are subject to inspections by HUD's Real Estate Assessment Center (REAC) utilizing HUD's Uniform Physical Condition Standards (UPCS). REAC inspections are performed by contractors who have been trained in UPCS. These inspections assure HUD that owners are fulfilling their obligations under the HAP contract and/or regulatory agreement, and that tenants are provided with decent, safe, and sanitary housing that is in good repair. In an email from the HUD mailing list on 2/20/19, HUD announced that O/As and PHAs will now get a 14-day notice of REAC inspection in order to avoid O/As doing quick fixes instead of maintaining the property year-round.

Owners must conduct move-in and move-out inspections and document the condition of the assisted unit. In addition, owners perform unit inspections on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly, and to assess whether a component needs to be repaired or replaced. This is also an opportunity to determine any damage to the unit caused by the tenant's abuse or negligence, and if so, make the necessary repairs and bill the tenant for the cost of the repairs.

Notice H 2011-20 provides owners of PBRA projects with important guidelines on bedbug control and prevention in multifamily housing. During a REAC inspection, REAC inspectors are required to ask the project owner if bedbugs have been observed in the project. If they have, REAC inspectors are required to notify the hub or program center director, who will send a letter to the project owner stating that within five days of the date of the letter, the owner must provide HUD with actions taken to date or actions that will be taken to eradicate the bugs.

Section 10 Chapter 3 Post-Test

1. Housing notices (H Notices) are mandatory while current and not used once they expire.
   a. True
   b. False
2. HUD updates the 4350.3 handbook:
   a. Annually
   b. From time to time as needed
   c. Monthly
   d. Every five years
3. The requirements for running a standard PBRA project are exactly the same as the requirements for running a RAD PBRA project.
   a. True
   b. False
4. Owners are required to pick a management agent who is:
   a. An owner/agent
   b. An identity of interest
   c. An independent fee management
   d. Any of the above
5. When converting public housing units to Section 8 HAP contracts under RAD, the owner may select to convert units to either the PBV program or the PBRA program.
   a. True
   b. False
6. CAs/PBCAs typically perform which of the following functions?
   a. Reviewing and following up on REAC inspection
   b. Processing monthly TRACS and voucher submissions
   c. Managing annual utility allowance analysis
   d. Managing rent increases
   e. All of the above

7. HAP contracts executed under the RAD PBRA program are the only new project-based Section 8 HAP contracts that may be executed by the Multifamily arm of HUD.
   a. True
   b. False

Notes

CHAPTER 4 Waiting List, Tenant Selection, and Occupancy

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify the waiting list and initial application requirements for the various programs in RAD PBRA
- Demonstrate how to consider preferences in RAD PBRA
- Apply the General Use Rule in the LIHTC program
- Define any occupancy standard
- Describe the tenant selection plan requirements in RAD PBRA

OVERVIEW

Program regulations and requirements on everything from creating a waiting list to tenant selection to occupancy standards may be different from one program to the next. Juggling these requirements can be complex and confusing. This chapter highlights the major components you need to understand in managing pre-occupancy in a blended occupancy project.

Section 2 Waiting List Management in LIHTC

Applications and the Waiting List

The IRS does not mandate how or if a waiting list should be kept, although it is an advisable practice. Waiting lists may be maintained by bedroom size or by other factors depending on whether the property also receives other funding. There is no IRS requirement on following up on rejected applicants, purging the wait list, or applicant notification. Blended occupancy properties should follow required waiting list regulations for their applicable programs.

Private Letter Ruling 9330013

Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history, and landlord references. The fee is limited to the recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs. It is also acceptable for the applicant to pay the fee directly to the third party.

Tenant Selection Plans

The IRS also does not require owners adopt a written tenant selection plan in the LIHTC program, but it is a good business practice for owners to adopt written standards that clearly identify how applicants will be selected and how unit offers are made. Check with your HFA to see if a written tenant selection plan is required in your state.

GENERAL USE RULE

Treasury Regulation §1.42-9(b)

While the IRS does not require a written waiting list, there are restrictions on an owner's ability to limit occupancy to certain groups or provide preferences. This limit is known as the General Use Rule. The IRS requires that all units in a LIHTC project be available for use by the general public and that all of the units in the project be used on a non-transient basis. Units may not be provided only for a member of a social organization or by an employer for its employees. Owners must make reasonable attempts to make vacant units available to the public for rent by advertising the availability of vacant units using advertising methods designed to be accessible to all prospective tenants.

> *Reasonable attempts* vary depending on size, location of the project, tenant turnover rates, and market conditions. Common examples of advertising include banners and "For Rent" signs at the project entrance, websites, classified ads in local newspapers, and accessing the local PHA's waiting list for Housing Choice Voucher holders. Remember to follow the project's affirmative fair housing marketing plan (AFHMP) if the project is required to have one.

The General Use Rule was clarified on July 30, 2008, to allow occupancy restrictions and the use of preferences for the following:

- Those occupants with special needs
- Federal and state supportive housing
- Artistic and literary activities

Revenue Procedure 2019-17

For properties financed with bonds and 4 percent tax credits only, preferences for specific populations such as military veterans and other households with special needs are not in violation of the general use rule as long as they are consistent with the housing credit program's general public use requirements.

FAIR HOUSING AND THE GENERAL USE RULE

Treasury Regulation §1.42-9(a) 8823 Guide, Chapter 13

During the federal compliance period, certain fair housing violations are reportable as noncompliance with the General Use Rule on the Form 8823. This is because both the Department of Treasury and HFAs are obligated to affirmatively further fair housing and are subject to Title VIII of the Civil Rights Act of 1968 and the Fair Housing Act (FHA). It is illegal for owners of LIHTC properties to discriminate based on race, color, religion, sex, national origin, familial status, or disability. The FHA also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services to afford a person with a disability equal opportunity to use and enjoy a dwelling. The FHA also contains some design and construction requirements for multifamily dwellings that apply to LIHTC properties.

Rather than filing a Form 8823, HFAs should first report potential FHA violations discovered during their compliance monitoring activities to their HUD Regional offices or other applicable fair housing enforcement agencies for investigation. Once an investigation is completed, HFAs are required to immediately file a Form 8823 indicating a violation of the General Use Rule with the IRS when they receive notice of FHA administrative and legal actions issued by HUD or the Department of Justice (DOJ).

Since the IRS and HUD do not view LIHTC properties as receiving federal financial assistance, however, Section 504 and other non-FHA civil rights laws do not apply and are not reported by the HFA as noncompliance to the IRS.

DEVELOPMENTS FOR THE ELDERLY

It is common to find LIHTC properties that are designated as housing for older persons (either 62+ or 55+). This is allowable under the General Use Rule and may be required under the project's LURA. This is because, in some states, QAPs sometimes award owners extra points on their applications for creating housing that serves older persons. Unlike in many HUD programs, the IRS does not have requirements for the operation of housing for older persons. LIHTC owners should follow any requirements listed in their regulatory documents.

Further, owners must be aware of requirements under the Fair Housing Act, which makes it illegal to discriminate based on familial status. While restricting occupancy just to adults is not allowed under the familial status provisions of the Fair Housing Act, there are exceptions that allow for housing for older persons that excludes occupancy by children.

Exceptions include:

- Housing intended for, and occupied solely by, persons 62 or older if all occupants of the household who became residents after September 12, 1988, are 62 or older.
  - Examples:
    - A 70-year-old head of household and their 50-year-old spouse apply to the above development. They would be prohibited from living there since all occupants must be 62 or older.
    - A single 70-year-old head of household lives in the above development and obtains custody of their 10-year-old grandchild. The owner would prohibit the grandchild from living in the unit since all occupants must be 62 or older.
- Housing intended and operated for households comprised of at least one person 55 or older per unit. At least 80 percent of the units must be occupied by households where the head, spouse or cohead is 55 or older.

  The remaining 20 percent of units may be occupied by non-elderly individuals, although the owner may restrict occupancy for up to 100 percent of the units to households where at least one member is 55 or older (Check to make sure this is allowable under your state law).
  - Example: A 70-year-old head of household and their 50-year-old spouse apply to the above development. They would be allowed to live there since the head of household is 55 or over.
    - If the head of household dies, the 50-year-old spouse may remain in the unit, provided the 80 percent restriction is met, since 20 percent of the units may be occupied by non-elderly households.

    - However, the owner may have a policy restricting occupancy in 100 percent of the units to families with one member 55 or older, in which case the 50-year-old would be prohibited from becoming the new head of household.

- Housing for persons 55 or older housing may ban children. A minimum age may be set for all occupants (such as 19). However, the owner could allow children if the 80 percent requirement is met or may stipulate that occupants under 55 are only allowed if at least one member is 55 or older.
  - Example: A single 70-year-old head of household obtains custody of their 10-year-old grandchild.
    - The grandchild may be prohibited from residing in the unit.
    - The owner may allow children as long as the 80 percent requirement is met.
- Housing operated under a federal or state housing program that the Secretary of HUD has determined is specifically designed and operated to assist elderly persons.

Accurate records documenting residents' age should be maintained to show that policies of limiting occupancy to older persons are being followed and the lease should clearly state any requirements around who can reside in the unit.

Particularly in blended properties, owners should be cautious, however, because a property's governing documents may actually prohibit excluding children (such as properties with federally insured mortgages). For this reason, it is advisable to check your project's governing documents and discuss your options with someone well versed in the Fair Housing Act prior to implementing a new age restriction if one is not clearly required.

Section 3 Waiting List Management in RAD PBRA

ESTABLISHING THE INITIAL RAD PBRA WAITING LIST

Notice H 2019-09 RAD

PBRA projects may use a project-specific or community waiting list. How families transition from the public housing waiting list to the PBRA waiting list will depend on what type of waiting lists were used when the units were public housing and what type of list the owner will operate after conversion. Notice H 2019-09 has specific details about establishing different types of waiting lists. The creation of the waiting list is to be done using existing PIH rules including any posting or notification requirements and may be done using a lottery system.

If the PBRA waiting list will be site-based, the PHA must maintain the list in accordance with applicable civil rights and fair housing laws and regulations, specifically in accordance with the additional requirements found at 24 CFR 903.7(b)(2(ii)-(iv). Otherwise, after the initial waiting list has been established, the PHA must administer the list for the converted project in accordance with HUD Handbook 4350.3, Chapter 4.

HUD has established a series of notices that are specific and mandatory regarding RAD relocations. These are covered in Notice H 2016-17. These notices must be delivered either in person or by certified mail with return receipt requested, and there are specific times these notices must be delivered. A resident log for tracking all relocations is also required, and the notices and log will be subject to review during an MOR.

Refer to Notice H 2016-17, Sections 6.6.A through 6.6.F and Section 6.9 for details; the footnotes in these sections provide excellent information and examples.

APPLICATIONS AND THE WAITING LIST

Notice H 2019-19

While waiting lists in the standard PBRA program are always property-specific, in RAD PBRA, the O/A may have a program-wide lists or a site-based list. The PHA has the following options when establishing a RAD PBRA program waiting list from an existing public housing list or lists:

- Transfer an existing public housing site-based waiting list to a new site-based PBRA waiting list
- Transfer an existing public housing site-based waiting list to a PBRA program-wide waiting list
- Transfer an existing public housing community-wide list to a PBRA program-wide list
- Inform applicants on a community-wide public housing waiting list how to transfer their application to one or more newly created site-based waiting lists

To the extent the waiting list relies on date and time of application, applicants must have priority on the new waiting list to which their application is transferred in accordance with the date and time of their original application. If the PHA is establishing a site-based waiting list, additional public housing requirements found at 24 CFR 903.7(b)(2)(ii)-(iv) apply. Whether list will be site-based or community-wide, must maintain the list in accordance with applicable civil rights and fair housing laws and regulations

Notice H 2016-17

The O/A may not market or lease any unit not occupied by a household exercising it's right to remain or return to the covered project prior to approval of the AFHMP. Marketing or leasing includes the solicitation, distribution or acceptance of applications or development of a waiting list. HUD has established a series of mandatory notices specific to RAD relocations. These notices must be delivered at specific times either in person or by certified mail (return receipt requested). A resident log for tracking all relocations is also required. Both the notices and log are subject to a compliance review. Refer to Notice H 2016-17, Sections 6.6.A thru 6.6.F and Section 6.9. for details and example.

HUD Handbook 4350.3, Chapter 4

The tenant selection plan (TSP) describes the owner's policies and procedures for determining applicant eligibility and suitability as well as maintaining the waiting list. The TSP must be made available to the public when requested. The TSP must include all HUD-required topics and may include HUD recommended topics. While each property must have a TSP, HUD does not approve a project's tenant selection plan unless the owner adopts a residency preference or a homeless preference. During a management and occupancy review (MOR), however, HUD or the contract administrator (PBCA/CA) will review the project's TSP and may require the owner to make revisions if the current TSP is out of compliance.

Anyone who wishes to fill out an application must be given the opportunity to complete one either at the property or by having an application mailed to them. If an applicant requests an alternative method for filling out or submitting an application because of a disability, the owner must do so as a reasonable accommodation. Once an application is submitted, the owner must indicate the date and time the application was received. Owners may choose to use a full application or a shorter pre-application when an application is placed on the waiting list. While HUD does not provide a model for the full application, there are several required topics that must be included, as well as several recommended items that may be included. Both are listed in HUD Handbook 4350.3, Chapter 4, Section 3. The application must also include the form HUD-92006, Supplement to the Application for Federally Assisted Housing.

Applicants may be on more than one waiting list and/or may be waiting for more than one unit size on a particular waiting list, as determined by the owner's TSP.

The waiting list must include the following information:

- Date and time the application was submitted
- Name of the head of household
- Estimated annual income
- Identification of the need for an accessible unit, including the need for accessible features
- Preference status (if any adopted)
- Unit size

Owners must update the waiting list anytime an applicant's household composition changes. The owner's TSP determines if the applicant maintains their original application date or if their place on the waiting list is based on the date of the new determination of family composition. The waiting list must also accurately reflect any changes to contact information submitted by applicants.

A notation must be made on the waiting list anytime any action is taken or an activity specific to an applicant occurs. This means that all contact with the applicant must be noted on the waiting list. This is especially important when filing special claims. The owner should note actions such as move-ins or rejections, or any activity specific to an applicant such as address changes, household composition changes, etc.

When an appropriate unit will be available in the near future, the owner must interview the applicant to obtain information on the applicant's current circumstances. Paragraph 4-24 of the HUD Handbook 4350.3 lists required interview topics.

AFFIRMATIVE MARKETING

HUD Handbook 4350.3, Chapter 4, Section 2

All multifamily properties must be affirmatively marketed to populations least likely to apply. Properties built or substantially rehabilitated since July of 1972 must develop and abide by an affirmative fair housing marketing plan (AFHMP). Properties built or rehabilitated before February of 1972 are not required to develop or abide by an AFHMP unless it is required by a housing assistance contract.

Every multifamily property must develop and use an AFHMP that has been approved by HUD or the contract administrator (CA). Each property's AFHMP must be completed on the current version of form HUD-935.2A. The AFHMP is designed to promote equal housing choices for all prospective residents and to ensure that eligible families of similar income levels will have a similar range of housing opportunities.

As part of the AFHMP, the owner must also publicize the availability of housing to all persons and those least likely to apply, including limited English proficient (LEP) populations, if applicable.

The AFHMP must be reviewed every five years or when the local community development jurisdiction's consolidated plan is updated. Anytime the AFHMP is updated, it must be submitted to and approved by HUD or the CA before use. If the owner finds that the AFHMP does not need to be revised, they should maintain a file documenting what was reviewed, what was found, and why no change was required. HUD or the CA may review this information during a compliance review.

PREFERENCES

24 CFR 6.655(c)

There are four different types of preferences:

- Statutory displacement
  - In Section 221(d)(4), 221(d)(3), and 221(d)(3) BMIR properties only, owners must give preference to applicants who have been displaced by government action or a presidentially declared disaster.
- HUD regulatory preferences
  - Applies to Section 236 properties only
- State and local preferences
  - Owners must submit a written request for approval to the HUD Field Office when state or local laws require that the owner adopt a particular preference
  - For example, some states require veteran preferences or a preference for victims of domestic violence.

Notice H 2013-21

- Owner-adopted preferences
  - Owners may establish their own preferences as long as the preferences do not supersede any program-specific preferences and comply with applicable fair housing and civil rights laws.

- If the owner adopts any preferences other than those detailed in 24 CFR 5.655(c)(1) through (c)(5), the preference must be approved by the local HUD Field Office. The owner must specify the type of preference with a full description of the preference and how it will be implemented. All owner-adopted preferences are subordinate to income targeting requirements as well as statutory and regulatory preferences. If the owner adopts a residency preference or a homeless preference, HUD approval of the tenant selection plan is required. All state, local, or owner-adopted preferences must be fully described in the tenant selection plan.
- Preferences that may be adopted without HUD approval include:
    - Single persons who are 62 or older over other single persons
    - Single persons who are displaced over other single persons
    - Single persons who are homeless over other single persons
    - Single persons with disabilities over other single persons
- Preferences that require HUD Multifamily Field Office approval include, but are not limited to:
    - Elderly families
    - Near-elderly single persons

Unlike in public housing, owners of RAD PBRA properties may not establish an elderly designation (i.e., a set-aside of units for the elderly). However, owners may adopt a preference for elderly individuals and/or elderly families, which permits those applicants to be selected from the waiting list and housed before other eligible families. Any preference adopted as part of the conversion that will alter the occupancy of the property is subject to an upfront civil rights review during the RAD conversion process. Certain preferences also require approval from HUD's Multifamily Field Office as described above.

For RAD properties, preferences that may be adopted without HUD approval include:

- Single persons who are 62 or older over other single persons
- Single persons who are displaced over other single persons
- Single persons who are homeless over other single persons
- Single persons with disabilities over other single persons

Preferences that Require HUD Multifamily Field Office approval include but are not limited to:

- Elderly families
- Near-elderly single persons
- Near-elderly families

This approval must be secured prior to conversion if the owner intends to implement the preference for new admissions immediately following conversion.

Owners are cautioned not to assume a preference will be approved based on request alone. This is especially important if pursuing tax credits that may require the owner to serve a specific population. HUD approval for the population preference should be obtained prior to securing the tax credits to ensure the owner can comply with any tax credit requirements.

Owners are required by paragraph 1.7.C.9 of the RAD Notice to submit their request for an owner-adopted preference to the account executive (Field Office) prior to execution of the HAP contract. Doing so will reduce the applicant notification burden put on the owner when a new preference is applied to the property. Further, having the preference approved prior to execution of the HAP contract will permit the property to continuously operate in the closest manner to how it operated pre-conversion.

DENIAL NOTICES

All applicants must be promptly notified in writing of a rejection or denial of assistance. All rejection notices must:

- Be in writing
- State the specific reasons the applicant was rejected
- State that the applicant has the right to respond to the owner within 14 days to dispute the rejection
    - Persons with disabilities have the right to request reasonable accommodations to participate in the denial meeting

The meeting with the rejected applicant must be conducted by a member of the owner's staff who was not involved in the initial decision to deny the applicant. The owner must respond in writing to the applicant with the final decision of eligibility no later than five days after the meeting.

Section 4 Occupancy Standards

Occupancy requirements are standards used by housing providers to determine the appropriate unit size for a family based on the family's composition. In other words, occupancy standards identify how many people will live in a unit of a particular size.

These standards must comply with any requirements of state or local law or building code. Further, they must not cause or perpetuate patterns of occupancy which would be inconsistent with Title VI of the Civil Rights Act of 1964 or the Fair Housing Act.

The LIHTC and PBRA programs follow the guidance found in HUD Handbook 4350.3 REV-1 CHG-4, Chapter 3 when determining household size so both programs have virtually the same requirements. In the 4350.3 Handbook, HUD does not prescribe specific policies owners must implement but does provide guidelines that owners must follow when developing written occupancy standards. In general, a "two persons per bedroom" standard is acceptable. In PBRA, if a family qualifies for more than one unit size, the family must be allowed to choose the unit size they prefer. An owner may establish a different standard for assigning unit size based on specific characteristics of the property (e.g., some bedrooms are too small for two persons).

When developing occupancy standards, owners must ensure that they do not violate fair housing laws, state or local landlord-tenant laws, zoning restrictions, and all HUD requirements. While HUD does not specify the number of persons that may reside in units of a particular size, there are some general guidelines that owners must follow:

- Generally, two persons per bedroom is an acceptable standard.
  - Owners must take into account specific property issues such as square footage

- Owners may not have policies that exclude children or that are meant to prohibit families with children.
  - Owners may not exclude otherwise eligible elderly families with children from elderly or elderly/disabled properties in PBRA. Certain exceptions apply in the LIHTC program which were discussed earlier in this chapter under the General Use Rule.
- Owners must not dictate a family's sleeping arrangements.
- Occupancy standards must allow for family preferences to be considered.
- Owners must take into consideration:
  - Number of persons in the family
  - Age, sex, and relationship of members
  - Reasonable accommodation
  - Ensuring the family is neither over nor under-housed
- If a family qualifies for more than one unit size, the family must be allowed to choose the unit size they prefer

When determining unit size for a household, the following members must be counted:

- All full-time members of the family
- Unborn children of pregnant women
- Children who are in the process of being adopted
- Children whose custody is being obtained by an adult family member
- Foster children and adults
- Children who are temporarily absent due to placement in foster care
- Children who are in joint custody arrangements who will live in the unit for 50 percent or more of the time
- Live-in aides
- The owner may count children who are away at school but will live in the unit during breaks and vacations.
- The owner may establish reasonable policies for family members who are temporarily in a correctional facility.

A single person may not live in a unit with two or more bedrooms unless the person:

- Needs a larger unit as a reasonable accommodation
- Is displaced and an appropriately sized unit is not available
- Is elderly and has a verifiable need for a larger unit
- Is a remaining family member and there is not an appropriately sized unit available to which the person may transfer.

If at the time of conversion, an eligible family assisted under the HAP contract is occupying a unit that is larger than appropriate because of the family's composition, the family is permitted to continue occupancy until an appropriate-sized unit becomes available in the project, at which point the family living in the under-occupied unit must move to the appropriate sized unit within a reasonable period of time.

Family size and occupancy standards should be reviewed before a household is screened for eligibility. This will ensure that the property has an appropriately sized unit to accommodate the household. Owners must also review occupancy standards when there is a change in family composition to determine if the household is required to transfer to an appropriately sized unit. Owners may require the household transfer to an appropriately sized unit to avoid over or under-housing. If an appropriately sized unit is not available, the owner may not evict the household or increase their rent to the market rent. If the family refuses to move to the correct size unit, the family may stay in their current unit and pay market rent. The owner may not evict the family for refusing to move but may evict the family for failure to pay the market rent.

If a household is currently living in an accessible unit but no longer requires the accessible features, the owner may ask the household to move, provided a provision was made in the household's lease.

Section 5 Chapter 4 Post-Test

1. Which of the following is true regarding the TSP in the PBRA program?
   a. HUD doesn't approve a project's TSP unless the owner adopts a local or residency preference
   b. HUD must always approve the project's TSP
   c. HUD never approves a project's TSP
   d. HUD doesn't approve a project's TSP unless the owner has site-based waiting lists
2. Children who are subject to joint custody arrangements who will be present in the unit at least 50 percent of the time must be considered members of the household in both LIHTC and RAD PBRA.
   a. True
   b. False
3. Tenant selection plans are required in the LIHTC program in mixed-use developments.
   a. True
   b. False
4. Describe the General Use Rule in the LIHTC program:

CHAPTER 5 Managing Eligibility

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- State the different income limits used in LIHTC and RAD PBRA
- Discuss the student rules for blended occupancy projects
- Recognize the citizenship status requirements for RAD PBRA
- Identify the social security number verification requirements for RAD PBRA
- Describe mandatory denials of admission for RAD PBRA
- Recognize screening requirements
- Identify income targeting requirements in RAD PBRA

OVERVIEW

Managing eligibility of blended occupancy projects can be complicated. Multiple programs can cause confusion. It's important to thoroughly understand the similarities and differences in the varying programs. A general rule is that when program regulations conflict, comply with the most restrictive program. When program regulations don’t align, comply with both.

Section 2 In-Place Families in RAD PBRA

Notice H 2019-09

Current households living in units that convert to PBRA under RAD are not subject to rescreening, income eligibility, or income targeting provisions. Households who are temporarily displaced also have a right to return. Households are grandfathered in for conditions that occurred prior to conversion but will be subject to ongoing eligibility requirements for actions that occur after conversion. All in-place tenants at the time of conversion are eligible to remain in the unit and receive assistance. The PHA should develop a way of identifying existing households who were housed prior to RAD conversion. Once the remaining household moves out, the unit must be leased to an eligible family.

Further, to facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the converting project that will reside in non-RAD PBRA units placed in a project that contain RAD PBRA or RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically the requirements governing the applicable contract for non-RAD PBRA units.

LIHTC Issues

The LIHTC program does not recognize this same right to return requirement. For units that undergo conversion under RAD and also receive an allocation of tax credits, while families will be eligible for RAD PBRA, they must undergo an eligibility determination for the LIHTC program. Some families may not be eligible under tax credit requirements, and the PHA may not be able to claim tax credits on certain units because of this.

Section 3 Income Eligibility

INCOME LIMITS IN LIHTC

To be initially eligible for an LIHTC unit, a household's anticipated annual gross income must be at or below the applicable income limit, either 50 percent, 60 percent, or the income averaging MSA, as elected by the owner. Pay special attention to deep rent skew units or any additional, lower income set-asides in the project as identified in the project's governing documents.

Income limit tables for the LIHTC program are known as the Multifamily Tax Subsidy Project (MTSP) income limits. These limits are published by HUD on an annual basis at **www.huduser.gov.**

HOLD HARMLESS

Beginning in 2009, HUD began issuing separate income limits for the LIHTC program based on changes implemented as part of the Housing and Economic Recovery Act of 2008 (HERA). As in other programs, these income limits are organized by area and household size. HERA changed the way owners apply income limits in LIHTC projects and added what are known as the "hold harmless" provisions for area median gross income (AMGI) for LIHTC properties. *Hold harmless* means that once a building is placed in service, the income limits for that building can increase, but they can never decrease. In other words, once a building is placed in service, if income limits decrease for an MSA or county, the owner does not need to qualify tenants at the lower limits; rather, the owner should simply continue to use the same income limits.

WHY HOLD HARMLESS?

In the LIHTC program, rent limits are calculated based on income limits. The higher the income limits, the higher the amount of restricted rent that may be charged. When income limits decrease, rent limits also decrease. Without hold harmless status, the owner would have to qualify lower income families and may have to lower project rents, which would result in less cash flow. Holding income limits harmless bolsters the financial viability of LIHTC projects.

Example: Hold Harmless

Sheryl and Antonio are a two-person household who want to live on Main Street in Anytown, USA. There are three LIHTC developments, each consisting of one building, which are all owned by different owners and were placed in service in different years on Main Street.

- Project/Owner A: PIS 2016
- Project/Owner B: PIS 2017
- Project/Owner C: PIS 2020

Two-person income limits:

- Income limits 2016: $30,000
- Income limits 2017: $31,500
- Income limits 2018 and 2016: $31,000
- Income limits 2020: $29,800
- Income limits 2021: $27,500
- Income limits 2022 & 2023: $26,500

What is the maximum income limit for a two-person family for Project A, Project, B, and Project C?

HERA Special

HERA also created a special class of MTSPs called "HUD hold harmless impact projects" or impacted MTSPs. An impacted MTSP is any project with income limits that were determined in 2007 or 2008 under HUD's hold-harmless policy. A property may qualify as an impacted MTSP only if it was placed in service before the end of 2008. These HERA special income limits only apply to LIHTC properties located in areas with HERA special income limits that were placed in service in prior to January 1, 2009. If the project was in service or placed in service during 2007 or 2008, HERA special income limits may be able to be used.

Rural Areas

LIHTC projects located in rural areas (as defined in Section 520 of the Housing Act of 1949) are eligible to use the greater of area median gross income or national non-metropolitan median income as allowed under HERA for rent and income determinations.

Multiple Building Projects

In multiple building projects, the income limits used are based on when the first building in the project is placed in service.

If the owner indicated that the LIHTC project is a multiple building project and if the multiple buildings are placed in service in different years, owners can use the same income limits for all buildings, even if the buildings are placed in service in different years. Remember, for this to happen, the owner would have elected YES on line 8b of the Form 8609 for all buildings.

Example: Briarhill Townhomes

Briarhill Townhomes consists of three newly constructed buildings (Buildings A, B, and C). The project is a multiple-building project on the Form 8609. Building A was placed in service in 2022. Buildings B and C won't be placed in service until late in 2023. Income limits for 2023 for the area have decreased.

Which income limit will the owner use for buildings B and C? Why?

If the owner of Briarhill Townhomes elected to treat each building as its own project, which income limits would be used for buildings B and C?

Rev. Ruling 94-57

It is the owner's responsibility to ensure that the correct income limits are being used for the property. New income limits must be put into use by the later of the effective date or 45 days from HUD's publication date.

INCOME LIMITS IN RAD PBRA

Notice H 2019-09

Current households at the time of conversion are not subject to income eligibility. A unit with a household that was over-income at the time of conversion would continue to be treated as an assisted unit.

