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CHAPTER 1 Learning Outcomes

Explain and apply the fundamentals of the LIHTC program, including basic program components, tenant eligibility, rent setting, ongoing eligibility requirements, property inspection protocol, issues with blended occupancy properties, and fair housing and reasonable accommodation considerations.

Upon completion of Fundamentals of Low-Income Housing Tax Credit Management, you should be able to:

- Explain how the low-income housing tax credit (LIHTC) program works on a broad level
- Determine the value of tax credits for a particular project
- Identify steps necessary to avoid recapture and explain compliance monitoring requirements
- Identify and apply the correct income limits based on various factors including household size and project location
- Recognize requirements for calculating income using the HUD Handbook 4350.3 (Rev-1) and other resources
- Apply the maximum gross rent limit and explain how Section 8, supportive services, and rural housing services programs affect this determination
- Identify lease requirements and annual recertification requirements for the LIHTC program
- Recognize inspection requirements and frequency for LIHTC units
- Complete an in-depth case study using important documents for the LIHTC program

STATE-SPECIFIC REQUIREMENTS

Each state has their own specific requirements. This class will not cover those requirements. Owners will need to contact each state to discuss the specific requirements and obtain any state compliance manuals. This class will be based on the federal Low-Income Housing Tax Credit Program.

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ONLINE RESOURCES

- Additional resources and references for this course are available at http://NMAreferences.com. Click the Low-Income Housing Tax Credit (LIHTC) Program link at the top of the web page to jump directly to the references. No login information is required.

CHAPTER 2 Low-Income Housing Tax Credit Program Overview and Project Structure

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 (LIHTC) program works on a broad level
- List the benefits for owners and 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

OVERVIEW

IRC Section 42
General Explanation of Tax Reform Act of 1986

The low-income housing tax credit (LIHTC) program was created by Congress in 1986 via the Internal Revenue Service's (IRS's) Internal Revenue Code (IRC) Section 42. The program's purpose is to encourage the creation of affordable rental housing units in each state to low-income households by providing financial incentives to the private sector to invest in affordable housing.

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Section 2 Program Basics

Low-income housing tax credits may be used for the new construction, acquisition or rehabilitation of affordable rental housing. Unlike many other affordable housing programs which provide an operating subsidy, the LIHTC is a capital subsidy. Provided the property maintains compliance with the program requirements, investors receive a dollar-for-dollar reduction in their federal tax liability each year over a period of 10 years. Tax liability is the amount of money an entity is legally obligated to pay an authority as the result of the occurrence of a taxable event. The amount of the annual credit is based on the amount invested in the affordable housing and will be discussed later.

Credits versus Deductions – What's the Big Deal?

Credits: Tax credits are subtracted directly from one's tax liability. Credits reduce tax liability dollar-for-dollar.

For example: *A $1,000 credit in a 15 percent tax bracket reduces tax liability by $1,000.*

Deductions: Tax deductions are subtracted from a taxpayer's total income to compute his or her tax base. Deductions reduce tax liability by the amount of the deduction times the tax rate.

For example: *A $1,000 deduction in 15 percent tax bracket reduces taxable income by $1,000, thereby reducing tax liability by $150.*

Tax Credits for Public Housing Agencies (PHAs)

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

- Housing authorities are public agencies, and as such are not subject to payment of federal income taxes.

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- Receipt of a low-income housing tax credit allocation by a PHA does not benefit the PHA unless the PHA is able to sell the credits to an investor, or a group of investors that would benefit from a reduction in federal tax liability. By selling the credits, the PHA is able to obtain funds up front. The funds received by the PHA are then used to accomplish the goals established in the PHA's tax credit application, which may include any of the following:
  - Construction of new affordable housing to meet the affordable housing goals of the PHA
  - Acquisition of existing units to provide additional affordable housing in the community
  - 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; therefore, the units that are developed, acquired, or rehabilitated with LIHTC would have reduced rents, making these units more affordable than units developed using funding sources that require repayment.

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 in order to generate up-front income to be used for the construction, rehabilitation, or acquisition of affordable rental units.
- The income generated by the sale of the credits does not create a "loan" which has to be repaid from future project income, therefore the units that are developed, acquired or rehabilitated with LIHTC would have rents reduced, making these units more affordable than units developed using funding sources that require repayment.

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STATE ALLOCATING AGENCIES

State allocating agencies (often called housing finance agencies (HFAs)) 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 state allocating agencies are independent entities that operate under the direction of a board of directors appointed by each state's governor. They administer a wide range of affordable and community development programs including the Low-Income Housing Tax Credit (LIHTC) program. State allocating agencies may impose stricter requirements than federal requirements as part of the state allocation plan.

- A list of state allocating agencies can be located on NCSHA's webpage at: www.ncsha.org.

As the administrator of the LIHTC program, the state allocating agency awards/allocates the LIHTC and performs compliance activities throughout the entire compliance period. The state allocating agency conducts tenant file reviews, unit inspections, and reports 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 allocating agency. Many state allocating agencies offer free or inexpensive training workshops that elaborate on state-specific compliance issues you need to understand and stay up to date on.

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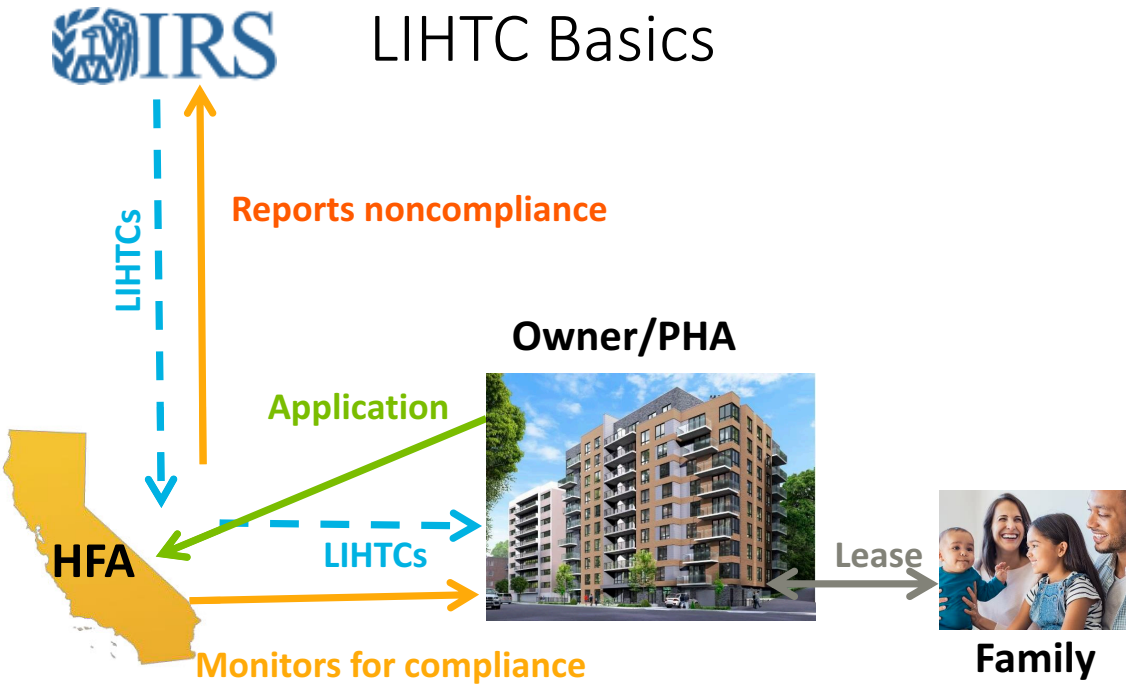
As the administrator of the LIHTC program for the IRS, the state allocating agency is essentially the "eyes and ears" of the IRS as it relates to the project. The state agency relationship is one of the most important relationships your project has if the project has low-income housing tax credits.



LIHTC Basics

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

1. Suitable for occupancy
2. Initially occupied by an income-qualified household
3. Rent-restricted

Suitable for Occupancy

IRC §42(i)(3)(B)

The Code states that a unit will not be considered an 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. We will discuss the General Use Rule, Vacant Unit Rule, and casualty loss in later chapters, all of which are issues related to a unit's suitability for occupancy.

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RENT LIMITS

IRC §42(g)(2)(B) and Guide for Completing Form 8823, Chapter 11

Rents are restricted in the LIHTC program. Rents are not income-based, like subsidized housing (e.g., public housing or the Section 8 housing choice voucher program). While the rents aren't income-based, the gross rent is restricted and must be under a maximum LIHTC gross rent limit for the entire compliance period.

Maximum gross rent limits are established for each unit size. The contract rent plus the utility allowance (if any), plus any nonoptional charges, may not exceed the applicable LIHTC maximum gross rent limit. These rent limits are based on a percentage of area median gross income (AMI) and are adjusted by unit size. Of course, even with these maximum gross rent limits in place, rents also cannot exceed what the local rental market will allow.

Rent + utility allowance + non-optional charges = Gross Rent

There is one exception to the gross rent limit which will be discussed in greater detail in a later chapter. A brief explanation is provided here: As long as there is a subsidy being paid on behalf of the tenant, the contract rent can exceed the applicable LIHTC gross rent limits. Housing choice vouchers (HCV), project-based vouchers (PBV), and project-based rental assistance (PBRA) are all examples, but not all inclusive, of programs under which this would be possible. For tenants with such rental assistance, subsidy is not included in the calculation of gross rent, so the total contract rent collected from the combination of subsidy and tenant rent may exceed the LIHTC maximum gross rent limits. It is important, however, to check your state compliance manual on this issue in particular, to understand how your state interprets this exception.

Detailed information about how the LIHTC maximum gross rents are determined is described in a later chapter. Fortunately, most state allocating agencies calculate the LIHTC maximum gross rents and publish them on their websites annually.

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Learning Activity 2-1: Holly Court

Holly Court is a 100-unit LIHTC project where all units are LIHTC. The owner chose the 40-60 MSA. It is located in Anytown County.

Yolanda and Frank Washington want to rent a 2-bedroom unit in Holly Court. They have no form of rental assistance.

- The LIHTC maximum gross rent limit for a 2-bedroom 60% unit in Anytown County is $1,900
- The 2-bedroom utility allowance at Holly Court is $150
- There are no non-optional charges

1. What is the maximum amount of rent the owner may charge for this unit?

   _____

2. How much will the Washington family pay in rent?

   _____

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INCOME LIMITS

IRC 42 (g)(1)(A) and (B); Guide for Completing Form 8823, Chapter 10

A household may live in an LIHTC unit if the household income is initially no greater than the maximum allowed for that size household.

HUD determines the income limits for the LIHTC program based on area median gross income (AMI) and publishes these income limits on huduser.gov. HUD updates these numbers on an annual basis. Income limits will be discussed in greater detail in a later chapter.

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.

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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 IA 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 records and communicate the change to the state allocating agency.

Although there is no federal requirement to designate a prorata 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 income
- 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.

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Learning Activity 2-2: Minimum Set-Aside

Lemon Grove Apartments is a 50-unit project located in Lemon Grove, CA. The owner selects the 20-50 MSA on the IRS Form 8609.

1. How many units at a minimum must be LIHTC?

   _____

2. What about the remaining 40 units? Are they required to have any income or rent restrictions?

   _____

North Coast Village is a 10-unit project, located in Oceanview, CA. The owner selects the (AIT) set-aside.

1. At least _____ percent of the units in the project must be occupied by households with income limits that on average are at or below _____ percent or less of the area median gross income (AMI) *and* be rent restricted.

DEEP RENT SKEWING

In addition to the federal MSA, the owner may also elect to set aside units for lower income families through deep rent skewing. If line 10d is selected on the IRS Form 8609, the owner must rent at least 15 percent of the tax credit units in the project to tenants whose income is 40 percent or less of area median gross income. This is not an additional test for satisfying federal minimum set-aside requirements; rather, it relates to the determination of tenant's income. This election is also irrevocable once made. If deep rent skewing is chosen, the owner must charge 50 percent of the average gross rent for market rate units of comparable size in the project.

Example: Oak Tree Court

Oak Tree Court is a 100 unit project. The owner elected the 20-50 MSA on the IRS Form 8609 and also elected to deep rent skew.

- In order to meet the MSA, the owner must rent a minimum of 20 units (20 percent of 100) to individuals at or below 50 percent of AMI.
- In order to meet the deep rent skewing requirements, the owner must rent 15 percent of those units to families at or below 40 percent of AMI. In other words, the owner must rent three units at 40 percent of AMI or less, and the remaining 17 to individuals at or below 50 percent of AMI.

ADDITIONAL LOWER SET ASIDES

The regulatory agreement between the allocating agency and the owner may also require additional, lower set-asides, requiring more units designated as LIHTC and at lower income limit levels.

For example, the regulatory agreement could require a project to rent to families at income levels anywhere from10 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 IRS Form 8609. If during the federal compliance period an owner is noncompliant with these additional set aside(s), but maintains the federal MSA, noncompliance would not be reported to the IRS for failure to meet the federal MSA. However, there would likely still be state-specific consequences for failing to meet any additional set aside(s).

WHAT IS A PROJECT?

The MSA must be met and maintained at a project level.

The IRS assumes that each building is its own project, unless the owner has indicated on the IRS Form 8609 that each building is part of a multi-building project.

Line 8b on the IRS Form 8609 allows the owner to determine if the building is a project all by itself, or if the project consists of multiple buildings. This is an important election for the owner. If the owner determines that the building is part of a multi-building project, then "Yes" is selected on line 8b of the IRS Form 8609. If this is selected, the MSA is met over multiple buildings. If "Yes" is selected, the owner must attach a statement to the IRS Form 8609 identifying the name, address, and BIN of each building in the project as well as the aggregate credit dollar amount for the project and the credit amount allocated to each building. If no statement is attached, the buildings will be considered as separate projects, even if the owner selected "Yes" on the 8609. A separate IRS Form 8609 is issued for each building in a project.

If the owner determines that each building is its own project, then "No" is selected on line 8b of the IRS Form 8609. If this is selected, the MSA must be met building-by-building.

Two or more buildings may be included in a multi-building project if they:

1. Are located on the same tract of land (see exception at IRC §42(g)(7))
2. Are owned by the same person for Federal tax purposes
3. Are financed under a common plan of financing; and
4. Have similarly constructed residential units

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Hint! Check line 8b on your 8609(s), which can affect:

- Minimum set-aside
- Income limits
- Transfers

BUILDING IDENTIFICATION NUMBERS (BIN)

Building Identification Numbers (BINs) identify LIHTC buildings so that state allocating agencies 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. State allocating agencies assign all building identification numbers.

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IRS FORM 8609

Form **8609** (Rev. May 2018) Department of the Treasury Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

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	Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	**3b**	1 ___ ___ %
4	Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)	**4**	%
5	Date building placed in service ▶ _____		

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized **b** ☐ Newly constructed and **not** federally subsidized **c** ☐ Existing building

d ☐ Sec. 42(e) rehabilitation expenditures federally subsidized **e** ☐ Sec. 42(e) rehabilitation expenditures **not** federally subsidized

f ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(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 ☐ Average income ☐ 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) ☐ 15-40

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

▶ _____ Signature ▶ _____ Taxpayer identification number ▶ _____ Date

▶ _____ Name (please type or print) ▶ _____ First year of the credit period

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

Section 3 Important Compliance Time Periods

There are three important time periods for buildings in the LIHTC program. These are broken down into the amount of time the owner/investor may claim tax credits and the time periods in which buildings must remain affordable. The IRS requires that buildings that receive tax credits have a minimum long-term commitment to remain low-income housing of at least 30-years. This affordability period is broken into two distinct time periods-the federal compliance period and the extended use period.

Credit Period

IRC §42(f)(1)

The credit period is the 10-year period during which the property owner/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 to the following calendar year if the owner/investor chooses to do so. It may be deferred only to the following calendar year. If the owner elects to defer the start of the credit period, credits will not be available to the investor(s) until the year after the building's 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.

Federal Compliance Period

IRC §42(i)(1)

The federal compliance period starts the first year of the credit period and extends for 15 years thereafter.

During the federal compliance period, instances of program noncompliance, both corrected and uncorrected, are reported to the IRS by the state allocating agency. This could result in all or a portion of the credits the building is eligible to receive being taken away—a process known as recapture or disallowance, which will be discussed later.

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EXTENDED USE PERIOD

IRC §42(h)(6)(D)

The IRS requires that LIHTC buildings have an extended use period with the state allocating agency of 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 different requirements for monitoring during this time. During the extended use period, instances of program noncompliance are not reported to the IRS but may seriously impact the owner/investor's eligibility for future allocations of LIHTCs.

Projects with allocations prior to 1990 were not required to have extended use periods.

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 the project for the initial 15-year federal compliance period and the subsequent extended use period.

Example: LIHTC Time Periods

Below is an example of when a building that begins its credit period in 2025 would enter various important periods.

- First year of the credit period: 2025
- End of the credit period: 2034 (2025 + 9 years for a total of 10 years)
- End of compliance period: 2039 (2025 + 14 years for a total of 15 years)
- End of extended use period (assuming minimum of 30 years): 2054 (2025 + 29 years for a total of 30 years).

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Section 4 Award and Allocation of Tax Credits

State allocating agencies often use the words award and allocation interchangeably, but they have different meanings:

- An award of LIHTCs is basically an announcement by the state allocating agency, of the LIHTC application review outcomes.
- An allocation is when credits are taken from what is available to the state allocating agency from the IRS and are then applied to a particular project.

After the state allocating agency has awarded, and then allocated LIHTCs to a project, several tasks must occur. One of the most important tasks is placing in service.

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Section 5 Placed-In-Service Date

IRS Revenue Notice 88-116

A building is considered to be placed-in-service when it is ready for its specifically assigned function as rental housing. In other words, the placed-in-service date is the date an eligible tax credit family could potentially occupy a unit. The definition of when a building is considered placed-in-service differs depending on the type of eligible activity being performed.

Owners typically are required to place their buildings in service within two years of when credits are allocated.

Placed-In-Service Dates for New Construction/Existing Substantial Rehabilitation

The placed-in-service date for **new construction** or **an existing building that undergoes substantial rehabilitation** (think unoccupied units) is the date on which the building is ready and available for its specifically assigned function as rental housing.

In general, the placed-in-service date of a new building or a building that undergoes substantial rehabilitation is the date it receives its certificate of occupancy (CO) from the local building inspector. Once the CO has been issued, the building is then ready for lease-up. The placed-in-service date is not to be confused with the date that the first LIHTC-eligible tenant occupies the first unit in the new building. The PIS date is the date the building is ready for occupancy, not the date it was actually initially occupied.

Example: Creekside Homes

- 35-unit new construction building.
- Certificates of occupancy were issued on May 1, 2025.
- The first household moved into the building on August 15, 2025.
  - What is the placed-in-service date?

Placed-In-Service Dates for Rehabilitation

A developer needs to understand their state allocating agency's process for placing rehab credits into service. The process can vary by agency and based on the circumstances at the project.

The placed-in-service date for a lesser **rehabilitation** building may not be as clear because a CO will not be issued when the rehab is completed. The state allocating agency will have criteria the owner must meet to place the building in service, but generally, the owner/investor will establish the placed-in-service date at the close of any 24-month period after the minimum rehabilitation expenditures have been met. The owner will typically need to provide information and a certification that the rehab is significantly complete and ready to be placed in service.

IRC §42(e)(3)(A)(ii)

The IRS states that the owner must expend the greater of either 20 percent of the adjusted basis of the building or $6,000 (adjusted for inflation) per low-income unit in order to meet this expenditure requirement. In addition, however, most state agencies have additional and more restrictive expenditure requirements. The rehabilitation building is considered placed-in-service when the units are ready and available for their intended use as rental housing.

Placed-In-Service Dates for Acquisition/Rehabilitation

In an acq/rehab project, there are two different placed-in-service dates:

- Since existing rental housing buildings are generally occupied when they are acquired and are ready for their intended purpose when they are purchased, the placed-in-service date for the **acquisition** is the date the ownership entity that will benefit from the credits acquires the project.
- The placed-in-service for the **rehabilitation** follows the criteria discussed above.

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WHY IS PLACING IN SERVICE IMPORTANT?

- The placed-in-service date is a critically important date because it establishes the date from which a building has the potential to generate a low-income housing tax credit. Owners can begin to claim low-income housing tax credits on units once:
  - A unit is placed-in-service for a full calendar month, and;
  - It is occupied by a LIHTC-qualified tenant as of the last day of the month with a restricted rent amount.
- The placed-in-service date is determined on a building-by-building basis, not a project basis. Even though most projects are composed of several buildings, it is rare that all of the buildings are placed-in-service at the same time. The placed-in-service date must be tracked on a building-by-building basis because many LIHTC rules, including the tax credit percentage that changes monthly, are tracked on a building-by-building basis.

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Learning Activity 2-3: Placed-in-Service

Pine Ridge is a 50-unit, new construction, 100 percent LIHTC project consisting of one building.

Scenario 1:

- The certificates of occupancy were issued on September 1, 2025.
- The Alvarez family was determined eligible and moved into a rent-restricted unit on September 25, 2025.
- In what month does the unit begin generating a credit?

_____

Scenario 2:

- The certificates of occupancy were issued on September 5, 2025.
- The Crawley family was determined eligible and moved into a rent-restricted unit on September 25, 2025.
- In what month does the unit begin generating a credit?

_____

Scenario 3:

- The certificates of occupancy were issued on September 25, 2025.
- The Hall family was determined eligible and moved into a rent-restricted unit on October 5, 2025.
- In what month does the unit begin generating a credit?

_____

Scenario 4:

- The certificates of occupancy were issued February 14, 2025.
- The Cloud family was determined eligible and moved into a rent-restricted unit on December 30, 2025.
- In what month does the unit begin generating a credit?

_____

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Section 6 Regulatory Documents

The LIHTC program is governed by Section 42 of the Internal Revenue Code (IRC) and related regulations. Changes to the program are done through regulations, revenue rulings, revenue procedures, private letter rulings (PLRs), technical advice memorandums (TAMs), notices, and announcements. Revenue rulings are published in the Internal Revenue Bulletin and are an official interpretation by the IRS of the IRC, related statutes, and regulations. They represent the conclusion of the IRS on how the law is applied to a specific set of facts. Unlike other housing programs, changes to the LIHTC program may or may not be retroactive depending on the year of the revenue ruling.

Low-Income Housing Tax Credit (LIHTC) Program Documents

In addition to complying with the IRC and related regulations, 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 governing documents in the LIHTC program:

- The **Qualified Allocation Plan**, or QAP is the document that each state allocating agency is required to publish on an annual basis to describe the LIHTC allocation process and application scoring criteria and methodology. In some states, the QAP also sets out requirements for noncompetitive 4% allocations as well.
- The **Tax Credit Application** is the actual application for tax credits prepared by the project owner and submitted to the state allocating agency in accordance with the requirements of the QAP.

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- The **Land Use Restricted Agreement (LURA) / Regulatory Agreement / Extended LIHTC Commitment / Declaration of Restricted Covenants** is the legally binding document between the owner and the allocating agency that commits the project owner and his/her successors to occupancy and affordability requirements for the project. This document may specify the actual number of units that must be kept affordable. Tax credit projects made in 1987-1989 may not have extended use provisions, as they were not mandatory.
  - Hint! Check your LURA for:
    - Additional set asides
    - The length of the extended use period
    - Supportive service commitments
- The **state-specific LIHTC compliance manual** outlines the allocating agency's policies, procedures, timelines and required form(s), if any. Not all allocating agencies publish a compliance manual.
- Although the tax credit program is an IRS program administered by state agencies, the program relies on HUD for defining and calculating income and assets using Chapter 5 of the **HUD Hand-book 4350.3(REV-1)**.
- While the IRS has not published a handbook for the LIHTC program, they have published the ***Guide for Completing Form 8823: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*** to assist state agencies with compliance monitoring. While it is not legal authority, it does provide citations to the IRC and related regulations as well as notices, revenue rulings, and revenue procedures, in addition to including important interpretations.
- ***Audit Technique Guide for IRC 42 Programs, Low-Income Housing Credit*** provides information to IRS examiners who audit the tax returns of LIHTC owners. It is meant to be used in conjunction with the Form 8823 Guide.
- The ***General Explanation of the Tax Reform Act of 1986*** (also commonly referred to as the "Blue Book") provides an explanation of the Act.

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- ***Housing and Economic Recovery Act of 2008 (HERA)***. Major piece of legislation that affected the LIHTC program
- ***Housing Opportunity Through Modernization Act of 2016 (HOTMA)*** was signed into law on July 29, 2016. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact low-income housing programs, including the LIHTC program. The Final Rule implementing broad changes to income and asset in Sections 102 and 104 of HOTMA was published in the Federal Register on February 14, 2023.
- The ***Low-Income Housing Credit Allocation and Certification, IRS Form(s) 8609*** lists important information about the building. Once a project is placed-in-service, the owner sends a placed-in-service package to the state housing finance agency. The state housing finance agency then completes Part I of the Form 8609, retains a copy, and sends the owner the signed original. The owner then makes a copy of the form and submits the original 8609 to the IRS no later than the due date (including extensions) of the first tax return with which the owner submits a Form 8609-A. The state housing finance agency may also require that the owner submit a copy of Part II of the completed 8609. The owner then submits a Form 8609-A, Annual Statement for Low-Income Housing Credit, during each year of the federal compliance period.
  - Hint! Check your 8609 for:
    - Date of allocation
    - PIS date
    - MSA
    - Deep rent skewing
    - Multi-building project

Form **8609**
(Rev. May 2018)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

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)
228 Lakeview Way
La Mesa, CA 91941

B Name and address of **housing credit agency**
CA Tax Credit Allocation Committee
1046 Turning Stone Ct.
Sacramento, CA 92701

C Name, address, and TIN of **building owner** receiving allocation
Lee Development Corporation, LLC
701 January Blvd.
San Diego, CA 92020
TIN ▶ 99-9999999

D Employer identification number of agency
82-2222222

E Building identification number (BIN)
CA1300001

1a	Date of allocation ▶ 03 / 01 / 2013 **b** Maximum housing credit dollar amount allowable	1b	250,000.00
2	Maximum applicable credit percentage allowable (see instructions)	2	9 %
3a	Maximum qualified basis	3a	2,777,777.78
b	Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	3b	1 0 0 %
4	Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)	4	0 %
5	Date building placed in service ▶ 11 / 01 / 2014		

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 ▶ John Q. HFA 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	2,780,000
8a	Original qualified basis of the building at close of first year of credit period	8a	2,780,000
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 ☐ Average income ☐ 25-60 (N.Y.C. only)
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) ☑ 15-40

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

▶ Signature ▶ 99-9999999 Taxpayer identification number ▶ Date

▶ Name (please type or print) ▶ 2015 First year of the credit period

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

Learning Activity 2-4: IRS Form 8609

Instructions: Using the Form 8609, answer the following questions:

1. When were the low-income housing tax credits allocated?

   _____

2. When was the building placed-in-service?

   _____

3. What is the BIN?

   _____

4. What is the minimum set aside and what does this mean?

   _____

5. Must the owner maintain the MSA for this building or for multiple buildings?

   _____

6. Did the owner elect to deep rent skew and, if so, what does this mean?

   _____

7. Is the owner required to attach anything to the 8609?

   _____

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Section 7 Chapter 2 Post-Test

1. Excluding New York City, what are the three options from which the owner chooses for the federal MSA?

   _____

   _____

2. Which of the following statements is true about the credit period?
   a. The credit period is for 15 years
   b. The credit period is generally 10 years
   c. The credit period is for 30 years
   d. The credit period varies by state
3. The federal compliance period is for:
   a. 10 years
   b. 30 years
   c. 15 years
   d. 25 years
4. The extended use period is for a minimum of:
   a. 10 years
   b. 30 years
   c. 15 years
   d. 25 years
5. 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.

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6. 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 area median income
   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
7. 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
8. For what three activities may low-income housing tax credits be used?

   _____

   _____
9. PHAs apply for LIHTCs because they receive a dollar-for-dollar reduction in the PHA's federal income tax liability.
   a. True
   b. False
10. A tax _____ is subtracted from a taxpayer's total income to compute their tax base. A tax _____ is subtracted directly from the taxpayer's tax liability which creates a dollar-for-dollar reduction in their federal tax liability.

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11. The credit period always begins the same year the building is placed-in-service.
    a. True
    b. False
12. A building may have a 30-year extended use period if required by the state HFA.
    a. True
    b. False

13. 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? _____

14. A building was placed in service on April 1, 2024. It claimed credits in 2024. On what date does the 15-year compliance period end?
    a. April 1, 2038
    b. December 31, 2038
    c. December 31, 2039

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CHAPTER 3 LIHTC Application Process & Calculating Credits

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

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

- List the steps involved in the LIHTC application process
- Calculate the qualified basis
- Determine the value of tax credits for a particular project
- Compare and contrast 4 percent and 9 percent credits

OVERVIEW

It's important for managers of LIHTC properties to understand how tax credits are calculated and allocated at a basic level as well as the process undertaken to apply for LIHTCs.

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Section 2 Applying for Tax Credits

Each year, the IRS provides housing tax credits to designated housing credit allocating agencies—typically state housing finance agencies (HFAs)—which in turn award the credits to owners/developers of qualified projects. The amount each state receives is based on the state's population and is linked to a cost-of-living index. In October 2025, the Internal Revenue Service issued Revenue Procedure 2024-40 for calendar year 2025, providing the 2025 per capita and small state minimum levels for the Housing Credit Volume caps. States will receive the greater of $3.00 per capita, or $3,455,000 in Housing Credit authority.

IRC § 42(m)(1(B)

Within general guidelines set by the Internal Revenue Service (IRS), state housing agencies administer the LIHTC program according to their individual Qualified Allocation Plans (QAP). State agencies have broad discretion in determining which projects will be awarded credits. They review tax credit applications submitted by developers and award the credits based on the QAP and related documentation. Section 42 requires QAPs prioritize projects that serve the lowest-income tenants and ensure affordability for the longest periods.