HUD Handbook 4350.3, Chapter 3, paragraph 3-6

In order to be eligible for PBRA, a household's anticipated annual gross income must be at or below the applicable income limit for the program. The O/A must determine income eligibility before move-in or initial certification using the income limit for that year. Income limits are only applied at move-in or initial certification. If a resident has an income increase after admission, they may continue to receive assistance as long as they continue to qualify.

In the standard PBRA program, income limits used in PBRA properties depends on the effective date of the initial HAP contract. Projects with effective dates on or after October 1, 1981 must use the very-low income limit (50 percent of AMI) while older projects use the low-income limit (80 percent of AMI). Properties converting under RAD are to be treated as Pre-1981 HAP Contracts, meaning owners may admit families up to the low-income limit (80 percent).

With the exception of in-place families at the time of conversion, in order to be eligible, families must require assistance. Eligibility may not be based on a lack of income. Zero income households are eligible for rental assistance.

INCOME TARGETING

Income targeting requirements do not apply to in-place families at the time of conversion.

Section 8 projects are required to lease not less than 40 percent of the units assisted under the HAP contract during a fiscal year to extremely low-income (30 percent of AMI) families.

Both move-in certifications and initial certifications completed during the fiscal year are counted, but in-place families at the time of conversion are not counted.

Owners may select extremely low-income families over other families on the waiting list as needed to meet basic income targeting requirements. The owner should document the waiting list to show why families were pulled out of order if this happens. The TSP must discuss how and when applicants will be skipped to meet requirements as well has how applicants will be treated when families are skipped.

WHO COUNTS FOR INCOME LIMITS?

HUD Handbook 4350.3 REV-1, CHG-4, Chapter 3

In the LIHTC and PBRA program, all household members are included when determining family size for purposes of income limits, with the exception of live-in aides, guests, and children who do not live in the unit at least 50 percent of the time. As per CHG-4 of the HUD Handbook 4350.3 REV-1, foster children and foster adults count toward the family size for purposes of income limits. The following are included when determining family size for income limits:

- Children who are away at school
- Unborn children of pregnant women
- Children who are in the process of being adopted
- Children who are temporarily absent due to placement in foster care
- Temporarily absent family members
- Temporarily absent family members in the military on active duty (only if they leave a spouse or dependent in the unit)
- Family members in the hospital or rehab facilities for period of limited or fixed duration
- Persons permanently confined to a hospital or nursing home (family decides)

Section 4 Student Status

STUDENT STATUS IN LIHTC

The student rule for the LIHTC program states that units comprised entirely of full-time students **do not qualify as LIHTC units.**

- **Definition of *Student*:** The IRS defines *student* in IRC §152 (f)(2) as an individual, who during each of five calendar months during a calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170 (b)(1)(A)(ii) or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in IRC §170 (b)(1)(A)(ii) or of a state or political subdivision of a state. The five calendar months need not be consecutive.
- The determination of student status as full or part-time is based on the criteria used by the *educational institution* the student is attending. The term educational institution includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. It does not include on-the-job training courses. It may also include online institutions (check the HFA compliance manual).
- Further, the definition makes clear that a student who attends an educational institution for five calendar months, regardless of whether the months are full or partial months, is considered a full-time student. The months also do not need to be consecutive.
    - For example, a student who attends a qualifying educational organization on a full-time basis from January 1st to April 13th and then again from October 1st through October 15th would be considered a full-time student by the IRS definition since they attended a qualifying education institution for a total of 5 calendar months in a calendar year, even though the months were not consecutive, and some months were partial months. The out-of-compliance date is the first day of the fifth month during the calendar year the full-time student attended the educational organization.

- A unit is also considered out of compliance if the owner fails to verify the household's student status at the time of move in or if the annual student status verification was performed late and after notification of a state agency review.
- Units are considered back in compliance when they are no longer occupied entirely by full-time students or the tenant qualifies under one of the exceptions.
- It is permissible for one or more students to be part of an otherwise qualified household or for part-time students to be part of a qualified household. If, however, the entire household consists of full-time students, the unit is not considered a LIHTC unit, unless the unit falls within one of the following specified exemptions:
    - The unit is occupied by an individual who is:
        - A student is receiving assistance under Title IV of the Social Security Act (i.e., TANF)
        - A student was previously under the care of a state foster care program
        - A student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state, or local laws
    - The unit is occupied by full-time students and such students are:
        - Single parents and their children, and neither the single parent nor their children are dependents of another individual (other than a parent of such children)
        - Married and file a joint return
- Typically, state HFAs interpret the above exceptions this way:
    - All members must meet the exceptions for marriage and single parents
    - One member meeting an exception qualifies the entire household for the remaining exceptions

- However, some state agencies state that one member meeting any of the above exceptions qualifies the entire household.
- Be sure to check with your state agency to see how they interpret exceptions to the student rule.
- Further, during the extended use period, some states do not change how they monitor the student rule while others choose to no longer monitor it.

Learning Activity 5-1: Student Rule in LIHTC

Rebecca Tan, an otherwise qualified LIHTC individual, attended a qualifying educational organization on a full-time basis in January and February 2023. She returned to the qualifying education organization again from September 2023 - December 2023.

1. Is this LIHTC unit in compliance?

____

____

____

2. What if she only returned again September 2023 through November 15th?

____

____

____

Mark Spelman and Peter Assad, two students attending college full-time and working part-time share a LIHTC unit with Brandon Lerda, a third person who works full-time and is not enrolled at the college. The combined household incomes qualify them under the LIHTC income limit.

3. Is this a qualified LIHTC household?

____

____

____

Student Status in RAD PBRA

Effective January 1, 2006, congress imposed a restriction on housing assistance to students in the Section 8 program. As a result, student eligibility must be determined at move-in or initial certification, recertification, and when any interim recertification is processed as a result of a household member enrolling as a student.

Restrictions on Assistance

24 CFR 5.612

Individuals may not receive Section 8 assistance if they are enrolled as a part-time or full-time student at an institution of higher education for the purpose of obtaining a degree, certificate, or other program leading to a recognized educational credential and are:

- Under the age of 24; and
- Not married; and
- Not a veteran; and
- Do not have a dependent child; and
- Not a person with disabilities, as defined in 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(E)) and were not receiving Section 8 assistance as of November 30, 2005; and
- Not living with their parents who are receiving assistance; and
- Not individually eligible to receive Section 8 assistance or has parents (the parents individually or jointly) who are not income-eligible to receive Section 8 assistance.

In other words, if the student does not meet any of the above exceptions, both the student and their parents must be income eligible, unless the student can demonstrate the absence of or independence from their parents.

To demonstrate independence from their parents, all of the following requirements must be met:

- The student must be of legal contract age under state law (18 in most states).
- The student must establish a separate household from their parents for at least one year before applying for assistance or meet the U.S. Departments of Education's definition of an *independent student* (dorms do not count toward the one-year requirement).
- Their parents must not have claimed the student as a dependent on their taxes.
- The student must provide a certification of assistance from parents stating the amount of financial assistance they will receive.
  - This must be completed even if the student will not receive any assistance from their parents.
- Note that if the owner determines that the student meets the definition of *vulnerable youth*, such a determination is all that is necessary determine that the person is an independent student for the purposes of using only the student's income for determining eligibility for assistance.
  - *Vulnerable youth* is defined as an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16.

If any student in the applicant family is ineligible, the owner must deny assistance for the entire family. If the owner finds that an ineligible student is part of any assisted household, the owner must terminate the entire household's assistance, but may not evict the household or student as long as all members of the household adhere to the terms of the lease and house rules.

VERIFICATION

When determining the income eligibility of a student's parents, the owner may accept a signed declaration and certification of income from the parents. However, if the verification received is questionable, the owner may request further income documentation from the student's parents such as tax returns, pay check stubs, bank statements, SSA award letters, etc.

The owner may need to obtain verification from parents either jointly or separately. If the student cannot or does not know how to contact one of the parents, the owner may accept a certification from the student explaining such circumstances.

The owner must use the low-income limit (80 percent) for the parent's family size in the location where the parents live. If parents live outside of the United States, the owner should use the low-income limit for the parent's family size where the student has applied to receive assistance.

There may be circumstances when the student's parents refuse to provide any documentation; in these cases, students are ineligible to receive assistance unless the student can prove independence.

In order to verify a student's independence, the owner must:

- Review and verify the student's previous address to ensure that there is evidence of a separate residence
- Ensure the student meets the U.S. Department of Education's definition of an *independent student*
- Review the student's prior year tax returns to make sure the student's parents did not claim the student as a dependent
- Obtain a certification that will serve as verification whether the student's parents are providing financial support to the student
    - Except in cases in which the owner determines that the student meets the definition of *vulnerable youth*
    - If support is provided, it must be counted as income
- Verify all amounts of financial assistance received by the student and the amount of tuition
- Verify that the school attended meets the Department of Education's definition of an *institution of higher education*
- Verify any exceptions to the student rule that the student has claimed

Student Rule Example

The Garcia household consists of Glenn Garcia (age 20) and his cousin Melissa Garcia (age 27). Both Glenn and Melissa are full-time students at the local college.

Under the LIHTC student rule, the household consists entirely of full-time students, but let's say Melissa had formerly been in foster care. Although the household consists entirely of full-time students, since Melissa meets one of the exceptions, the entire household is eligible. Glenn is not required to meet one of the exceptions while Melissa lives there.

Under the Section 8 student rule, the household may not be eligible. While Melissa meets specified exemption categories since she is over the age of 23, if Glenn does not meet any exceptions, the student rule would apply to the family, and the family would have to establish:

1. The household is income eligible under the two-person limit applicable to the program.
2. Glenn is individually eligible under the one-person 80 percent income limit.
3. Glenn's parents (individually or jointly) are income eligible under the 80 percent income limit in the area in which they live, or that Glenn is an independent student

If Glenn is not an independent student and his parents are not income eligible (individually or jointly) in the area in which they live, or if Glenn cannot income qualify on his own, then the entire household is ineligible. Even though Melissa meets one of the exceptions, unlike under the LIHTC student rule, everyone in the household must establish eligibility under the Section 8 student rule.

If a household is ineligible, this means they must have their assistance denied or terminated.

LIHTC	Section 8
Full-time students	Part-time and full-time students
Unit must consist entirely of full-time students	One student family member may trigger the rule
Includes elementary, junior high, high school, and higher education	Institutions of higher education
Exception criteria differs	Not applicable to students who reside with their parents
If one family member is exempt, the entire household is eligible, although check HFA compliance manual	If one family member is not exempt, the entire household is ineligible
In a household consisting entirely of full-time students, if no family member meets an exception criterion, household is ineligible	If any student in the household does not meet exception criteria, must perform parental income test
Initial and ongoing eligibility consideration	Initial and ongoing eligibility consideration

Section 5 Citizenship Status

Citizenship Status in LIHTC

The LIHTC program has no requirement to verify citizenship status for any household member, nor does the program prohibit admission to an LIHTC unit based on a household member's citizenship status.

A combined funding unit with PBRA will have to comply with the citizenship requirements for its respective program.

Citizenship Status in RAD PBRA

24 CFR 5.506 (a);
24 CFR 5.512(a) and (b);
24 CFR 5.514(c)

Assistance is restricted to U.S. citizens or nationals and eligible noncitizens in the following programs:

- Section 8
- Section 236
- Rent Supplement
- Rental Assistance Payment (RAP)
- Section 202/8
- RAD PBRA

These requirements do not apply to:

- Section 221(d)(3) BMIR
- 202 PAC, 202 PRAC
- 811 PRAC
- Section 202 projects where units do not receive assistance under the Rent Supplement or Section 8 programs

Under the regulations governing restriction on assistance to noncitizens, applicant families may not receive assistance until the owner establishes the eligibility of at least one family member. Unless there is a change in family composition, owners typically only review citizenship status for each family member once as part of the initial eligibility determination, unless the status of an individual household member changes.

NOTIFICATION

24 CFR 5.502 and
24 CFR 5.508(f)

All members of the applicant family must submit a declaration of their citizenship status and appropriate verification no later than the time the owner initiates the verification process for eligibility. If the applicant certifies that documentation of their citizenship status is temporarily unavailable and additional time is needed, the owner may grant an extension of 30 days or less.

The owner must notify all families of the requirement to submit evidence of their citizenship status when they apply. Where feasible, the notice must be in a language that is understood by limited English proficient (LEP) individuals.

ELIGIBILITY FOR ASSISTANCE

24 CFR 5.500

In order to determine the family type and eligibility for assistance, each individual in the family, regardless of age, must declare their citizenship or immigration status and submit appropriate documentation of their status, where required. Individuals will fall into one of three categories:

- Eligible citizen or national
- Eligible noncitizen
- Ineligible noncitizens, including noncitizen students on student visas
    - Providing housing assistance to noncitizen students is prohibited. This prohibition extends to the ineligible noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. The prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance.

FAMILY CATEGORIES

After the status of each individual in the family has been determined, families will fall into one of three categories:

- All members are either citizens or eligible immigrants
- Some members are eligible and some are ineligible
- All members are ineligible

24 CFR 5.504(b) and 5.506(a)

An **eligible family** will be comprised of citizens, nationals, or noncitizens with eligible immigrant status. Eligible families receive full assistance.

24 CFR 5.504(b) and 5.506(a)

An **ineligible family** is one in which no member is a citizen, national or eligible immigrant. Ineligible families are denied assistance.

24 CFR 5.504(b)

A **mixed family** is comprised of citizens or eligible noncitizens and those without citizenship or eligible noncitizen status. Mixed families receive prorated assistance. For example, in a family of five where four members have eligible immigration status, and one member is ineligible, the family would receive 4/5 of full assistance.

VERIFICATION

24 CFR 5.508,
HUD Handbook 4350.3,
Chapter 3, p. 3-25

Verification requirements differ depending on the individual's status. All family members, regardless of age, must provide appropriate documentation:

- Persons who claim citizenship or national status execute a signed declaration of citizenship status.
  - This is the minimum requirement, and the owner may require additional verification, as long as it is applied consistently and outlined in the TSP.

24 CFR 5.508(b)(1)

  - Owners may establish a policy in the TSP requiring verification of either U.S. citizenship or national status in the form of a U.S. passport, resident alien card, registration card, Social Security card, or other appropriate documentation.

24 CFR 5.508(b)(2)

- Persons 62 and older who claim eligible immigration status execute a signed declaration of Section 214 status and provide proof of age.

24 CFR 5.508(e)

- Persons who declare themselves ineligible or don't contend to have eligible status do not sign a declaration of 214 status; rather, they sign a statement acknowledging their ineligibility for assistance.

24 CFR 5.508(b)(3)

- Noncitizens under the age of 62 who claim eligible immigration status are required to submit:
  - A signed declaration of eligible immigration status

- A United States Citizenship and Immigration Services (USCIS) card or other USCIS document
- A signed verification consent form to allow the owner to access the Multifamily Systemic Alien Verification for Entitlements (SAVE) system
  - Owners are required to verify with the Department of Homeland Security (DHS) the validity of the documents provided by applicants through the SAVE system.
  - Owners may not delay the family's assistance if the family submitted its immigration documentation in a timely manner but the DHS verification or appeals process has not been completed.
  - If at least one family member has been determined eligible, the owner must offer the family a unit. Owners may wish to verify citizenship status in advance of other verification efforts.

Samples of the Owner's Notice, Exhibit 3-3; Owner's Summary of Family, Exhibit 3-7; the Family Summary Sheet, Exhibit 3-4; and the Citizenship Status Declaration, Exhibit 3-5, can be found in *HUD Handbook 4350.3.*

Owners are required to notify families in writing if they are found to be ineligible based on citizenship or immigration status. Owners may notify eligible families or mixed families of their status, although this is not required. Sample notifications can be found in *HUD Handbook 4350.3, Exhibits 3-8 and 3-9*.

Owners must determine the citizenship or immigration status of residents at annual or interim recertification only if:

- Proper documentation was not collected previously or the documentation collected suggested that the residents status was likely to change
- If the status of a family member in a mixed family changes from ineligible to eligible
- Any new family member joins the household—the new member must disclose and provide citizenship documentation

Section 6 Social Security Numbers

Social Security Numbers in LIHTC

The LIHTC program has no requirement to verify Social Security numbers for the household.

A combined funding unit with PBRA will have to comply with the SSN requirements for its respective program.

Social Security Numbers in RAD PBRA

24 CFR 5.216

The regulations governing disclosure and verification of Social Security numbers were revised effective January 31, 2010. While applicants and residents must disclose and provide SSN documentation under the new regulations, the actual verification of SSNs is performed by the owner through HUD's automated systems. The regulations also provide penalties for failure to disclose or document SSNs.

All assisted applicants and residents must disclose and document a complete and accurate SSN for each member of the household, including foster children, foster adults, and live-in aides. Children under the age of six are not exempt from the requirement. Applicants may not be admitted until these requirements are met.

If otherwise eligible, the family may retain its place on the waiting list pending SSN disclosure and documentation.

- If a child under the age of six years has been added to the applicant household within six months prior to the date of admission, an otherwise eligible family may be admitted to the program. The family must provide documentation of the child's SSN within 90 days of admission. The PHA must allow an additional 90 days if it determines that failure to comply was outside the control of the participant or was due to unforeseen circumstances. If documentation is not provided within the time allowed, tenancy must be terminated.

EXEMPT INDIVIDUALS

Some household members are exempt from the SSN disclosure requirement. These include:

- Individuals who do not contend eligible immigration status ("noncontending" family members in a mixed family paying prorated rent).

24 CFR 5.216(a)

- Current residents who had not previously disclosed an SSN, and who were at least 62 years old on January 31, 2010. The exemption applies at all future recertifications and continues if the individual transfers to a new unit or receives another form of housing assistance.
- Household members who have already provided a valid SSN prior to January 31, 2010. The regulations do not require the owner/agent to reverify the SSNs of current residents whose SSNs have been validated through HUD's automated systems.

24 CFR 5.216(e)

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements.

TIMEFRAME FOR DISCLOSURE

If all members of the applicant household have not disclosed and provided SSN documentation at the time a unit becomes available, the next eligible applicant on the property's waitlist must be offered the unit. If the owner has determined the household is otherwise eligible, the applicant household may stay on the waitlist for 90 days from the date of the first unit offer while trying to obtain the required documentation. If the applicant household is unable to disclose SSNs and supply the owner with the proper documentation, the applicant is ineligible and removed from the property's waitlist.

Notice H 2016-09 explains that there are certain circumstances in which residents must provide SSNs after initial occupancy:

- If the SSN was not previously disclosed or verified
- An invalid SSN was provided, as shown by EIV Pre-Screening or Failed Verification report
- A household member has been assigned a new SSN
  - The new SSN must be disclosed to the owner with documentation at the time of receipt, at the next interim or regularly scheduled recertification, or at an earlier time as required by the owner, as outlined in their TSP.
- Addition of a new household member
  - When adding a new household member age six or older, or under the age of six with an assigned SSN, the SSN must be provided to the owner either at the time of the request or at the time of the recertification to add the new household member.
  - If the household member is under the age of six and does not yet have an assigned SSN, the resident must disclose the SSN and provide documentation within 90 days of the member being added to the household. The owner must add the child to the household and a TRACS ID will be assigned to the child until an SSN is provided.
    - The owner must grant one 90-day extension period to the household if the owner determines the resident's failure to comply is due to circumstances out of their control. If the household does not comply within the time period given, the household is then subject to termination of tenancy.

DOCUMENTATION AND VERIFICATION

24 CFR 5.216(g)

The household may provide several forms of documentation. For each household member, the applicant or resident family may provide any of the following:

- An original Social Security card issued by the Social Security Administration.
- Documentation issued by the Social Security Administration that contains the name and SSN of the individual (e.g., a benefit award letter, Medicare card, or printout).
- An original document showing the individual's name and SSN, issued by a federal, state, or local government agency. This could include welfare agency documents, military papers, unemployment insurance documents, or any other government-issued documentation. See HUD Handbook 4350.3, Appendix 3 for a full list of acceptable documents.

24 CFR 5.216(i)

Since SSNs for all household members are matched against SSA records through HUD's automated systems, the owner must generally accept any of the documents listed above. However, the owner may reject documents that are not original, appear to be forged, or appear to be altered, mutilated, or are not legible.

Section 7 Gender Identity, Sexual Orientation, and Marital Status Issues

EXECUTIVE ORDER 13988

Executive Order 13988, issued January 20, 2021, provides that federal laws prohibiting discrimination on the basis of sex, including the Fair Housing Act, also apply regarding discrimination on the basis of sexual orientation and gender identity.

- The order requires all federal agencies to review any regulations, guidance documents, policies, programs, or other agency actions that were put into effect under any statute or regulation prohibiting sex discrimination and to develop a plan to ensure their consistency with the order.
- This includes both HUD and the IRS, so it would be applicable in all programs.

EQUAL ACCESS RULE IN RAD PBRA

24 CFR 5.105(a)(2)

The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule requires that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

As part of this rule, administrators of HUD-assisted housing and owners participating in multifamily programs may not inquire about the sexual orientation or gender identity of an applicant or occupant for the purposes of making eligibility determinations or otherwise making housing available.

In the PBRA program, HUD or a Contract Administrator may review an owner's tenant selection plan or other policies and procedures to determine if it complies with the Equal Access Rule. In addition, the civil rights review done at the time of the management and occupancy review may include a review to determine if the owner is following the Equal Access Rule.

The rule does not, however, prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. HUD has stated that failure to comply will result in sanctions or corrective action plans as it deems appropriate to remedy any violations.

While the Equal Access rule specifically does not apply to the LIHTC program, Executive Order 13988 would still apply. You should also check your state and local fair housing laws for any additional requirements regarding marital status, gender identity, and sexual orientation.

Section 8 Screening for Suitability

Eligibility is the determination that the applicant is qualified for the program or subsidy type available at the property.

Suitability is the determination that an eligible applicant has the ability to pay rent on time, abide by the lease, and care for the property and unit.

LIHTC

Unlike in certain HUD programs, the IRS does not mandate that owners deny tenancy for certain types of criminal activity.

Although a tenant selection plan is not required by the IRS, owners may develop fair, consistent screening criteria as part of their property's tenant selection requirements.

Owners may screen for a variety of factors, including the tenant's housekeeping habits and record of drug abuse and other criminal activity.

Owners may adopt screening criteria that take into consideration rental and credit references of prospective tenants and may reject otherwise eligible applicants based on these references.

In certain LIHTC units, owners may also consider the affordability of the unit rent when screening potential applicants. Owners may set a minimum income threshold or a requirement that tenant rent not exceed a certain percentage of the tenant's income for qualifying tenants; however, owners should use caution not to be overly restrictive when establishing these amounts. Note that this type of policy would not be permissible in units with other forms of rental assistance attached.

Owners should ensure that all tenant screening is conducted fairly and consistently and in accordance with all federal, state, and local fair housing laws and requirements.

The owner may not refuse potential tenants solely because they receive Section 8 assistance.

There are not requirements that the owner provide written notice of rejection or any meeting to discuss the rejection to an applicant.

Check with your state HFA to see if there are any additional requirements related to applicant screening.

RAD PBRA

24 CFR 5.655; HUD Handbook 4350.3, Paragraph 4-7

Eligibility is the determination that the applicant is qualified for the program or subsidy type available at the property. Criteria to determine eligibility include the applicant's ability to meet income limit requirements and their ability to provide documentation of SSNs and citizenship status where applicable.

Suitability is the determination that an eligible applicant has the ability to pay rent on time, abide by the lease, and care for the property and unit.

Effective screening policies ensure that the owner is treating all applicants fairly and consistently. All screening standards must be described in the TSP, including procedures for screening for drug-related criminal activity, criminal activity (including registered sex offender status), and the use of the Existing Tenant Search. Screening criteria must be nondiscriminatory and must be in compliance with all applicable fair housing and civil rights laws.

Applicants may not be charged for screening costs. The owner may, however, charge such costs to the property's operating account.

Mandatory Screening Requirements

Owners must establish standards in the TSP that prohibit admission in the following circumstances:

- The applicant was evicted from federally assisted housing for drug-related criminal activity in the last three years.
  - The owner may adopt more stringent requirements such as implementing a five-year timeframe.
  - The owner may, but is not required to, consider:
    - Whether the household member has successfully completed an approved, supervised drug rehabilitation program.
    - Whether the circumstances of the eviction no longer exist.

- Any household member is currently engaged in illegal drug use, or the owner has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents.
  - The owner should define *current illegal drug use* in the TSP as well as *reasonable cause*.
- The owner has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may interfere with the health, safety, and right to peaceful enjoyment of other residents.
  - Screening criteria must be based on behavior, not the condition of alcoholism.
  - The owner should adopt policies defining *reasonable cause*.
- Any household member is subject to a state lifetime sex offender registration requirement.

Owners are also required to establish policies and procedures in the TSP for using EIV Existing Tenant Search to determine if the applicant or any member of the applicant's household is being assisted under a HUD rental assistance program in another location.

PERMITTED AND COMMONLY USED SCREENING CRITERIA

Owners may establish additional screening standards that are not mandated by HUD regulations. Owners have the option to:

- Establish additional standards, beyond the required standards, that prohibit admission if the owner determines that any household member is currently engaging in, or has engaged in drug-related criminal activity, violent criminal activity, and other criminal activity that threatens the health, safety, and right to peaceful enjoyment by other residents.
  - However, the owner must define a reasonable length of time in which the applicant must not have engaged in the activity before the applicant would be eligible for admittance to the program.
- Require the household exclude a household member who does not meet screening requirements.

- Consider whether the appropriate household member has completed a drug or alcohol rehabilitation program.
    - The owner may require documentation of successful completion of the program.
- Implement a longer screening period than required by the regulation that prohibits admission to a property for a disqualifying behavior.
- Reconsider the application of a previously denied applicant.
    - Owners must require the applicant to submit documentation, such as a certification from the applicant and/or supporting information from sources such as a probation officer, landlord, neighbor, etc., to support the reconsideration of the decision.
- Consider circumstances relevant to a particular case, such as the seriousness of the offense, effects of denial, degree of participation in the offending activity, and the effect of the offending action on the program's integrity.
- Consider the applicant's credit history.
    - Owners may deny applicants based on poor credit and may determine how far back to consider an applicant's credit history but may not deny an applicant for lack of credit history. Owners must distinguish between acceptable and unacceptable credit ratings.
    - Establish a minimum income requirement at Section 236 and Section 221(d)(3) BMIR properties for applicants who receive no other form of assistance only.
- Consider rental history.
    - Owners may reject applicants for poor rental history but may not deny applicants for a lack of rental history. Owners must distinguish between acceptable and unacceptable rental history.

If the owner chooses to conduct home visits as part of the screening process, the owner must visit the homes of all applicants, unless the owner has established a geographic radius within which home visits are made or objective criteria for when home visits will be conducted. For example, the owner could only conduct home visits for families who have no rental history.

- Consider housekeeping habits.
  - Owners should establish what level of bad housekeeping would lead to a denial and whether home visits will be required in certain cases.

For all discretionary denial criteria, owners may adopt a policy in the TSP to consider extenuating circumstances in cases where applicants would normally be rejected but other factors indicate the family might be an acceptable future tenant.

The owner must consider extenuating circumstances if the applicant is a person with disabilities who requests a review of the circumstances as a reasonable accommodation. For example, during the denial process, an applicant may assert that their poor history was caused by a disability and that a reasonable accommodation will prevent future violations. There may be mitigating circumstances related to the disability and the problems causing the poor history may have been reasonably resolved. The applicant may request that this be taken into account as a reasonable accommodation.

Notice H 2015-10

HUD does not recommend or require that owners adopt a “One Strike” policy when implementing screening criteria.

Arrest records may not be the basis for denying admission since they are not evidence that criminal activity actually occurred. The owner may make an adverse decision based on the conduct underlying an arrest if the conduct indicates the individual is not suitable for tenancy and the owner has sufficient evidence other than the fact of the arrest that the individual engaged in the conduct.

When screening applicants for drug abuse and criminal activity, owners may use either the local public housing authority (PHA) or can elect to use alternate or private screening services to conduct criminal background checks.

PROHIBITED SCREENING CRITERIA

HUD prohibits any discriminatory screening criteria. Owners must not discriminate against:

- Any federally protected class
- Segments of the population (e.g., welfare recipients, single-parent households)
- Individuals who are not members of the sponsoring organization of the property

Owners are prohibited from rejecting any applicant based on race, color, religion, sex, national origin, familial status, disability, age, or if an applicant is a victim of domestic violence, dating violence, sexual assault, or stalking.