IRC §42 (h)(5)(A)

While not all low-income housing tax credits are competitive, the most desirable credits (9 percent credits) are awarded by HFAs through a competitive process. The credit amount for a project is calculated based on the costs of development and the number of qualified low-income units and cannot exceed the amount needed to make the project feasible. This process will be discussed later in this chapter. The credits are usually awarded yearly to projects in allocation rounds, however some states have multiple funding rounds each year. Typically, the top ranked project will get credits, then the second, and so on, until the credits are exhausted for the round. A portion of each state's credits must be set aside for projects sponsored by nonprofit organizations, although nonprofits more typically apply for credits under the general rules without regard to the set-aside. Nonprofits awarded under the set aside must materially participate in the day-to-day management of the LIHTC development.

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A state has two years to award housing tax credits to projects. Tax credits not awarded in a year may be carried forward to the next year. If a state is unable to use its tax credits over a two-year period, they are returned to a national pool for reallocation. If a state awards tax credits to a project that is not completed, and the tax credits are returned, the state has an additional two years to award the tax credits to another project within that state. Since the award process is described in each state's QAP, each state is able to set its own priorities and address its specific housing goals. This also encourages developers to offer benefits that are greater than the established minimums (e.g., charging lower rents, or maintaining the low-income requirements for a greater number of years). These benefits will often improve a project's rank in the competitive process, so it is important to check the particular state's QAP and application to see how it makes these judgments. Selection will usually reflect specific needs and market conditions and may differ based on property type, targeted population and housing needs. QAP election criteria must include the following considerations:

IRC 42(m)(1)(C)

- Project location
- Housing needs characteristics
- Project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan
- Sponsor characteristics
- Tenant populations with special housing needs
- Public housing waiting lists
- Tenant populations of individuals with children
- Projects intended for eventual tenant ownership
- Energy efficiency of the project
- Historic nature of the project

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Each state establishes threshold criteria for all developments. Such criteria may include:

- The availability of development amenities (community rooms, laundry facilities)
- Any unit amenities provided
- Visitability (housing that is “visitable” has a very basic level of accessibility that enables persons with disabilities to visit friends, relatives, and neighbors in their homes within a community)
- Any energy conservation measures

Applications are also evaluated to determine the amount of tax credits required to make the application economically feasible and to ensure the project's long-term viability. Projects that are financed by tax-exempt bonds can also qualify for non-competitive low-income tax credits (4 percent credits). Tax-exempt bonds are also limited on a state-by-state basis, and the state agency responsible for bonds may be different from state to state, but these agencies will generally apply similar rules as the agencies responsible for the tax credit program.

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Section 3 Syndication and Equity Investment

Tax credits are claimed annually over a 10-year period. When a developer receives an award of low-income housing tax credits from the state HFA, the developer forms a partnership entity. Typically, these partnerships are formed as either Limited Liability Companies (LLCs) or Limited Partnerships (LPs). The details of the partnership entity can be very complicated and require lengthy legal agreements, known as partnership or operating agreements.

In order to actually build, rehabilitate or acquire the actual housing development, the owner/developer generally needs money up-front in order to pay for the costs of the development. Accordingly, the owner/developer syndicates the credits. Syndicating is basically selling the rights to the future credits in exchange for money that can be used for up-front costs. The actual amount that is invested into the development (equity investment) is negotiated and depends on many factors, including interest rates, and where the development is located. Here are the basics on how syndication works:

The owner/developer can sell the tax credits:

- Directly to an investor; OR
- To a syndicator, who assembles a group of investors and acts as their representative

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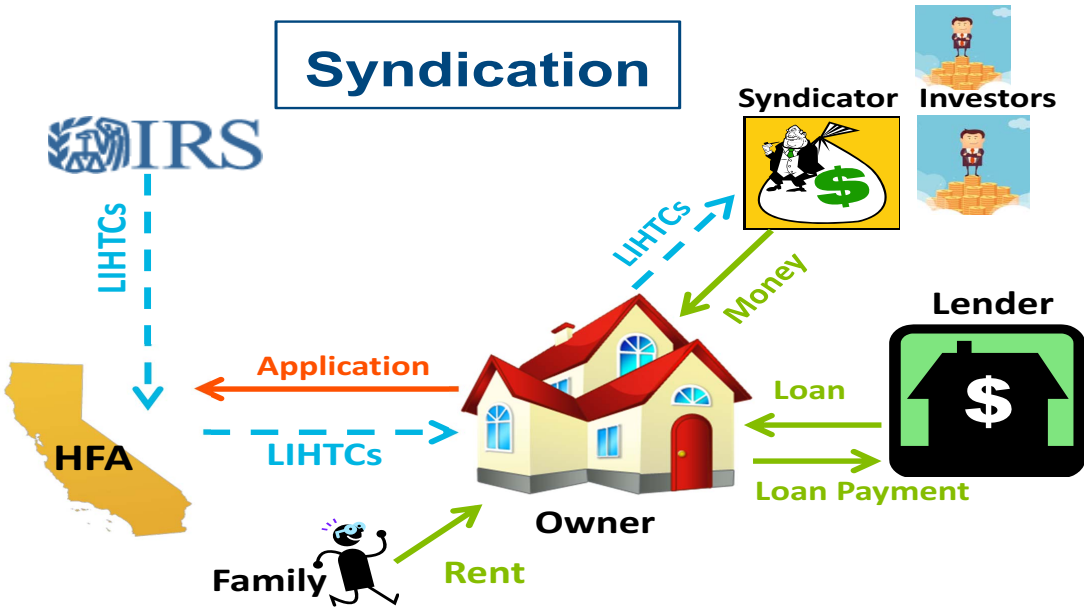
The graphic below provides a useful visual aide for understanding the flow of tax credits from their origin in the IRS to the ultimate destination with private investors.



The investor or group of investors that purchases the low-income housing credits must be a part of the entity which owns the property. This is accomplished by creating a limited partnership (in which the credit purchaser is a 99 percent+ limited partner) or a limited liability company (in which the credit purchaser is a 99 percent+ non-managing member). The general partner is responsible for managing the project on a day-to-day basis, while the limited partners are typically limited to a passive investment role. The limited partner receives the majority of the benefit of the low-income housing tax credit.

The partnership agreement will describe in detail the property ownership structure, as well as how profits and losses will be shared. Typically, the general partner (managing partner) receives a large share of any positive cash flow, often structured in the form of fees for services such as partnership management, incentive management, or investor services.

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Section 4 Calculating the Qualified Basis

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

There are four steps to calculate the qualified basis:

1. Determine the eligible basis
2. Apply the basis boost (if applicable)
3. Determine the applicable fraction
4. Calculate the qualified basis

Eligible Basis (with or without the boost) x Applicable Fraction = Qualified Basis

Once the qualified basis is calculated, the annual amount of tax credits may be determined:

Qualified Basis x Applicable Percentage (either 4% or 9%) = Maximum Credits

IRC §42(d); LIHTC Newsletter #5

Step 1: Determine the Eligible Basis:

The eligible basis is the amount of all depreciable development costs that can be included when calculating tax credits.

Eligible depreciable costs INCLUDE all hard costs, such as construction costs, and most depreciable soft costs, such as architectural and engineering costs, soil tests, and utility connection fees. Services that are typically includable in the eligible basis include: negotiating agreements for architectural, engineering and consulting services; costs for applying for and maintaining government permits and approvals for construction and securing certificates of occupancy; complying with requirements imposed by insurance providers during construction; and providing oversight during the course of construction.

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Fees for professional services may or may not be includable in eligible basis, depending on the nature of the cost. Developer fees may be included in eligible basis as long as they are reasonable, but the state agency may limit the amount that could be included. Check with your state to see what may be included.

Some examples (though not entirely inclusive) of what is EXCLUDED from the eligible basis are the following non-depreciable costs:

- The cost for buying the land
- Marketing costs
- Off-site improvements (with some exceptions)
- Permanent financing costs
- Initial deposits to reserves

Costs for nonresidential areas within the building such as commercial space are not included in eligible basis. The LIHTC units themselves and spaces that are either intended for use by tenants or are reasonably necessary for the building are included in eligible basis. In other words, hallways and staff units (discussed in a later chapter) are examples of areas included in eligible basis, while first floor commercial space is an example of something that is not.

IRC §42(d)(5)(B)

Step 2: Apply the Basis Boost:

A building can receive a 30 percent increase to the eligible basis (known as a basis boost) in three cases:

1. Building is located in qualified census tracts (QCTs)
   - To identify what census tract you are located in, visit American Fact Finder through the Census Bureau's web site: http://censtats.census.gov/.
2. Building is located in difficult development areas (DDAs)
   - To learn more about the methodology HUD uses to identify QCTs and DDAs, or to view a list of QCTs and DDAs, visit the HUD User website, located at: http://www.huduser.gov/portal/datasets/qct.html.
3. For buildings that are not located in QCTs or DDAs, the state HFA has the authority to award up to a 30 percent basis boost (although the state may select a lesser amount); 4 percent buildings are not eligible

The basis boost is determined at the time of the application.

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IRC §42(c)(1)(B)

Step 3: Determine the Applicable Fraction:

The percentage of qualified low-income units is referred to as the applicable fraction. 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
  - Excludes hallways and other common areas

Example: South Side Apartments

- 12 unit mixed use building
- 50% of the units are LIHTC (6 units) and 50% are market (6 units)
- The LIHTC units are smaller by square footage, only 40% of the floor space

What's the applicable fraction?

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. Typically, developers prefer to structure their LIHTC projects so that each building has an applicable fraction of 100 percent or 0 percent, because this makes ongoing compliance much easier. Remember that there may be Fair Housing issues by using this method that will also need to be considered. If the owner fails to achieve the projected applicable fraction each year of the federal compliance period, the amount of credits is reduced.

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MSA vs. Applicable Fraction, What's the Difference?

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 owner may meet the minimum set aside election but fail to meet the applicable fraction.

In the example of South Side Apartments, if the owner chose the 20-50 MSA, only three of the six LIHTC units would need to be rented to LIHTC-qualified households in order to meet the MSA (20 percent of 12 is 2.4 which rounds to three). However, if the owner rented only one of the six LIHTC units to an unqualified household, the applicable fraction would not be met.

Example: Elmwood Court

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

- To meet the MSA, 20 units (40% of 50) must be LIHTC
- To meet 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 IRS Form 8609. The applicable fraction on which the tax credits are based is 50%.

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

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

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Step 4: Calculate the Qualified Basis.

The qualified basis refers to the dollar amount that is eligible for housing tax credits.

Eligible Basis (Step 1) x Applicable Fraction (Step 3) = Qualified Basis

CREDIT RATES

In order to determine the annual amount of tax credits, the qualified basis is multiplied by the applicable percentage. There are two applicable credit rate percentages in the LIHTC program: the 9 percent rate and the 4 percent rate. Tax credits are either used to fund 30 percent (4 percent rate) or 70 percent (9 percent rate) of the low-income unit cost in a project.The ongoing compliance requirements for both types of percentages are generally the same, however there can be some differences. If your project has tax-exempt bond financing, follow the requirements of your state.

The 9 percent credit rate provides a more substantial subsidy, covering around 70 percent of eligible low-income unit costs. This credit primarily aims at new construction projects and substantial rehabilitation efforts not otherwise subsidized by federal funds. Generally, this refers to tax-exempt bond financing. The higher subsidy percentage makes the 9 percent credit particularly attractive for larger and more ambitious affordable housing projects, enabling developers to achieve financial support and feasibility. Eligible buildings earn credits at a rate of approximately 9 percent of the qualified basis, each year for a 10 year period. 9 percent credits are awards competitively.

Note: Tax-exempt bonds are issued by a government entity, typically a state or local government. When investors buy these bonds, they lend money to the government. The government, in turn, uses this money to fund projects that serve a public purpose, such as building roads, schools, hospitals, or affordable housing

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The 4 percent credit rate is referred to in the Code as the 30 percent present value credit. Eligible buildings earn credits at a rate of approximately 4 percent of qualified basis, each year for a 10-year period. It is received under two circumstances.

1. In acquisition/rehabilitation buildings (known as acq/rehab), the purchase of the building is only eligible for a 4 percent rate. The rehabilitation portion, however, is eligible for the 9 percent credit. The building is essentially treated as two different buildings, each earning credits at a different rate. These are awarded competitively.
2. Buildings that are federally subsidized new construction or rehabilitation also earn the 4 percent rate. For purposes of the 4 percent credit, this means the building receives the proceeds of tax-exempt bonds. These are awarded noncompetitively.
   a. For "federally subsidized" new construction or substantial rehabilitation expenditures.
   b. *Federally subsidized* means the building receives the proceeds of tax-exempt bonds or of a "below-market federal loan." A *below market federal loan* 1) carries an interest rate of less than the applicable federal rate (AFR) published monthly by Treasury (as of May 2007, approximately 4.90% for long term loans compounded annually) and 2) is funded with federally appropriated dollars. For example, HUD HOPE VI loans.
   c. Exceptions from Federally Subsidized Definition.
      (i) HOME Loans if 40% of units in each building are occupied by families at or below 50% of median income;
      (ii) Community Development Block Grant loans (CDBG);
      (iii) Affordable Housing Program loans (AHP);
      (iv) Loan is subtracted from basis;

(v) Section 8 not considered federal assistance; however, receipt of Section 8 Moderate Rehabilitation on projects receiving post-1989 credit allocations (except McKinney SRO funds) disqualifies building from receiving credit; and

(vi) Loans under the Native American Housing Assistance and Self-Determination Act of 1996 if 40% of the units in each building are occupied by families at or below 50% of median income.

IRC §42(b)(1)(A)

Depending on the credit rate and the activity performed, LIHTC buildings typically lock in at the time the building is placed in service or at the election of the owner/developer. Once the percentage is locked in, the decision is irrevocable, and the percentage is used each year to determine the amount of credits received. If the rate changes in subsequent months, the credit calculation does not change since it remains locked in at the original number.

The Protecting Americans from Tax Hikes Act of 2015 permanently extended the minimum low-income housing tax credit rate for non-federally subsidized buildings and as a result, the 9 percent floor was made permanent January 1, 2015. In 2020, the 2021 Omnibus Appropriations bill locked in the 4 percent floor for allocations of credits that place in service after December 31, 2020.

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Example: Determining the Value Of Housing Tax Credits

A local developer has proposed to use tax credits to construct one building of 70 units of new rental housing in Anytown, USA. No tax exempt bonds will be used. The development will not be located in a QCT or DDA. Forty percent of the units (and 40 percent of the square footage) will be set aside for LIHTC households.

- Will this project receive a basis boost?

  _____

- Will this project earn a 4 percent or 9 percent rate?