Owners may not:

- Require a specific minimum income
  - With the exception of Section 236 and Section 221(d)(3) BMIR properties for applicants who receive no other form of assistance
- Require applicants to undergo a physical exam or medical testing
- Require pregnant women to undergo medical testing to determine whether they are pregnant in order to assign the appropriate unit size
- Impose greater burdens on persons with disabilities
- Require residents to participate in a meal program that is not approved by HUD
- Require a donation or contribution as a condition of admission
- Inquire about an applicant’s disabilities
- Violate any state or local laws that prohibit certain screening criteria

Learning Activity 5-2: Blue Lake Meadows

1. Blue Lake Meadows' MSA must be met by December 31, ______.
   a. 2019
   b. 2020
   c. 2021

2. What is Blue Lake Meadows' applicable fraction for the following buildings:
   a. Building A:
   b. Building B:

3. What version of the RAD notice is applicable to Blue Lake Meadows?

   ____

4. What is the maximum household income for the following to initially occupy a unit at Blue Lake Meadows?

   A one-person household ______________
   A two-person household ______________
   A three-person household ______________
   A four-person household ______________

5. Consider the applications received for Blue Lake Meadows. Based on their **student status**, which households would potentially qualify to live at Blue Lake Meadows? Identify ALL of the families who qualify.
   a. Household 1
   b. Household 2
   c. Household 3
   d. Household 4
   e. Household 5

6. During the course of the applicant screening process, the O/A determines that Kristy Jackson, the head of household in family #4 is subject to the state's lifetime sex offender registry. Is the household eligible to reside at Blue Lake Meadows?

   a. Yes
   b. No

7. At her applicant interview in February 2020, applicant household #5, Jennifer Hall, informs the property manager that she will be changing her student status from full-time to part-time in six months and would like to live in Blue Lake Meadows. Based on this new information, household #5 is eligible to live at Blue Lake Meadows because she won't be a full-time student in six months.

   a. True
   b. False

8. If the applicant interview was instead conducted in October 2020, and Jennifer informed you she was changing her student status from full-time to part-time in March of the following year, she would potentially be eligible to live at Blue Lake Meadows under tax credit rules.

   a. True
   b. False

9. Since Blue Lake Meadows has LIHTC funding, the Equal Access Final Rule is not applicable.

   a. True
   b. False

10. A household consisting of eligible and non-eligible family members based on their citizenship status would receive full PBRA assistance at Blue Lake Meadows since the units are also LIHTC.

    a. True
    b. False

11. Decide whether the following families are eligible for assistance (based on citizenship assistance only (E)), ineligible for assistance (IE), or would receive prorated assistance (P) in RAD PBRA.

    a. Yim family

       E IE P

    b. Howell family

       E IE P

    c. Ortega family

       E IE P

    d. Jackson family

       E IE P

    e. Hall family

       E IE P

12. George Michaelson (age 21) is a resident in a blended LIHTC/RAD PBRA unit at Blue Lake who moved in five months after the RAD conversion. He is head of household and lives with his 25-year-old sister Gina who is not a student. George is unemployed and decides to enroll part-time at the local community college. George is not a veteran and has never been married. George reports to the O/A that his parents still claim him as a dependent on their taxes. The O/A verifies that George's parents are over-income where they live.

    a. The O/A must terminate the family's assistance in PBRA
    b. The O/A does not have grounds to terminate since George is only a part-time student
    c. Since George is a program participant, not an applicant, the student rule doesn't apply to him
    d. As long as George's parents certify that they won't give George any financial assistance, even though they will still claim him as a dependent on their taxes, George may continue receiving assistance

13. If George and Gina instead lived in a LIHTC only unit at another development:

    a. They would not be eligible to reside in a unit under the student rule
    b. They would be eligible to reside in a unit
    c. Since they are residents, not applicants, the student rule doesn't apply

Notes

CHAPTER 6 Calculating Income

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Understand how income is annualized
- Compare and contrast program requirements for the calculation of income
- Compare and contrast program requirements for the calculation of assets
- List the requirements for verification in LIHTC and RAD PBRA
- Explain how HUD's Enterprise Income Verification (EIV) system is used in RAD PBRA

Both LIHTC and RAD PBRA follow the definition of *income* found at 24 CFR Part 5 as interpreted in Chapter 5 of the HUD Handbook 4350.3 REV-1, CHG-4.

LOW-INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM

Although the tax credit program is an IRS program, calculations to determine a family's annual income are made using the HUD Handbook 4350.3 REV-1, CHG-4, Chapter 5, Section 1. The handbook was not, however, written specifically for the LIHTC program. Certain information found in Chapter 5 is simply not applicable to LIHTC. For example, Chapter 5 discuses the use of HUD's EIV system as the most preferred method of third-party verification, but in the LIHTC program, EIV may never be used. Even those familiar with the HUD 4350.3 will still need to learn a few key differences when administering the LIHTC program, which can be found in the Guide for Completing Form 8823 and in each state housing agency's compliance manual.

Since rents are not income-based, total annual income is calculated to compare the family's income and assets to the appropriate MTSP income limit at the time of eligibility. Also, special attention should also be taken to ensure that any lower set-side requirements for the project are met. Adjusted income is not calculated. Once the family lives in a LIHTC unit, income is evaluated only at annual recertification (when applicable) for purposes of the Next Available Unit Rule (which is discussed in a later chapter), not to determine rent. Income information is recorded on a state-specific Tenant Income Certification (TIC), which is kept in the tenant file. A TIC must be signed by all adult household members on or before the move-in date and at annual recertification. The TIC must state the anticipated annual gross household income. While there is no standardized TIC provided by the IRS, many states use the National Council of State Housing Agencies' (NCSHA) recommended TIC.

Some states allow owners to use 50058s or 50059s as third-party verification of income for individuals receiving Section 8 assistance. Check with your state to see if this is permitted. This can be particularly useful in combined LIHTC/HOME units in years where the HOME program does not require third-party verification from source documents.

A great emphasis is placed on calculating income eligibility correctly in the LIHTC program because a minimum number of units must be rented to tenants at a certain income level. If income is calculated incorrectly, and tenants' incomes are above the applicable income limit, then the owner may have moved in ineligible families, and the minimum set aside or applicable fraction for the project may not be met. This can put the project's tax credits in jeopardy and can ultimately lead to recapture or disallowance. For this reason, understanding the compliance requirements for calculating income eligibility is the paramount concern for the LIHTC manager.

SECTION 8 PROJECT-BASED RENTAL ASSISTANCE (PBRA) PROGRAM

The HUD Handbook 4350.3 (REV-1), Chapter 5 provides the rules governing income and rent calculation in the PBRA program. Chapter 5 is organized into 4 sections:

- Determining Annual Income
- Determining Adjusted Income
- Verification
- Calculating Tenant Rent

Since rents are income-based, once a family has been determined eligible for the program, the owner/agent also calculates allowances and deductions such as medical expenses and child care expenses to determine the family's adjusted income (annual income minus allowances). Tenant rent is then based on the family's total tenant payment (TTP), which is calculated using their gross annual and adjusted income amounts, with a minimum rent of $25. Tenant rent is calculated by subtracting the utility allowance, if any, from the family's TTP. In some cases, tenant rent may be $0 and the family may receive a utility reimbursement payment when the utility allowance for the unit is greater than the family's income-based TTP. Every month the owner/agent submits a voucher (Form HUD-52670) to HUD or the Contract Administrator, for a Housing Assistance Payment (HAP) for each unit, which is the difference between the family's TTP and the gross rent for the unit (contract rent plus utility allowance, if any). This information is sent through the Tenant Rental Assistance Certification System (TRACS) using Form HUD-50059 and Form HUD-50059A. TRACS collects certified tenant data and subsidy payment vouchers from owners and management agents of multifamily housing projects.

Section 2 Annualizing Income

24 CFR 5.609(a)

Annual income means all amounts, monetary or not:

- Which go to or on behalf of the family head or spouse or to any other family member; or
- That are anticipated to be received from a source outside the family during the 12-month period following admission or the annual reexamination effective date; and
- Which are not specifically excluded in 24 CFR 5.609(c); and
- Also includes amounts derived from assets to which any family member has access.

WHOSE INCOME IS COUNTED?

All sources of income are counted unless specifically excluded by regulations. Furthermore, the relationship and/or situation of the individual family member also must be taken into consideration.

- For the head of household, spouse, cohead, and other adults, all income is counted unless regulations state to exclude.
- Earned income of minors (family member 17 years of age and under) is not included. Benefit and other non-earned income paid directly to minors is included. Asset income of minors is counted as income.
- Earnings in excess of $480 for each full-time student 18 years old or older is not included as income. Benefit and other non-earned income of a full-time student is included.

Member	Include Employment Income	Include Other Income (Including from Assets)
Head	Yes	Yes
Cohead	Yes	Yes
Spouse	Yes	Yes
Other adult (including foster adult)	Yes	Yes
Child under 18	No	Yes
Full time student over 18	Earned income over $480 of a dependent who is a full-time student and 18 years of age or older is excluded.	Yes
Foster child under 18	No	Yes
Live-in aide	No	No

Considerations When Annualizing Income

While both programs discussed here require that all income be converted to an annual figure, the process for annualizing income is slightly different depending on whether rents are income-based or not. One thing to consider when annualizing income is the purpose for which income is annualized.

- In the **LIHTC** program, when performing initial certifications, the purpose of annualizing income is solely to determine that the family's income does not exceed the applicable income limit, not to calculate rent. There are serious tax penalties for moving in over-income families, so income calculation at initial move-in is of particular importance in this program. Therefore, the most conservative calculation of income is generally made to ensure that there is no doubt that a family is income-eligible. Although the IRS has not addressed this issue, it is a best practice in most states. Further, many HFAs require that owners calculate income from wages both by calculating the average income per pay period and the year-to-date income and selecting the highest amount. Check with your state HFA.

- On the other hand, in **PBRA**, income is calculated not only to determine eligibility but also to determine rent. Therefore, when calculating rent for these programs, calculations should be as realistic as possible since a family's rent is based on the projection. Typically, when calculating income from wages, the O/A will use the average income per pay period and will not use a year-to-date calculation.

Example

A property manager receives a third-party employment verification that states that an individual works between 15 and 25 hours per week.

In the LIHTC program, 25 hours would be used to annualize income, which would be the most conservative approach.

In PBRA, an average would be taken (15+ 25= 40/2= 20), and 20 hours per week would be used.

Another factor to consider when annualizing income is whether program regulations allow for interim recertification.

- In **PBRA**, interim recertification may be performed when residents experience changes in income, family composition, or family circumstances.
- In **LIHTC**, interims are not performed. After the initial determination of income eligibility, income is certified only once annually (when applicable), not intermittently. Therefore, all anticipated income for the subsequent 12 months must be included at the time of certification.

The 4350.3 gives guidance on how to treat sporadic income, seasonal employment, and zero income status that is applicable to the PBRA program. However, since HUD assumes that there will be interim certifications, in the LIHTC program, that guidance fits like a square peg in a round hole. The bottom line is, while both programs require that income be annualized for the upcoming 12 months, the approach to annualization is different. Let's look at a few examples.

EXAMPLE 1: SEASONAL EMPLOYMENT

Joni Jones is an applicant. For the last several years, Joni has worked part-time, 20 hours per week, during the school year (eight months per year) as a teacher's aide at a local elementary school earning $8.25 an hour. Over the summer, she is not paid by the school, and she gets a full-time job at a local coffee shop where she makes $7.75 an hour working 40 hours per week.

- In **PBRA**, interim recertifications may be required to reflect changing circumstances of those who are seasonally employed. These amounts could be annualized one of two ways:
  1. $8.25 x 20 x 52 = $8,580 and then conduct an interim when she changes jobs
  2. ($8.25 x 20 x 32 = $5,280) + ($7.75 x 40 x 20 = $6,200) = $11,480
- For the **LIHTC** program, since no interims are possible, the owner would be required to use the second calculation. This becomes more difficult when there isn't a stable history of employment. For example, Joni might have worked full-time during the school year, but isn't sure if she is going to work over the summer. In PBRA, this would simply mean that the owner/agent would be required to use the first calculation and conduct an interim when her situation changes. But in LIHTC, that wouldn't be possible.

EXAMPLE 2: UNEMPLOYED

Let's say instead that Joni used to work as a teacher's aide. When she applies for a unit, she's been unemployed for the last several months. She isn't collecting unemployment, but she is looking for another job.

- In **PBRA**, you would use current circumstances to project Joni's income, and Joni would be zero income. Since income eligibility determinations may not be based on a lack of income and zero income households are eligible for rental assistance, this would not be a problem. The O/A would apply any procedures related to zero income families, which would be outlined in the O/A's EIV security policy. HUD recommends that owners have a policy of reverifying the status of residents reporting zero income at least quarterly.

- But in **LIHTC** this likely would not be the case. The 8823 Guide states that if a tenant is unemployed at the time of move-in, but anticipates becoming employed during the year, the anticipated income from future employment should be included as anticipated income. In other words, if the tenant indicates that he or she is expecting to return to work and lists anticipated income, then that amount should be included on the income certification. Since the employment has not yet been obtained, it is not possible to verify the amount with the employer.

  However, the tenant should include an estimated amount on the tenant income certification. In order to estimate the anticipated amount, the tenant should provide documentation, such as a prior year tax return or W-2, indicating that the estimate is reasonable. Also, past paycheck stubs showing the hourly wage can be used. The anticipated income does not need to be exact or even approximately the same as what the tenant made in the prior year, but if the amount is drastically different, the tenant should clarify the reason for the difference. Many state monitoring agencies have an affidavit that is used for unemployment purposes. These forms request an estimate of the hourly wage to be obtained and the number of hours to be worked per week.

Example 3: Zero or Sporadic Income

Finally, what if when Joni applies, she claims she's never worked before and has zero income?

- In **PBRA**, since income eligibility determinations may not be based on a lack of income and zero income households are eligible for rental assistance, this would not be a problem. The O/A would apply any procedures related to zero income families, which would be outlined in the O/A's EIV security policy. HUD recommends that owners have a policy of reverifying the status of residents reporting zero income at least quarterly.

- In **LIHTC**, the owner could consider whether Joni could actually afford to rent the unit and might deny her application based on her inability to pay rent. For LIHTC, the property manager must determine if Joni is expecting to earn income at any time during the year, as well as the anticipated amount. The IRS states that "the best way to determine whether a prospective tenant is income-qualified is to conduct a detailed interview with the tenant. An interview can be used to follow up on information disclosed on the application, surface information that would not otherwise be known, and help the property manager make an informed decision." A tenant does not need to have income every month, but each month should be accounted for with either an anticipated amount of income, or an explanation of why no income is anticipated and how that month's expenses will be covered. A prior year's tax return and/or paycheck stubs should be used to provide support for the anticipated income amount. Many state HFA compliance manuals have specific requirements that must be followed for applicants and tenants with no income or sporadic income. Be sure to check your state manual.

Section 3 Income Inclusions

DIFFERENCES IN INCLUSIONS AND EXCLUSIONS

Since LIHTC and PBRA both follow the HUD Handbook 4350.3 REV-1, CHG-4 for income calculation, sources of income that are included and excluded are very similar between the two programs. However, there are some places where rules differ, which are discussed below.

INCOME FROM A BUSINESS

24 CFR 5.609(b)(2)

The net income from any business, including self-employment, must be counted. Net income equals gross income business expenses, interest on loans, and depreciation computed on a straight-line basis.

Owners must count any salaries or other amounts paid to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business. Applicants and residents may treat, as a business expense depreciation (straight-line), interest payments on loans and all expenses other than those for expansion or capital improvements.

Withdrawal of cash or assets from a business is included as income except when the withdrawal is for reimbursement of amounts the family has invested in the business.

If the net income from a business is negative, it must be counted as zero income.

Typically, what you will need to determine income from a business is IRS form Schedule C. The following calculation will be done:

> Line 31 + Line 11 + Line 12+ Line 13+ Line 20 = total annual income

Net income from a rental property owned by the applicant or tenant is also counted. As verification the owner may request:

- IRS Form 1040 with Schedule E
- Copies of the latest rent checks, leases or utility bills
- Documents of the applicant or tenant's expenses in renting the property
- Lessee's written statement identifying monthly payments due

Guide for Completing Form 8823, Chapter 4

In the **LIHTC** program, though, the 8823 Guide provides more detailed information on calculating income from self-employment:

- A tax return must be filed for all self-employed individuals who will reside in a LIHTC unit who operate sole-proprietorship businesses or otherwise report income on Schedule C, regardless of whether the taxpayer is reporting a profit or a loss. If the person is not eligible to get an SSN, which is needed to file a tax return, an individual taxpayer identification number (ITIN) can be obtained using IRS Form W-7.
- If a tenant is using a portion of their LIHTC unit to provide daycare services, the tenant must have applied for (and not have been rejected), be granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law. See IRS Form 8829, Expense for Business Use of Your Home and Publication 587, Business Use of Your Home for more information.

MILITARY PAY

CFR 5.609(c)(7)

For both programs, count all regular pay, special pay, and allowances of a member of the armed forces (whether or not they are living in the dwelling). Exclude the special pay for exposure to hostile fire.

Internal Revenue Code §142(d)(2)(B)(ii), IRS Notice 2008-79

In the **LIHTC** program, military basic housing allowances are generally included as income, however, there is an exception if the building is located in any county, or adjacent county, in which a qualified military installation is located. This is defined as an installation where:

1. Not less than 1,000 members of the Armed Forces are assigned, and
2. The number of members of the Armed Forces assigned; to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005.

The exception applies to:

- Determinations of income made after July 30, 2008, and before January 1, 2012, if (1) the credits were allocated on or before July 20, 2008, or (2) if financed with tax exempt bonds, the building was placed in service before July 20, 2008, but only if the bonds were issued before July 20, 2008.
- Determinations of income made after July 20, 2008, if (1) the credits were allocated after July 20, 2008, and before January 1, 2012, or (2) if financed with tax-exempt bonds, the building was placed in service after July 20, 2008, and before January 1, 2012, but only if the bonds were used after July 20, 2008, and before January 1, 2012.

Qualified bases are listed in IRS Notice 2008-79. Owners are responsible for documenting that the exception is applicable. The list below is not an exclusive list:

Name of Military Installation	State
U.S. Air Force Academy	Colorado
Fort Shafter	Hawaii
Fort Riley	Kansas
Annapolis Naval Station (including U.S. Naval Academy)	Maryland
Fort Jackson	South Carolina
Fort Bliss	Texas
Fort Hood	Texas
Dam Neck Training Center Atlantic	Virginia
Naval Station Bremerton	Washington

EDUCATIONAL SCHOLARSHIPS OR GRANTS

Guide for Completing Form 8823, Chapter 4

In the **LIHTC** program:

- If the student is not receiving Section 8 assistance, all forms of financial assistance and scholarships are excluded from annual income.
- If the student is receiving Section 8 assistance, follow the student rule requirements in the HUD Handbook 4350.3 REV-1, CHG-4.

Student loans are excluded in either circumstance.

FR Notice 12/30/05; FR Notice 04/10/06; 24 CFR 5.609(b)(9); Notice H 2015 12

In **PBRA**, financial aid in excess of amounts received for tuition and any other required fees and charges are included in annual income, unless:

- The student lives with his or her parents; or
- The student is over the age of 23 with dependent children.

Student loans are excluded.

Required fees are defined as all fixed sum charges that are required of a majority of students, including:

- Writing and science lab fees
- Athletic fees
- Fees specific to student's major or program
- Expenses related to attending school not included in tuition include:
- Room and board
- Books
- Supplies
- Meal plans
- Transportation and parking
- Student health insurance
- Other non-fixed sum charges

EARNED INCOME DISALLOWANCE (EID)

Tenants who are employed and are currently receiving the Earned Income Disallowance (EID) exclusion at the time of conversion will continue to receive the EID exclusion after conversion, in accordance with regulations at 24 CFR 960.255. After conversion, no other tenants will be eligible to receive the EID. If a tenant receiving the EID exclusion undergoes a break in employment, ceases to use the EID exclusion, or the EID exclusion expires in accordance with 24 CFR 960.255, the tenant will no longer receive the EID exclusion and the owner will no longer be subject to the provisions at 24 CFR 960.255. Furthermore, tenants whose EID ceases or expires after conversion do not qualify for the rent phase-in provision, as described in Section 1.7.B.3 of the RAD Notice. This is because rent phase-in is only applicable at the time of conversion (initial certification) and can only be implemented if rent increases purely as a result of the conversion. When the EID ceases or expires after conversion, the household TTP will be adjusted to the appropriate rent level based upon tenant income at that time that includes the previously disregarded income.

RECURRING GIFTS, GRANTS, AND CONTRIBUTIONS

24 CFR 5.609(b)(7)

In all programs, regular gifts and contributions from persons outside of the household are counted as income. Temporary, nonrecurring, or sporadic income, including gifts, is excluded.

HUD 4350.3(REV-1), Chapter 5

In **LIHTC** and **PBRA**, groceries provided to the family by a person not living in the household are excluded. The payment of a utility bill or rent by someone outside of the unit must be included in annual income. Further, groceries and/or contributions paid directly to a child care provider by persons not living in the unit are excluded from annual income.

Guide for Completing Form 8823, Chapter 4

However, for the **LIHTC** program only, if the child care expenses are paid by the non-custodial parent in lieu of all or part of the child support payments, they should be included in income. Check your state compliance manual to see how your state treats recurring gifts.

Deferred VA Disability Payments

LIHTC Newsletter, Issue 54

For **LIHTC**, the treatment of these types of payments differs depending on whether the individual also receives Section 8 assistance:

- If they do, the deferred payment is not considered income, regardless of how it is paid.
- If they do not receive Section 8 assistance (for example a LIHTC-only unit), a lump sum payment that was caused by delays in processing periodic payments is included in income.

24 CFR 5.609(c)(14)

For **PBRA** and **LIHTC with Section 8**, deferred disability benefits from the Department of Veterans Affairs are excluded from annual income, whether paid as a lump sum or in prospective monthly amounts. If paid as a lump sum, then the lump sum may be counted as an asset.

Similarities in Inclusions and Exclusions

Temporarily Absent Family Members

The income of family members who are temporarily absent is included in annual income. Family members who are temporarily absent include:

- Dependents away at school
- Temporary employment in another location
- Active military duty
    - Temporarily absent individuals on active military duty will continue to be counted as family members and have their income included, if:
        - They are the head, spouse or cohead
        - The spouse or dependent of the person on active military duty resides in the unit
    - Otherwise, the individual on active military duty must be removed from the family and their income must not be counted.
- Members who are permanently confined to a hospital or nursing home

- It is the family's discretion whether to include that person as a household member.
- The family member may not be named as family head, spouse, or cohead.
- If the family chooses to include the permanently confined person as a household member, then that member's income and deductions must be included in the income and rent calculation.
- If the family chooses to not include the permanently confined person as a household member the member must be removed from the Form HUD-50059 as well as all of their income and deductions.

SOCIAL SECURITY

The gross amount of each payment must be counted. For example, for Social Security recipients, the full amount of the Social Security payment must be counted prior to any Medicare deductions.

If a Social Security recipient's benefits are reduced to make up for prior overpayments, the recipient's income should include the amount the Social Security agency will provide, not the amount that would have been provided if no error were made. This guidance applies to Supplemental Security Income (SSI) payments as well. Note: This is not the case for deductions made for any other reason, such as back child support, alimony, or IRS payments. In these cases, the gross amount would be used.

Example: *Ms. Lou (age 78) lives alone is an assisted unit at Shady Acres. Her sole source of income is monthly Social Security payments. She receives $1,400 per month because $104 is taken out to pay for her Medicare benefits. Her income is calculated as follows:*

- *$1,400 net monthly payment + $104 paid for Medicare = $1,504 monthly gross payment.*
- *$1,504 monthly gross payment X 12 months = $18,048 annual income*

The monthly Medicare premium will be deducted when her adjusted income is calculated.

The owner must have policies within the EIV policy concerning how the annual Cost of Living Adjustment (COLA) will be handled. Owners must select one of the the four methods for January through April recertifications:

1. Use the benefit information reported in EIV that does not include the COLA as third-party verification, as long as the tenant confirms that the income data in EIV is what they are receiving;
2. Use the SSA benefit award letter or proof of income letter provided by the tenant that includes the COLA adjustment if the date of the letter is within 120 days from the date of receipt by the owner;
3. Determine the tenant's income by applying the verified COLA increase percentage to the current verified benefit amount and document the tenant file with how the tenant's income was determined; or
4. Request third-party verification directly from SSA when the income in EIV does not agree with the income the tenant reports they are receiving (See 4350.3, Paragraph 9-15).

All recertifications effective after April 1 of each year must reflect the SSA benefit that includes the verified COLA for that year.

Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits

Include the full amount of periodic payments from:

- Annuities
- Insurance policies
- Retirement funds
- Pensions
- Disability benefits
- Death benefits

Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.

Withdrawals from retirement savings accounts such as individual retirement accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income.

If the tenant is receiving long-term care insurance payments, any payments in excess of $180 per day must be counted toward the gross annual income. Payment of long-term care insurance premiums is an eligible medical expense.

Federal Government/Uniformed Services Pension Funds Paid to a Former Spouse

Federal Government/Uniformed Services pension funds paid directly to an applicant or tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant or tenant's former spouse, is no longer an asset of the applicant or tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order to be paid to the former spouse of a federal government employee, is counted as income for a tenant or applicant receiving such funds.

Other State, Local Government, Social Security, or Private Pensions Paid to a Former Spouse

Other state, local government, Social Security, or private pension funds paid directly to an applicant or tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.

Example: *Joan Carson is a retired federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of $20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of $20,000. The $20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line-item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.*

ALIMONY AND CHILD SUPPORT

Alimony and child support payments that have been awarded by the court must be counted in full unless the applicant or resident certifies that payments are not being made and the household member has made every effort to collect amounts due to them, including filing with courts or appropriate agencies responsible for enforcing such payments.

The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments actually received.

Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as "pass-through" payments. These amounts must be counted as annual income.

When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

Lump-Sum Payments

In most cases, lump-sum payments from sources such as inheritances and insurance settlements are not considered income. However, in certain circumstances where a lump-sum payment is caused by delays in processing periodic payments (such as unemployment, welfare, or similar benefits), the payment would be included as income.

Lump-sum payments caused by delays in processing periodic payments from the following sources are not included as income:

- Social Security
- Supplemental Security Income
- Deferred VA disability benefits received in a lump sum or in prospective monthly amounts (Section 8 only)

Other lump sums that families may receive will be discussed under assets.

If any portion of a lump-sum income covers a period prior to the family's admission to the program, do not treat that portion as income.

HUD provides two methods for treatment of lump sums counted as income:

- Option A (prospective method): Include lump-sum income in current income.
- Option B (retroactive method): Treat lump-sum income the same way as unreported income.

Family member loses his/her job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of $700 in December to cover the period from 10/20 to 12/5 and begins to receive $100 a week effective 12/6.

Option A: The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

* The family's income is calculated at $0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

** Family's actual income for 1/1 is $100/week x 52 weeks = $5,200 / 12 = $433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the $700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

$100/week benefit x 52 weeks = $5,200 + $700 lump sum payment = $5,900 annual gross income/ 12 = $492.

*** Increased rent does not start until 2/1 in order to give the family notice of rent increase.

Option B: The owner processes one interim re-examination after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 – 94=)	-	110	110	-	-

* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using $800 as monthly gross income. Beginning 1/1, monthly gross income is known to be $100/week, or $433/month.

** The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as $5,200 / 12 = $433 monthly gross income.

*** TTP for November and December recalculated as $433 monthly gross income and $313 monthly adjusted income x .30 = 94 with credit or refund to family of $110/month for each of these two months for difference between TTP paid of $204 and recalculated TTP of $94.

PUBLIC ASSISTANCE

Public assistance income sources included in annual income include:

- Temporary Assistance to Needy Families (TANF)
- SSI
- General Assistance/General Relief
- Aid to Aged Blind and Disabled (AABD)

WELFARE ASSISTANCE IN AS-PAID STATES

In most cases, the gross amount of public assistance will be counted as income. However, in some circumstances, owners must calculate public assistance in a special way when part of an "as-paid" locality, otherwise known as "Welfare Rent."

Special calculations of income are required for "as paid" state, county, or local public assistance programs. An as-paid system is one in which the welfare assistance payment includes a specifically designated amount for shelter and utilities that is subject to adjustment based upon the actual cost of shelter and utilities. Welfare rent is the public assistance amount specifically designated for shelter and utilities.

The amount of welfare assistance income to be included as income shall consist of:

- The amount of the deduction or grant minus the amount specifically designated for shelter or utilities, plus the maximum amount the welfare assistance agency could in fact allow the family for shelter and utilities.

If the family's welfare assistance is reduced from the standard of need by the application of a percentage, the "maximum amount" shall be the amount resulting from one application of the percentage.

Owner/agents are encouraged to contact their local HUD Field Office to discuss how these rules are applied in their locality.

Example: *At the time of application, a household's monthly public assistance amount is $300. The total amount includes $125 for basic needs and $175 for shelter and utilities, the shelter and utilities amount is based upon where the family is currently living. However, the maximum the public assistance agency could allow for shelter and utilities for this size household is $190 per month.*

Count the following as income:

- $125 basic needs + $190 shelter and utilities = $315 total monthly public assistance income
- $315 monthly public assistance income X 12 months = $3,780 annual income

PAYMENTS IN LIEU OF EARNINGS

Annual income includes such payments as:

- Unemployment
- Disability compensation
- Workers' compensation
- Severance pay

Section 4 Income Exclusions Common to Both Programs

HUD Handbook 4350.3, Paragraph 5-6

Income Exclusions	
Income from Employment of Children	Earnings of children under the age of 18 are excluded; however, unearned income is included.
Payments Received for Foster Children or Foster Adults	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).
Lump-Sum Additions to Family Assets (Counted as Asset)	Includes inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses.
Medical Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
Income of a Live-in Aide	As defined in 24 CFR 5.403: a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who is determined to be essential to the care and wellbeing of the persons; is not obligated for the support of the persons; and would not be living in the unit except to provide the necessary supportive services.
Student Financial Aid	Financial aid exceeding amounts received for tuition and required fees are included in annual income. However, financial aid paid to a student over the age of 23 with dependent children is excluded. Does not include student loans.