  _____

The total development costs for the project are 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

Step 1: Eligible Basis = $4,000,000

Step 2: Basis boost = None

Step 3: Applicable Fraction = 40%

Step 4: Qualified Basis = $4,000,000 x 40% = $1,600,000

Annual Credit = $1,600,000 x 9 percent = $144,000

Total Housing Tax Credits = $144,000 x 10 years = $1,440,000

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Section 5 Chapter 3 Post Test

1. The IRS requires that each state qualified allocation plan (QAP) prioritize projects that serve the lowest-income tenants and ensure affordability for the longest period.
   a. True
   b. False
2. The process of selling rights to future credits in exchange for up-front cash is known as:
   a. Qualification
   b. Banking
   c. Syndication
   d. Speculation
3. The amount of tax credits that each state receives is based on that state's population.
   a. True
   b. False
4. States have ___ years to award housing tax credits to projects.
   a. 2
   b. 3
   c. 4
   d. 5
5. In general, compliance requirements for 9 percent and 4 percent tax credits are the same, although there may be small differences
   a. True
   b. False

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6. The steps to calculate the amount of credits a building can potentially claim annually are:
   a. Eligible basis x basis boost (if any) x the affordable square feet x credit rate percentage
   b. Eligible basis x basis boost (if any) x the affordable units in project x credit rate percentage
   c. Eligible basis x basis boost (if any) x the minimum set aside x credit rate percentage
   d. Eligible basis x basis boost (if any) x the applicable fraction x credit rate percentage
7. The qualified basis is used to calculate the number of tax credit a building qualifies for annually.
   a. True
   b. False
8. The applicable fraction must be maintained throughout the entire compliance period.
   a. True
   b. False
9. A portion of a state's tax credits must be set aside for:
   a. Veterans
   b. Nonprofits
   c. PHAs
   d. Projects with HUD funding
10. Maple Street Apartments has 50 units. 80% of the units are LIHTC but only 65% of the floor space is LIHTC. What is the applicable fraction?
    a. 50%
    b. 65%
    c. 80%

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Henderson Homes will be a new construction development consisting of two buildings. No tax-exempt bonds will be used in the financing. The project is located in a Qualified Census Tract (QCT). The development costs for the project will be $4,000,000, although $1,000,000 will be to purchase the land. Answer the following questions:

11. How much is the eligible basis?
    a. $1,000,000
    b. $3,000,000
    c. $4,000,000
12. Will the project receive a basis boost and, if so, how much is the basis boost?
    a. No
    b. Yes, a 30% basis boost
    c. Yes. The percentage will be determined by the HFA
    d. Yes. The percentage depends on where in the QCT the project is located
13. Will the project earn 4% or 9% credits?
    a. 4%
    b. 9%

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Notes

CHAPTER 4 Compliance Monitoring & Avoiding Recapture

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

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

- Recognize how monitoring reviews are conducted in the LIHTC program
- Recall how and why Form 8823s are filed with the IRS
- Identify how accelerated credits are calculated
- Explain the process for recapture and disallowance of credits

OVERVIEW

As discussed in Chapter 2, the federal compliance period begins with the first year of the credit period and runs for 15 years. During this period, instances of noncompliance with program requirements, even if corrected, are reported to the IRS by the state agency. This chapter will discuss how monitoring reviews are conducted during the federal compliance period as well as the extended use period.

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Section 2 Compliance Monitoring

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. Compliance monitoring typically takes three forms:

- Desk audits
- Site visits, and;
- Review of the owner's tenant files

DESK AUDIT

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. 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.

Example: Site Visit

Green Acres Apartments consists of two buildings that are part of one project. Building A was placed-in-service in November 2022, and Building B was placed-in-service in February 2023. The initial site visit from the state agency must be conducted by December 31, 2025.

Federal Register Notice 2/26/19

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 on site 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 particular 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 HFA must select units and files separately and in a random manner. This means that they generally may not select the same units for inspection as files to review 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.

FR 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.

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The sample size reference chart is below:

Units in Property	Sample	Units in Property	Sample
1	1	28-30	16
2	2	31-35	17
3	3	36-39	18
4	4	40-45	19
5	5	46-51	20
6	6	52-59	21
7	6	60-67	22
8	7	68-78	23
9	8	79-92	24
10	8	93-110	25
11-12	9	111-133	26
13-14	10	134-166	27
15-16	11	167-214	28
17-18	12	215-295	29
19-21	13	296-455	30
22-24	14	456-920	31
25-27	15	921+	32

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, as long as the minimum number is conducted.

FR 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.

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PHYSICAL INSPECTIONS

Tres. Reg. 1.42-5(C)(2)(ii)(B); Form 8823 Guide Chapter 6;24 CFR 5.703

During the affordability period, all 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 National Standards for Physical Inspection of Real Estate (NSPIRE) or local inspection standards in order to verify that tax credit projects are decent, safe, sanitary and in good repair. While the state agency should identify which standard will be used in the qualified allocation plan (QAP), most agencies choose the HUD standard. State HFAs cannot combine selected portions of NSPIRE with portions of local standards. State HFAs are allowed to add state level requirements. These violations would result in a state-level finding, but not an 8823 reportable issue.

On January 13, 2021, HUD published the "Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE)" proposed rule in the Federal Register.

The NSPIRE final rule, published on May 11, 2023, aligns and consolidates HUD's inspection standards and procedures and incorporates provisions of the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act for HUD's rental assistance programs.

In the final rule, 24 CFR Part 5, Subpart G is the focal point of the consolidated requirements for HUD-assisted housing that is decent, safe, sanitary, and in good repair, and will be referenced by other rental assistance regulations. In 24 CFR 5.703, the NSPIRE final rule revises that to mean "functionally adequate, operable, and free of health and safety hazards."

For the Multifamily Housing programs, HUD (or the servicing mortgagee, as applicable) began inspections for all other properties starting October 1, 2023. This new inspection protocol replaced the previous Uniform Physical Condition Standards (UPCS) inspection criteria.

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The NSPIRE final rule defines the inspectable areas for the inspection as inside, outside, and units of HUD housing at:

- Inside
  - Inside of HUD housing (or "inside areas") refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of "inside" common areas may include basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.
- Outside
  - Outside of HUD housing (or "outside areas") refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of "outside" components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, a detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, carports, fire escapes, foundations, lighting, roofs, walls, and windows.

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- Units
  - A unit (or "dwelling unit") of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patios, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows.

Generally, NSPIRE inspections will focus on areas where residents live, areas residents can enter, and components or systems that could impact resident safety and health.

- For example: inspectors should not cite deteriorated paint as a potential lead-based paint hazard in an area that a child under the age of six years would not frequent, such as a locked utility closet. Potential lead-based paint hazards are relevant in units, outside, and common areas, including the main entryway, stairways and hallways, and other common areas frequented by a young child.

The IRS has stated that they do not need to give a formal opinion on if the new NSPIRE inspection criteria is applicable to LIHTC. This seems to be clear to them. As of June 2024, many states have still not implemented NSPIRE criteria into their inspection processes for LIHTC. Some states are taking some time to educate owners and staff on the new process and some states have fully implemented all new inspection standards. You need to check with your state often through the next several months to ensure proper implementation per state guidelines.

If the HUD standard is selected, state HFAs are not required to use the HUD protocol. This means that while some issuers may appear to be 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 HUD inspection.

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Even if the HUD standard is used, a development must also still satisfy local health, safety, and building codes. State HFAs however, are not required to determine by inspection whether the project meets these local standards. Instead, the owner is responsible for certifying that state and local authorities responsible for making inspections did not issue a violation report for any building or project. If violation notices or reports were issued, the owner is required to attach a statement to their annual certification to the state HFA. Note that in some cases, local codes will conflict with the requirements under the HUD standard. 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" vacant units in a reasonable period, as defined by the HFA, will result in a report of noncompliance to the IRS.

Owners should typically have at least one employee available for the onsite physical inspections to accompany the state inspector during the process. Tenants should also be provided adequate notice that an inspection will occur.

HUD Protocol

FR 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 protocol and meets the following requirements:

- Both vacant and occupied units were included
- The inspection complies with HUD inspection requirements
  - Including using the most recent software
- The inspector performed by HUD or a HUD 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 HFA must still, however, conduct a review of tenant files.

Section 3 Form 8823

Housing credit agencies use IRS Form 8823 as part of their compliance monitoring responsibilities under Section 42(m)(1)(B)(iii) to notify the IRS of any building disposition or noncompliance with the low-income housing tax credit provisions.

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 days or 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.

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The IRS processes the Form 8823 forms 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 to the IRS by the HFA.

The IRS immediately evaluates forms received by the HFA and makes a determination whether an audit of the owner's tax return is needed. Remember, there are certain types of noncompliance that cannot be corrected.

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; 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 makes 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.

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FORM 8823

Form **8823** (Rev. December 2019) Department of the Treasury Internal Revenue Service

Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

▶ File a separate Form 8823 for each building that is disposed of or goes out of compliance.
▶ Go to *www.irs.gov/Form8823* for the latest information.

OMB No. 1545-1204

Check here if this is an amended return ▶ ☐

IRS Use Only

1 Building name (if any). Check if line 1 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

2 Building identification number (BIN)

3 Owner's name. Check if line 3 differs from Form 8609 . . ▶ ☐

Street address

City or town, state, and ZIP code

4 **Owner's** taxpayer identification number ☐ EIN ☐ SSN

5 Total credit allocated to this BIN . . . . . ▶ $

6 If this building is part of a multiple building project, enter the number of buildings in the project . . . . . ▶

7a Total number of residential units in this building . . . . . ▶

b Total number of low-income units in this building . . . . . ▶

c Total number of residential units in this building determined to have noncompliance issues (see instructions) . . . . . ▶

d Total number of units reviewed by agency (see instructions) . . . . . ▶

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY) . .

9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY) . . . . . .

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem . . ▶ ☐

11 Check the box(es) that applies:	Out of compliance	Noncompliance corrected
a Household income above income limit upon initial occupancy	☐	☐
b Owner failed to correctly complete or document tenant's annual income recertification	☐	☐
c Violation(s) of the UPCS or local inspection standards including casualty losses (see instructions) (attach explanation)	☐	☐
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	☐	☐
e Changes in Eligible Basis or the Applicable Percentage (see instructions)	☐	☐
f Project failed to meet minimum set-aside requirement (20/50, 40/60, average income test) (see instructions)	☐	☐
g Gross rent(s) exceeds limits	☐	☐
h Project not available to the general public (see instructions) (attach explanation)	☐	☐
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	☐	☐
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	☐	☐
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	☐	☐
l Low-income units occupied by nonqualified full-time students	☐	☐
m Owner did not properly calculate utility allowance	☐	☐
n Owner has failed to respond to agency requests for monitoring reviews	☐	☐
o Low-income units used on a transient basis (attach explanation)	☐	☐
p Building is no longer in compliance nor participating in the section 42 program. (Attach explanation.)	☐	
q Other noncompliance issues (attach explanation)	☐	☐

12 Additional information for any line above. Attach explanation and check box . . . . . ▶ ☐

13a Building disposition by ☐ Sale ☐ Foreclosure ☐ Destruction ☐ Other (attach explanation)

b Date of disposition (MMDDYYYY) . . . . . .

c New owner's name

Street address

City or town, state, and ZIP code

d **New owner's** taxpayer identification number ☐ EIN ☐ SSN

14 Name of contact person

15 Telephone number of contact person Ext.

Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and, to the best of my knowledge and belief, it is true, correct, and complete.

▶ Signature of authorizing official ▶ Print name and title ▶ Date (MMDDYYYY)

For Paperwork Reduction Act Notice, see instructions. Cat. No. 12308D Form **8823** (Rev. 12-2019)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form 8823 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form8823.*

Purpose of Form

Housing credit agencies use Form 8823 as part of their compliance monitoring responsibilities under section 42(m)(1)(B)(iii) to notify the IRS of any building disposition or noncompliance with the low-income housing tax credit provisions.

The housing credit agency should also give a copy of Form 8823 to the owner(s).

Who Must File

Any authorized housing credit agency that becomes aware that a low-income housing building was disposed of or is not in compliance with the provisions of section 42 must file Form 8823.

When To File

File Form 8823 no later than 45 days after (a) the building was disposed of, or (b) the end of the time allowed the building owner to correct the condition(s) that caused noncompliance. For details, see Regulations section 1.42-5(e).

Where To File

File Form 8823 with the:

Department of the Treasury
Internal Revenue Service Center
Philadelphia, PA 19255-0549

Specific Instructions

Amended return. If you are filing an amended return to correct previously reported information, check the box at the top of page 1.

Line 2. Enter the building identification number (BIN) assigned to the building by the housing credit agency as shown on Form 8609.

Lines 3, 4, 13c, and 13d. If there is more than one owner (other than as a member of a pass-through entity), attach a schedule listing the owners, their addresses, and their taxpayer identification numbers. Indicate whether each owner's taxpayer identification number is an employer identification number (EIN) or a social security number (SSN).

Both the EIN and the SSN have nine digits. An EIN has two digits, a hyphen, and seven digits. An SSN has three digits, a hyphen, two digits, a hyphen, and four digits, and is issued only to individuals.

Line 7d. "Reviewed by agency" includes physical inspection of the property, tenant file inspection, or review of documentation submitted by the owner. Regulations section 1.42-5(c)(2)(iii)(B) provides that a housing credit agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units set forth in the table found in Regulations section 1.42-5(c)(2)(iii).

Note: If the only noncompliance issue identified by the physical inspection of the property on line 11c relates to a common area, then the number of units identified on line 7c should be -0-.

Line 8. Enter the date that the building ceased to comply with the low-income housing credit provisions. If there are multiple noncompliance issues, enter the date for the earliest discovered issue. **Do not** complete line 8 for a building disposition. Instead, skip lines 9 through 12, and complete line 13.

Line 9. Enter the date that the noncompliance issue was corrected. If there are multiple issues, enter the date the last correction was made.

Line 10. Do not check this box unless the sole reason for filing the form is to indicate that previously reported noncompliance problems have been corrected.

Lines 11a through 11p. Check only the "Out of compliance" box if the issue causing the noncompliance remains uncorrected at the end of the correction period. Check both the "Out of compliance" and "Noncompliance corrected" boxes if the noncompliance was corrected within the correction period. Check only the "Noncompliance corrected" box if the noncompliance was previously reported to the IRS on a separate Form 8823.

Line 11c. Housing credit agencies must use either (a) the local health, safety, and building codes (or other habitability standards); or (b) the Uniform Physical Condition Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either (a) the deficiency and its severity under the UPCS (that is, minor (level 1), major (level 2), and severe (level 3)); or (b) the health, safety, or building violation under the local codes. The Department of Housing and Urban Development's Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled "Revised Dictionary of Deficiency Definitions" found at *www.hud.gov*. Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection. Physical damage to low-income housing credit projects caused by casualty events and that render 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. While no credit is allowable during the time the property is being restored by reconstruction or replacement, section 42(j)(4)(E) provides relief from the credit recapture provisions; that is, the recapture provisions are not applied when there is a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period.

Line 11d. Report the failure to provide annual certifications or the provision of certifications that are known to be incomplete or inaccurate as required by Regulations section 1.42-5(c). As examples, report a failure by the owner to include a statement summarizing violations (or copies of the violation reports) of local health, safety, or building codes; report an owner who provided inaccurate or incomplete statements concerning corrections of these violations.

Line 11e. For buildings placed in service after July 30, 2008, report any federal grant used to finance any costs that were included in the eligible basis of any building. Report changes in common areas when they become commercial, when fees are charged for facilities, etc. For buildings placed in service after July 30, 2008, report any obligation the interest on which is exempt from tax under section 103 that is or was used (directly or indirectly) with respect to the building or its operation during the compliance period and that was not taken into account when determining eligible basis at the close of the first year of the credit period.