Income Exclusions	
Special Armed Forces Pay	Payments received by a family member serving in the armed forces who is exposed to hostile fire.
Resident Service Stipends	Exclude amounts received under a resident service stipend, not to exceed $200 per month.
Holocaust Reparation Payments **24 CFR 5.609(c)(10)**	Payments received from a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
Earnings for Full-Time Students	Exclude earnings in excess of $480 for each full-time student.
Sporadic Income	Exclude temporary, nonrecurring, or sporadic income, including gifts. *Sporadic income* is defined as income that is neither reliable nor periodic.
Adoption Assistance Payments **24 CFR 5.609(c)(12)**	Exclude amounts in excess of $480 per adopted child.
Developmental Disability Care Payments	Paid to a family with a member who has a developmental disability. Enables the family to offset the cost necessary to keep the member at home.
Refunds and Rebates for Property Taxes **24 CFR 5.609(c)(15)**	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.
Plan for Achieving Self-Support	Exclude payments to disabled persons on SSI pursuing a PASS program
Other Publicly-Assisted Programs **24 CFR 5.609(c)(8)(iii)**	Exclude amounts received by a participant in other publicly assisted programs that are specifically for reimbursement of out-of-pocket expenses to allow participation in a specific program.
HUD-Funded Training Programs	Exclude all amounts received under any training program funded by HUD.

Income Exclusions	
Incremental Income from Employment Training Programs Qualified Under 5.609[C][8][V] 24 CFR 5.609(c)(8)(v)	Exclude all incremental earnings and benefits resulting from participation in a qualifying state or local employment training program.

Other Federally Mandated Income Exclusions
Value of food stamps — Value of allotment provided to an eligible household under the Food Stamp Act of 1977
Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966 — includes WIC
Domestic Volunteer Services Act — Payments under the Domestic Volunteer Services' Act of 1973 are excluded. These programs include: • VISTA — Volunteers in Service to America • RSVP — Retired Senior Volunteer Program • Foster Grandparents • Senior Companions Programs • Heating assistance — Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program • Workforce Investment Act of 1998 — Payments or allowances received under programs funded in whole or in part under the Workforce Investment Act of 1998 • Americorps Living Allowance under the National and Community Service Act of 1990
Deferred disability benefits from the Department of Veterans Affairs — received as a lump sum or in prospective monthly amounts

Other Federally Mandated Income Exclusions
Indian settlements/trusts — Payments received under the Maine Indian Claim Settlement Act of 1980 (Pub. L. 96-420, 94 Stat. 1785). • Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1616(c)) • Income derived from certain sub-marginal land of the United States held in trust for particular Indian tribes • Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation • Income derived from the disposition of funds of the Grand River Band of Ottawa Indians • The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court, 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 • Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b)) • A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobell et al. v. Ken Salazar et al. for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 • Benefits under the Indian Veterans Housing Opportunity Act of 2010 • Only applies to Native American housing programs
Title IV of the Higher Education Act of 1965 — Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, 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, the exception found in Section 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition and required fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-247).
Spina bifida and agent orange settlements. • Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) • Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spina bifida.

Other Federally Mandated Income Exclusions
Child Care and Development Block Grant Act of 1990 — 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.
Earned Income Tax Credit refunds.
Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations.
Title V of the Older Americans Act — Payments under Title V are excluded. This is the Senior Community Service in Employment Program (SCSEP) funded through the Department of Labor. This program is administered by national contractors such as: • Green Thumb • AARP — American Association of Retired Persons • NCOA — National Council on Aging • National Council of Senior Citizens (sometimes called Senior Aides) • US Forest Service • NCBA — National Caucus for Black Aged • Urban League • National Association for the Spanish Elderly — State coordinators for Title V can provide a list of additional contractors who administer Title V — even if there is 90 percent federal and 10 percent local funding, 100 percent of the income funded through Title V is excluded. • Crime Victim Compensation — Any amount of crime victim compensation under the Victims of Crime Act • Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002

Section 5 Income from Assets

Annual income includes amounts derived from assets to which family members have access. Therefore, the value of assets may affect the family's annual income. When assets are included in annual income, it is the income earned from the asset that is counted, not the value of the asset itself. The PHA or owner/agent must identify and verify:

- Assets
- The market value of assets
- Expenses involved to convert the assets to cash
- Actual anticipated income from each asset

Market value is the worth of the asset. For example, market value is the amount in a certificate of deposit (CD) or what a buyer would pay for real property.

- Cash value of an asset is the market value less reasonable expenses that would be incurred by the family to sell or convert the asset to cash, such as:
- Penalties for early withdrawal
- Broker fees
- Legal fees
- Settlement costs for real estate

In other words, the cash value of an asset is the amount the family would actually receive if the asset were converted to cash. Note that the family is not actually required to convert the asset to cash.

Anticipated income is the actual amount of income the asset will generate to the family over the coming 12 months.

Some assets generate no income, such as:

- Non-interest-bearing checking accounts
- Coin collections

Many assets do generate income, such as:

- Interest from investments
- Rents from rental property
- Dividends

Market value – expenses = cash value Market value x interest rate = anticipated income

IMPUTED ASSET INCOME

The rule for calculating income from assets differs depending on whether the total cash value of family assets is $5,000 or less, or is greater than $5,000.

- When total cash value is $5,000 or less:
  - Use actual income the family receives from assets
- When total cash value exceeds $5,000, use the greater of:
  - Actual income from assets; or
  - Imputed asset income (total cash value of assets x passbook rate)

Imputed asset income is income that would be received from an asset if it were converted to cash and placed in a savings account earning an average passbook rate. The passbook rate differs among programs.

Notice H 16-01

Effective February 1, 2015, the passbook rate used in LIHTC and PBRA is 0.06 percent.

TYPES OF ASSETS

HUD Handbook 4350.3, Paragraph 5-7

Annual income includes amounts derived from assets to which family members have access. Assets are items of value that may be turned into cash.

Assets include:

- Checking accounts
  - Use the six-month average balance as the cash value.
- Savings accounts
  - Use the current balance as the cash value.

RHIIP Listserv Posting #296

- Prepaid debit cards
  - Social Security benefits received through direct deposit or the Direct Express Debit Card are counted as income.
  - The balance on the Direct Express Debit Card is also considered an asset and should be verified consistent with existing savings account verification requirements.

- Specifically, tenants who receive their benefit on a Direct Express Debit Card will need to provide an account balance no more than 120 days old at the time of recertification. This balance can be obtained from an ATM, through the online account service, or a paper statement. The verification document must identify the account and the account holder.
- Includes any prepaid debit or gift card that holds a cash value.

Notice H 2019-06

There are some exceptions regarding tax-advantaged savings accounts under the Achieving a Better Life Experience (ABLE) Act of 2014.

- These accounts are for persons with disabilities. The beneficiary must meet the statutory eligibility requirements and there is a cap on annual deposits per state law.
- Withdrawals and disbursements, contributions by third parties, and actual or imputed interest under these accounts are excluded.
- However, if the ABLE beneficiary is employed, all earned income is counted, even if a portion is deposited into the ABLE account.
- Contributions made by someone other than the beneficiary directly into the ABLE account are also excluded. That is, if a third party or relative contributes $100 per month directly to the beneficiary, it would count as income, but if the third party or relative contributes $100 per month directly into the ABLE account, it would be excluded.

Trusts

- **Revocable trusts:** If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

- **Nonrevocable trusts:** If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income. If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.
- **Payment of principal from a trust:** The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump-sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.
- **Special needs trusts:** A *special needs trust* is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.
  - If the beneficiary does not have access to income from the trust, then it is not counted as part of income.
  - If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

Stocks, bonds, treasury bills, savings certificates, money market funds, and other investment accounts

- Interest or dividends earned are counted as income from assets even when the earnings are reinvested. Residents with these types of accounts may request an interim recertification at any time after the authorization for release of information has been received and the account value has been verified; a decrease in stock value may result in a decrease in rent. Note: The change in stock value alone is not income from the asset.

Annuities

- An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.
- Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets need to be made.
- In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. When an applicant or resident has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.
- If the owner of the annuity does not have the right to withdraw the balance from the account, the annuity will not be treated as an asset.

Equity in real property (land owned or bequeathed) or other capital investments

- Equity is the estimated current market value of an asset less the unpaid balance on all loans secured by the asset.
- Calculate equity in real property as follows:
  - Market Value – Loan (mortgage) = Equity
- Calculate the cash value of real property as follows:
  - Equity – Expense to convert to cash = Cash Value
- Expenses to convert to cash may include such costs as broker fees, sales commissions, settlement costs, and transfer taxes.

Balances held in retirement accounts

- Includes IRA, Keogh, and similar retirement savings accounts.
    - Must be counted when the holder has access to the funds, even if withdrawal would result in a penalty.
- Contributions to company retirement/pension funds:
    - While an individual is employed, count as an asset only those amounts the family can withdraw without retiring or terminating employment.
    - After retirement, include in annual income any benefits received through periodic payments from a retirement or pension fund.
    - Include any retirement benefits received through periodic payments. Do not count any remaining amounts in the account as an asset.

One-time lump-sum payments such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlements for personal or property losses that are placed in an asset

- A lump sum is an asset only as long as the family continues to possess it. If the family uses the money for some-thing that is not an asset, the lump sum must not be counted.

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc.

Cash value of whole life insurance policies available to the individual before death

Jointly owned assets

- If an asset is owned by more than one person, prorate the asset according to the percentage of ownership.
- If no percentage is specified or provided by state or local law, prorate the asset evenly among all owners.

- If the asset is not effectively owned by an individual, do not count it as an asset.
  - ***Example 1:*** *Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50 percent of the account.*
  - ***Example 2:*** *Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.*

Assets do not include:

- Necessary items of personal property such as furniture and automobiles
- Assets not accessible to the family
- Term life insurance policies
- Equity in a cooperative in which the family lives
- Assets that are part of an active business
- Any asset that is not effectively owned by the applicant
  - Assets are not effectively owned when they are held in an individual's name, but the asset and any income it earns accrue to the benefit of someone else who is not a member of the household, and that other person is responsible for income taxes incurred on income generated by the asset.
- Interest in Indian Trust lands

Section 6 Adjusted Income

LIHTC

Since rents are not income-based in the LIHTC program, adjusted income is not calculated.

PBRA

HUD Handbook 4350.3, Chapter 5, Section 2

Each resident's monthly rent amount is based on their adjusted annual income, which is calculated by using the following formula:

Annual Income – Total Allowable Deductions = Annual Income

There are five possible deductions each household may qualify for; however, two of the deduction types are only allowable for elderly or disabled households. *Elderly households* are families in which the head, spouse, or cohead is 62 or older. *Disabled households* are families where the head, spouse, or cohead is a person with disabilities.

The following deductions are available to any assisted family:

- Dependent
- Child care
- Disability assistance

The following deductions are only available to elderly or disabled families:

- Elderly/disabled
- Unreimbursed medical expenses

Dependent Deduction

Each applicant and resident household may receive a $480 deduction each year for each family member who is:

- Under 18 years of age;
- A full-time student; or
- A person with disabilities and is a dependent of the household

The head, spouse, cohead, live-in aide, foster children, and foster adults are never dependents regardless of their student status, age, or disability.

It is not necessary for a member of the family to have legal custody of a dependent in order to receive this deduction. When more than one household shares custody of a child and both households live in assisted housing, only one household at a time is eligible to receive the dependent deduction for that child. The household with primary custody or with custody at the time of the initial certification or annual recertification typically receives the deduction. If there is a dispute, the owner should refer to available documents such as copies of court orders or tax returns.

For full-time students, a full-time course load is defined by the institution where the student is enrolled.

CHILD CARE DEDUCTION

A child care deduction is given for anticipated, unreimbursed expenses for the care of children under the age of 13 (including foster children) where the child care is necessary to enable a family member to:

- Actively seek employment;
- Be gainfully employed; or
- Further their education (academic or vocational)

They must also meet the following criteria:

- The amounts must be reasonable.
- The children must be living in the household.
- The household has determined that there is no adult family member that is able to care for the child or children during the hours care is needed.
    - Note, the household, not the owner determines this.
- Amounts paid for child care are paid to a family member living outside of the unit.
- The charges are not reimbursed by an outside agency or other person outside of the household.

For work, the expenses paid may not exceed the earnings included in annual income of the family member who is working. In other words, the cap on child care expenses for an employed family member is earnings included in annual income, not gross earnings. If the child care expenses are incurred to enable a family member to attend school or look for work, there is no cap on the expense, other than that the expense be reasonable.

When two assisted households have joint custody of a child or children, the child care expense may be split between the two households. The custody and expenses must be documented and demonstrate that the total expense claimed by both households does not exceed the cost for the actual time the child spends in child care.

Disability Assistance Expense

Families may deduct reasonable anticipated expenses for attendant care and auxiliary apparatus for family members with disabilities if they allow an adult family member to be employed. In order to be counted as a disability assistance expense:

- The family member who is employed may or may not be the disabled member
- The expenses must not be paid to a member of the family or reimbursed by an outside source.
- The deduction may not exceed the earned income received by family members who are able to work
- The deduction is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds three percent of total annual income.
- If the disability assistance expense enables more than one person to be employed, the owner must combine the income of those persons to determine the cap. The allowance cannot exceed the combined incomes of those two people.
- One-time, nonrecurring expenses of a current resident for auxiliary apparatus may be included in the calculation of the disability assistance expense deduction after the expense is incurred.

Auxiliary apparatuses include:

- Wheelchairs
- Ramps
- Adaptations to vehicles
- Payments on a specially equipped van
    - To the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability
- Cost of maintenance and upkeep of an auxiliary apparatus
- Special equipment to enable a blind person to read and write

These items only qualify if they are directly related to permitting the disabled person or other family member to work. If the disabled person does not exclusively use the apparatus, the owner must prorate the total cost and allow a specific amount for disability assistance.

Attendant care may also be included as a disability assistance expense. Attendant care may include:

- Reasonable expenses for home medical care
- Nursing services
- Housekeeping
- Errand services
- Interpreters for hearing-impaired
- Readers for persons with visual disabilities

When a care provider takes care of children age 12 and under, plus a person with disabilities who is 13 years of age or older, expenses must be prorated appropriately since rules differ in treatment of child care and disability assistance expenses.

ELDERLY/DISABILITY DEDUCTION

Each household where the head, spouse, or cohead is a person who is at least 62 years of age or a person with disabilities will receive a $400 annual deduction.

The standard deduction amount is $400. If both the head of household and spouse or cohead are elderly or disabled, the deduction is not doubled. It is still $400, not $800.

MEDICAL EXPENSES

Each household where the head, spouse, or cohead is a person who is at least 62 years of age or a person with disabilities is eligible to claim annual unreimbursed medical expenses as a deduction.

If the household is eligible for a medical expense deduction, the unreimbursed medical expenses of all family members may be counted, including non-elderly adults and children living in the household.

The deduction is equal to the amount by which the family's unreimbursed medical expenses exceed three percent of total annual income.

> ***Example:*** *Phyllis French (age 72) lives alone. She has unreimbursed medical expenses of $1,500 annually. Her total annual income is $17,000.*
>
> *$17,000 x 3% = $510*
>
> *$1,500 - $510 = $990 allowable medical expense*

The deduction should include all expenses the household anticipates incurring during the 12 months following certification or recertification that are not reimbursed by an outside source. Owners can use ongoing expenses the household has paid for in the preceding 12 months to estimate anticipated medical expenses.

Typical allowable medical expenses include:

- Services of doctors and health care professionals
- Services of health care facilities
- Medical insurance premiums
- Prescription and nonprescription medicines (prescribed by a physician to treat a specific medical condition)
- Transportation to treatment (cab fare, bus fare, mileage)
- Dental expenses
- Eyeglasses
- Hearing aid batteries
- Long-term care insurance premiums
- Live-in or periodic medical assistance

- Monthly payment on accumulated medical bills (regular monthly payments on a bill that was previously incurred)
  - The deduction may include only the amount expected to be paid in the coming 12 months.

Past, one-time, nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction for current tenants at an initial, interim, or annual recertification as well. However, this type of medical expense is not applicable for new residents at the time of move-in. There are two options for addressing one-time medical expenses; they may be added either:

- At the time the expense occurs; the family may request an interim recertification
- At the upcoming annual recertification

Owners may find more guidance pertaining to allowable medical expenses in HUD Handbook 4350.3, Exhibit 5-3.

Households Eligible for Disability Assistance Expense and Medical Expenses

If an elderly or disabled family has both medical and disability assistance expenses, a special calculation is required to ensure that the family's three percent share is only applied once. Because the disability assistance expense is limited by the amount earned by the person enabled to work, the disability deduction must be calculated before the medical deduction.

When the family has disability assistance expenses greater than or equal to three percent of annual income, the deduction for medical expenses will be equal to the family's total medical expenses.

When a family has disability assistance expenses that are less than three percent of annual income, the family will receive no deduction for the disability assistance expense. However, the medical expense deduction will be equal to the amount by which the sum of both disability and medical expenses exceeds three percent of annual income. (Total disability assistance expense is added to the total medical expenses, and then the three percent threshold is subtracted to determine the medical or disability assistance deduction.)

If the disability assistance expense exceeds the amount earned by the person enabled to work, the disability assistance deduction will be capped at the amount earned by that individual. However, when the household is also eligible for a medical expense deduction, the three percent may have been exhausted in the first calculation. Then it will not be also applied to medical expenses.

Section 7 Verification in LIHTC

All forms of income and assets must be verified. Documentation requirements for verifying income are found in the HUD Handbook 4350.3 REV-1, CHG-4, Chapter 5, Section 3. The exception is that EIV cannot be used as verification for LIHTC and may not be accessed or maintained in LIHTC files. While the handbook is sufficient for purposes of verification for the LIHTC program, the authority for documentation requirements is found in Treasury Regulation 26 CFR 1.42-5(b). This regulation requires that:

- An income certification be completed for each tenant when they move into the unit and annually, if required
- The owner maintains documentation to support each tenant's income certification

In addition, most state HFAs have specific certification requirements for income verifications. Check your state compliance manual to see if your state requires any specific documentation, including the use of specific third-party verification forms.

DUE DILIGENCE

Guide for Completing Form 8823, Chapter 4

The IRS uses the concept of "due diligence," which may be unfamiliar to those who work in HUD programs. *Due diligence* is defined as "such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by an absolute standard, but depending upon the relative facts of the special case."

Essentially, due diligence means to go beyond the minimum expectations. Due diligence may differ by file. For some files, obtaining a third-party verification of employment might be enough to adequately determine income, while in another file, the owner may need to collect pay stubs, tax returns, and oral third-party verification to demonstrate due diligence. In situations where someone is newly employed, seasonally employed, or has zero or sporadic income, this may be the case.

The owner should also ensure that their application, income/asset questionnaire, and verification forms ask questions thoroughly and are filled out consistently and completely. Most state agencies have very specific requirements for how an owner must demonstrate due diligence and the owner should be familiar with all state-required forms and procedures. Failure to demonstrate due diligence can result in a report of noncompliance.

VERIFYING ASSETS

Revenue Procedure 94-65, 1994-2 C.B. 798

When the total cash value of a family's assets does not exceed $5,000, the owners may accept a signed, sworn statement from the family in lieu of third-party verification of the asset. Some states may not allow for self-certification of assets under $5,000, so be sure to check your state HFA's requirements. However, the IRS states that if a reasonable person in the owner's position would conclude that the applicant or tenant's income is higher than the amount presented by the applicant or tenant, the owner must obtain documentation of the applicant or tenant's annual income from assets.

THIRD-PARTY VERIFICATION

26 CFR 1.42-5(b) and LIHTC Newsletter, Issue 54

As part of the initial income certification as well as for annual recertifications, each tenant file must include documentation to support reported income. The IRS states that examples of acceptable documentation may include:

- Federal income tax returns
- W-2 forms
- Verifications from third parties like employers or state agencies

Verifications must be no older than 120 days before the effective date of the certification. When using pay stubs, the 4350.3 requires the owner collect the most recent four to six pay stubs, although your state agency may have different requirements. Most HFAs, however, require traditional third-party verification.

Chapter 5 of the HUD Handbook 4350.3 includes a more detailed discussion of other acceptable forms of third-party verification. Documents generated by a third-party source such as pay stubs provided by the tenant or W-2s provided by the tenant's employer are considered third-party verification, provided the document originated from the third-party source. When the owner receives such a document, they should consider whether the document is current, complete, and original. Owners should not accept copies of documents and may reject documentation that appears false or altered. Written documentation sent by a third party via mail, fax, or email is also considered third-party verification. Fax verification should include the name of the company and the fax number, while emails should include the email address of the third party and their name.

Owners may also verify information through online databases provided the information is from a reliable source. The IRS has made clear that a printout from the internet is an adequate form of verification.

Finally, third-party verification may also be obtained over the telephone, but it is recommended that owners initiate the call to the third-party source to ensure the person on the phone is the correct party.

Remember, many state HFAs have more stringent requirements than those listed in the HUD Handbook 4350.3 and may require the use of specific written third-party verification forms. It is important to understand the verification requirements in your state's compliance manual and to use any forms your state HFA may require.

It is also important to note that some states accept 50058s or 50059s as verification of annual income, while some do not. Do not assume that your state will accept this type of certification. Also, for properties that include LIHTCs and another form of subsidy from HUD, EIV printouts may never be used in the LIHTC program and may never be part of the LIHTC tenant file.

Section 8 Verification in PBRA

AUTHORIZATION FOR RELEASE OF INFORMATION/PRIVACY ACT STATEMENT

Forms HUD-9887 and 9887-A

Forms HUD-9887 and 9887-A comprise the Multifamily program's document package for household consent to release of information. This package is used to provide consent for HUD, PHAs, and the owner/agents to verify income information kept by certain public agencies through computer matching with:

- The Social Security Administration
- State agency that keeps wage and unemployment compensation information
- The National New Hires database

All household members 18 years and older must sign and date Forms HUD-9887 and 9887-A at the time of initial certification and at every annual recertification thereafter since the document package expires 15 months after it is signed.

EIV income reports may not be accessed until required household members have signed a current 9887/9887-A. However, a current form does not have to be on file for the owner to use EIV verification reports such as the Existing Tenant Search. Owners may not use EIV income reports for a household member who has turned 18 between recertifications until the household member has signed the forms.

VERIFICATION RELEASE FORMS

Although the 9887/9887-A is a release for several types of income information, owners must create and use their own verification forms for all items that require verification. Each verification form must be signed and dated by the household member whose information needs to be verified.

All individual verification forms must include the following information:

> Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the Social Security number are contained in the Social Security Act at 208 (a)(6), (7), and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a)(6), (7), and (8).

Before requesting any verifications, the owner must obtain signed consent forms from family members authorizing the release of information. The form must clearly state in a prominent place that the applicant or resident does not have to sign the form unless it clearly indicates who will be providing the information and who is requesting the information. Owners should use specific rather than generic consent forms for verification needs. Verification forms should let the family know who the owner will contact to provide information and who will receive it. Request forms sent to third-party sources should contain the family member's original signature and a copy should be maintained in the file.

If any adult member of the household refuses to sign the 9887/9887-A or any specific verification forms, the owner must consider the household ineligible. Owners are required to deny assistance to applicant households and must terminate the assistance of resident households in this circumstance.

METHODS OF VERIFICATION

The owner must use verification methods that are acceptable to HUD and is responsible for determining that documentation is adequate and credible. If third-party verification is not available, the owner must document the tenant file to explain why. In order of acceptability, the levels of verification are:

- Mandatory: Up-front income verification (UIV) using HUD's Enterprise Income Verification (EIV) system
  - Optional: UIV using non-HUD systems
- Written third-party verification from the source (written)
  - May be provided by family
- Third-party verification from the source (oral)
- Family certification

Appendix 3 of the HUD Handbook 4350.3 provides a list of acceptable forms of third-party verification.

UP-FRONT INCOME VERIFICATION

UIV is the verification of income, before or during a reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals.

Use current tenant-provided documents (such as pay stubs) to project annual income, unless the resident disputes EIV employer data and cannot provide supporting documentation. The owner would then need to contact the employer using a written third-party verification form.

In addition to the EIV system, HUD recommends that owners use other UIV sources to verify applicant and resident income. HUD maintains a website devoted to UIV and links to many current UIV resources:

- www.hud.gov/offices/pih/programs/ph/rhiip/uiv.cfm

UIV resources may include:

- State systems for the Temporary Assistance for Needy Families (TANF) program
- Credit Bureau Association (CBA) credit reports
- Internal Revenue Service (IRS) tax transcript (request with IRS form 4506-T)
- Private sector databases (e.g., The Work Number)

Owners may execute UIV agreements, such as agreements with TANF agencies, independent of HUD.

UIV meets the regulatory requirement for third-party verification. Additional third-party verification (such as employer statements) is not required in many cases. Use of UIV sources enables owners to streamline the verification process in many cases.

Written Third-Party Verification

Written third-party verification consists of an original or authentic document generated by a third-party source within 120 days of the date the documentation is received by the owner, not the effective date of the 50059. Tenant-provided documents are considered third-party verification when they originated from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to:

- Pay stubs, payroll summary reports, employer notice of hire or termination
- SSA benefit verification letters
- Bank statements
- Child support payment stubs
- Welfare benefit letters and/or printouts
- Unemployment monetary benefit notices

HUD requires the owner to collect the most recent four to six consecutive pay stubs to project annual income and that resident-provided documents be dated within 120 days of the date the documentation is received by the owner. The owner may reject documentation provided by the family if the document is not an original, is not current, is incomplete, appears to be forged, or is altered, mutilated, or illegible.

To manage the verification process effectively, the owner should establish a schedule for requesting higher levels of verification before accepting lower levels.

Written Third-Party Verification Forms

This form of verification is also known as traditional third-party verification. A written third-party verification form is a standardized form used to collect information from a third-party source. This form of verification is mandatory if there is no EIV information available and the resident has no written third-party documentation to support their reported income. It is also mandatory when there is an unreported source of income or a substantial difference in reported income ($2,400 annually or more) and there is no UIV or resident-provided documentation to support the income discrepancy.

Written verification from a third-party source may be received electronically by fax, email, or internet. Owners should consider the following when using electronic documents as third-party verification:

- Faxes are most reliable when the owner and the source first agree to use the method over the phone. The fax should include the company name and fax number.
- Email is also reliable when preceded by a phone conversation and should include the name of the individual and the business name.
- Internet information is considered third-party verification when the owner views web-based information from a reputable source on the computer screen. A printout may also be adequate verification in many cases.

Oral Third-Party Verification

For oral third-party verification, owners should contact sources by telephone or in person. Oral third-party verification may be used when requests for written third-party verification forms have not been returned within a reasonable time. The file must be documented with:

- The date and time of the telephone call or visit
- The name and position of the person contacted
- The telephone number
- The information confirmed
- The name of the person who conducted the interview

Family Certification

If the owner is unable to verify information through any other method, an applicant or participant may submit an affidavit or notarized statement to certify income or expenses that they have reported (the owner may also witness tenant signatures in lieu of the notarized statement or affidavit). This method should be used as a last resort when no other verification method is possible. When an owner relies on this form of verification, they must document the resident's file why third-party verification was not available.

Streamlined Verification at Annual Recertifications

The O/A may establish policies for streamlining the verification process for assets and/or for fixed sources of income.

- For families with assets valued at $5,000 or less, the O/A may accept a family's declaration of the value of and expected income from assets.
- For fixed sources of income, such as Social Security benefits and pensions, O/As opting for streamlining verification policies would use a published cost of living adjustment (COLA) to determine income.
- In both cases, third-party verification must be obtained at admission and at least once every three years thereafter.

Streamlining policies are optional. O/As may instead require third-party verification at each annual recertification.

Documenting the Absence of Third-party Verification

There are acceptable reasons for not having third-party verification in an applicant's or resident's file. However, when this occurs, the owner must explain why third-party verification was not available. Documentation showing the owner made efforts to obtain written third-party verification includes notations about:

- Date and time of the initial request and all follow-ups
    - Including date stamped original requests for verification
- The name of the company and the person to whom the request was sent
- A notation that no response was received and an explanation of the reason, if known.

All file notations made by staff members should be:

- Complete
- Dated
- Limited to facts (not opinions)
- Signed or initialed

Section 9 Electronic Signatures, Transmission, and Storage

OVERVIEW

Notice H 2020-04, issued May 20, 2020, was effective immediately and provides guidance to HUD Multifamily assisted housing industry partners on electronic signatures, electronic transmission, and electronic storage of documents and forms required by HUD's Office of Asset Management and Portfolio Oversight (OAMPO).