Line 11f. Failure to satisfy the minimum set-aside requirement for the first year of the credit period results in the permanent loss of the entire credit.

Failure to maintain the minimum set-aside requirement for any year after the first year of the credit period results in recapture of previously claimed credit and no allowable credit for that tax year. No low-income housing credit is allowable until the minimum set-aside is restored for a subsequent tax year.

In 2018, Congress revised section 42(g) to add a third minimum set-aside: the average income test. See section 42(g)(1)(C) for more information about the requirements of the average income test.

Line 11h. All units in the building must be for use by the general public (as defined in Regulations section 1.42-9 and further clarified in section 42(g)(9)), including the requirement that no finding of discrimination under the Fair Housing Act occurred for the building. Low-income housing credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C.A. sections 3601 through 3619.

It also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the loss of the low-income housing credit.

Individuals with questions about the accessibility requirements can obtain the Fair Housing Act Design Manual through *www.huduser.org.*

Line 11i. The owner must rent to low-income tenants all comparable units that are available or that subsequently become available in the same building in order to continue treating the over-income unit(s) as a low-income unit. All units affected by a violation of the available unit rule may not be included in qualified basis. When the percentage of low-income units in a building again equals the percentage of low-income units on which the credit is based, the full availability of the credit is restored. Thus, only check the “Noncompliance corrected” box when the percentage of low-income units in the building equals the percentage on which the credit is based.

Line 11k. Section 42(h)(6) requires owners of low-income housing credit properties to enter into an extended use agreement with the state agency that allocated the credits to the project. Building owners must agree to a long-term commitment beginning on the first day of the 15-year compliance period and ending on the later of (1) the date specified by the state agency in the agreement, or (2) the date that is 15 years after the close of the 15-year compliance period.

The extended use agreement must (1) specify that the applicable fraction for the building for each year in the extended use period will not be less than the applicable fraction specified in the extended use agreement and prohibit the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under section 42, (2) allow individuals (whether prospective, present, or former occupants) who meet the income limitations applicable to the building under section 42(g) the right to enforce in state court the requirements and prohibitions under section 42 (h)(6)(B)(i) throughout the extended use period, (3) prohibit the disposition to any person of any portion of the building unless all of the building is disposed of to that person, (4) prohibit the refusal to lease to section 8 voucher holders because of the status of the prospective tenant as such a holder, and (5) provide that the agreement is binding on all successors of the taxpayer. The extended use agreement must be recorded as a restrictive covenant with respect to the property under state law.

Noncompliance should be reported if an extended use agreement is not executed and recorded as a restrictive covenant with respect to the property under state law or the owner failed to correct the noncompliance within the 1-year correction period provided by section 42(h)(6)(J). The 1-year correction period begins when the agency notifies the owner in writing that an extended use agreement is not recorded as a restrictive covenant with respect to the property under state law. A copy of the notification letter should be included as an attachment to Form 8823 when filed with the IRS.

Line 11q. Check this box for noncompliance events other than those listed on lines 11a through 11p. Attach an explanation. For projects with allocations from the nonprofit set-aside under section 42(h)(5), report the lack of material participation by a non-profit organization (that is, regular, continuous, and substantial involvement) that the housing credit agency learns of during the compliance period.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . . 11 hr., 43 min.

Learning about the law or the form . . . . . 1 hr., 35 min.

Preparing and sending the form to the IRS . . . . . 1 hr., 51 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send your comments to *www.irs.gov/FormComments*. Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this address. Instead, see *Where To File,* earlier.

Section 4 Accelerated Credits

IRC §42(j) (3)

Credits in the LIHTC program are claimed over the 10-year credit period but are actually earned over the 15-year federal compliance period. How is this possible if the credit period is only 10 years? The credits the owner has the potential to earn in years 11 to 15 are essential "stacked" on top of the credits the owner earns in years one through 10. In other words, the owner or investor is claiming credits for the last five years of the credit period prior to it actually occurring. These credits are referred to as accelerated credits. This works out to approximately one third of the credits claimed each year during the 10-year credit period actually being earned in years 11 through 15 of the compliance period. The owner must maintain continuous program compliance for the entire 15 years of the federal compliance period in order to claim all of these accelerated credits.

Example: Accelerated Credits

Audit Technique Guide

A tax credit building received a total allocation of tax credits of $300,000. Since the credits for years 11-15 are accelerated, the owner or investor will actually claim $30,000 a year over the 10-year credit period for a total of $300,000 at the end of 10 years. Had the credits instead been claimed over a 15-year period, the owner or investor would have claimed $20,000 a year for 15 years ($300,000/15 years = $20,000). The accelerated portion of the credit is $10,000 a year in this case ($30,000 - $20,000 = $10,000).

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Section 5 Reduction in the Amount of Credit Claimed

When noncompliance is discovered, owners or investors may be unable to claim the entire amount of LIHTCs allocated to the building for one or more years because the IRS may either disallow and/or recapture all or a portion of the allocated tax credits. Recapture/disallowance causes the owner's tax liability to increase because of a loss in tax credits due to noncompliance with program requirements. Or to put it more simply, certain types of noncompliance can mean that the building no longer qualifies to earn all of the credits that were calculated for it.

RECAPTURE

The owner has the potential to lose the accelerated portion of the credit in both in the year the noncompliance occurs and for other years. This is known as recapture; the owner's loss of previously claimed accelerated credit. The owner/investor loses credits proportionate to the percentage of the building that was in noncompliance. In other words, the entire accelerated portion of the credit is not recaptured if the only a portion of the building was found to be in noncompliance. Interest is also assessed for the recaptured amount and may be a substantial amount. The amount of credits that have the potential to be recaptured depends on what year of the federal compliance period the building is in. Since recapture is the method for returning accelerated credits that were claimed, but not actually earned, the amount of the credit that can be recaptured decreases during the last five years of the compliance period as the owner actually provides the housing for which they claimed the accelerated credit.

Recapture occurs for these reasons:

- **Building disposition**
- **Decrease in the qualified basis from one year to the next**
  - Decrease in the applicable fraction
  - Decrease in the eligible basis

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Essentially, when the qualified basis is initially calculated, it is calculated using a certain applicable fraction and a certain eligible basis. When noncompliance occurs, this can reduce either the applicable fraction or eligible basis, which thereby reduces the qualified basis.

Decrease in the applicable fraction: Units that were once qualified LIHTC units are no longer qualified units. A few examples of when this might include:

- Over-income household move in
- Residents are overcharged rent
- Student rule is violated
- Leasing units on a transient basis
- Next Available Unit rule 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/manager units
- Charging for items used to calculate the eligible basis

After the first year of the federal compliance period, all credits are claimed on an annual basis. If the qualified basis is reduced as of the end of the year (December 31st), the amount of the qualified basis for the entire preceding year is subject to recapture. In order words: when mistakes are identified, owners can avoid recapture/disallowance if certain types of noncompliance are corrected before the end of the year.

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DISALLOWANCE

When *disallowance* occurs the non-accelerated, earned portion of the credit is decreased for the year under examination and potentially other years, either in part or in whole. Not all noncompliance results in a decrease of the qualified basis. Disallowance may occur even if there is no decrease in the qualified basis and therefore no recapture. For example, if the nonprofit set aside rules are violated (i.e. a nonprofit is not materially participating in the operation of the project), this would not cause a decrease in qualified basis, but the credit would be disallowed for the period of time the noncompliance occurred and until the noncompliance is corrected. Other examples of when disallowance may occur can be found in the audit technique guide (ATG) for the LIHTC program.

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Example: Recapture and Disallowance

- An owner received a credit allocation of $1,000,000. The owner has the potential to claim $100,000 a year for 10 years.
- In year 1 of the credit period, the owner claimed a partial credit of $72,000 since the building was only in service for part of the year.
- In years 2 through 10, the owner claimed the entire $100,000 credit each year.
- In year 11, the owner claimed the remainder of the first-year credit which was $28,000 ($100,000 allocated credit - $72,000 claimed credit).
- There was noncompliance in year 11 and the owner's tax return was audited.
- The audit resulted in an adjustment proportional to the noncompliance in the amount of $10,000 to the allowable credit for year 11.
- The credit to be recaptured from each prior year (with the exception of year 1) is $10,000 x .333 =$3,330.
  - Note the amount used to calculate the recapture of the accelerated credit varies depending on what year in which the noncompliance occurred. .333 for years 2-11, .265 for year 12, .200 for 13, .133 for 14, and .067 for 15.
- The owner claimed $28,000 of the $100,000 credit (28%) in year 11. 28% of the $10,000 adjustment is made on the year 11 tax return.
- What is recaptured is $3,300 (plus interest) for years 2-10, plus a prorated amount for year 1. What is disallowed for year 11 is $2,800.

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Section 6 Avoiding Noncompliance

The owner is required to correct any noncompliance within a reasonable period of time after the non-compliance is discovered or reasonably should have been discovered. When noncompliance occurs, the credit is disallowed in the year of the noncompliance, and if the qualified basis of a building is less at the close of one tax year than it was at the close of the previous tax year, then the owner is also subject to recapture.

While many types of noncompliance are correctable, not all types of noncompliance are correctable. In some cases, if the noncompliance is corrected within a reasonable period and prior to the end of the taxable year, there is no recapture or disallowance. 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.

For correctable types of noncompliance, issues identified and corrected by the owner prior to being notified of an upcoming compliance review by the state are not reported to the IRS. The IRS considers the date of notification of an upcoming compliance review as what's known as the bright line. For example, if an owner is notified on March 3rd that the state agency will be conducting an onsite visit on March 18th, any noncompliance corrected by the owner prior to the March 3rd notification will not be report by the HFA to the IRS. For this reason, it is critically important to have a quality control system in place to catch errors well in advance of a state agency audit.

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Section 7 Compliance During the Extended Use Period

LIHTC projects with allocations on or after 1990 were required to execute extended use agreements for a minimum of 15 years beyond the federal compliance period. As a result, in year 16, the building goes into the extended use period. Since noncompliance findings during the extended use period are not reported to the IRS, the IRS is no longer involved and cannot recapture or disallow credits. However, for example, if during a compliance review conducted by the state HFA in year 16, it is discovered that there was noncompliance during year 14, tax credits can be recaptured or disallowed for year 14 and other years.

The HFA is responsible for compliance enforcement during the extended use period and will continue to conduct on-site reviews. While tax credits are not subject to recapture or disallowance, noncompliance during the extended use period may seriously impact the owner or investor's ability to be eligible for future allocations of LIHTCs from that state.

Some state agencies modify their compliance procedures during the extended use period. Common modifications include:

- Reduced compliance monitoring fees
- Reduction in the number of units/tenant files reviewed during monitoring visits
- Streamlined reporting requirements

Many ownership entities/partnerships seek to exit the partnership once the federal compliance period of 15 years ends.

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Extended use agreements may be terminated for two specific reasons: foreclosure or release through what is called a *qualified contract*. This is an agreement to purchase an existing LIHTC project that has completed the federal compliance period but is still in the extended use period and operated as an LIHTC project for the remainder of the extended use period. Any time after the beginning of the 14th year of the federal compliance period, the owner of a LIHTC project can request that the state allocating agency locate a buyer willing to acquire the project through a qualified contract and operate it for the remaining extended use period subject to all rent and occupancy requirements. While the request can be made any time after year 14, the qualified contract cannot occur until the completion of year 15. The owner then submits information to the HFA per their requirements, and, once the information is received, a one-year period begins during which the HFA must offer the building for sale to the general public in an attempt to find a buyer.

- If the HFA finds a buyer and the owner accepts them, then the new owner purchases the property and is responsible for maintaining program compliance for the rest of the extended use period.
- If the HFA finds a buyer, but the owner rejects the qualified contract, then the owner remains responsible for compliance for the rest of the extended use period.
- If the HFA is unable to find a buyer during the one-year period, the extended use period is terminated effective the date that the one-year period ends. Existing tenants are protected in this situation for three years from the date of termination.

Treas. Reg. §1.42.18

Owners cannot evict or terminate the tenancy (other than for good cause) of existing low-income tenants or increase the gross rent for their units in a manner or amount not otherwise permitted under the program for three years after the termination of an extended use agreement.

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RESYNDICATION

Resyndication occurs when an existing LIHTC building receives another allocation of tax credits after the building has completed the initial 15 year federal compliance period. Buildings may not receive a second allocation of credits during the federal compliance period. Resyndication occurs during the extended use period.

There are several issues to consider for buildings undergoing resyndication. Income and rent limits may change since the project's rent limits will correspond with the new date of allocation and income limits will correspond with the new placed-in-service date. Since the building will receive a new allocation of credits, the rent and income limits may have to be lowered. If existing households are over-income when the second round of credits is allocated, they are grandfathered in as long as they were previously income-qualified when they first moved in. In other words, those units will generate credits for the resyndication. Note that this protection does not apply to full-time student households who must meet student eligibility requirements. Existing households who were previously income-qualified typically are not required to undergo a full income certification at the time of acquisition. Typically, the owner may use the original move-in files, although the owner may recertify the family, particularly when move in files are old or incomplete. Check with your state agency for specific certification requirements for existing residents.