Industry partners include:

- Owners and management agents (O/As) of HUD Multifamily assisted housing properties;
- Service providers; and
- HUD and Contract Administrator (CA) staff

The notice permits but does not require Multifamily owners to use electronic signatures (e-signatures), and to use electronic transmission and storage of files or documents. Owners who choose to adopt a policy that allows the use of e-signatures, transmission, and/or storage of documents must comply with federal, state, and local laws. If adopted, these policies need to be added to the Tenant Selection Plan, and possibly the EIV Policies and House Rules. Owners adopting the provisions in the notice must provide applicants and tenants the option to use "wet" signatures and paper documents upon request. The notice does not change the nature or use of HUD-required documents, and may be implemented at any time.

IMPACTED DOCUMENTS

Notice H 2020-04 pertains to all HUD forms and all owner-created documents and forms related to:

- Asset Management
- Section 8 contract renewals
- Occupancy policies

While not required by HUD, some state and local laws may require that owners obtain wet signatures on certain forms. For instance:

- HUD-50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures
- HUD-9887, Document Package for Applicant's/Tenant's Consent
- Leases and lease addenda

These forms and state and local requirements may vary from state to state. HUD urges owners to consult with their legal counsel and obtain necessary information about state and local requirements for these types of documents.

E-signature Requirements

Notice H 2020-04 sets forth a signing process that complies with all federal e-signature laws related to:

- Electronic form of signature
- Intent to sign
- Association of signature to the record
- Identification and authentication of the signer
- Integrity of the signed record

Electronic Transmission

Owners may electronically transmit HUD-approved or required documents when local, state, or federal law permits. The notice does not apply to documents required by lenders, other government agencies, or private concerns.

HUD and its CA may offer certain electronic transmission methods for documents. Owners should contact their HUD field office or CA to determine each agency's submission options and transmission preferences. HUD and CA staff may electronically transmit HUD forms and documents to the owner or to each other as state, local, or federal laws permit. Adequate security measures and choice of transmission method must ensure the security of sensitive information included in such documents.

If an owner chooses electronic communication, applicants and tenants may also choose to communicate electronically with the owner.

- Their choice must be made affirmatively
- Not assumed with an opt-out procedure

Applicants and tenants may complete documents online or by hand and then transmit or scan them to the owner. They may also submit information and documents using online systems, tablet or smartphone apps, email, or other electronic media. However, the owner may designate specific methods as acceptable electronic transmission. If the owner adopts the provisions of Notice H 2020-04, applicants and tenants must have the opportunity to provide their information and documents in paper copy, including both before and after they have provided any information electronically, or after they have done so and wish to discontinue.

Owners may provide documents and notices electronically or make such documents available in an electronic format when state and local laws permit. If an owner chooses to provide documents electronically, the owner should inform applicants or tenants of their option to receive documents in paper form. If required forms, notices, and brochures are transmitted electronically, HUD recommends the owner request an electronic acknowledgment of receipt. Where HUD does not require an acknowledgment, the owner should still maintain records showing they provided the applicant or tenant with the information. Owners must always comply with tenant notification requirements in HUD Handbook 4350.3, program notices, and state and local laws. When state, local, or federal laws, guidance in the 4350.3, or H notices require that specific documents be provided by first class mail, delivered in person, or other specified means, those documents must be provided using the required procedures and not solely transmitted electronically.

When transmitting documents electronically, industry partners must use National Institute of Standards and Technology (NIST) compliant methods. Examples include putting the documents inside an encrypted wrapper, such as a password-protected DOC, PDF, or ZIP file. Passwords should not be included in the same transmission as the documents. Best practice is to provide the recipient with the password by calling, texting, or in a separate email. HUD strongly recommends using an encrypted transfer mechanism such as a shared link with an encrypted cloud storage service, an encrypted mail service, or web-encrypted transfer tools.

EIV data stored electronically must be in a restricted access directory. If placed on portable media, it must be labeled appropriately and encrypted using a NIST Compliant Cryptographic Module. Similarly, all emails containing EIV data must be encrypted using a NIST compliant cryptographic module.

Other methods for transmitting data must meet HUD's security requirements. They may include but are not limited to the following:

- Removable electronic media, such as thumb drives or SD cards
- Direct access (i.e., providing login information to a system in order to access electronically signed and/or stored documents)
- Other compliant technology as developed

File and Document Storage

HUD forms and owner-created forms or documents may be stored electronically when state and local laws permit. Owners may do the following:

- Maintain paper files, electronic files, or a combination of both
- Convert paper files to electronic format

O/As are encouraged to consult legal counsel to determine when wet signatures are required by other federal, state, or local laws and/or agencies. All information stored electronically must be encrypted using a NIST-compliant encryption solution. Access to electronic information must comply with the same requirements paper files.

- Owners must ensure they are secure; and
- Access to e-storage systems must be restricted to certain users based on specific HUD program guidance.

Industry partners must comply with special rules surrounding EIV or other documents, such as those pertaining to a tenant or applicant's VAWA status. Stored information must only be used for its intended purpose and will not be shared except by appropriate request. Proprietary information will not be shared with another entity. For example, a CA would not share an owner's rent comparability study with another owner.

Document Retention and Destruction

Owners should have a document or records retention policy to establish a protocol for retaining electronic data information for compliance needs. Owners must comply with program-specific document retention requirements. Retention requirements are the same for paper and electronic documents and records.

Data destruction is the process of destroying electronic data stored on electronic media, so that it is completely unreadable and cannot be accessed or used for unauthorized purposes. Industry partners must have policies and procedures in place to destroy records and data and must document when and how records and data are destroyed. For electronic data:

- Procedures must ensure that records and documents cannot be accessed once they have been destroyed.
- The type of destruction method used should correlate to the sensitivity of the data and HUD or other federal/state/local government requirements.

For paper files:

- The O/A must dispose of paper files in a manner that will prevent any unauthorized access to personal information (e.g., burn, pulverize, shred, etc.).
- When converting paper files or documents to electronic format, prior to destroying the paper, the O/A must check state and local laws to determine if hard copies with wet signatures must be retained or whether a printout of an electronic document with a verifiable electronic signature is acceptable.

HUD Review Impact

Reviews conducted by HUD or the CA in compliance with HUD's guidelines may involve reading files electronically (when available). The files must be provided in compliance with HUD or other federal, state, and local government security access requirements. Owners may continue to furnish documents in paper format if they prefer.

Regulatory Restrictions: Notices

Some regulations require some notices to tenants be sent by first class mail, delivered directly to tenants or their units, or posted in public spaces. In these situations, electronic communication does not satisfy the requirement. For example, these notices would not be emailed or posted on a website. Notice H 2020-04 lists some examples of these notices, such as termination notices, changes in house rules or pet rules, etc. When a tenant is provided a notice in paper form, if the owner maintains electronic tenant files, they must scan and store an electronic file of the tenant notification in the tenant's file.

ACCESSIBILITY OF ELECTRONIC MEDIA

Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act (ADA) require effective communication with individuals with disabilities and prohibit Electronic and Information Technology (EIT) imposed barriers to accessing information, programs, and activities by persons with disabilities. Owners must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed, such as Braille, assistive listening devices, sign language interpreters, accessible websites, and other electronic communications as a reasonable accommodation.

Owners must also provide information in another language for persons with limited English proficiency (LEP), as described in the owner's LEP Policy.

Section 10 Basics of Enterprise Income Verification (EIV) Compliance

The Enterprise Income Verification (EIV) system is a web-based application that provides PHAs and multifamily owners and managers with employment, wage, unemployment compensation, and Social Security benefit information of participants in the public housing and Housing Choice Voucher programs. The benefit of using the EIV system is that it provides quick access to obtaining income verification. It also identifies tenant income discrepancies, which assures that limited federal dollars help as many families as possible. Information in EIV is derived from computer matching programs with the Social Security Administration (SSA) and the Department of Health and Human Services (DHHS). HUD's EIV system is a mandatory resource that must be used by every PHA and multifamily owner. In combined funding projects, using the EIV system to calculate initial and ongoing income eligibility for either the LIHTC or HOME program is prohibited. This chapter briefly outlines both the prohibitions and requirements for using the EIV system.

Low-Income Housing Tax Credit (LIHTC) Program

HUD's Enterprise Income Verification (EIV) system contains personal information on individual tenants covered by the Privacy Act. The information in the EIV system can only be used for limited official purposes.

Notice H 2011-21 specifically states that "official purpose" **does not** include:

- *Sharing the information with government entities not involved in the recertification process used for HUD's assisted housing programs, e.g., the LIHTC program and RHS Section 515 program.*
- *…this Notice does not apply to the LIHTC program for the Owner/Agent's completion of the LIHTC Tenant Income Certification (TIC) or for LIHTC compliance monitoring by state officials….*

- *Disclosing the EIV information to Owner/Agents for use under the LIHTC and RHS 515 programs is not allowed, since neither the Internal Revenue Service nor RHS are a party to the computer matching agreements with HHS and SSA.*
- *Penalties for Willful Disclosure or Inspection of EIV Data:*
  - *Unauthorized Disclosure—felony conviction and fine up to $5,000 or imprisonment up to five years, as well as civil damages.*
  - *Unauthorized Inspection—misdemeanor penalty of up to $1,000 and/or one year imprisonment, as well as civil damages.*

EIV information can never be used in the LIHTC program. EIV documentation cannot be part of the LIHTC tenant file.

Section 11 Project-Based Rental Assistance (PBRA) Program

HUD 4350.3 Rev-1, CHG-4 Chapter 9

As part of the Eliminating Improper Payments initiative, the use of HUD's EIV system entirely became mandatory for owners and management agents on January 31, 2010. EIV income reports must be used to verify tenants' employment and income during annual and interim recertifications of household composition and income. Other EIV income reports such as the Income Discrepancy Report, New Hires Report, and No Income Report; and EIV verification reports such as the Existing Tenant Search, Multiple Subsidy Report, Identify Verification Report, and Deceased Tenant Report must also be used.

Documentation Associated with EIV

The Form HUD-9887 does not need to be on file in order to use the Existing Tenant Search in the EIV system at the time of application processing and tenant screening.

Form HUD-9887 must be on file before accessing the employment or income data contained in the EIV system for a tenant. This form must be signed by:

- Each adult member of a household regardless of whether he or she has income.
- The head of household, spouse, or cohead, regardless of age, and each household member who is 18 years of age or older.
    - This form must be signed at move-in and annual recertification.
- A household member when he or she turns 18. (If a household member turns 18 and has not signed the HUD-9887, the owner must not use the EIV income reports for that household member until the form is signed. Procedures and policies on how to address the timeframe for household members who turn 18 between annual recertifications must be addressed in the project's policies and procedures manual.)

In addition to the Form HUD-9887, a signed and dated form HUD-9887-A, Applicant's/Tenant's Consent to the Release of Information, must also be on file.

Owners must provide applicant households who have been selected from the waiting list for screening and final application processing with a copy of the "EIV & You" brochure.

Owners may only provide EIV data to the individual to whom the record pertains. EIV information for adult household members may not be provided to the head of household. EIV data of minors may be provided to the minor's parent or guardian.

When To Run EIV Reports

While EIV income data is not available for applicants, the **Existing Tenant Search Report** must be a part of the screening criteria for new tenants. This report identifies family members currently receiving housing assistance in a PIH or multifamily program. Written policies for using the search must be included in the TSP.

The owner must generate and review the following reports on a **quarterly basis**:

- **Multiple Subsidy Report:** Similar to the Existing Tenant Search, identifies individuals who are receiving duplicative assistance.
- **New Hires Report:** Identifies tenants who have new employment within the last six months.
- **Deceased Tenants Report:** Matches with SSA death records and specifically identifies deceased single-member households.

The owner must generate and review the following reports on a **monthly basis**:

- **Failed EIV Pre-Screening Report:** Identifies tenants who have missing or invalid personal identifiers in TRACS. Also identifies tenants who need to disclose an SSN (e.g., replace a TRACS-generated ID number).
- **Failed Verification Report (Failed SSA Identify Test):** Identifies tenants whose personal identifiers do not match the SSA database.

The owner must generate and review the following reports at **annual and interim recertification**:

- **Summary Report:** Matches with SSA database to validate a tenant's SSN.
- **Income Report:** Provides employment and income reported by HHS and SSA for each household member that passes the SSA identity test.
- **Income Discrepancy Report:** Identifies households where there is a difference of $2,400 or more in the wage, unemployment, and SSA benefit information reported in the system and the information reported in TRACS.

The owner must generate and review the following reports **as identified in the project's policies and procedures**:

- **No Income in HHS or SSA Report:** Identifies tenants who passed the SSA identity test but no income was reported by HHS or SSA.
- **No Income on 50059 Report:** Identifies tenants who passed the SSA identity test but no income was reported on the 50059.

The project owner must have written policies and procedures for staff to follow for using the EIV Income Report as third-party verification of employment and income and for using the other EIV reports (e.g., Income Discrepancy Report and the EIV verification reports).

Notice H 2013-06 as well as Chapter 9 of the HUD 4350.3 Handbook provide updated instructions for using the EIV system.

Section 12 Chapter 6 Post-Test

1. The earned income disallowance applies to which of the following programs? Select all that apply.
   a. LIHTC
   b. PBRA
   c. In-place residents who are on the EID at the time of conversion to PBRA
   d. All of the above
2. In the LIHTC program, if an applicant is seasonally employed, their income should be annualized, and an interim should be conducted when they have a change in circumstances.
   a. True
   b. False
3. Financial aid and scholarships:
   a. Are always included in annual income in LIHTC and PBRA
   b. Are always excluded from annual income in LIHTC and PBRA
   c. Are excluded in LIHTC-only units
   d. May be counted in some cases in PBRA
   e. Both c and d
4. Medical expenses are not calculated in the LIHTC program.
   a. True
   b. False
5. Walter Willis is an applicant to an LIHTC unit. He works full-time at an amusement park earning $12 an hour. The written employment verification states that Walter will be receiving an annual bonus of $3,000 in six months. What is his gross annual income?
   a. $24,960
   b. $27,960
   c. $25,260

6. Maple Crest Manor is a 100-unit development that is 100% LIHTC and RAD PBRA. When the state HFA audits Maple Crest Manor's files, they will review them to ensure that income calculations for LIHTC match those in the development's RAD PBRA files.
   a. True
   b. False
7. Amanda Washington owns stock worth $6,785. If she were to sell it, she would pay a broker fee of $250. What is the cash value of her asset?
   a. $7,125
   b. $6,875
   c. $6,535
   d. $250
8. The passbook rate in LIHTC and PBRA is

   ____
9. The unearned income of foster children is included in annual income in the LIHTC and RAD PBRA programs.
   a. True
   b. False
10. Which of the following are excluded from annual income?
    a. Earned income of a minor
    b. Unearned income of a foster child
    c. Food stamps
    d. Both a and c
11. The income of a temporarily absent family member is included in annual income.
    a. True
    b. False

12. Which of the following is not an asset?
    a. The savings account of a minor
    b. A non-interest-bearing checking account
    c. Monies held in an irrevocable trust not accessible to the family
    d. A house that is not generating income
13. In RAD PBRA, to calculate income from employment, the owner should use the amount in EIV if the resident agrees.
    a. True
    b. False
14. How is the HAP amount determined in RAD PBRA?
    a. Gross rent minus TTP
    b. Gross rent minus tenant rent
    c. Contract rent minus TTP
15. Hannah Henry's gross monthly Social Security is $1,304, but after her $104 Medicare premium is taken out, she receives $1,200 a month. What is her gross annual income?
    a. $1,096
    b. $13,152
    c. $14,400
    d. $15,648
16. The Martin household consists of Mary (age 62) and Saul (age 70) and their granddaughter, Lilly (age 5). Their total annual income is $26,000. They have no assets. Their total unreimbursed medical expenses are $2,000 annually. What is their adjusted income in RAD PBRA?
    a. $23,900
    b. $23,600
    c. $24,000
    d. $23,120

Notes

CHAPTER 7 Preparing to Rent the Unit

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize how vacancies are filled
- Clarify the lease requirements
- Identify security deposit requirements
- Compare and contrast pet rules
- Understand what fees may be charged

OVERVIEW

Preparing to rent a unit in a blended occupancy project requires a thorough understanding of the various program requirements. Program regulations and requirements on everything from marketing to lease requirements may be different from one program to the next. Juggling these requirements can be complex and confusing. This chapter highlights the major components you need to master to successfully prepare to rent the unit.

Section 2 Renting LIHTC Units

THE VACANT UNIT RULE

The vacant unit rule states that as long as reasonable attempts are being made to rent to qualifying LIHTC households, vacant LIHTC units that were previously occupied by income-qualified households will continue to be tax credit eligible.

The IRS has stated that reasonable attempts to rent a vacant unit are based on circumstances, and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions.

If the vacant unit rule is violated, all vacant units previously occupied by qualifying tenants lose their low-income status as of the date the oldest currently vacant unit was vacated and are no longer considered LIHTC-qualified.

- Vacant doesn't mean empty
  - An **empty** unit is an LIHTC unit that has never been occupied by an LIHTC tenant
  - A **vacant** unit is an LIHTC unit from which a tenant has moved

Vacant units must be suitable for occupancy after a reasonable period to make the units ready. Check with your state to see if they identify a reasonable period to make vacant units ready. If the HFA conducts a physical inspection of the property and finds vacant units that are not suitable for occupancy, they may issue a Form 8823 for violating the vacant unit rule.

Owners should check with their state HFA for any other requirements related to the vacant unit rule. Owners are required to maintain records identifying vacant LIHTC units and information that shows when and to whom units were rented. Owners should keep records related to the length of vacancies and of any marketing efforts for their LIHTC units.

Example: Vacant Unit Rule

Castle Hills Apartments is a mixed-use LIHTC project consisting of 100 units. Mr. Jones, the owner, elected the 40/60 MSA as documented on the building's Form 8609. 40 of the units must be rented to tenants earning 60 percent or less of AMI. The remaining 60 units are market units and have no income/rent restriction.

Mr. Jones stopped advertising efforts to LIHTC-qualified tenants on January 15, 2022, because it was quite expensive. Ten of the market rate units are vacant and 20 of the LIHTC units are vacant at the time the state agency conducted an audit. The LIHTC units were vacated between September 25, 2021, and March 31, 2023.

As a state agency auditor, when must you inform the IRS that the project was out of compliance?

LEASES

The start date of the lease and the effective date of the initial certification should be concurrent in most cases. The LIHTC program requires an initial minimum lease term of six months. The IRS has established two exceptions to the six-month lease general rule:

1. Certain transitional housing for the homeless, provided the rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building:
   - Used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and
   - In which a government entity or qualified nonprofit organization provided such individuals with temporary housing and supportive services designed to assist the individuals in locating and retaining permanent housing.

2. SRO units that permit the sharing of kitchen, bathroom, and dining facilities. These SRO units are not considered by the IRS to be used on a transient basis merely because they are rented on a month-by-month basis.

Remember that because tax credit units must be used on a non-transient basis, lease language against breaking a lease agreement in the first six months should be carefully considered by the project owner to avoid a report of noncompliance to the IRS by the state HFA. If a tenant vacates prior to six months, it is a good idea to document the file with an explanation.

This requirement only applies to initial leases. Leases after the initial lease are not subject to a six-month term.

The IRS does not require the use of a model lease, although it is recommended that the following minimum requirements be included:

- Legal name of the parties to the agreement and all additional occupants
- Unit address and number
- Date the lease is effective
- Term of lease
- Amount of unit rent
- Rights and obligations under the lease
- Signature pages

Because of the prohibition against occupancy entirely of full-time students, owners may want to consider having lease language that management must be notified of any change in the occupancy of the unit during the lease term and that occupancy consisting entirely of full-time students is a potential cause for termination of tenancy.

Security Deposits

Units receiving low-income housing tax credits are encouraged to collect security deposits. The IRS does not specifically address this issue other than to say that refundable security deposits are not included in the calculation of gross rent. State and local laws governing the security deposit apply. Your state agency may also have requirements related to security deposits. The lease should address the amount of the security deposit, and if the security deposit is required, the owner should maintain evidence that the security deposit was collected and properly refunded.

Late Fees

Fees charged for failure to perform in accordance with the lease are not included in gross rent and can be charged to the tenant. The owner establishes the amount in accordance with state and local law.

Pet Rules

Projects receiving low-income housing tax credits must comply with state and local requirements for pet ownership. The IRS does not specifically address this issue.

While LIHTC owners may restrict residents' ability to own pets, including prohibiting pet ownership altogether, under the reasonable accommodation requirements of the Fair Housing Act, allowing residents to own service or assistance animals related to their disability is required. These animals are not subject to any restrictions the owner may place on pets, including the requirement for any pet deposits or fees (Note that if the assistance animal causes damage to the unit or premises, the cost of repairing the damage may be charged against the security deposit).

STAFF UNITS

Revenue Ruling 92-61
Office of Chief Counsel Memo
June 2, 2014

If one or more units in an LIHTC project are used for on-site staff, one of the following will apply:

- The unit is considered a rental unit. In this case, the staff must be a qualified LIHTC household. They must be income eligible and sign a lease.
- The unit is considered common area. In this case, the staff does not have to be a qualified LIHTC household. The staff does not need to be income eligible and does not need to sign a lease. The staff member must be full-time.

Check the project's governing documents to determine if the owner set-aside a unit in the LIHTC application and subsequent allocation paperwork.

The owner may charge rent and/or utilities for resident manager or maintenance units. In order to be considered common area rather than residential rental units, the issue is whether the facilities are reasonably required for the project based on the circumstances at the project, not whether rent is being charged.

Section 3 MSA and Applicable Fraction after the First Year of the Credit Period

Both the MSA and the applicable fraction must be met during the first year of the credit period and maintained throughout the compliance period. Both concepts are critical to maintaining program compliance and will be reviewed by the state agency.

The failure of a project to maintain its federal minimum set-aside in any year after the first year of the credit period results in a recapture of previously claimed tax credits back to year one, and no allowable credit for the tax year for which the noncompliance was recorded. Low-income housing credits continue to be disallowed until the federal minimum set-aside is restored.

Recapture occurs for two reasons:

- Building disposition
- Decrease in the qualified basis from either:
    - Decrease in the applicable fraction
    - Decrease in the eligible basis

Essentially, when the qualified basis is initially calculated, it is calculated using a certain applicable fraction (based on either the number of affordable units or the floor space of affordable units) and a certain eligible basis (based on the cost to develop those units). When noncompliance occurs, this can reduce either the applicable fraction or eligible basis, which thereby reduces the qualified basis. Recapture/disallowance causes the owner's tax liability to increase because of a loss in tax credits due to noncompliance with program requirements. Or put more simply, noncompliance means that the building no longer qualifies to earn and claim all the credits that were calculated for it.

Decrease in the applicable fraction: Units that were once qualified LIHTC units are no longer qualified units. A few examples of when this might occur include:

- An over-income household moves in
- The residents are over charged rent
- The student rule is violated
- The Next Available Unit rule is violated

Decrease in the eligible basis: Some or all of the units in the building go "off-line." A few examples include:

- Casualty loss (with certain exceptions)
- Not suitable for occupancy
- Incorrectly renting staff or manager units

IRS Memorandum 200912012

After the first year of the federal compliance period, if the qualified basis is reduced as of the end of the year, the amount of the qualified basis for the entire preceding year is subject to recapture. Credits are only calculated on a monthly basis in the first year of the credit period. Subsequent credits are claimed on an annual basis. In other words, when mistakes are identified, owners can avoid recapture or disallowance of credits if certain types of noncompliance are corrected before the end of the year.

Casualty Loss

Sudden, unexpected events such as fires, natural disasters and other casualty events can affect LIHTC projects. The IRS has defined *casualty loss* in Chapter 6 of the 8823 Guide as:

> The damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A sudden event is one that is swift, not gradual or progressive. An unexpected event is one that is ordinarily unanticipated and unintended. An unusual event is one that is not a day-to-day occurrence and that is not typical for low-income housing credit properties. Casualty losses may result from a number of different sources: e.g., car accidents, fires, government-ordered demolitions, hurricanes, mine cave-ins, sonic booms, storms, tornadoes, vandalism, etc. Property damage is not considered a casualty loss if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or was progressive deterioration such as damage caused by termites.
>
> Physical damage to LIHTC projects caused by casualty events and which render LIHTC residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy is reported as noncompliance with the UPCS or local standards.

Fortunately, the IRS has stated that if the building is restored by reconstruction or replacement within a reasonable time, no recapture of previous year's credits will occur. The IRS has defined a reasonable time to mean two years.

Revenue Procedure 2007-54

The IRS makes an important distinction between casualty loss that occurred in a Presidentially Declared Disaster Area and casualty loss that occurred in an area that was not presidentially declared. Projects in Presidentially Declared Disaster Areas continue to generate credits on buildings affected by such disasters. On the other hand, while projects suffering casualty losses outside of disaster areas are not subject to recapture of previously claimed credits as long as they are restored in a reasonable time, no credits can be claimed during the period the building is being restored. Since monthly credits are only available during the first year of the credit period, this means owners must have their buildings placed back online by December 31 in order to claim credits for that year.

Example 1: An LIHTC unit was in compliance with UPCS all year. On December 26th, the unit suffered a fire because of faulty Christmas tree lights, rendering the unit inhabitable. The owner must restore the unit within a reasonable amount of time (within 24 months) and put the unit back online in order to avoid recapture of previous credits for that unit. Since the owner will not be able to make necessary repairs and get the unit back online by December 31st, the unit will not generate a credit for that year.

Example 2: A LIHTC unit suffered a kitchen fire in February but was put back online in October of the same year. Because the owner has restored the unit within a reasonable amount of time (within 24 months), and the unit was put back online by December 31st of the same year, the unit generates a full year of credits.

Section 4 Renting RAD PBRA Units

LEASES

PBRA Quick Reference Guide

All properties converting under RAD must use form HUD-90105-A, Model Lease for Subsidized Programs. Blended RAD PBRA/LIHTC units will use this lease as well, since it is required under RAD PBRA and meets all requirements of the LIHTC program. Leases for existing tenants must have an effective date equal to the HAP contract effective date. The lease must be signed by both the owner and the tenant on or before the HAP contract effective date.

Note: Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing. For example, if the project closes on October 20, 2023, the HAP contract can be effective on either November 1, 2023, or December 1, 2023.

HUD Handbook 4350.3, Chapter 6

Changes to the lease are not allowed without prior HUD approval either through a correction to the model lease or via an attachment or addendum. The head, spouse, cohead, and any other adult household members must sign the lease along with the owner or owner's agent. If a resident transfers, a new lease must be executed.

At the time the lease is singed, tenants must also be provided with all attachments listed in paragraph 27 of the lease, including form HUD-50059 and 50059-A and the property's house rules. The following documents must be attached to the lease:

- HUD-50059, signed by the tenant and the owner;
- HUD-50059-A, signed by the owner and, when applicable, by the tenant;
- Move-in inspection report, signed by both the owner and tenant;
- House Rules;
- Lead-based paint disclosure form (if applicable);
- Pet rules (if applicable);
- Live-in aide addendum (if applicable); and
- VAWA lease addendum form HUD-91067.

Changes to the lease, either through correction to the actual model lease, or via attachment or addendum, are not allowed without prior HUD approval. This can be an issue in blended RAD PBRA/LIHTC projects since TDHCA requires that owners add certain language to the LIHTC lease, and it is common practice for owners to add certain information to their LIHTC leases.

Many LIHTC owners have specific language in their lease agreements that prohibit tenants from breaking their lease within the first six months of initial occupancy since the General Use Rule requires that all units in the project be used on a non-transient basis. While RAD PBRA/LIHTC projects will have an initial lease term of one year, allowing a tenant to break a lease agreement in the first six months of initial occupancy could be considered as a violation of the General Use Rule.

Furthermore, because of the prohibition against occupancy entirely of full-time students, owners typically state that management must be notified of any change in the occupancy of the unit during the lease term, and that occupancy consisting entirely of full-time students is a potential cause for termination of tenancy.

Since the owner may not modify the model lease, or create a lease addendum without HUD approval, this type of language should be carefully considered and HUD and the state HFA should be consulted.

HOUSE RULES

Notice H 2019-09

While owners are not required to develop house rules in the standard PBRA program, for RAD PBRA projects, O/As are required to include resident rights as listed in Attachment 1E of Notice H 2019-09 as part of house rules.

The RAD provisions must be incorporated as an addendum to the house rules and provide as follows:

Resident Procedural Rights

A. **Termination Notification.** HUD is incorporating additional termination notification requirements to comply with Section 6 of the Act for public housing projects converting assistance under RAD that supplement notification requirements in regulations at 24 CFR 880.607 and the Multifamily HUD Model Lease.

   i. *Termination of Tenancy and Assistance. The termination procedure for RAD conversions to PBRA will additionally require that project owners provide adequate written notice of termination of the lease, which shall not be less than:*

      1. A reasonable period of time, but not to exceed 30 days:

         a. If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or

         b. In the event of any drug-related or violent criminal activity or any felony conviction; or

      2. Not less than 14 days in the case of nonpayment of rent (30 days when HUD determines that there is a national emergency); and

      3. Not less than 30 days in any other case, except that if state or local law provides for a shorter period of time, such shorter period shall apply.

   ii. *Termination of Assistance*. In all other cases, the requirements at 24 CFR 880.603, the Multifamily HUD Model Lease, and any other HUD multifamily administrative guidance shall apply.