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Section 8 Chapter 4 Post-Test

1. How often must a state agency perform an inspection of each LIHTC project?
   a. Annually
   b. Semi-annually
   c. At least once every three years
   d. Only upon completion of the project
2. If noncompliance is discovered by the state agency in year 17 (and the noncompliance occurred in year 17):
   a. It is reported to the IRS on Form 8823
   b. Recapture of previously claimed credits may occur
   c. Nothing happens
   d. The state may enforce remedies against the owner
3. During the extended use period, the state allocating agency no longer monitors compliance.
   a. True
   b. False
4. Fill in the missing terms:
   a. When the owner/investor loses credits proportionate to the percentage of the building that was in noncompliance for that year and/or previous years

      _____

   b. When the owner/investor loses the nonaccelerated, earned portion of the credit for that year and future years

      _____

   c. Credits taken during the first 10 years of the credit period that are actually earned in years 11 through 15

      _____

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5. List the two main reasons tax credits may be recaptured during the federal compliance period:

_____

_____

6. Define bright line:

_____

_____

_____

_____

7. Form 8823s are issued by the state agency during the federal compliance period for any noncompliance with either federal or state-specific requirements.
   a. True
   b. False
8. Who determines the inspection standards used in the LIHTC program?
   a. The owner
   b. The PHA
   c. The IRS
   d. The state HFA
9. If the state HFA uses NSPIRE as the inspection standard for LIHTC, severity levels for all deficiencies identified will be noted in order to determine the level of noncompliance.
   a. True
   b. False

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10. HFAs will inspect vacant units during their onsite review and could file an 8823 if the unit is found to not be rent-ready within a reasonable timeframe.
    a. True
    b. False
11. If a state or local authority responsible for conducting inspections issues a violation report to the owner, the owner must submit the report to the HFA.
    a. True
    b. False
12. In year 3 of the credit period, a portion of the community room in a tax credit property is converted into a doctor's office. The doctor is not charged rent to use the space and serves at no charge only the residents of the property. Tax credit consequences are:
    a. A decrease in eligible basis and possible recapture
    b. A decrease in qualified basis and possible recapture
    c. No tax credit consequences
    d. An increase in eligible basis and more available tax credit
13. During the 5th year of a building's credit period, an ineligible household moves into a unit. The household occupies the unit for two months before the property manager discovers the error and corrects it within the same tax year. The error is discovered and corrected prior to any state agency review. There are no over-income households in the building. Will an 8823 be filed?
    a. Yes
    b. No

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14. Under which of the following circumstances would an existing household in a project receiving a second allocation of credits (resyndication) not be eligible?
    a. They have lived in the project for less than one year
    b. Their income qualified when they moved in but exceeds the current qualifying income limit
    c. Their income qualified when they moved in but exceeds 140% of the current income limit
    d. The household's student status does not currently meet one of the student exceptions

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Notes

CHAPTER 5 Earning Credits During the First Year

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

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

- Explain the basic components of acq/rehab projects
- Identify how tax credits are earned for new construction/substantially rehabilitated projects during the first year of the credit period
- Describe the basics of 2/3 credits
- Identify how tax credits are earned for acq/rehab projects
- Describe how to qualify in-place residents in an acq/rehab project

OVERVIEW

As discussed in Chapter 2, LIHTCs can be used for new construction, acquisition or rehabilitation of affordable rental housing. Each affordable rental housing property is unique and, it's important to understand how to earn credits and qualify residents during the first year of the credit period. The way the owner/investor earns credits during the first year of the credit period differs depending on the type of activity for which the credits are used — acq/rehab projects generate credits differently than a new construction project or a project undergoing rehabilitation without acquisition. Regardless of the type of activity, however, the first year of the credit period can make or break a project. Remember, buildings must meet their minimum set aside and applicable fraction during the first year of the credit period. This chapter will discuss how credits are earned during this crucial time.

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Section 2 New Construction and Substantial Rehabilitation

Notice 88-116

In order to understand how credits are generated in the first year, we need to review concepts that were discussed in Chapter 2. Earlier we defined the placed-in-service date for a new construction/substantially rehabilitated building as the date on which the building is ready and available for its specifically assigned function — typically the date certificates of occupancy are issued by a local authority. For other rehabilitation activities, the building is placed-in-service when a minimum expenditure test has been met as well as any other requirements of the state agency.

Of course, just because a building is ready to be used as low-income housing, doesn't mean that the owner/investor can begin the credit period. In order for a unit to generate credits, the following must occur:

- The unit must be in-service a full calendar month; and
- The unit must be occupied by a LIHTC-qualified family paying a restricted rent as of the last day of the month.

Further, in Chapter 3 we discussed the concept of applicable fraction, which is a building-by-building calculation that measures the lower of the square footage or number of LIHTC units to determine the total number of low-income units in a building. One of the goals of first year lease up is to meet the building's applicable fraction no later than the end of the first year of the credit period.

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EARNING FIRST YEAR CREDITS

IRC §42 (f)(2)

Tax credits in new construction/substantially rehabilitated building are earned differently in the first year than in any other year of the credit period. In all other years, tax credits are earned on an annual basis. In the first year, however, they may be earned on a monthly basis. This is because, once a project is placed-in-service and eligible to start generating credits, leasing up units with LIHTC-qualified families is typically a gradual process. Because of this, the building typically does not meet its applicable fraction right away and will earn credits on a monthly basis as individual units are qualified. As more units are leased to qualified families, the building's applicable fraction increases. This is known as the monthly weighted average applicable fraction. This means that if the owner/investor will begin the credit period the same year the building is placed-in-service, they will only receive a partial amount of the potential credits that could be earned during the first year since the building's applicable fraction will only be met gradually. The good news is that the IRS knows that buildings typically won't immediately meet their applicable fraction, and assuming the building remains in continuous program compliance, the owner/investor will receive the difference between the first year's partial amount of credits and the entire allocated credit for the first year in year eleven of the credit period. By receiving a partial first year credit and the deferred year-11 credit, the owner eventually receives the entire allocated credit. Note that the building must be fully qualified by the end of the first year of the credit period in order for this to happen.

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Example: First Year Credits

A new construction building was placed-in-service on April 1, 2025. The first eligible family moved into the building on April 27, 2025. Families gradually continued moving into units in May, June, July, and August. By September, all units were leased to LIHTC-eligible families paying a restricted rent.

Since the building was placed-in-service in April, no credits were earned for January through March. Since the building was placed-in-service on April 1, and there was a qualified family in a unit as of the last day of April, the owner/investor began earning credits in April. Credits were earned based on the building's actual applicable fractions for May through August as units were filled. The owner/investor began claiming the full allocated credit amount starting in September when the targeted applicable fraction was met. This continued through the end of the year. The difference between the credits the owner/investor actually earned in April through August and the building's targeted applicable fraction will be earned in year 11.

2/3 Credits

IRC §42 (f)(3)

As discussed in Chapter 2, both the minimum set aside (MSA) and applicable fraction must be met by December 31st of the first year of the credit period. Failure to meet the MSA by this deadline means the project is disqualified from being a tax credit project and no credits are ever earned. But what happens if a project meets its MSA but a building fails to meet its applicable fraction? Failure to meet a building's applicable fraction and qualifying units after the first year of the credit period results in the owner/investor receiving what are known as 2/3 credits. While this is not as dire as not meeting the MSA, failure to meet the applicable fraction is not great news for owners/investors.

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In this situation, for the units that are qualified during year one, the owner/investor will not be able to claim the deferred year-11 credits. For that year the owner/investor only earns credits based on the actual monthly weighted applicable fraction. For example, if 20 units are supposed to be qualified by the end of the first year of the credit period, but only eight are qualified as of the end of the first year of the credit period, the owner/investor would earn the credits generated by those eight qualified units and no credits on the remaining 12 units.

For units that were not qualified during the first year of the credit period but were subsequently qualified in a later year, two things happen:

- First, these units will generate 2/3 of the amount of annual credit they would have generated had they been qualified at the end of the first year of the credit period. These units will continue to generate 2/3 of the annual credit for the entire credit period.
- Second, the owner/investor loses the ability to claim accelerated credits on these units. Instead, the owner/investor will claim an annual 2/3 credit on those units — through year 15. Accelerated credits can still be claimed on units that were qualified at the end of the first.

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Example: 2/3 Credits

- Holly Hill is a 100% LIHTC project consisting of one building with 10 LIHTC units.
- Each unit will generate $5,000 in tax credits if qualified during the first year of the credit period.
- The owner/investor expects 10 units x $5,000 = $50,000 in year one.
- The owner/investor expects a total of $500,000 in tax credits ($50,000 x 10 years).
- The owner qualifies 4 units the year Holly Hill is placed-in-service. Because of this the owner defers the credit period for a year.
- The owner qualifies 2 more units the next year. The credit period may not be deferred again. The owner only has 6 units qualified by the end of the first year of the credit period.
- The owner qualifies the remaining 4 units during the second year of the credit period.
- The building will not produce $500,000 in tax credits over the credit period. Instead:
  - Year One: 6 units x $5,000 = $30,000 in tax credits in year one.
  - Year Two: (6 units x $5,000 = $30,000) + (4 units x $3,333 ($5,000 x 2/3) = $13,332) = $43,332 in year two.
  - Years 2 - 10: $43,332
  - Years 11 - 15: Credits for the 4 units that were placed in service are not accelerated. Owner earns $3,333 each year.
  - $30,000 for year one + $389,988 for years 2 to 10 ($43,332 x 9 years) + $16,665 for years 11 to 15 ($3,333 x 5 years) = $436,653

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CORRECTING NONCOMPLIANCE AFTER YEAR 1

After the first year of the credit period, credits are claimed on an annual basis in order to avoid credit disallowance, and all buildings/units must be in compliance no later than December 31 at the end of each year. If the qualified basis is reduced as of the end of the year (December 31), the entire previous year is subject to recapture and/or disallowance, depending on when it was discovered.

- Bottom Line: Correct noncompliance before December 31, starting in Year 2 of the credit period.

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Section 3 Conducting Acq/Rehab

In an acquisition/rehabilitation (acq/rehab), the owner purchases an existing rental property and then rehabilitates it. Typically, the owner is purchasing existing rental housing in which residents are already living and then qualifying those residents as eligible for the LIHTC program. Although this is not always the case, this chapter will focus on acq/rehab in this type of property since properties that are not rental housing at the time of acquisition are leased up like new construction buildings. In acq/rehab properties there are two separate streams of tax credits with two separate placed-in-service dates—one for the acquisition and one for the rehabilitation. However, placed-in-service dates are issued by building not by unit.

Placed-In-Service Dates

A building is considered to be placed-in-service when it is ready for its intended purpose. In an acq/rehab project, this occurs at two different times:

- Since existing rental housing buildings are generally occupied when they are acquired are ready for their intended purpose when they are purchased, the placed-in-service date for the acquisition is the date the deed for the building is transferred to the new owner.
- The placed-in-service for the rehabilitation does not directly correlate to occupancy or even the completion of the rehab, however. Instead, there is an expenditure test to determine the year credits can be claimed. Rehab credits can be placed-in-service at the close of any 24-month period over which minimum rehab expenditures are made.

See chapter 2 for a more detailed discussion of placed-in-service dates.

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EARNING CREDITS

Even though there are two separate allocations of credits, both sets of credits are typically earned at the same time — after the rehabilitation is completed. Units must, of course, also be occupied by eligible residents who are either existing residents who have been determined eligible or new eligible residents who have moved into the project. In other words, credits in acq/rehab projects are not earned until after eligible families are qualified and the rehab is completed and placed-in-service. However, credits may be claimed retroactively back to the date of acquisition in certain circumstances, as described below.

Finally, as discussed in Chapter 2, remember that in order to start generating credits, a unit must be:

- In service a full calendar month and
- Occupied by a qualified family paying a restricted rent as of the last day of the month

REHAB COMPLETED SAME YEAR AS ACQUISITION

A unit may begin to claim credit retroactively to the acquisition date if:

- Existing in-place residents are determined LIHTC-eligible within 120 days of the date of acquisition; and
- The rehab was completed within the same year as the acquisition

If rehab is completed in the same year the building is acquired, credits may be claimed as of the date of acquisition, not the date the rehab is actually completed.

Example: Acq and Rehab PIS Same Year

- Acquisition placed in service April 20, 2024.
- Rehab placed in service November 16, 2024.
- All existing residents are certified within 120 days of the date of acquisition and are paying a restricted rent. Initial TICs are effective April 20, 2024.
- Credits may begin to be generated retroactively to the date of acquisition for any household certified within 120 days of this date.

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The owner has a window in which to qualify in-place families as LIHTC eligible from 120 days prior to the date of acquisition to 120 days after the date of acquisition.

Note: Although the IRS allows residents to be certified within a 240-day window, verifications still need to be dated within 120 days of the signature date on the TIC.

If the owner qualifies families during this time, the family is paying a restricted rent, and the unit is suitable for occupancy, the effective date of the family's initial certification is the placed-in-service-date of the acquisition, not the date the certification was actually completed or signed.

Example: TIC Effective Date

- Acquisition placed-in-service date: July 27, 2025
- Household initial LIHTC certification is completed and signed September 22, 2025 (which is within 120 days of July 27)
- TIC is effective July 27, 2025
- Credits can begin being claimed as of the date of acquisition if rehab is completed by 12/31/25

As discussed above, this is good news — because, if the owner certifies the family within this 120-day window, the owner will be able to generate credits back to acquisition date. Further, since the resident was certified as eligible as of the date of acquisition, if the resident later experiences an increase in income prior to the start of the credit period, they remain eligible for the program, although some state allocating agencies require a safe harbor test be conducted (see discussion below).

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If existing residents were determined eligible more than 120 days before or after the date of the acquisition, residents must be treated as new move-ins, and credits may not be generated retroactively to the acquisition date. Instead, credits are generated as of the date the resident is certified as LIHTC-eligible (the date the last adult household member signed the TIC).

Example: TIC Effective Date

- Acquisition placed-in-service date: July 27, 2024
- Household initial LIHTC certification is completed and signed December 1, 2024 (which is over 120 days after July 27)
- TIC is effective December 1, 2024

Because of this, 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. Since there may be unexpected delays in acquisition, it is advisable to start the process about 60 days prior to the expected date of acquisition.

Rehab is Completed Year After Acquisition

Assuming the owner wants to take advantage of the "tack-back" rule, when rehab is completed the year following the acquisition, the owner needs to make sure to qualify residents by January of the year rehab will be completed. Check with your state agency and owner/investor about when to start qualifying residents in this situation as the owner has two different options for when residents could potentially be qualified:

- Option A: Some state agencies/owners/investors state certifications may not begin until 120 days prior to the "tack-back" date of January 1. If this is the case, and certifications are completed outside of 120-day window prior to the date of acquisition, the effective date of the TIC would be the date the last family member signs the TIC.

- Option B: Some state agencies/owners/investors state the owner should qualify residents within 120 days prior to the date of acquisition even though credits will not be generated back to the date of acquisition and then perform a safe harbor test within 120-days of the beginning of the credit period (January 1). The benefit of performing a certification during this timeframe is that it protects existing families who experience an increase in income after they are certified as eligible but prior to the start of the credit period provided the safe harbor test is applied.

Example 1

- Acquisition placed in service October 20, 2024.
- Rehab placed in service November 16, 2025.
- All existing residents are certified by January 1, 2025, and are paying a restricted rent.
- Credits may begin to be generated retroactively to January 1, 2025, for any household certified by this date (the "tack-back" date).

Example 2

- Acquisition placed in service October 1, 2024.
- Rehab placed in service November 1, 2025.
- All existing residents are certified within 120 days of October 1, 2024, and are paying a restricted rent.
- Credits may be generated retroactively to January 1, 2025, for any household certified by this date (the "tack-back" date).
- Safe harbor test may be required.

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SAFE HARBOR

IRS Revenue Procedure 2003-82

The safe harbor test applies in situations where households were qualified more than 120 prior to the start of a January 1 credit period (see Option B above). The safe harbor test does not apply in situations where the effective date of the initial TIC is 120 days or less before January 1 of the first year of the credit period (see Option A above).

The purpose of the test is to check to see if residents' income has increased since their original certification for purposes of the next available unit rule. Safe harbor allows households to remain income eligible in situations where their income has increased between the time they were certified as LIHTC-eligible and the start of the credit period.

While not all state allocating agencies require this type of certification, this safe harbor certification is generally completed by the owner and the resident 120-days prior to the start of the credit period and certifies that the in-place resident was LIHTC-qualified as of the acquisition date. Residents typically self-certify that their income has not changed since they were initially qualified.

If the resident's income has changed, however, most states require third-party verification of the resident's new income and an updated TIC. Check your state allocating agency's compliance manual for state-specific guidance and any required forms.

If this increase income has caused the resident to become over income (income above 140% of the applicable income limit or 170% in deep rent skewed projects), the resident remains LIHTC-eligible, however, the next available unit rule must be followed (see Chapter 9).

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Note, safe harbor only protects income eligibility. Households must remain eligible regarding their student status during the entire compliance period.

Example: Safe Harbor

- An owner purchases a building on April 13, 2024.
- The owner certifies existing resident Marquita Mars as income eligible on March 15, 2024, and the effective date of her TIC is April 13, 2024.
- Construction begins in May 2024 and is completed in May 2025.
- The owner starts taking credits retroactive to January 1, 2025, since the rehab was completed in a different year than the acquisition.
- Marquita unexpectedly starts a new job on November 15, 2024, and her income increases significantly.
- The owner performs a safe harbor certification for Marquita on December 1, 2024, and Marquita self-certifies that she started a new job on November 15, 2024. Although her income is now over the income limit in place at the time of acquisition, she remains eligible for the program, although the next available unit rule must be applied (if applicable).

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Section 4 Resident Relocation

During rehabilitation, residents may be relocated either on site or off site. In either case, if a unit that was previously qualified is offline for rehab, the unit does not produce tax credits when it is taken out of service for the rehab. The unit cannot begin to generate credits again until it is again suitable for occupancy and occupied by a LIHTC-qualified family, paying a restricted rent. For this reason, owners should track unit transfers very carefully during the first year of the credit period.

Off-Site Relocation

For off-site relocations, the project may be subject to the requirements of the Uniform Relocation Act (URA) which provides rules regarding both temporary and permanent relocation, including rules about how long residents may be out of their apartments temporarily, the quality of the temporary housing, etc. If permanent relocation is required (displacement), significant compensation is owed to the residents.

Note: Make sure to check with your state compliance manual for state-specific guidance on how long residents can be relocated offsite temporarily. Industry practice and informal guidance from the IRS states that when offsite relocation lasts for 6 months or more, a resident that was formerly LIHTC-qualified may need to be recertified as a new LIHTC-eligible household.

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ONSITE RELOCATION

When LIHTC-qualified residents are relocated onsite, they can either move temporarily to another unit while their original unit is being rehabilitated or permanently moved to another unit that has already been rehabilitated. When the resident moves to another unit in the same project temporarily, the resident does not need to be re-certified as LIHTC-qualified. When the resident permanently moves to another unit, the owner needs to consider whether the move is within the same project or outside of the project (as defined on line 8b of the IRS Form 8609):

- If the relocation is within the same project, the LIHTC-qualified resident does not need to recertify, the units swap status, and the TIC and lease status is transferred with the resident to the new unit. These relocations are essentially considered transfers where the resident's TIC and lease move with them within the project. The only exception to this is if a resident was determined LIHTC-eligible but is over-income at the time of relocation, the resident cannot move between buildings within the same project. This will be discussed in a later chapter.
- If the relocation occurs between projects, the LIHTC-qualified resident is considered a new move-in, and the resident must requalify as LIHTC-eligible in the new unit with a new full certification.

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Example: Putting it All Together

Project Information

Willow Run is a 20-unit acq/rehab project consisting of one building undergoing a rolling rehab. The acquisition was placed in service on 2/1/24. The rehab was completed on 12/1/24.

Unit Information

- Unit 101
  - Marquis Williams lives in Unit 101. He is certified as LIHTC eligible on 1/15/24.
  - Marquis is moved from unit 101 to unit 201 on 5/1/2024
  - Unit 101 was rehabilitated from May through July.
  - Unit 101 is suitable for occupancy on 7/31/2024.
  - Unit 101 is vacant in August.
  - On 9/1/24 the owner permanently relocates the Howard family from unit 301 to unit 101. Since they are moving within the same project, a new certification is not required, however an updated TIC with the new unit number will need to generated
- Unit 201
  - Unit 201 was empty in January.
  - Unit 201 was rehabilitated from February through April.
  - Unit 201 was suitable for occupancy on 4/30/24.
  - On 5/1/24 the owner permanently relocates Mr. Williams from Unit 101 to Unit 201. Since he is moving within the same project, a new certification is not required however an updated TIC with the new unit number will need to generated
- Unit 301
  - The Howard family lives in Unit 301. They are certified as LIHTC eligible on 1/10/24.
  - On 9/1/24 the owner permanently relocates the Howard family from unit 301 to unit 101.
  - Unit 301 was rehabilitated from September through November.
  - Unit 301 was suitable for occupancy 11/30/24.
  - The Smith family moves in on 12/5/24. Since the family is a new move-in, the owner completes a full certification.

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<table>
<tr><th></th><th>January</th><th>February</th><th>March - Apr</th><th>May - July</th><th>August</th><th colspan="2">Sept - Dec</th></tr>
<tr><td rowspan="2">Unit 101</td><td>1/15: Mr. Williams certified as LIHTC eligible</td><td colspan="2">2/1: Date of acquisition
Occupied by Mr. Williams</td><td>5/1 – 7/30: Rehab</td><td></td><td colspan="2">9/1: Occupied by Howard family</td></tr>
<tr><td>No credits</td><td colspan="2">3 mo. credits</td><td>No credits</td><td></td><td colspan="2">4 mo. credits</td></tr>
<tr><td rowspan="2">Unit 201</td><td>Empty</td><td colspan="2">2/1: Date of acquisition
2/1 – 4/30: Rehab</td><td colspan="4">5/1: Occupied by Mr. Williams</td></tr>
<tr><td>No credits</td><td colspan="2">No credits</td><td colspan="4">8 mo. credits</td></tr>
<tr><td rowspan="2">Unit 301</td><td>1/10: Howard family certified as LIHTC eligible</td><td colspan="5">2/1: Date of acquisition
Occupied by Howard family</td><td>9/1-11/30: Rehab</td><td>12/5: Smith family moves in</td></tr>
<tr><td>No credits</td><td colspan="5">7 mo. credits</td><td>No credits</td><td>1 month</td></tr>
</table>

Section 5 Acq/Rehab Other Considerations

RESIDENTS THAT DO NOT QUALIFY FOR LIHTC

It is likely that during the process of qualifying in-place residents for LIHTC eligibility, some residents will not qualify for a variety of reasons. The most common reasons include in-place residents being over the LIHTC income limit or not meeting the LIHTC student status requirements.

This can be especially tricky for RAD conversions to PBRA or PBV or existing low income housing (i.e. USDA Rural Development) since residents have an absolute right to return to the project and do not have their program eligibility redetermined for any of these programs.

Owners should evaluate in-place residents' income and student status early in the LIHTC-application process and have a plan for any in-place resident that will not/does not qualify for the LIHTC program, especially for projects that are 100 percent LIHTC.

OTHER FUNDING SOURCES

Acq/rehab is becoming more and more common as a component of many PHAs' strategies to reposition existing public housing. LIHTCs are often used to rehabilitate existing properties which are moved from the public housing platform to long-term Section 8 through programs like the RAD program, demolition/disposition (demo/dispo), and voluntary conversions. This process can be confusing for staff since, although the ownership of the building is transferred as part of the acquisition, the building is still typically operated by PHA staff (either wholly or in partnership with a management company), and the PHA or an ownership entity created by the PHA maintain an interest in the building. For example, in RAD conversions with LIHTCs, the PHA must maintain an interest in the property and is typically either a controlling member of the ownership entity (typically an LLC) or maintains a long-term ground lease.

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Section 6 Chapter 5 Post Test

1. Owners have _____ days prior to and after the date of acquisition to qualify in-place families as LIHTC-eligible in order to claim LIHTC back to the acquisition date.
   a. 240
   b. 60
   c. 90
   d. 120

Use this information to answer questions #2 and #3:

Redwood Court Apartments

- Acquisition placed-in-service date: 5/3/2023
- Rehab placed-in-service date: 11/25/2024

2. Ms. Hall was determined LIHTC-eligible for a unit at Redwood Court Apartments and certified eligible as of 6/5/2023, what is the earliest date credits can be claimed for her unit?
   a. 5/3/2023
   b. 6/5/2023
   c. 1/1/2024
   d. 1/1/2023
3. After being determined LIHTC-eligible on 6/5/23, Ms. Hall experienced an unanticipated increase in her annual gross income in December 2023 that put her over the LIHTC income limit. What action(s) should the owner take?
   a. If the state agency requires, perform a safe-harbor test within 120-days of 1/1/2024
   b. If the state agency requires, perform a safe harbor test within 120-days of 1/1/2023
   c. Evict Ms. Hall due to being over the income-limit
   d. Move Ms. Hall to a market unit

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Use this information to answer questions #4 and #5:

Callaway Court Apartments

- Acquisition placed-in-service date: 2/18/25
- Rehab placed-in-service date: 9/5/25

4. If an existing resident is qualified within 120 days of the date of acquisition, when may credits be claimed on their unit?
   a. 2/1/25
   b. 2/18/25
   c. 9/5/25
   d. 1/1/26
5. An in-place resident is qualified as LIHTC-eligible and signs a TIC on 2/1/25. What is the effective date of their TIC?
   a. 2/1/25
   b. 2/18/25
   c. 9/5/25
   d. 1/1/26

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Notes

CHAPTER 6 Eligibility

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

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

- Define the student rule for the LIHTC program
- Apply the appropriate income limit depending on the case
- Identify the correct household size as it applies to determining which income limit to use
- List and define the different types of household members

OVERVIEW

Managing eligibility in a tax credit project is a critical component in maintaining the credits themselves. Making certain that families are income eligible and program eligible ensures that income set-asides and the applicable fraction are met. This is critical because noncompliance with regard to eligibility may lead to a recapture or disallowance of credits.

Unlike in many HUD programs, the LIHTC program has no requirements to verify the citizenship status or social security number of any family member. Nor are there any requirements to deny applicants based on certain types of criminal activity. LIHTC units with combined funding should follow any more restrictive requirements imposed by other programs.

Further, the IRS has no requirement for maintaining written waiting lists in the LIHTC program, although it is an advisable practice. Waiting lists may be maintained by bedroom size or by other factors depending on whether the property receives HUD subsidy. If LIHTC units are combined with funding sources which require a waiting list, always follow the more restrictive requirements. There are also no IRS requirements for notifying rejected applicants, purging the waiting list or allowing applicants to appeal denial decisions.

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While owners are also not required to adopt a written tenant selection plan in the LIHTC program, 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 or waiting list is required in your state, as many states commonly require this.

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.

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Section 2 Student Status

The student rule for the LIHTC program is altogether different than the student rule for HUD programs. The LIHTC student rule states that units comprised entirely of full-time students do not qualify as LIHTC units. In order to understand how to apply the student rule in the LIHTC program, it's important to know the IRS definition of a student.

- **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 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.
- 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.

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The following categories are exemptions to the LIHTC student rule:

- 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 Trainer Note: The IRS code states that a joint income tax return must have been filed in order to meet the exemption category. A newly married couple that has not yet filed also meets the exemption, but a couple that is not newly married and has not filed jointly does not meet the exemption.
    - 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 exception 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.

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For example, a household consists of Glenn Garcia (age 20), his cousin Melissa Garcia (age 27). All household members are full-time students at qualifying educational institutions. Everyone in the household is a full-time student, so the household is potentially ineligible. However, let's say Melissa was formerly in foster care. The entire household is eligible under the LIHTC student rule since Melissa meets one of the exemption categories listed above. Even if Glenn does not meet any of the exemption criteria outlined above, the household remains eligible because Melissa does. Only one student household member need meet the exemption criteria.

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Learning Activity 6-1: LIHTC Student Rule

Rebecca Tan moves into a LIHTC unit in June 2025. Rebecca is the only occupant of the unit. She attended a qualifying educational organization full-time from January 1 through February 22, 2025 She later returned to the qualifying education organization full time from September 2025 through December 2025.

1. Is this LIHTC unit in compliance?

_____

_____

2. What if she only returned again September 1, 2025 through November 15, 2025?

_____

_____

Mark Spelman and Peter Assad, two students attending college full-time and working part-time share an 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 household eligible under the student rule?

_____

_____

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Certification of Student Status- LIHTC

Head of Household Name:	**Unit Number:**

Students include individuals attending public or private elementary schools, middle or junior high schools, senior high schools, colleges, universities, technical, trade or mechanical schools***. A full-time student is defined as an individual, who during each of five calendar months during a calendar year, is a full-time student at an educational institution.***

Please choose **one** option below that best describes **your household:**

☐	The household contains **no** occupants who are students (full-time or part-time). ***(no one has been or will be a student at all in the current calendar year)***
☐	The household contains **at least one occupant who is not a student** and has not been and will not be a student for **in** the current calendar year.
	List non-student(s) here:
☐	The household contains **all students**, but some are **full-time,** and some are **part-time** students. Verification of part-time status is required.
	List household members and their student status here:
☐	**Name of Student: _____** For each student that **has been or will be** a student in the **current calendar year**, please answer the following section. Please note that any part of any month must be noted. (FT= Full Time student, PT=Part time student NO= not a student at any time in that month) Attach additional forms if needed for additional household members. **Use additional sheet attached only if more than one student.**

January	**FT**	**PT**	**NO**	**May**	**FT**	**PT**	**NO**	**September**	**FT**	**PT**	**NO**
February	**FT**	**PT**	**NO**	**June**	**FT**	**PT**	**NO**	**October**	**FT**	**PT**	**NO**
March	**FT**	**PT**	**NO**	**July**	**FT**	**PT**	**NO**	**November**	**FT**	**PT**	**NO**
April	**FT**	**PT**	**NO**	**August**	**FT**	**PT**	**NO**	**December**	**FT**	**PT**	**NO**

If the household is comprised entirely of full-time students, please answer the section below, otherwise skip this section:

	Yes	No
Are the students married and entitled to file a joint tax return? (attach an affidavit or tax return)		
Is the student a single parent with child(ren), and not a dependent of someone else, and the child(ren) is/are not dependent(s) of someone other than the parent(s)?		
Is at least one student receiving Temporary Assistance to Needy Families (TANF)?		
Does at least one student participate in a program receiving assistance under the Job Training Partnership Act, Workforce Investment Act, or under other similar federal, state, or local laws? (attach verification of participation)		
Does the household consist of at least one student who was previously under foster care? (provide verification of participation)		

Under penalties of perjury, I/we certify that the information presented in this certification is true and accurate to the best of my/our knowledge and belief. I/we agree to notify management immediately of any changes in this household's student status. I/we understand that providing false representations constitute an act of fraud. False, misleading, or incomplete information may result in the termination of the lease agreement. **This form must be signed by each household member age 18 and older.**

Resident Signature Date

Resident Signature Date

Resident Signature Date

Resident Signature Date

Revised 02/16/24

Supplemental Sheet for Additional Students

(Use only if more than one student in the household)

☐ **Name of Student: _____**

For each student that has been or will be a student in the **current calendar year**, please answer the following section. Please note that any part of any month must be noted. (FT= Full Time student, PT=Part time student NO= not a student at any time in that month) Attach additional forms if needed for additional household members. **Use additional sheet if more than one student.**