B. **Grievance Process.** In addition to program rules that require that tenants are given notice of covered actions under 24 CFR Part 245 (including increases in rent, conversions of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant-paid utility allowances), HUD is incorporating resident procedural rights to comply with the requirements of Section 6 of the Act. RAD will require that:

i. Residents be provided with written notice of the specific grounds of the project owner's proposed adverse action, as well as their right to an informal hearing with the project owner;

ii. Residents will have an opportunity for an informal hearing with an impartial member of the project owner's staff within a reasonable period of time;

iii. Residents will have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the project owner as the basis for the adverse action. With reasonable notice to the project owner, prior to hearing and at the residents' own cost, the resident may copy any documents or records related to the proposed adverse action; and

iv. Project owners provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action, and the evidence the project owner relied on as the basis for the adverse action.

The project Owner will be bound by the decisions from these hearings, except if the:

i. Hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing.

ii. Decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law.

If the project owner determines that it is not bound by a hearing decision, the project owner must promptly notify the resident of this determination, and of the reasons for the determination.

C. **Family Right to Move. [Do not include this provision if HUD provided to the Covered Project a good-cause exemption from Choice Mobility as described in Section 1.7.5.]** Each family has the option to obtain tenant-based rental assistance (commonly known as a Housing Choice Voucher) from [name of the PHA], subject to certain program limitations, at any time after the second year of occupancy. Before providing notice to terminate the lease, the family must first contact the PHA to request tenant-based rental assistance if the family wishes to move with continued assistance. If tenant-based rental assistance is not immediately available, the PHA shall give the family priority to receive the next available opportunity for tenant-based rental assistance. After the PHA offers the family the opportunity for tenant-based rental assistance in accordance with HUD requirements and after the family has secured a lease with such tenant-based rental assistance, the family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

HUD Handbook 4350.3, Section 6-9

Owners may develop additional house rules consistent with HUD requirements. It is good practice for owners to develop them for each property since they are beneficial to both owners and residents. If an owner chooses to develop additional house rules, there are a few things to keep in mind when doing so:

- House rules are not approved by HUD or the Contract Administrator (CA) but may be reviewed during an MOR. If house rules conflict with HUD requirements, owners must revise them.
- House rules are an attachment to the lease but do not replace the lease in any way.
- House rules may not be so restrictive that they limit resident freedom, must not infringe on any residents' civil rights, must be reasonable, and must not create an unfavorable impact on residents who are part of a protected class.
- House rules must be related to the safety, care, and cleanliness of the building or the safety and comfort of the residents.

- All house rules must be consistent and within HUD requirements that govern the operation of HUD subsidized programs.
- House rules must comply with state and local requirements.

Security Deposits

PBRA Quick Reference Guide

Owners may continue to recognize security deposit amounts that have been previously provided by tenants who are in place at the time of conversion. If in-place tenants have not previously been required to provide a security deposit, the owner cannot require a security deposit to be collected.

For new tenants after conversion, owners must collect a security deposit at the time of initial lease execution equal to the greater of the household's one-month total TTP at move-in or $50.

HUD Handbook 4350.3, Chapter 6, Section 2

State and local laws governing the security deposit apply. The amount of the security deposit does not change if a resident later experiences an income increase.

When a resident household transfers, the security deposit must either be transferred to the new unit or refunded, in which case the resident is required to pay a security deposit for the new unit. If the deposit for the old unit is refunded, the owner must follow HUD's guidelines to determine the resident's security deposit for the new unit as described in 24 CFR 880.608 and HUD Handbook 4350.3, Chapter 6.

Accessible Units

HUD Handbook 4350.3, Chapter 4, Section 4-29

When selecting a family to occupy an available unit, owners may match families to units according to family size and the number of bedrooms in the unit. All units with special accessibility features must first be offered to families that include persons with disabilities who require such features.

Families with disabled members that require a unit with accessible features must be offered a unit when they reach the top of the waiting list, regardless of whether an accessible unit is available. The family must be offered the next available unit once they reach the top of the waiting list, and the family may decide whether the unit meets their needs and may reject the unit if it does not.

When an applicant requests an accessible unit or a unit with accessible features, unless the disability is obvious or otherwise known and the need for the features is apparent, the owner should verify that the applicant:

- Is qualified for the unit
- Needs the features as an accommodation for their disability
- Is qualified to receive priority on the waiting list

When units meeting a household member's disability-related needs are in short supply, the household may decide to accept a nonaccessible unit, but may request some modification to the unit as a reasonable accommodation. Owners may not prohibit an eligible family with a disabled member from accepting a suitable nonaccessible unit. Owners must make physical alterations to the nonaccessible unit as a reasonable accommodation, unless the alterations would result in an undue financial or administrative burden.

Late Fees

HUD Handbook 4350.3, Chapter 6, Section 6-23

Owners may charge a $5.00 late fee on the sixth day of the month and $1 per day for the remainder of the month until that month's rent has been paid. Higher late fees may be approved by HUD or the PBCA/CA as long as the fee does not exceed $30 per month, the fee is permitted under state and local laws, and is consistent with local management practices.

Owners may not evict residents for nonpayment of late fees, but owners may deduct unpaid late fees from the resident's security deposit at the time of move-out.

Pet Rules

PBRA Quick Reference Guide

Existing pets must be grandfathered into the property at RAD conversion. Owners must develop Pet Rules using the requirements found in HUD Handbook 4350.3 REV-1, Chapter 6.

Owners can restrict pets to households that are not part of the RAD conversion. When a property permits pets, the Pet Rules must be provided to each household regardless of whether the household has a pet.

Pet rule requirements for tenant admissions after conversion are covered by state and local requirements.

HUD Handbook 4350.3, Chapter 6, Paragraph 6-10

Projects receiving PBRA that are for the elderly or persons with disabilities cannot prohibit tenants from owning common household pets in the tenants' units or discriminate against applicants based on their ownership of a pet. An owner must not apply house pet rules to assistance animals. Pet rules in the HUD Handbook 4350.3 only apply to properties established for the elderly and persons with disabilities. Assistance animals that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from the refundable pet deposit. Chapter 6, Paragraph 6-10 of HUD Handbook 4350.3 outlines pet rules applicability.

Projects receiving PBRA that are family projects must comply with state and local requirements regarding pet ownership. Common household pets can be prohibited in family projects. The pet rules outlined in HUD Handbook 4350.3, Chapter 6, Paragraph 6-10 do not apply.

SPECIAL CLAIMS

Owners can apply for special claims for damage and/or vacancy loss for units that receive PBRA assistance. Many owners do not apply for special claims because they don't understand the process. It is recommended that you work with your contract administrator to understand this process so that you can take advantage of the opportunity to receive compensation and/or reimbursement. There are two types of special claims: Vacancy loss claims and unpaid rent and damage claims.

*Vacancy loss claim*s are compensation to the owner for the loss of rental income of a PBRA unit that was previously occupied by an assisted household when the unit has been vacant for circumstances beyond the owner's control.

Unpaid rent and damage claims are reimbursements to the owner for a former household's failure to pay monthly rent, or for other charges for damages caused by the negligence or abuse of the former resident.

HUD's "Special Claim Processing Guide" has very specific timelines for submitting special claims to the Contract Administrator. This document is available on the web at: https://www.hud.gov/program_offices/administration/hudclips/guidebooks/HSG-06-01.

Section 5 Chapter 7 Post-Test

1. Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of the conversion) must have an effective date that coincides with:
   a. The effective date of the RAD PBRA HAP contract
   b. The date of the family's annual recertification
   c. The first inspection of the unit
2. The RAD PBRA lease must be signed by an in-place family on or before the effective date of the RAD PBRA HAP contract.
   a. True
   b. False
3. A combined funding unit with LIHTC and RAD PBRA should have a minimum lease term of:
   a. Six months
   b. Thirty days
   c. One year
   d. Sixty days
4. A LIHTC project may have a no pets policy.
   a. True
   b. False
5. Define the following in the LIHTC program:
   a. Vacant unit:

      ____

      ____

   b. Empty unit:

      ____

      ____

Notes

CHAPTER 8 Rents

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize how contract rents are determined in blended occupancy/combined funding projects
- Describe how household rent is determined in blended occupancy projects
- Identify how the utility allowance schedule is determined

OVERVIEW

Making a determination of what rent must be used in a blended occupancy project can often be daunting. Each program may have different gross rent limits and different utility allowances. Which one should you use? This chapter discusses the rent requirements for both programs and provides you with helpful learning activities to practice what you've learned.

Section 2 Unit Rents in LIHTC

A common misconception about the LIHTC program is that rents are based on a percentage of household income. They are, instead, restricted to a maximum gross rent amount. While LIHTC tenants do not pay a percentage of their income for rent like in many HUD-subsidized programs, owners must still determine the amount of a household's gross annual income before the household is allowed to move into a LIHTC unit to ensure that the combined household income does not exceed the maximum LIHTC income limit applicable to the unit. In other words, verifying family income in the LIHTC program is about eligibility, not determining an income-based rent amount.

Contract rents are established by the project owner and must be restricted throughout the project's compliance period. Households with no form of rental assistance will pay the full contract rent for the unit. Families who receive subsidy on their behalf pay rent in accordance with the rules of the subsidy program.

The maximum allowable gross rents (the rent limits) are calculated using the income limits applicable to the unit, adjusted for bedroom size. If income limits increase, the rent limits will also increase. Rent limits are generally published by the state agency, but it's ultimately the owner's responsibility to make sure that gross rents never exceed the gross rent maximum.

Maximum allowable gross rent limits are tied to the income limits as elected by the owner on the IRS Form 8609 (50 percent, 60 percent, or income averaging). For projects with credit allocations after 1990, the rents are based on the number of bedrooms in the unit, not the number of household occupants. Further, a project may have different rent amounts for the same bedroom size unit for a variety of reasons:

- The owner chose the income averaging MSA;
- The project's regulatory agreement may require lower set asides, such as 40 percent or lower; and/or
- The owner may have elected deep rent skewing on the IRS Form 8609.

Contract Rent + Utility Allowance + Nonoptional Charges = Gross Rent

IRC 42(g)(2)(B)(i)

The gross rent limit applies only to payments made directly by the tenant. Gross rent does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program. This means that there is an exception for households where housing assistance payments (HAP) are made on behalf of the tenant. HAP is not included in the calculation of gross rent. As long as the owner receives subsidy on behalf of a tenant, the gross rent may exceed the applicable maximum LIHTC gross rent limit. Because of this, many LIHTC owners encourage households with various types of Section 8 assistance. If no subsidy is provided for the tenant because of an increase in the tenant's income, the gross rent may not exceed the LIHTC gross rent limit.

Note that some states have slightly different interpretation when it comes to the tenant portion of the rent when a family receives a HAP subsidy on their behalf. In some states, while the gross rent may exceed the applicable gross rent limit when HAP is paid, the tenant portion of the rent must remain below the LIHTC gross rent limit. In others, as long as subsidy is being paid on the tenant's behalf, the gross rent may exceed the LIHTC gross rent limit, regardless of whether or not the tenant portion exceeds the gross rent limit. Check with your state for their interpretation.

CHARGES

26 CFR 1.42-11

Charges in addition to rent to LIHTC tenants for services that are optional are generally not included in the gross rent calculation. A service is optional when the service is not a condition of occupancy and there is a reasonable alternative.

Example: Optional Charges

A LIHTC property provides hot meals three times each day for the convenience of the property's tenants in a common dining facility. They charge a nominal fee to cover their costs, but do not include the cost in the rent charged for the apartments. Each unit in the property contains a fully functional kitchen. Because a practical alternative exists for tenants to obtain meals other than from the dining facility, and payment for the meals in the common dining facility is not a condition of occupancy, the cost of the meals is not included in the maximum gross LIHTC rent calculation. The fee is an optional charge.

Non-optional fees in addition to rent, such as a washer/dryer hookup fee and built-in storage shed fees (paid month-to-month or in a single payment), must always be included within gross rent. Charges that are required as a condition of occupancy such as fees for month-to-month tenancy or renter's insurance, even if required under federal or state law, are considered mandatory and must be included in the gross rent.

No separate fees should be charged for tenant facilities (e.g., pools, parking, recreational facilities) if the costs of the facilities are included in the eligible basis. Assuming that they are optional, charges such as pet fees, laundry room fees, garage fees, and storage fees may be charged in addition to the rent; that is, they are not included in the computation of gross rent.

NONCOMPLIANCE

Once a unit has been determined to be out of compliance with the rent limits, it is out of compliance for the remainder of the owner's tax year, even if the owner rebates the excess rent or fees to the affected tenants. A unit out of compliance on April 2, 2023, will remain out of compliance until January 1, 2024, assuming the owner fixed the noncompliance in 2023. The unit is back in compliance on the first day of the owner's next tax year.

If rents are overcharged for the first year of the credit period, and this causes the building to fail to meet the minimum set-aside, the building does not qualify for LIHTCs at all.

Section 3 Utility Allowances in LIHTC

Treasury Regulation 1.42-10

The gross rent in the LIHTC program includes a utility allowance for tenant paid utilities. Unless all utilities are paid for by the owner, a utility allowance must be calculated. This allowance is different from HUD programs in that the allowance is not deducted from a percentage of the tenant's income to determine tenant rent. Rather, the utility allowance, along with any non-optional charges/fees, must be deducted from the maximum LIHTC gross rent limits provided by your state to determine the maximum amount of rent that can be charged for the unit.

WHICH UTILITY ALLOWANCE DO I USE?

The utility allowance that must be used depends on the type of building the unit is in or the type of subsidy the unit receives.

LIHTC-ONLY UNIT

The IRS issued a regulation change in July 2008 amending the code to allow owners of LIHTC projects to choose from one of the following methods to calculate the utility allowance:

- PHA Utility Allowance
- Local Utility Allowance Estimate
- HUD Utility Schedule Model
- Energy Consumption Model
- State Housing Credit Agency Estimate

Check with your state for more information on requesting to use these methods. Many states charge a fee for reviewing methods other than the PHA utility allowance. Some states do not allow all methods. For example, some states do not provide an agency estimate.

- Owners can change the method used year to year provided the state HFA allows this.

LIHTC + RAD PBRA

Use the applicable HUD utility allowance as approved by HUD or the contract administrator.

APPLYING UTILITY ALLOWANCES

Utility allowances must be reviewed annually. **If a utility allowance changes, it must be put into effect to calculate gross rent no later than 90 days after the change.**

Owners must demonstrate that the basis on which utility allowances have been established have been reviewed at least once during each calendar year. The owner must also demonstrate that (1) the tenants and the state agency have been notified of any change in a timely manner, and (2) the new utility allowance was used to compute maximum gross LIHTC rents for units after the end of the 90-day period.

Section 4 Contract Rents and Tenant Rents in RAD PBRA

INITIAL RENTS

Notice H 2019-09

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, and replacement housing factor funds. The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice H 2019-09.

Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located. For example:

Example: Calculating the Current Funding Rent			
Bedroom size	1	2	3
PIC units	20	50	30
Metropolitan FMRs	$650	$775	$900
FMR Bedroom Adjustments	0.839	1.000	1.161
Bedroom Adjusted Rent	**$646**	**$770**	**$894**

Since HUD has calculated initial contract rents for every public housing project based on each project's subsidy under public housing, all RAD applications will have initial contract rents based on their "RAD rent base year:" When converting to PBRA, the contract rent is the lower of 120 percent of the FMR or current funding.

Example: Calculating Initial Rents			
Bedroom size	1	2	3
Current Funding Rents	$646	$770	$894
120% of FMR			
– Utility Allowance	$50	$60	$70
FMR Rent Cap	**$730**	**$870**	**$1,010**
Market Rent	**$640**	**$740**	**$830**
PBRA Contract Rent	**$646**	**$770**	**$894**

TENANT-PAID UTILITY SAVINGS AND RENT

When conversion will result in the reduction of one or more utility components (e.g., gas, water and sewer, electric) use to establish the utility allowance, HUD will permit the RAD contract rent to be increased by 75 percent of the projected utility savings. See Attachment 1C of Notice 2019-09 for more information.

OTHER CONSIDERATIONS

For applications where the PHA proposes a de minimis reduction of units, projects will not be permitted to retain the subsidy of any units that are not included in the conversion application. An exception is made when the PHA is proposing a de minimis reduction in dwelling units, but certain units will be designated for special purpose uses, or units are being reconfigured through rehab to improve marketability (e.g., combining efficiencies). The project will retain the subsidy attributable to those units and the contract rents for the dwelling units will increase by a share of the foregone subsidy (i.e., the operating fund and capital fund portion of the weighted contract rent).

PHAs that are scheduled to receive ongoing RHF or DDTF funding (funds that have not been awarded and, with HUD permission, funds that have been awarded but not yet disbursed) may choose to forgo any ongoing RHF or DDTF grants for the purpose of offsetting an increase to the RAD rent. See Attachment 1C of Notice H 2019-09 for the calculation of how RHF or DDTF funding may offset increased RAD rent.

MTW Agencies

Notice PIH 2012-32, REV-3

The calculation of contract rents for MTW agencies with an alternative subsidy calculation under the public housing program differs since their operating subsidy is not allocated at a project level. For these agencies, HUD used data provided in the form HUD-50058 MTW to derive tenant rents. For operating fund subsidy, for applications submitted by or before March 5, 2015, the project's operating subsidy is determined based on a pro-rata share of the agency's operating fund grant. For applications submitted after March 5, 2015, HUD will derive an approximation of operating fund subsidy under 24 CFR Part 990 for the purpose of calculating contract rents under RAD. PHAs should email rad@hud.gov to request revised RAD contract rents.

For MTW agencies converting to PBRA that are utilizing MTW fungibility, HUD will permanently reduce the agency's public housing funds (in addition to any finding modifications that would occur as a result of the conversion absent the rent increase) by the additional amount established for the HAP contract.

Tenant Rent Calculation in PBRA

HUD Handbook 4350.3, Section 4

After the verification of an applicant's or resident's income, assets, and deductions have been completed, the owner must then calculate the household's tenant rent and the monthly assistance amount. Owners are required to calculate each applicant's or resident's rent prior to move in, at the time of annual recertification, and at the time of any interim recertification.

DEFINITIONS

Contract Rent: The amount of rent an owner is entitled to collect to operate and maintain the property. This rent amount is approved by HUD or the Contract Administrator (CA) at the time of contract renewal or annual rent increase. (Note: In the Section 236 programs, this is known as the basic rent.)

Gross Rent: The contract rent plus the utility allowance. (Note: In Section 202 and 811 PRACS, this is the same as the operating rent.)

Housing Assistance Payment (HAP): The payment made by HUD or the CA to the owner of an assisted unit that equals the gross rent minus the TTP.

Market Rent: The amount HUD allows the owner to collect from families who are ineligible for assistance.

Section 8 Minimum Rent: The lowest TTP permitted for residents receiving assistance. Tenants in Section 8-subsidized units must pay a minimum TTP of $25.

Tenant Rent (TR): The amount payable each month by the family as rent to the owner.

Total Tenant Payment (TTP): The amount the tenant pays toward rent and utilities. The TTP for Section 8, PAC, PRAC, RAP, and Rent Supplement properties is based on the family's income.

Utility Allowance (UA): HUD or the CA's estimate of the average monthly amounts tenants will pay for utilities assuming normal consumption. If all utilities are included, there is not a utility allowance.

Utility Reimbursement Payment (URP): The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the TTP for the family occupying the unit. The tenant will pay no rent if they receive a URP.

TOTAL TENANT PAYMENT (TTP)

TTP is the greater of:

- 30 percent of monthly adjusted income;
- 10 percent of monthly gross income;
- Welfare rent (as-paid states only); or
- The $25 minimum rent (Section 8 only)
- The alternative non-public housing rent for non-public housing over-income (NPHOI) families (public housing only)

TENANT RENT

After the TTP has been determined, the owner must determine tenant rent. The tenant rent is calculated by subtracting the UA, if any, from the family's TTP. In some cases, tenant rent may be $0 or the family may receive a utility allowance reimbursement when the UA for the unit is greater than the family's income-based TTP.

- Note that the O/A has the option of making utility reimbursement payments not less than once per calendar year quarter when reimbursements total $45 or less.

Example: Tenant Rent Calculation	
Total Tenant Payment	*$466*
Utility Allowance	*$65*
Tenant Rent	*$466 – $65 = $401*

Example: URP Calculation	
Total Tenant Payment	*$35*
Utility Allowance	*$65*
Tenant Reimbursement	*$65 – $35 = $30*

HOUSING ASSISTANCE PAYMENT (HAP)

The HAP is the amount of assistance HUD sends to the owner for each assisted household. The HAP amount is the difference between the resident's TTP and the gross rent for the unit.

Example: HAP Calculation	
Total Tenant Payment	*$466*
Contract Rent	*$1000*
UA	*$70*
Gross Rent	*$1070*
HAP Amount	*$1070 - $466 = $604*

MINIMUM RENT HARDSHIP EXEMPTIONS

Tenants in Section 8-subsidized properties must pay a minimum TTP of $25. Minimum rent does not apply to Section 202 PAC, Section 202 PRAC, Section 811 PRAC, RAP, Rent Supplement, Section 221(d)(3) BMIR, or Section 236 programs. Minimum rent is used when 30 percent of monthly adjusted income, 10 percent of gross monthly income, and the welfare rent (if applicable) are less than $25.

Example: *The diamond family's TTP calculation is as follows:*

Example: Minimum Rent	
10% of monthly	*$8*
30% of monthly adjusted	*$2*
Welfare rent	*n/a*
Minimum rent	*$25*
TTP	*$25*

Owners must waive the minimum rent for any household that is unable to pay rent due to a long-term financial hardship. Financial hardship situations may include:

- Household has lost federal, state, or local government assistance or is waiting for an eligibility determination.
- Household would be evicted if the minimum rent requirement was imposed.
- Household income has decreased due to a change in circumstances, including but not limited to loss of employment.
- A death in the family has occurred.
- Other applicable situations, as determined by HUD, have occurred. Owner/agents should consult with their local HUD office or Contract Administrator for all other situations that could lead to a financial hardship.

When a resident requests a financial hardship, the owner may request reasonable documentation of the hardship to determine:

- Whether a hardship exists
- If the hardship is temporary or long-term

After receiving the requested documentation, within one week, the owner should make a determination whether or not the family is experiencing a hardship. The owner may determine:

- *No hardship is present:* Immediately reinstate the minimum rent. The resident is responsible for paying any minimum rent that was not paid from the date rent was suspended. Owners may not evict the tenant for nonpayment of rent during the time the owner was making the hardship determination.
- *The hardship is temporary:* The owner may not impose the minimum rent requirement until 90 days after the date of the suspension. At the end of the 90 days, the resident is responsible for paying the minimum rent, retroactive to the original date of the minimum rent suspension. The owner may not evict the household for nonpayment of rent during the time the owner was making the determination or during the 90-day suspension period.

- *The hardship is long-term:* The owner must exempt the resident from the minimum rent from the date the suspension was granted until the hardship no longer exists. The family must be recertified every 90 days to verify that circumstances have not changed.

If the owner determines the family has a hardship, the minimum rent is waived the first of the following month. TTP is then calculated using higher of 30 percent of adjusted monthly income or 10 percent of gross monthly income (or the welfare rent, if applicable). The TTP will not drop to zero unless those calculations all result in zero.

Example: *The diamond family requests and is granted rent hardship exemption.*

Example: Minimum Rent	
10% of monthly	*$8*
30% of monthly adjusted	*$2*
Welfare rent	*n/a*
Minim um rent	*$0*
TTP	***$8***

Rent Phase-Ins in RAD PBRA

In-place tenants at the time of conversion are protected from rent increases on the date of conversion. If their TTP would be different from the 50058 on the IC 50059, the owner must use the rent override option to enter an alternate TTP and TRACS will accept it. The owner must check to make sure the override flag is set only for the IC conversion process, and the default PBRA calculation rules will apply after conversion.

In-place tenants at the time of conversion are eligible to have rents phased in if, purely as a result of the conversion, the amount the tenant would pay for rent and utilities (TTP) would increase by more than the greater of 10 percent or $25. If that is the case, the tenant rent increase is phased in over a three or five-year phase-in period. The PHA must have a written policy in place at the time of conversion for the length of the phase-in. The PHA may choose either a three or five-year period, or a combination of the two.

- Example: The PHA may choose a three-year phase-in for smaller increases, and a five-year phase-in for larger increases.

The policy may not be modified after conversion.

If rent phase-in applies, the O/A must override the regular rent calculation by noting Y in the rent override field of the 50059

The phase-in percentages of a three-year term are:

- At conversion: match 50058 TTP
- Year 1: 33 percent of the difference in the most recent TTP and the new TTP (any AR or IR)
- Year 2: 66 percent of the difference in the most recent TTP and the new TTP (any AR or IR)
- Year 3: Total calculated multifamily TTP
- The phase-in ends when the multifamily housing TTP is equal to or less than the previous TTP, or at the end of the three or five-year phase-in period. The PHA must communicate this policy in writing to affected residents. See Notice H 2019-09 for examples of phase-ins.

EXAMPLE OF A THREE-YEAR PHASE-IN

Adam East is a former PH resident paying the $500 flat rent at the time of conversion, but his TTP should be $1,000 based on PBRA calculation rules, so the owner must follow the steps below:

- At conversion:
    - Rent override: Y
    - Total tenant payment: $500
    - TTP before override: $1000
    - TTP at RAD conversion: $500
- No change on the date of conversion
- At the first AR, let's say that the resident's rent has increased to $1,100
- TTP at AR: $1,100 — TTP at RAD conversion: $500 = difference of $600
- $600 x 33% = $198
- TTP at conversion: $500
- Amount to phase-in: $198
- Year 1 TTP: $698
    - TRACS will be as follows:
        - Rent override: Y
        - TTP: $698
        - TTP before override: $1100
        - TTP at conversion: $500
- Year 2
    - Let's say that two months later, the resident loses a job and their rent has now dropped to $600
        - More than it was at conversion but less than the last TTP resident was paying
    - O/A will conduct the IR and submit the 50059 data to TRACS
- This is the end of the phase-in for this household.

- TRACS will be as follows:
  - Rent override: blank
  - TTP: $600
  - TTP before override: $600
  - TTP at conversion: $500
- At all IR or AR recertifications after this, the rent override will be left blank, and the TTP before override and TTP at conversion lines will also be left blank.

The percentages used in the preceding example are from the Notice PIH 2012-32 (REV-2) and are to be used in TRACS 202D. When TRACS 203A is released, the phase-in percentages will change to the amounts used in Notice H 2017 03 (REV-3). Owners are not to use these new percentage calculations until HUD publishes the new 203A version of TRACS.

ADJUSTING RENTS

HUD Handbook 4350.1 Chapter 7

Generally, rent adjustments are completed at the same time as utility allowance changes by way of a gross rent change, unless there is call for a mid-term utility allowance change. The new utility allowance and contract rent changes must be effective on the same date, unless the UAA is completed mid-year. They are effective the first day of the first month following approval by the HUD/CA.

Notice H 2019-09

Contract rents will be adjusted by the OCAF annually at the anniversary date of the HAP contract subject to:

- The availability of appropriations
- The Maximum Rent

The Maximum Rent is the higher of:

- 140 percent of the FMR minus the utility allowance (if applicable)
- Market rents as demonstrated by an RCS

When an RCS has been used to establish initial rents or to justify an OCAF adjusted rent that exceeds 140 percent of the FMR:

- The RCS will remain valid for five years.
- The Maximum Rent will not apply for the next four annual rent adjustments.

Section 5 Utility Allowances in RAD PBRA

In general, the utility allowances in the HAP contract at closing must be the utility allowances that are in effect for each public housing unit type prior to conversion. Refer to Attachment 1C of the RAD Notice, which includes information on how an alternative utility allowance may be established at conversion when the owner can demonstrate that energy-saving improvements will result in measurable tenant-paid utility cost savings.

In accordance with Notice H 2015-04, *Methodology for Completing a Multifamily Housing Utility Analysis*, properties undergoing new construction or substantial rehabilitation may establish initial utility allowances for new or rehabilitated units based on an analysis completed at underwriting through an energy consumption model, but only in the first year of occupancy post-construction. When the property is occupied and the owner can obtain 12 months of consumption data, the owner must then follow the methodology in Notice H 2015-04 and establish a baseline analysis.

For properties not undergoing new construction or substantial rehabilitation, the owner must follow the methodology in Notice H 2015-04 and establish a baseline analysis beginning with the first contract anniversary after the RAD conversion.

If an owner fails to submit a utility analysis with a rent adjustment submission, the owner's rent adjustment will be withheld until a utility analysis is provided to HUD. Once the required documents are received, HUD will retroactively implement the rent adjustment.

Notice H 2015-04

On June 22, 2015, HUD published Notice H 2015-04 that amended the methodology owners use to complete an annual Utility Allowance Analysis (UAA). Previously, a full UAA was required annually at the time of rent adjustment or contract renewal for each property or at the time of any special adjustments. Further, adjustments had to be made whether the utility allowance increased or decreased, rent adjustments had to be held until the UAA was completed, and owner certifications in lieu of the UAA were not accepted.

SAMPLE SIZE METHODOLOGY

A full UAA is now only required once every three years instead of annually. For the two years thereafter, owners may perform a factor-based utility analysis.

Every third year, a baseline utility analysis for each bedroom size must be performed. In these years, owners must request utility data for each bedroom size in the property from the local utility company or resident household for at least the number of units determined by the sample size methodology. Owners may include more than the minimum required number units but may not use less.

Sample Size Methodology	
Number of Units	**Minimum Sample**
1-20	All
21-61	20
62-71	21
72-83	22
84-99	23
100-120	24
121-149	25
150-191	26
192-259	27
260-388	28
389 and above	29

If the property consists of multiple identical buildings, sampling may be performed at the property level for each bedroom size. If the buildings are not identical, sampling must be done for each bedroom size for each building.

Units should be excluded from the sample if they:

- Are receiving an increased utility allowance as a reasonable accommodation
- Have been vacant for two or more months
    - Units included in the sample should have at least 10 months of occupancy.
- Are receiving a flat utility rate as part of a low-income rate assistance utility program

For properties in California, the California Climate Credit should not be used when calculating utility allowances. It is not to be considered a reduction in electricity cost; however, it must be counted as part of the annual income calculation. This guidance applies only to the California Climate Credit. Questions regarding similar benefits should be submitted to HUD for further review.

CONDUCTING THE UAA

Six to eight months before contract expiration or rent adjustment, owners must request the resident usage data from the utility provider and complete an analysis. The utility information for each unit included must be from the same 12-month date range. For ease of processing, HUD has created utility allowance spreadsheets that owners may use. They can be found as attachments to Notice H 2015-04. Local CAs may also have an expanded version that they prefer.

After the data has been received and analysis portion has been completed by the owner, the owner must notify residents of the proposed utility change. The owner must give residents a 30-day comment period; all comments must be documented and included with UAA information.

Owners submit their UAA and all supporting documentation to HUD/the CA. The package must include data received by utility provider, analysis spreadsheet and calculations, and certification that the owner complied with the 30-day resident comment period as well as any comments received. The UAA package is generally submitted with the contract renewal and rent adjustment documentation.

Factor-Based Utility Analysis

For the two years after a baseline UAA is completed, the utility allowance amounts for each bedroom size may be adjusted by a state-specific increase factor published annually by HUD called a Utility Allowance Factor (UAF). This may be used in lieu of a baseline UAA during the two years after the baseline UAAs completed. The UAF is determined by considering the state-specific average retail price of electricity, natural gas, water, and oil or propane for residential customers published by the U.S. Energy Information Administration and can be found on the HUD User website.

After completing the property's UAA under the factor-based method, owners should compare the adjusted utility analysis to their actual paid utilities over the previous 12 months. If the results indicate a significant disparity between the two, the owner should complete a baseline UAA to ensure the utility allowance is accurate.

The timeline and submission requirements for a factor-based UAA are the same as for a baseline UAA with the exception that the owner does not provide information from the utility provider.

UA Changes Outside of the Contract Rent Adjustment Schedule

When changes in utility rates result in a cumulative increase in utility allowances of 10 percent or more from the most recently approved utility allowances, owners must submit documentation and request an increase in utility allowances. A 10 percent increase in any one utility may not necessarily result in a corresponding 10 percent or greater increase in the utility allowance. The owner must submit either:

- Utility bills from the month prior to the utility rate change and the first month after the utility rate change
- Verification of the increase from the utility provider

LIHTC + PBRA

Use the applicable HUD utility allowance as approved by HUD or the contract administrator.

Section 6 Gross Rent Changes

HUD Handbook 4350.3, Chapter 7, Section 4

Annually, owners are required to perform and submit a utility allowance analysis (UAA) for each HUD multifamily property on or before the property's contract anniversary date. Generally, the UAA is completed in conjunction with an annual rent increase or contract renewal. This process will be discussed in detail in a later chapter.

Any time there is a utility allowance change or a contract rent change on a property, the owner must complete a gross rent change for each household and/or unit on the property. When a utility allowance or contract rent amount changes, the owner must provide each resident with a new HUD-50059-A that reflects these changes. Gross rent 50059-As must be signed and dated by the owner or the owner’s agent, but only need to be signed and dated by the resident if the resident’s rent portion or utility reimbursement amounts have changed. Owners must keep a signed and dated copy of the gross rent 50059-A in the resident file.

Utility allowance and contract rent changes must be effective on the same date unless a UAA is completed mid-year due to a 10 percent or greater rate increase in tenant-paid utilities. In those cases, the new UA must be effective the first day of the first month following approval by HUD or the contract administrator (CA).

Owners must comply with the resident comment and posting procedures described in 24 CFR 245. Owners are required to give all residents a 30-day comment period for any contract rent increase or utility allowance decrease and are also required to give residents an additional 15-day comment period if there were any changes made based on previous comments.

The owner is required to submit the rent increase and UAA to HUD or the CA for approval before implementing any rent or utility allowance change. The process is as follows:

1. Owner completes the required documentation for the UAA and contract rent increase.
2. Owner submits request and documentation to HUD or the CA.
3. Owner receives approval for UA and rent changes from HUD or the CA.

4. Owner completes and produces a gross rent certification (form HUD-50059-A) for each household in the owner's software, effective on the date approved by HUD or the CA. In some cases, this date may be retroactive.
5. Owner changes the certification and adjusts the monthly subsidy voucher.
6. Owner signs and dates all 50059-As and has each resident sign and date, if applicable.
7. Owner transmits all 50059-As to HUD or the CA for processing in TRACS for each resident in the property.

Section 7 Chapter 8 Post-Test

1. In LIHTC, a utility allowance change must be put into effect no later than _______ days after the change.
   a. 45
   b. 60
   c. 90
2. The gross rent in LIHTC is:
   a. The contract rent plus a utility allowance plus any nonoptional charges
   b. The same as the contract rent
   c. Based on the number of occupants in the unit
   d. Both a and c
3. Rents in excess of the LIHTC maximum gross rent limit may never be charged under any circumstances in a LIHTC unit.
   a. True
   b. False
4. Rents in the LIHTC program are based on a percentage of income.
   a. True
   b. False
5. A family living in a combined LIHTC/RAD PBRA unit will typically pay an income-based rent.
   a. True
   b. False
6. If a tax credit owner overcharges rent to a unit in April, the unit is out of compliance until January 1 of the next year.
   a. True
   b. False
7. A full utility allowance analysis must be completed every three years in PBRA.
   a. True
   b. False

8. If the utility allowance will change in PBRA, the owner must:
    a. Give residents a 60-day notice
    b. Give residents a 30-day notice
    c. Give residents a 30-day comment period
    d. Give residents a 60-day comment period

Notes

CHAPTER 9 Annual Activities and Ongoing Compliance

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Define the annual recertification requirements for the LIHTC program
- Recognize and distinguish between the interim and annual recertification requirements for the PBRA program, the PBV program, and the public housing program
- Define the annual recertification requirements for the HOME program

OVERVIEW

Households that reside in blended occupancy projects typically have some type of annual recertification requirement and in many cases an interim recertification requirement. This chapter examines those requirements

Section 2 Annual Recertifications in LIHTC

The Housing and Economic Recovery Act (HERA) of 2008 eliminated the requirement for annual recertifications for LIHTC projects that contain 100 percent LIHTC units. These are defined as projects where all the low-income buildings in the project are 100 percent LIHTC. Although HERA eliminated the requirement, some state agencies (and owners) still require full annual recertifications for 100 percent projects, while other state agencies may require a mixture of full or partial recertification or self-certification. Check your state agency and owner requirements on annual recertification procedures. Adhere to the most restrictive requirement.

HERA also allows for owners to apply for waivers of the annual recertification requirement (effective 1/1/2009). The waiver only applies to recertifications, not initial certifications. Each tenant must still be certified at the time of their initial move-in (including transfers within the property and when adding additional household members age 18 and older). Check with your state agency for more information on how to request a waiver.

Properties with additional types of financing must still meet recertification requirements for those programs. For example, a property that is 100 percent LIHTC, but also has PBV in 100 percent of its units, would have to meet the annual recertification requirements for the PBV program.

Any project that is 100 percent LIHTC will have a target applicable fraction that is 100 percent.

Mixed-Use Projects

Owners of LIHTC projects that contain a mixture of LIHTC and non-LIHTC units in the same project must conduct annual recertifications of household income and composition for all units. The annual recertification process of verifying household income and composition should be conducted according to state agency and owner requirements. Non-LIHTC units may be market units or may be another subsidy or funding type such as project-based vouchers (PBV), project based rental assistance (PBRA), or HOME. Any project that is mixed-use will have a target applicable fraction less than 100 percent.

> All projects, regardless of their status as 100 percent LIHTC, must verify the student status of each member of a LIHTC household on an annual basis.

A unit will be considered out of compliance if the annual recertification was not performed, or the annual recertification was performed late and after notification of a state agency compliance review. Chapter 5 of *The Guide for Completing Form 8823* contains detailed information on correcting noncompliance when annual recertifications are performed late.

Tenant Income Certification (TIC)

The recertification process is identical to the initial certification in terms of documenting household composition, income, and income from assets. A Tenant Income Certification (TIC) must be completed and signed by all adult household members no earlier than 120 days before the anniversary date of the move-in.

TICs must be thoroughly and accurately completed to avoid an instance of noncompliance. Common errors include:

- Incorrect effective dates
- Incorrect move-in dates
- Incomplete Section 8 rental assistance information
- Incorrect income and rent limits
- Missing signatures or dates
- Insufficient or missing verifications for the income/asset amounts listed on the TIC

The TIC must be signed and dated by each adult tenant who is age 18 or older at the time of certification. The effective date of the TIC is the date the household moved into the unit (or the date of acquisition for acquired or rehabilitated buildings). The annual recertification must be completed by the anniversary of the effective date. In other words, the anniversary of the move-in date is the effective date of the TIC, not the first of the month. If new family members are added to the unit at a later time, the effective date of the recertification continues to be based on the original date. For example, if a family moved in on September 15, 2023, their annual recertification the following year would need be completed within 120 days prior to September 15, 2024.

- **Note, interim recertifications are not required under the IRC.**

Section 3 Annual Recertifications in PBRA

HUD Handbook 4350.3, Section 7-7

All residents must be notified in writing of their upcoming recertifications. Owners must provide residents with an initial notice and several reminder notices to ensure residents are aware of their responsibilities.

- The **initial notice** must be provided to each resident when they sign the initial lease and at the completion of each annual recertification in order to ensure that residents understand they are required to complete an annual recertification by a specified date the following year.

The resident must sign and date the initial notice. The owner must maintain the original in the resident file and provide a copy to the resident.

- The **first reminder notice** must be provided to the resident at least 120 days prior to the recertification anniversary date, and a copy must be maintained in the resident file.
- The **second reminder notice** must be sent to the resident no later than 90 days prior to the recertification anniversary date. The notice only needs to be sent if the resident did not respond within 30 days of the first reminder notice. In other words, if the resident responded to the first reminder notice, the owner is not required to send the second reminder.
- The **third reminder notice** must be sent to the resident no later than 60 days prior to the recertification anniversary date. Once again, the notice only needs to be sent if the resident did not respond to the first or second reminder notices within 60 days prior to the recertification anniversary date. A copy must be maintained in the resident's file.

HUD Handbook 4350.3, Section 7-6

Each annual recertification must be completed and submitted to the Tenant Rental Assistance Certification System (TRACS) in a timely manner. If a current annual recertification has not been completed and submitted through TRACS within 15 months of the last recertification, the previous annual recertification for that family will be terminated in TRACS.

Recertification Anniversary Dates

All annual recertifications must be completed on or by the resident's anniversary date, which is the first day of the month the resident initially moved into the unit. For example, if a resident moved in on May 10th, in subsequent years the effective date of their annual recertification is May 1.

The recertification date does not change if the resident transfers units at the same property.

Owners may request an alternative recertification date schedule from HUD/the CA for acceptable reasons, such as basing recertification dates on the annual cost of living adjustment (COLA) to Social Security, or other assistance programs in elderly and disabled properties, the anniversary date of the property's housing assistance payment (HAP) contract, or basing recertification dates by building or unit number to better coordinate recertification and inspection activities.

Timely Processing

HUD Handbook 4350.3, Section 7-8

Owners must give residents who have complied with all recertification requirements at least 30 days' notice of a rent increase. In order for the owner to do this, recertifications should be completed at least 35 days prior to the anniversary date.

A 30-day notice is not required if the resident's rent portion is decreasing.

Late Processing Due to Owner Error

If the owner is unable to complete the verification process in time to give 30-day notice or if the owner failed to provide timely recertification reminders, the rent increase may not take effect until the 30-day notice period has expired. However, the change in HAP will take effect on the recertification date regardless of whether proper notice was given. In this situation, the owner would lose the difference between the old rent amount and the new rent amount.

Late Response by Resident

If the owner provides all three recertification reminder notices in a timely manner, and the resident does not respond until after the cutoff date (the 10th day of the 11th month after the last recertification), but prior to the anniversary date, any increase in tenant rent or TTP and any change in the HAP will be effective on the anniversary date. The third recertification notice fulfills the requirement of providing the resident a 30-day notice of rent increase effective on the recertification effective date.

Resident Response After the Recertification Anniversary Date

If the owner has provided all three recertification reminder notices in a timely manner, but the resident does not respond until on or after the recertification anniversary date, as of the recertification anniversary date, the resident must begin paying the contract/market rent.

The owner should reinstate the resident's assistance if:

- The resident submits the required information;
- Assistance is available; and
- The owner determines that the resident still qualifies for assistance.

The resident is required to pay the contract/market rent until the first day of the month following the date on which the resident reported for the recertification.

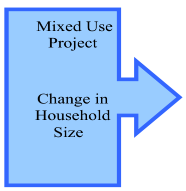
Owners are required to evict the resident if they do not report for the recertification interview and do not pay the contract/market rent. However, owners may not evict for failure to pay contract/market rent after the resident reports for the recertification interview and the recertification is in process.

Section 4 Changes in Household Composition in LIHTC

The LIHTC program does not require the owner to process interim recertifications when a household experiences an increase or decrease in income or household size. Since the rent is not based on the household income, no interim recertification is required.

CHANGES IN HOUSEHOLD COMPOSITION

8823 Guide, Chapter 4

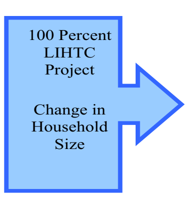


Household composition of LIHTC-qualified families can and will change over time. Decreases in household composition are similarly addressed for projects that are 100 percent LIHTC and those that are mixed-use. Increases in household composition are addressed differently for projects that are 100 percent LIHTC and those that are mixed-use.

Family size decreases do not trigger an immediate requirement for a new TIC unless state agency requirements so require. Subsequent annual income recertifications will be based on the income of the remaining members of the household. If the remaining household's income is more than 140 percent (170 percent in deep rent skewed projects) of the income limit at the time of the annual income recertification, then the Next Available Unit Rule is triggered.

Family size increases after the initial determination of eligibility for the LIHTC program and completion of the move in TIC are addressed differently for projects that are 100 percent LIHTC and those that are mixed-use.

- In **mixed-use projects**, the new household member's income is verified and added to the current household's **most recent** TIC. The household continues to be income-qualified and the income of the new member is taken into consideration with the income of the existing household for the purposes of the Next Available Unit Rule.



- In **100 percent LIHTC projects** consisting of 100 percent LIHTC units, the new tenant's income is verified and typically added to the current household's ***original*** tenant income certification (TIC), unless the state agency requires otherwise. Since the original household was determined as LIHTC-eligible at move-in, the new household's information will simply be added to the original TIC.

Changes in Household Composition—Original Household No Longer Occupying the LIHTC Unit

8823 Guide, Chapter 4

Changes in household composition when there are no remaining original tenants are treated slightly differently in mixed-use versus 100 percent LIHTC projects. A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless:

- For mixed-use projects, the newly created household was income-qualified, or the remaining tenants were independently income-qualified at the time they moved into the unit.
- For 100 percent LIHTC projects, the remaining tenants were independently income-qualified at the time they moved into the unit.

Example: Michael and Jason

Michael, an income-qualified individual, moved into a two-bedroom LIHTC unit in a mixed-used project on May 20, 2016. Jason joined the household in October of 2017. At that time, the owner obtained written verification of Jason's income and determined that Michael and Jason's combined income was below the limit for a two-person household.

In January of 2018, Michael moved out. It is not necessary for Jason to be certified as a new tenant.

However, if Michael and Jason's combined income exceeded the income limit for a two-person household in October of 2017, then Jason must be certified as an income-qualified tenant when Michael moves out.

Section 5 Interim Recertifications in PBRA

REQUIRED REPORTING BY THE RESIDENT

HUD Handbook 4350.3, Chapter 7

Residents are required to notify owners when:

- A family member moves out of the unit
- The family requests to move in a new member
- A previously unemployed adult family member obtains employment
- The cumulative family income increases by $200 or more per month

RESIDENT-REQUESTED INTERIMS

Between regular recertification dates, residents may request an interim recertification due to any changes that may affect the rent or TTP. Owners must process an interim recertification when a resident reports:

- A change in family composition
  - For birth, adoption, or court-awarded custody of a minor, the resident is required to report the change to the owner but does not need to receive prior approval.
  - Any proposed additions to the households other than birth, adoption, and court-awarded custody, including live-in aides, must be screened for suitability and eligibility and approved by the owner prior to move-in.
- An increase in the household's cumulative income of $200 or more per month
  - The owner must verify all changes in income reported by the resident, but the owner should not process an interim rent increase unless the household's cumulative income increases by at least $200 per month.
  - If a resident reports a change in family composition (e.g., the birth of a new baby) and also includes information about an income increase of less than $200 per month, the owner should process an interim to add the new household member without including the income increase.
- An increase in allowances (number of dependents, new disability assistance expense, etc.)

- Most decreases in income
  - Except in certain circumstances where the decrease was caused by a deliberate action of the tenant to avoid paying rent
- A change in citizenship or eligible immigration status of any household member

When a resident requests an interim, the owner must process the certification within a reasonable amount of time, generally not to exceed four weeks. The only instances in which an owner may refuse to process an interim recertification are:

- The resident deliberately caused an income decrease to avoid paying rent.
  - For example, the owner receives documented evidence that a resident quit their job so that the household would qualify for a lower rent portion.
- An income decrease will last less than one month.
  - For example, the resident has been laid off from their job for only two weeks. The owner is not obligated to process an interim recertification but may if they so choose; however, this policy must be implemented for all residents at the property and must be used consistently.
- For residents who are paying market rent.

Effective Dates

Regardless of whether an interim results in an increase or decrease in the resident portion of rent, both the change in HAP and the rent amount are effective on the same day.

If the resident responds in a timely manner and supplies the owner with all required information, the resident must receive a 30-day notice of a rent increase. The effective date of the increase is the first of the month after the end of the 30-day notice period. If the resident rent has decreased, the decrease will be effective on the first of the month after the date of the action that caused the interim recertification.

If the resident does not respond in a timely manner, or the owner discovers through the use of EIV reports that the resident failed to report changes as required, the owner must initiate an interim recertification. Any rent increases are applied retroactively to the first of the month following the date the action occurred. Rent decreases are effective the first rent period following completion of the recertification.

Section 6 Chapter 9 Post-Test

1. For a project with a mixture of LIHTCs and market units, annual recertifications must be completed within 12 months from the initial move-in certification date.
    a. True
    b. False

2. A tenant income certification (TIC) must be completed and signed no earlier than ___ days before the anniversary date of the move-in.
    a. 60 days
    b. 30 days
    c. 90 days
    d. 120 days

3. The Watson family moves into a combined PBRA/LIHTC unit on March 12th. The development is mixed-use for the LIHTC program.
    a. What is the effective date of their next annual in the PBRA program?

    ____

    b. What is the effective date of their next annual in LIHTC?

    ____

4. Does a resident's recertification date change in PBRA if the household transfers to a new unit?
    a. Yes
    b. No

5. Which recertification notice is the resident required to sign in PBRA?
    a. Third reminder notice
    b. First reminder notice
    c. Initial notice
    d. Second reminder notice

6. In PBRA, residents receive an initial notice of recertification:
   a. 120 days before their annual recertification date
   b. When they initially sign their lease
   c. At the completion of each annual recertification
   d. Both b and c
7. If a current annual recertification has not been submitted through TRACS within ___ months, the family will be terminated in TRACS.
   a. 12 months
   b. 15 months
   c. 24 months
   d. 6 months

CHAPTER 10 Managing the Unit Mix

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Explain and apply the Next Available Unit Rule for LIHTC
- Understand steps to take when PBRA TTP exceeds gross rent

OVERVIEW

Ensuring that the correct unit mix is continuously maintained for each funding or subsidy type can be confusing and time consuming. Understanding how blended occupancy projects complement and conflict with each other is the first step in understanding how to maintain the unit mix.

Section 2 Available Unit Rule in LIHTC

Household income of LIHTC-qualified families may increase over the MTSP income limit over time as long as the household initially qualified under the applicable MTSP income limit for the unit and the rent continues to be restricted. In other words, after an income-qualified family moves in, their income may increase over the income limit. Check your HFA compliance manual carefully, however, as some HFAs state that the income of LIHTC-qualified families cannot increase during the initial lease term of six months.

When an LIHTC-qualified family experiences an increase in income after initially income qualifying for the unit, the IRS doesn't automatically consider them over-income. For projects that elected the 20/50 or 40/60 MSA option, the IRS considers these families over-income when the combined family income is above 140 percent of the applicable MTSP income limit.

Deep skew projects use 170 percent instead of 140 percent. This is generally discovered as part of the annual recertification process.

The Next Available Unit Rule

Once a household is considered over-income, the Next Available Unit Rule is triggered. When triggered, the next available unit in the building that is the same size or smaller as the over-income unit must be rented to a tax credit qualified household until the building's applicable fraction is restored.

Provided this happens, the owner may continue claiming credits on the over-income unit. The over-income household does not need to move out. The purpose of the rule is to replace over-income units with new LIHTC-qualified units.

The rule is applied on a building-by-building basis, not on the project level, since the goal of the rule is to restore the applicable fraction for the building where the over-income unit is located, and to restore the building's unit mix designation if income averaging was elected.

If the over-income resident moves out of the unit, the unit is still considered an over-income unit until the effective date of the TIC for the new income-qualified household that moves in.

The next available unit rule applies to both 100 percent and mixed-use projects.

100 PERCENT LIHTC PROJECTS

In 100 percent LIHTC projects, the owner will typically not conduct annual recertifications and may be unaware if existing households become “over-income.” Further, every available unit in the building will be always rented to an LIHTC-qualified household, so the Next Available Unit Rule should always be satisfied. The IRS has said that the rule can, however, be violated if an owner cannot demonstrate due diligence and rents a unit to an over-income household or if the owner deliberately rents a LIHTC unit as a market unit.

In projects that elected the income averaging MSA, the project must always have 40 percent or more of the units rent-restricted with household income limits designated in 10 percent increments that on average are at or below 60 percent AMI.

MIXED-USE PROJECTS

In a project that has a mixture of LIHTC and non-LIHTC units, once a household is determined to be “over-income,” the Next Available Unit Rule is triggered. Since annuals are required in mixed-use projects, owners will become aware that a household’s income has increased to this level during the annual recertification process.

For the purposes of this rule, it’s important to understand several terms used by the IRS.

- **Next available unit:** Any vacant unit, or any unit that is subsequently vacated in the same building, of a comparable or smaller size. This includes market rate units. Units are considered no longer available for rent when there is a contractual agreement that is binding under local law.

- **Comparable unit:** A residential unit in an LIHTC building that is comparably sized or smaller than an over-income unit. For the purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine the qualified basis for the credit year in which the comparable unit became available. Note: Be careful about units of the same bedroom size, but different square footage (For deep rent skewed projects, a comparable unit is any low-income unit in the building).
- **Nonqualified tenant:** A household whose combined gross anticipated income exceeds the applicable MTSP rent limits.

RESTORING THE APPLICABLE FRACTION

The rule is satisfied once the percentage of low-income units in a building (excluding over-income units) equals the percentage of low-income units on which the credit is based, and the building's unit mix designation is restored, if income averaging was elected.

In other words, once the building's applicable fraction is restored, and the unit mix designation is restored if income averaging was elected, the rule is satisfied. Once this happens, the owner may convert the over-income unit to a market-rate unit if allowable under the lease and the project's governing documents.

Learning Activity 10-1: Managing the Unit Mix

Mountain View Apartments consists of one building with 10 one-bedroom units, each 800 square feet.

Mr. Lopez, the owner, elected the 40/60 MSA as documented on the building's Form 8609. Four of the units must be rented to households earning 60 percent or less of AMI. The remaining six units are market units and have no income/rent restriction.

Unit 102's household income at their annual recertification increased to over 140 percent of the 60 percent AMI income limit. At the time, two market units were vacant.

How does Mr. Lopez bring Mountain View Apartments back into LIHTC compliance?

Unit 101 LIHTC Unit Occupied–income under 140 percent of income limit	Unit 102 LIHTC Unit Occupied–over 140 percent of income limit	Unit 103 LIHTC Unit Occupied–income under 140 percent of income limit	Unit 104 Market Unit Occupied	Unit 105 Market Unit Vacant
Unit 106 LIHTC Unit Occupied–income under 140 percent of income limit	Unit 107 Market Unit Occupied	Unit 108 Market Unit Occupied	Unit 109 Market Unit Vacant	Unit 110 Market Unit Occupied

AVERAGE INCOME TEST

For projects that elected the Average Income Test MSA option, the Next Available Unit Rule is adapted to account for the different income limit designations in the project. Under this option, the IRS considers families over-income when the combined family income is above 140 percent of the greater of:

- 60 percent of AMI; or
- The applicable designated income limit (i.e., 20, 30, 40, 50, 70, or 80 percent of AMI)

Designated Unit Type with IA MSA	140% Threshold
20%-60% AMI	140% x 60%
70% AMI	140% x 70%
80% AMI	140% x 80%

When the rule is triggered, the next available comparable unit must still be rented to an income-eligible household. However, determining which income limit should be applied to that household depends on whether the vacant comparable unit was previously an LIHTC unit or a market unit.

If the comparable or smaller unit was a LIHTC unit, it is rented at the vacant unit's previous income designation immediately before it was vacant (i.e., a vacant 40 percent unit is rented as a 40 percent unit).

If the comparable or smaller vacant unit is a market unit, however, it is rented based on the income designation of the over-income unit (i.e., an over-income 40 percent unit is replaced with a new 40 percent unit that was formerly a market unit).

The project must always have 40 percent or more of the units rent-restricted with household income limits designated in 10 percent increments that on average are at or below 60 percent. The rule is satisfied once the applicable fraction is restored.

NONCOMPLIANCE

Treas. Reg. §1.42-15(f).

If any available comparable or smaller unit is rented to a nonqualified tenant, all over-income units within the same building for which the available unit is comparable or larger lose their status as LIHTC units.

Learning Activity 10-2: Average Income Test

PART I

North Coast Village consists of one building with nine one-bedroom units, each 700 square feet.

The owner elected the Average Income Test MSA and has agreed to the following unit mix:

- Two 40 percent units
- One 50 percent unit
- One 60 percent unit
- Three 70 percent units
- One 80 percent unit
- One market unit

Unit A's annual recertification was conducted, and the household is now over-income. Unit F becomes vacant.

How does the owner bring North Coast Village back into compliance with the income averaging MSA?

Unit A 40% – now over-income	Unit B Market – occupied	Unit C 90% – occupied
Unit D 40% – occupied	Unit E 70% – occupied	Unit F 70% – vacant
Unit G 50% – occupied	Unit H 60% – occupied	Unit I 70% – occupied

PART II

North Coast Village consists of one building with nine one-bedroom units, each 700 square feet.

The owner elected the Average Income Test MSA and has agreed to the following unit mix:

- Two 40 percent units
- One 50 percent unit
- One 60 percent unit
- Three 70 percent units
- One 80 percent unit
- One market unit

Unit G's annual recertification was conducted, and the household is now over-income. The market unit becomes vacant.

How does the owner bring North Coast Village back into compliance with the Average Income Test MSA?

Unit A 40% – occupied	Unit B Market – vacant	Unit C 80% – occupied
Unit D 40% – occupied	Unit E 70% – occupied	Unit F 70% – occupied
Unit G 50% – now over-income	Unit H 60% – occupied	Unit I 70% – occupied

KEY CONCEPTS

The Next Available Unit Rule is a building rule, not a project rule.

The Next Available Unit Rule is used to replace over-income units with new LIHTC income qualified units as available units are rented.

Over-income units may be returned to LIHTC income qualified status if the household's income decreases or the income limits increase.

No available comparable unit may be rented to a nonqualified tenant before the owner complies with the Next Available Unit Rule.

An over-income tenant does not need to move out.

Office of Chief Counsel Memorandum 3/16/15

In projects that elected the income averaging MSA, the vacant unit must be rented at the rate of its previous designation, unless it's a market unit. If it's a market unit, it would be rented at the designation of the over-140 percent unit.

Office of Chief Counsel Memorandum 3/16/15

OVER-INCOME UNITS IN BLENDED PROPERTIES

For LIHTC units blended with other programs that require a termination of assistance for income increases, the IRS has stated in a 2015 memorandum that not renewing a tenant's lease when a tenant's income rises to a certain income threshold that violates a local, state, or other federal program does not mean that the building is not a qualified low income building under LIHTC requirements. This is a reversal of earlier guidance provided in a 2007 memo.

THE NAUR AND DEEP RENT SKEWING

The Next Available Unit Rule is applied differently in buildings where the owner has elected to deep rent skew. Remember, deep rent skewing means that the owner elected on Form 8609 to rent 15 percent of the units in the building to individuals whose incomes are at or below 40 percent of AMGI. In this case, the Next Available Unit Rule is triggered when a resident's income increases above 170 percent of the current MTSP income limit, rather than 140 percent. The 170 percent threshold applies to all low-income units in the building, not just to the deep rent skewed units.

Once a household goes over 170 percent of the applicable income limit, the next available LIHTC unit is rented to an individual at or below 40 percent of AMGI, regardless of whether the over-income individual resides in a deep rent skew unit or a LIHTC unit at a different set-aside. In these buildings, the owner is not required to rent available market units to low-income individuals like they are in other buildings. Finally, the over-income unit does not have to be replaced with a unit that is comparable or smaller. The owner may rent any LIHTC in the building to a household at or below 40 percent of AMGI to satisfy the rule.

Section 3 PBRA TTP Exceeds Gross Rent

HUD Handbook 4350.3, Chapter 8, Section 1

Termination of assistance occurs because of a change in the resident's eligibility for assistance or their failure to fulfill specific responsibilities under the program. The owner may not terminate assistance for any other reasons. When assistance terminates, the residen's rent amount will increase and the owner must give the resident proper notice. The resident is not required to move from the unit because of a termination of assistance, only because of a termination of tenancy.

Assistance must be terminated when:

- The household does not provide required information at the time of their recertification
- The household does not sign or submit required consent and verification forms
- Student eligibility requirements are not met
- The household does not meet occupancy requirements for the current unit and refuses to transfer
- The household started receiving assistance, but the owner is unable to establish citizenship or eligible immigration status for any household member

H 2019-09

For residents in place at the time of conversion as well as new admissions in a RAD PBRA project thereafter, when TTP equals or exceeds the gross rent (contract rent plus utility allowance), the family does not pay the contract rent like they would in the standard PBRA program. The family will pay the lesser of their TTP minus the utility allowance or the applicable LIHTC maximum rent. Managers of RAD PBRA developments need to be sure to follow the RAD PBRA requirements in H 2019-09 in this situation, not the HUD Handbook 4350.3 REV-1 since RAD requirements differ from standard PBRA requirements in this situation.

Although the resident is no longer assisted, they are still considered a Section 8 resident and retain the same rights and responsibilities under the existing model lease. They are still subject to reexaminations of income and family composition. Assistance is reinstated if the tenant again becomes eligible either because of a decrease in income or an increase in the contract rent amount. Furthermore, contract rent adjustments are still in effect for the resident's unit. The owner is not, however, required to use EIV for the family or process the family through TRACS. When TTP equals or exceeds gross rent, the excess rent collected by the owner is considered project funds and must be used for project purposes.

Example: Sally Hansen was receiving HAP and not eligible for a rent phase-in at conversion. She reports on 2/1/2023 for her first AR after conversion and has no significant income changes. On 4/1/2023, she reports for an IR that she has a new income source, as follows:

- Unit rent before income change: $700
- HAP request before change: $10 (making the contract rent $710)
- New adjusted income after change: $30,000
- 30 percent of adjusted income: $9,000/12 = $750
- HAP request after income change: -$40
- The IR is effective 5/1/2023 and signed but not sent to TRACS
- The owner's software may or may not allow the owner to create this IR in the software system
- If not, the owner will have to create the IR 50059 manually
- The resident is charged $750 per month in rent
- The owner creates a Termination (TM) effective 4/30/2023 and submits to TRACS
- The resident will no longer show on vouchers moving forward
- The resident's unit is no longer a part of the assisted unit count in TRACS
- All certifications after this will be calculated using the true 30 percent of adjusted monthly income (and may have to be done manually)

- And they will no longer appear on the voucher requests
- The owner will keep calculating IR and AR requests but not submitting them to TRACS as long as no HAP is being requested
- The owner will not pull EIV reports for the resident during the time they are not receiving assistance
- The resident may receive assistance again if they are ever income eligible again
- Subsidy would be restored by creating an Initial Certification (IC)

Section 4 Chapter 10 Post-Test

1. Which of the following might result in recapture of tax credits?
   a. Over-income household moves in
   b. Residents are overcharged rent
   c. Student rule is violated
   d. All of the above
2. The next available unit rule is:
   a. A building rule
   b. A project rule
3. In the LIHTC program, if an existing tenant's income goes over 140% of the current applicable MTSP income limit for their household:
   a. They must move out of the building
   b. They must transfer to a market unit
   c. The next available comparable or smaller unit in the building must be rented to LIHTC-qualified household
   d. The next available market unit in the project, regardless of size, must be rented to a LIHTC-qualified household
4. The next available unit rule does not apply to 100% LIHTC projects.
   a. True
   b. False
5. In RAD PBRA, when TTP exceeds the gross rent, the family pays:
   a. The contract rent for their unit
   b. 30% of their monthly adjusted income less the utility allowance
   c. The LIHTC maximum rent (if applicable)
   d. The lower of b or c

6. In RAD PBRA, when TTP exceeds gross rent:
    a. The family is no longer assisted, although they are still considered Section 8 residents
    b. The family is still subject to recertification of income and family composition
    c. The owner is not required to use EIV for the family or process the family through TRACS
    d. All of the above

Notes

CHAPTER 11 Moves, Transfers, and Terminations

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify requirements for moves and transfers
- Recognize termination requirements in PBRA

OVERVIEW

Families can change and become too large or small for the unit size. Sometimes families want to move to another unit in the same project or to another project. This chapter will enable you to identify requirements and establish reasonable policies.

Section 2 VAWA

The Violence Against Women Act (VAWA) applies to victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking. Although the rule previously applied to the public housing and tenant-based and project-based programs, the rules have since been expanded to cover the LIHTC and HOME programs as well.

- Although the VAWA 2022 statute does not specifically do so, HUD has recently begun including human trafficking as part of the list of victims protected under VAWA, as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24. In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, we have opted to include human trafficking in this text in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

24 CFR 5.2005(c)

With certain exceptions, VAWA prohibits denying admission or evicting/terminating assistance to an otherwise qualified applicant on the basis of or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking. PHAs and owners may not consider actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking as cause for terminating tenancy or occupancy right of a victim of such violence. PHAs or owners may not construe such violence as:

- A serious or repeated violation of the lease by the victim
- Other good cause for terminating tenancy or occupancy rights of the victim
- Criminal activity which jeopardizes the tenancy or occupancy rights of the victim

PHAs and owners may bifurcate a lease in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant, and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking:

- Regardless of whether the household member is a signatory of the lease
- Without evicting or otherwise penalizing the victim of such criminal activity who is also a tenant or lawful occupant

24 CFR 5.2005(d) and (e); Public Law 117-103

The PHA or owner retains the authority to evict, remove or terminate the occupancy rights of a victim under either of the following conditions:

- The termination is for a lease violation based on something other than an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking against the victim and the PHA or owner is holding the victim to a standard no more "demanding" than the standard to which other tenants are held.
- The PHA "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant or lawful occupant is not terminated from assistance."

If the PHA or owner chooses to request an individual document their status as a victim, the PHA or owner must make such a request in writing. Individuals cannot be required to provide third-party documentation, unless more than one person provides documentation claiming to be a victim. Otherwise, if the PHA or owner requests documentation, the applicant or participant may submit one of the following:

- A signed HUD-5382
- A document signed by a "professional" and the applicant or participant that specifies that the professional believes that the occurrence is grounds for VAWA protection
  - A "professional" can be an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional.
- Federal, state, tribal, territorial, or police or court records

- A statement or other evidence provided by the individual, at the PHA or owner's discretion

FR Notice 1/4/23

- PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA.

PHAs and owners are required to provide the Notice of Occupancy Rights (HUD-5380) and certification form (HUD-5382) at the time the individual is provided assistance or admission, along with any notice of denial. PHAs and owners are also required under the regulations to establish an emergency transfer plan (ETP).

Section 3 Moves in LIHTC

Family Right to Move

Treasury Regulation 1.42-15(d)

Households may move from a LIHTC unit if they have provided the owner with the required notification as described in their lease agreements. The IRS does not specify the length or form of notice the tenant must give. Check your state landlord/tenant laws. Remember, the minimum initial lease term in the LIHTC program is six months and the owner should prohibit moves during that time.

Family Requirement to Move

Violations of the LIHTC lease agreement may result in termination of tenancy. The owner may not evict, non-renew, or otherwise terminate tenancy for LIHTC residents other than for good cause. While the IRS does not define good cause, it means the owner may not arbitrarily terminate the lease of a LIHTC household, rather the owner must show the eviction is for a material violation of the lease. Because of this, the lease should include a written list of reasons for eviction. The eviction process varies from state to state, and LIHTC owners should consult state landlord/tenant law and the compliance manual for their state allocation agency (if any), and follow any more restrictive requirements of other programs that may be blended into the unit when considering an eviction. Unlike in many of the HUD programs, however, the IRS does not mandate that owners evict residents for certain types of drug abuse or criminal activity.

In blended units, owners should follow any more restrictive requirements of other programs when considering an eviction.

When a lease is up for renewal, neither the owner nor the tenant is obligated to renew a lease once it expires and nonrenewal of a lease does not necessarily equate to termination of tenancy. If an owner intends to non-renew a lease, they will have to ensure that doing so is acceptable under state law.

The Internal Revenue Code does not require that applicants or tenants receive an opportunity to request or receive either an informal review or hearing. Households living in LIHTC projects have the same legal rights to appeal owner decisions, including evictions, as other non-LIHTC tenants, as provided by the tenant-landlord laws of the state in which the projects are located.

TRANSFERS

For household transfers between units, the IRS does not require that the owner establish a transfer policy for residents who wish to transfer after the initial term of their lease. While the owner must develop an emergency transfer plan under VAWA and allow for transfers as a reasonable accommodation, other transfers, such as for individuals who have changes in family composition, are at the discretion of the owner. Many owners limit the circumstances under which a household may transfer since there are costs associated with making units ready for occupancy.

When considering transfers, the owner should ask two questions:

- Is the transfer within a building or is it between buildings?
- If the transfer is between buildings, is the building part of a multi-building project?

Remember that in the tax credit program, each building is considered its own project, unless the owner elects on Form 8609 that the building is part of a multi-building project.

SAME BUILDING

Treas. Reg. 1.42-15(d) Treas. Reg 1.42-15(d); Rev. Rul. 2004-82

If the transfer is within the same building, a previously qualified LIHTC household living in an LIHTC unit may move within the same building into another LIHTC unit. The household does not need to qualify under current income limits like a new move-in. The unit the household moves into simply adopts the status of the vacated unit.

This same concept extends to any over-income household transferring within the same building as well; the newly occupied unit is treated as an over-income unit. Note that for mixed-use projects, the owner must ensure that the applicable fraction is still met when households transfer.

DIFFERENT BUILDING

If someone wants to transfer to another building, compliance differs depending on whether the buildings are part of a multi-building project:

- If a previously qualified LIHTC household living in a LIHTC unit wants to move to another LIHTC unit in another building within the same project, the unit the household moves into and the unit they vacated "swap" unit designations.
- If a previously qualified LIHTC household living in a LIHTC unit wants to move to another LIHTC unit in another building that is not part of the same project, then the household is treated as a new move-in and must requalify as an LIHTC-eligible household under current income limits in the new LIHTC unit.

8823 Guide

Households residing in 100 percent LIHTC projects where the household's current income is not known may also transfer between buildings within a project.

Example

If each building is part of a multiple-building project:
Moves may occur (when income does not exceed 140 percent) between buildings without initially qualifying the household as LIHTC-eligible into the next building.

If each building is its own project:
Moves may not occur between buildings unless households are qualified as LIHTC-eligible for the new project.

Bottom line: No moves between projects without initial qualification. Know what your Form 8609 says.

Treas. Reg. 1.41-10

If a household is over-income, since units swap status when a family transfers, and the NAUR is applied by building, over-income households may not transfer to another building.

Transfers relating to reasonable accommodation requests that would put the owner in noncompliance should be addressed with the state agency before the transfer is allowed.

Transfers during the first year of the credit period require special consideration. Essentially, a qualified household can only qualify one unit at a time. This means that transferring a family during the first year of the credit period does not qualify more than one unit.

Check with your state HFA on this issue. Many state HFAs have specific guidance on moving. Some states prohibit transfers between buildings or require a recertification be conducted at the time of transfer to ensure households are not over-income.

Moves, Terminations, and Transfers in PBRA

Family Right to Move

HUD Handbook 4350.3 REV-1
Chapter 8, Section 2

PBRA is project-based assistance. The assistance stays with the unit. If the PBRA tenant moves out of the PBRA project, they do not take the assistance with them.

Tenants can move from the PBRA project if they have provided the owner with the required notification as described in their lease agreements.

Terminations

Owners are required to enforce program requirements in the lease; however, a violation of the lease does not automatically lead to termination of assistance or tenancy in all cases. HUD encourages owners to work with tenants and use other corrective action measures in situations where it is beneficial to both the owner and tenant. HUD Handbook 4350.3 draws a distinction between terminating assistance and terminating tenancy.

- Termination of assistance: Occurs when a tenant is no longer eligible for subsidy or to enforce HUD program requirements. While the tenant no longer receives subsidy, they may be eligible to remain in the unit, although their rent payment will be affected. Termination of assistance does not necessarily lead to eviction from the unit.

- Termination of tenancy: Occurs in limited circumstances when the tenant has violated the lease, HUD regulations or state or local law. It is the first step in the eviction process. When initiating a termination of assistance or tenancy, owners are required to follow proper notification and documentation procedures and may only terminate for reasons permitted by HUD.

Unless the resident's tenancy is being terminated the lease renews automatically at the end of its term. Owners may not refuse to renew the lease solely because the lease term has expired. In order for owners to terminate a resident's tenancy either during or at the end of the lease term, the owner must establish that the basis for the termination falls under HUD-required lease provisions and state and local laws.

Residents may terminate their lease by giving the owner at least a 30-day notice to vacate before leaving the unit. State landlord-tenant law may require a longer notice period.

TERMINATION OF TENANCY

HUD Handbook 4350.3, Chapter 8, Section 3

Owners may terminate a resident's tenancy for any material noncompliance with the lease. This includes:

- Failure to comply with recertification requirements
- Failure to submit required evidence of citizenship, immigration status, or Social Security numbers
- Drug abuse or other criminal activity
- Refusing to sign and submit required consent and verification forms
- Extended absence from the unit as defined by the property's house rules
- Abandonment of the unit as defined under state or local law
- Fraud

Repeated Minor Violations

Termination of tenancy may be initiated by the owner for repeated minor violations that:

- Disrupt the livability of the property
- Affect the health and safety of other residents
- Interfere with management
- Have an adverse financial effect on the property

These types of minor violations are not considered material noncompliance with the lease. Termination may not be initiated unless the minor violations are repeated.

Repeated minor violations include, but are not limited to:

- Failure to pay utilities
- Failure to pay the cost of repairs due as a result of household carelessness or negligence
- Repeated unauthorized occupants
- Continual noise during quiet hours that disrupts other residents' rights to peaceful enjoyment of the property
- Repeated damage to the unit caused purposefully or because of resident carelessness or negligence

Nonpayment of Rent

Residents are responsible for paying all amounts due under the lease or as part of a repayment agreement. If amounts are not paid, the household may be terminated after the grace period allowed under state or local law has expired.

Repayment Agreements for Former PIH Tenants Housed Prior to RAD Conversion

Funds Owed Prior to RAD Conversion – If an adjustment shows that the tenant owed money due to an underpayment of rent that occurred prior to the effective date of the RAD HAP contract, the money attributed to this time period is out of the control of Multifamily Housing. No recapture of subsidy is necessary. PHAs must not enter the debt into the Earned Income Verification "Debts Owed" module.

Year of Conversion Repayment Funds – For properties converting under RAD, any money that is to be repaid during the year of conversion must not be returned through TRACS in the form of a voucher adjustment. In accordance with Section 2.5 of the HAP contract, the owner is permitted to keep these funds for operating costs. Some examples for use are resident services or to contribute to a project's capital or operating reserve. The funds cannot be applied to residual receipts and cannot be withdrawn as distributions.

Subsequent Year Repayment Funds – Money repaid after the initial year of conversion is returned to HUD through a voucher adjustment and following the requirements found in the MAT Guide.

Example
A RAD property executes a HAP contract on July 1, 2022. The tenant misreported income on the May 1, 2017, PIH Annual Recertification resulting in a $20 per month overpayment of subsidy. The tenant begins paying the correct TTP on February 1, 2023. The amount due for overpayment of subsidy is $180 (Nine months times $20).

Breakdown of Amounts due:

May 2022	$20	This overpayment occurred during the year of conversion. $120 is owed to the owner.
June 2022	$20	
July 2022	$20	
August 2022	$20	
September 2022	$20	
October 2022	$20	
November 2022	$20	
December 2022	$20	
January 2023	$20	

This $20 overpayment was from MFH funding and is adjusted through a voucher adjustment.

Drug and Alcohol Abuse or Other Criminal Activity

The owner has the authority to terminate tenancy in accordance with the model lease and state or local law for certain types of drug and alcohol abuse and other criminal activity. The resident's tenancy is subject to termination when covered persons engage in these types of activities, including the tenant, household members, guests, or any other persons under the resident's control. *Other person under the resident's control* is defined as a person who is not staying in the unit but is on the premises at the time of the activity in question at the invitation of the tenant or other member of the household. People on the premises temporarily and infrequently for legitimate business purposes are not considered other persons under the resident's control.

The owner has the authority to terminate tenancy for criminal activity that:

- Threatens the health, safety, or right to peaceful enjoyment of the property by other residents, including management or maintenance staff who lives on the property
- Threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the property

Owners may terminate tenancy and evict a household for:

- **Illegal Drug Use:** If an owner determines that a household member is using an illegal drug or that a pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the property for other residents.
- **Alcohol Abuse:** If an owner determines that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the property for other residents.
- **Lifetime Sex Offender:** The owner must terminate the tenancy of anyone subject to a lifetime registration requirement under a state sex offender registration program if the person was admitted erroneously. If the owner accidentally admitted a lifetime sex offender, the household must be offered the opportunity to remove the member from the household or face termination.

- **Other circumstances:** The owner may also terminate tenancy for fleeing to avoid prosecution; custody or confinement after conviction for a crime; attempting to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the state of New Jersey, is a high misdemeanor; and violating a condition of probation or parole imposed under federal or state law.

Owners may terminate tenancy and evict covered individuals regardless of whether there has been an arrest or a conviction. The owner does not have to satisfy the same standard of proof as in a criminal conviction, rather they simply need to determine that a covered person engaged in the activity.

Notice H 2015-10

Arrest records alone may not be used as the basis for terminating assistance or evicting tenants since they do not provide evidence that criminal activity actually occurred. The owner may, however, make an adverse decision based on the conduct underlying an arrest if the conduct indicates the individual is not suitable for tenancy and the owner has sufficient evidence other than the fact of the arrest that the individual engaged in the conduct. An arrest can trigger an inquiry into whether there is sufficient evidence for an owner to determine that a person engaged in disqualifying criminal activity. The owner may review police reports, witness statements, and other relevant documentation when making their decision.

When terminating tenancy for drug or alcohol abuse and other criminal activity, there are several factors that owners may take into consideration, including:

- The seriousness of the offense
- The effect the termination would have on the community
- The extent of the resident’s participation in the activity
- The effect the termination would have on the members who were not involved in the activity
- The demand for assistance by households who will adhere to lease responsibilities

- The extent to which the resident has shown personal responsibility and taken all reasonable steps to prevent or mitigate the activity
- The effect of the owner's action on the integrity of the program

If a resident or covered person is no longer engaged in drug or alcohol abuse, owners may require evidence that the person is participating in or has successfully completed a rehabilitation program or has otherwise been successfully rehabilitated.

The owner may require the household exclude a culpable member in order to continue to reside in the unit if that member participated in or is responsible for an action or a failure to act that warrants termination.

Failure to Comply With Local or State Landlord/Tenant Law

Many states and localities have landlord/tenant laws governing the behavior of both owners and residents. If residents violate any obligations under state landlord/tenant law, the owner has the right to terminate tenancy.

Other Good Cause

Other good cause for termination of tenancy is not governed by HUD regulations, but rather by state and local laws. Resident conduct may be deemed good cause for termination of tenancy as long as the owner has given the resident written notice and stated the conduct would be grounds for termination. Good cause issues may be resolved by both parties in court through the eviction process.

Criminal Background Checks

The owner is permitted to access criminal records and/or state lifetime sex offender registration records during tenancy for lease enforcement or eviction provided this is indicated in the property's Tenant Selection Plan (TSP). Background checks and any decisions based on information therein must be applied consistently. Before a background check may be completed, the owner must obtain a signed consent form.

RESIDENT PROCEDURAL RIGHTS

Notice H 2019-09

The information below must be included in the House Rules for the project and must be submitted to HUD for review prior to closing.

RAD notification requirements supplement notification requirements in the PBRA regulations and the model lease. The O/A must give written notice of lease termination of:

- 14 days for failure to pay rent
- A reasonable period of time considering the seriousness of the situation, but not to exceed 30 days, in any of the following cases:
  - The health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened.
  - Any member of the household has engaged in any drug-related criminal activity or violent criminal activity.
  - Any member of the household has been convicted of a felony.
- 30 days in any other case unless state or local law allows a shorter notice period

In all other cases, the requirements at 24 CFR 880.603 and the Multifamily HUD Model Lease, and any other HUD multifamily administrative guidance apply.

Notice H 2019-09

In addition to program rules that require that tenants are given notice for certain actions, HUD requires that:

- Residents be provided with notice of the specific grounds of the O/A's proposed adverse action, as well as their right to an informal hearing with the project owner;
- Residents have an opportunity for an informal hearing with an impartial member of the project owner's staff within a reasonable period of time;

- Residents have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the project owner as the basis for the adverse action. With reasonable notice to the project owner, prior to hearing and at the resident's own cost, residents may copy any documents or records related to the proposed adverse action; and
- Project owners provide the resident with a written decision within a reasonable period of time stating the ground for the adverse action and the evidence the project owner relied on as the basis for the adverse action.

The project owner is bound by decisions from these hearings, except if the hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing or the decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law. If the owner determines that they are not bound by a hearing decision, they must promptly notify the resident and state the reasons for the determination.

Unit Transfers

If a tenant reports a change (or the owner becomes aware of a change) in family composition, the owner must do the following:

- **Determine appropriate unit size.** Owners should use the occupancy standards established for the property to determine whether the unit is still the appropriate size for the tenant.
- **Determine whether a transfer is required.** The following considerations determine whether the tenant is required to move:
  - Is there a unit of appropriate size in the property? If there are appropriately sized units available, then a transfer to an appropriately sized unit is required. If a unit of appropriate size is not available, then the tenant should be moved to the most appropriately sized unit.

- Is there a market for the size of unit the tenant would be vacating? If the tenant is occupying a unit that is larger than needed and there is no demand for that larger unit, the owner does not have to require the tenant to move from the larger unit until there is a demand for that size of unit.
- How long will the tenant remain in the property? If the tenant has given a written notice to vacate, the owner need not require the tenant to transfer.

Owners may not reduce or terminate the assistance payment associated with the original unit until the family has been offered a transfer to a unit of appropriate size and has been given sufficient time (no fewer than 30 days) to move to the new unit.

The owner must terminate assistance if a tenant fails to move to a different-sized unit within 30 days after the owner notifies them that the unit of the required size is available. As required by the HUD lease, if the tenant remains in the same unit, the tenant must pay the market rent, the full contract rent, or 110 percent of the BMIR rent.

In the case of a unit transfer, both the change in rent and change in the assistance payment are effective on the day the tenant actually occupies the new unit.

When an owner determines that a transfer is required, the Model Lease for Subsidized Programs states that the tenant:

- May remain in the unit and pay the HUD-approved market rent; or
- Must move within 30 days after the owner notifies the family that a unit of the required size is available within the property.

Owners must describe the unit transfer policies in the project's written tenant selection plan (TSP) that addresses the following topics:

- Transfers between waiting lists
- Acceptable reasons for transfers
- Procedures for filling vacancies
- The owner's policy for establishing priority for filling vacant units with either tenants awaiting transfers or applicants from the property waiting list

Owners are obligated to transfer tenants to different units as a reasonable accommodation to a household member's disability.

CHOICE MOBILITY

Notice H 2019-09

Unless the project received a specific good cause exemption, families have a right to choice-mobility, which must be stated in the House Rules. Residents have a right to move with tenant-based rental assistance (e.g., Housing Choice Voucher (HCV)) the later of:

- 24 months from date of execution of the HAP; or
- 24 months after the move-in date

The voucher agency may, but is not required to, create a voucher turnover cap to provide no more than one-third of the agency's turnover vouchers in any year to residents in covered projects. The PHA may, but is not required to, limit the number of choice-mobility moves exercised by eligible households to 15 percent of the assisted units in the project in any year. If either policy is adopted, a waiting list must be created and maintained in the order in which requests from eligible households were received.

The voucher agency must maintain a written agreement with the owner describing how the choice-mobility option will be administered in accordance with HUD requirements and the process by which households may request a voucher.

Certain good-cause exceptions are outlined in Notice H 2019-09.

Section 4 Chapter 11 Post-Test

1. In the LIHTC program, when income does not exceed 140 percent, moves may occur between buildings without initially qualifying the household as LIHTC-eligible into the next building:
   a. If allowed in the PHA's administrative plan policies
   b. If the owner has elected on Form 8609 that the building is part of a multi-building project
   c. If the HUD field office approves
   d. As a reasonable accommodation for a person with disabilities
   e. In all cases
2. HUD must approve all Tenant Selection Plans at RAD PBRA sites.
   a. True
   b. False
3. In the RAD PBRA program, if a family reports a change in family composition:
   a. A transfer may not be required
   b. The owner must determine if the family is in an appropriate unit size
   c. The owner must determine whether a transfer is required
   d. The owner must follow the project's TSP regarding transfers
   e. All of the above
4. Households living in LIHTC-only projects have legal rights to appeal owner decisions, including evictions, as provided by:
   a. The Internal Revenue Service (IRS)
   b. HUD regulations
   c. State landlord/tenant laws
   d. The 4350.3
   e. All of the above

5. In the RAD PBRA program, the family may move with continued assistance using a tenant-based voucher after 24 months of continued occupancy and with proper notice to the owner.
   a. True
   b. False
6. In a blended LIHTC/PBRA project, a tenant in a LIHTC-only unit must be given hearing rights under the RAD PBRA regulations.
   a. True
   b. False
7. Once all original household members have moved out of a LIHTC unit, the remaining family members must always be certified as a new household.
   a. True
   b. False

Chapter 12 Post-Test Answer Keys

Chapter 2: Overview of the LIHTC Program

1. b 2. c 3. c 4. b	5. a 6. b 7. b 8. b	9. b 10. ea 11. b 12. b	13. b 14. Placed-in-service date **June 5** Month Kamry family's unit generates a tax credit **July**

Chapter 3: RAD PBRA Program Basics

1. b 2. b	3. b 4. d	5. a 6. e	7. a

Chapter 4: Waiting List, Tenant Selection, and Occupancy

1. a	2. a	3. b	4. All units in an LIHTC project must be available for use by the general public and used on a non-transient basis. The owner must make reasonable attempts to make vacant units available by advertising the availability of vacant units using advertising methods designed to be accessible to all prospective tenants

Chapter 6: Calculating Income

1. c 2. b 3. e 4. a	5. b 6. b 7. c 8.	9. a 10. d 11. a 12. c	13. b 14. a 15. d 16. a

CHAPTER 7: PREPARING TO RENT THE UNIT

1. a 2. a 3. c 4. a	5. (a.) A unit from which a LIHTC tenant has moved (b.) A unit that has never been occupied by an LIHTC qualified tenant

CHAPTER 8: RENTS

1. c 2. a	3. b 4. b	5. a 6. a	7. a 8. c

CHAPTER 9: RECERTIFICATIONS

1. a 2. d	3. (a.) March 1st (b.) March 12th	4. b 5. c	6. d 7. b

CHAPTER 10: MANAGING THE UNIT MIX

1. d 2. a	3. c 4. b	5. d 6. d

CHAPTER 11: MOVES, TRANSFERS, AND TERMINATIONS

1. b 2. b	3. e 4. c	5. a 6. b	7. b