January	**FT**	**PT**	**NO**	**May**	**FT**	**PT**	**NO**	**September**	**FT**	**PT**	**NO**
February	**FT**	**PT**	**NO**	**June**	**FT**	**PT**	**NO**	**October**	**FT**	**PT**	**NO**
March	**FT**	**PT**	**NO**	**July**	**FT**	**PT**	**NO**	**November**	**FT**	**PT**	**NO**
April	**FT**	**PT**	**NO**	**August**	**FT**	**PT**	**NO**	**December**	**FT**	**PT**	**NO**

☐ **Name of Student: _____**

For each student that has been or will be a student in the **current calendar year**, please answer the following section. Please note that any part of any month must be noted. (FT= Full Time student, PT=Part time student NO= not a student at any time in that month) Attach additional forms if needed for additional household members. **Use additional sheet if more than one student.**

January	**FT**	**PT**	**NO**	**May**	**FT**	**PT**	**NO**	**September**	**FT**	**PT**	**NO**
February	**FT**	**PT**	**NO**	**June**	**FT**	**PT**	**NO**	**October**	**FT**	**PT**	**NO**
March	**FT**	**PT**	**NO**	**July**	**FT**	**PT**	**NO**	**November**	**FT**	**PT**	**NO**
April	**FT**	**PT**	**NO**	**August**	**FT**	**PT**	**NO**	**December**	**FT**	**PT**	**NO**

☐ **Name of Student: _____**

For each student that has been or will be a student in the **current calendar year**, please answer the following section. Please note that any part of any month must be noted. (FT= Full Time student, PT=Part time student NO= not a student at any time in that month) Attach additional forms if needed for additional household members. **Use additional sheet if more than one student.**

January	**FT**	**PT**	**NO**	**May**	**FT**	**PT**	**NO**	**September**	**FT**	**PT**	**NO**
February	**FT**	**PT**	**NO**	**June**	**FT**	**PT**	**NO**	**October**	**FT**	**PT**	**NO**
March	**FT**	**PT**	**NO**	**July**	**FT**	**PT**	**NO**	**November**	**FT**	**PT**	**NO**
April	**FT**	**PT**	**NO**	**August**	**FT**	**PT**	**NO**	**December**	**FT**	**PT**	**NO**

Revised 02/16/24

Section 3 Screening for Suitability

The IRS does not require owners to adopt written tenant selection procedures. Further, the code does not identify any mandatory denial criteria owners must apply to their eligibility screenings like in many HUD programs. However, it is suggested that owners adopt written tenant selection policies that outline the eligibility and suitability criteria they will apply when screening applicants for occupancy.

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

Gender Identity, Sexual Orientation, and Marital Status Issues

Executive Order 13988 was issued January 20, 2021. It is a federal mandate that now extends the prohibition of discrimination on the basis of sex to also apply to sexual orientation and gender identity. This Executive Order applies to federal agencies, including HUD and IRS.

What this means from a practical standpoint is that, in general, questions about the gender of the household members should not be asked, as this does not have any impact on the screening of an applicant for residency. **Note: On January 25, 2025, this Executive Order was rescinded**.

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Section 4 Income Limits

Tenants must initially have incomes that are at or below the applicable income limit, either 50 or 60 percent of AMI or the applicable income limit under income averaging, as elected by the owner on the IRS Form 8609.

Using Income limits

IRS Revenue Ruling 94-57

Income limit tables for the LIHTC program are known as the multifamily tax subsidy project (MTSP) income limits. They are established by family size for the area in which the property is located. These limits are published by HUD on an annual basis at http://www.huduser.gov. 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).

HERA changed the way that owners apply income limits in LIHTC projects and added what's known as "hold harmless" provisions for area median gross income (AMI) for LIHTC properties. Hold harmless means that once a project is placed in service, the income limits for that project can never go down. Remember that it's important to know the definition of a project, as discussed in Chapter 2.

Why Hold Harmless?

Income limits and rent limits are tied together. 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.

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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 2019
- Project/Owner B: PIS 2021
- Project/Owner C: PIS 2023

Two-person income limits:

- Income limits 2019: $30,000
- Income limits 2020: $31,500
- Income limits 2021 and 2022: $31,000
- Income limits 2023: $29,800
- Income limits 2024, 2025, and 2026: $27,500

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

WHAT INCOME LIMIT DO I USE?

Owners determine what income limits must be used based on when they place their first building in their project into service.

When multiple buildings are placed in service in different years, the IRS has said that owners can use the same income limits for all buildings included in the same project, even if the buildings are placed in service in different years. If multiple buildings are not included in the same project and income limits decrease, the income limits in effect when the building is placed in service must be used, even if they are lower.

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- **Example**: Briarhill Townhomes is a newly constructed LIHTC project consisting of three buildings. The owner elects to consider the project as a multiple-building project. Building A is placed in service in 2024. Buildings B and C won't be completed and placed into service until summer 2025. The income limits for 2025 are scheduled to decrease. The owner can choose the 2024 income limits, which are higher, for all three buildings since the first building, building A, is placed in service in 2024 AND the owner has elected to treat the project as a multiple building project.

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

More simply put, the MTSP income limits may increase at these properties but will not decrease. The previous higher income limit will continue to apply until there is an increase in the area median gross income above the amount.

Rev. Ruling 94-57, LIHTC Newsletter #47 and #48

Taxpayers may rely on income limits released by HUD until 45 days after HUD releases a new list of income limits or until HUD's effective date for the new list, whichever is later. If the project is located in an area where income limits are decreasing, projects placed in service within 45 days of HUD publishing lower income limits may rely on the previous year's higher income limits. For example, if in 2023 the two-person income limit for Orange County, CA was $29,875, and HUD subsequently published lower income limits for 2024 on 12/2/2023 (reduced to $28,151), then a project placed in service within 45 days of 12/2/2023 would use the higher 2023 income limits.

HERA also created a special class of MTSPs called "HUD hold harmless impact project(s)" or impacted MTSPs. An impacted MTSP is defined as "any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy." Impacted projects use the HERA Special income limit tables. If a project was placed in service for calendar year 2007 or 2008, it may be impacted. Impacted income limits are generally higher and may widen the project's market potential.

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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.

While most state agencies publish the income limits for their respective states, it is the owner's responsibility to ensure that the correct income limits are being used for the property and that revised income limits are implemented within 45 days of HUD publishing the new limits.

So in order to determine which income limit to use for your project you need to look at where your project is located, the date that your buildings were placed in service, whether they are part of a multi-building project and whether any buildings in your project are subject to the HERA "hold harmless" provisions.

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Section 5 Income Limits and Household Size

When determining whether or not an applicant family is income eligible, family size must be accurately established. The IRS defers to HUD guidance in the Handbook 4350.3 REV-1 on determining family size for purposes of income limits. Figuring out who should be included for various calculations, can be difficult because some persons are not included when determining annual income or family size for income limits, but are included when determining the appropriate unit size.

Temporarily Absent Family Members

HUD Handbook 4350.3 REV-1, chapter 5, paragraph 5-6 B

For the most part, the income of temporarily absent family members continues to be counted toward the family's annual income. Family members who are temporarily absent include family members on active military duty, dependents away at school, and family members who accept temporary employment in another location. After consulting with the family, owners must decide if the person in question qualifies as a family member. Each situation is different and must be considered on an individual basis.

An individual who is temporarily absent on active military duty must be removed from the family, and their income must be excluded from the calculation of household income, unless: (1) the person is the head of the family, spouse or cohead, or (2) the spouse or a dependent of the person on active military duty resides in the unit.

Note that if a family member in the Armed Forces is called to active duty, the owner may allow a guardian to move into the unit on a temporary basis or allow a tenant in another low income unit to care for any dependents. The guardian who temporarily resides in the unit would have their income excluded from household income.

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Live-In Aides

A live-in aide is defined in the HUD Handbook 4350.3 REV-1 glossary as a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who 1) is determined to be essential to the care and well-being of the persons; 2) is not obligated for the support of the persons; and 3) would not be living in the unit except to provide the support services.

While live-in aides are counted in establishing unit size, their income is fully excluded when determining annual income, and they are not counted when determining family size for comparison to income limits.

Foster Children and Foster Adults

24 CFR 5.603 (b)

A foster child is defined as a member of the household who meets the definition of a foster child under state law. In general,

a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

A foster adult is defined as a member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

24 CFR 5.609(b)(8)

The income of foster children and foster adults, regardless of whether it is earned or unearned, is fully excluded from annual income.

24 CFR 5.609(b)(4)

The owner excludes payments received for the care of foster children or foster adults.

State or tribal kinship or guardianship care payments are also excluded from annual income.

Foster children and foster adults are considered members of the household, not family members. They are not counted as family members for income limits

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OTHER HOUSEHOLD MEMBERS

When determining household size, the owner must include:

- Children temporarily absent due to placement in foster care
- Children in joint custody arrangements who are present in the LIHTC household 50 percent or more of the time
  - If disputed, the IRS has recommended that a determination be made of which parent claimed the children as dependents for the purposes of filing a federal income tax return.
- Children in the process of being adopted
- Children who are away at school but who will live with the family during school recesses
- Unborn children of a pregnant woman
  - As self-certified by the woman
- Temporarily absent family members
- Family members in the hospital or rehabilitation facility for periods of limited or fixed duration
- Persons permanently confined to a hospital or nursing home. The family decides if such a person is included. Can't be the head, spouse, or co-head.

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Section 6 Chapter 6 Post Test

1. Exceptions to the LIHTC student rule include all but the following:
   a. Married and eligible to file a joint tax return
   b. Over the age of 24
   c. Participation in a job training program under JTPA or similar
   d. A student previously in foster care
2. Which of the following persons is excluded when determining family size for comparison to the income limit?
   a. Head of household
   b. A temporarily absent family member
   c. The live-in aide
   d. Cohead
3. If the applicant is registered as a lifetime sex offender, under IRS Code the owner is prohibited from allowing them to reside in an LIHTC only unit.
   a. True
   b. False
4. The Mack family wishes to reside in an LIHTC only unit. Before the Mack family may move into an LIHTC unit, IRS code requires that they disclose and document the Social Security numbers of all household members.
   a. True
   b. False
5. The LIHTC student rule applies to all but the following:
   a. Full-time students
   b. Minors in elementary school
   c. Minors in high school
   d. Part-time students

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6. Define “hold harmless” with regard to income limits:

   _____

   _____

7. If multiple buildings are included in the same project on the IRS Form 8609, and those buildings were placed in service in different years:
   a. The owner may use the same income limits for all buildings included in the same project
   b. The owner must use different income limits for each building depending on when the buildings were placed in service.
8. The Sweeney family is applying to live in an LIHTC unit at Lake View Court. The family consists of head of household Walter, his wife Winnie who is pregnant, their foster child Barbara, their dog Spot, their live-in aid Peter, and Winnie's sister Wanda who is staying with the family for the next 4 weeks. What is their family size for comparison to the income limit?
   a. 6 people
   b. 5 people
   c. 4 people
   d. 3 people
9. New income limits must be applied _____ days after HUD publishes them.
   a. 30
   b. 45
   c. 60
   d. 90

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10. In May 2025, Mary Jones filled out applications to live at Green Acres Apartments, Meadow Brook Commons, and Sunset Homes. The projects are all 100% LIHTC, owned by different owners, use the 60% MTSP income limit, and were placed-in-service in different years. Green Acres Apartments placed-in-service in 2022. Meadow Brook Commons placed-in-service in 2024. Sunset Homes placed-in-service in 2025.

    Given the information below, what income limit did each project use when qualifying Mary in 2025?

    1 person, 60% MTSP Income Limits

    - 2022: $28,900
    - 2023: $29,000
    - 2024: $28,500
    - 2025: $28,000

    Green Acres Apartments: ***$*** _____

    Meadow Brook Commons: ***$*** _____

    Sunset Homes: ***$*** _____

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Notes

CHAPTER 7 Calculating Gross Annual Income

Section 1 Learning Outcomes

LEARNING OUTCOMES

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

- Understand how income is annualized in different situations
- Identify income that is excluded from annual income
- Recognize requirements for identifying assets
- Calculate net cash value and anticipated income from assets
- List the requirements for verification of income and assets

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Section 2 Overview

Household income in the LIHTC program is defined as the gross income (with no adjustments or deductions) the household anticipates it will receive in the 12-month period following the effective date of the household's certification. Adjusted income is not calculated in the LIHTC program since rents are not income-based.

Treasury Regulation Section 1.42-5(b)(1)(vii) states, "Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8")." In other words, income and asset calculations in the LHTC program follow HUD regulations.

REFERENCES

Regulations governing the calculation of income and assets for Section 8 programs are found in the Code of Federal Regulations (CFRs) at 24 CFR 5.609, as updated for the Housing Opportunity Through Modernization Act (HOTMA) of 2016.

While HOTMA changes to the CFRs were applicable on January 1, 2024, the IRS has not issued any guidance on HOTMA implementation. State agencies have varying interpretations and requirements related to HOTMA and have different timelines for implementation. As such, this chapter includes only federal requirements for the implementation of HOTMA. It is imperative that you check with your state allocating agency to see how HOTMA is being implemented in your state. HUD's implementation guidance for HOTMA may be found in Notice H 2023-10/PIH 2023-27, which provides helpful examples of how income and assets should be calculated.

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HUD Handbook 4350.3 was created to govern the administration of certain Multifamily Section 8 programs. Chapter 5 of the HUD Handbook 4350.3 outlines how income and assets are calculated based on the Part 5 income and assets regulations. In the LIHTC program, Chapter 5 (Sections 1 and 3) of the Handbook is used as the primary reference and legal authority for how to determine annual gross household income even though it was written for HUD programs. With the implementation of HOTMA, however, until HUD updates the HUD Handbook 4350.3, the current version of Chapter 5 should be used with extreme caution, as it is currently outdated in many sections. Also note that although the same regulations govern how annual income is calculated in LIHTC and Section 8, not all parts of Chapter 5 apply to the LIHTC program. Verification of income and assets is not governed by HUD regulations, and the verification process in the LIHTC program can differ significantly from HUD programs.

Section IV.G. of the *Guide for Completing Form 8823* discusses the determination of annual income in the LIHTC program. The IRS issued a revised version of the guide in February 2024. This also has not been updated for HOTMA and should be used with caution, although some information in the Guide remains useful when calculating income and assets.

Finally, if your state publishes a compliance manual, it is imperative that you follow requirements listed in the manual.

Tenant Income Certification (TIC)

A state-specific Tenant Income Certification (TIC) is the document used to record a household's family composition, income, assets, and other important information. It is kept in the tenant file and is not submitted electronically to the IRS like in certain HUD programs. It is the primary document state agencies monitor when conducting file reviews. A TIC must be signed by all adult household members on or before the effective date of the move-in and at each annual recertification (if applicable). 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. This TIC has been updated for HOTMA.

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INFLATIONARY ADJUSTMENTS

HUD publishes certain inflation-adjusted items online at the HUD User website and the updated passbook rate each year no later than September 1. The revised amounts are effective on January 1 of the following year. The items that are impacted by inflationary adjustments that are applicable to the LIHTC program are:

- Threshold above which imputed returns must be calculated on net family assets
- Threshold above which the total value of non-necessary personal property is included in net family assets
- The amount of net assets for which the PHA may accept self-certification by the family
- Income exclusions for earned income of dependent full-time students/adoption assistance payments

HOTMA Provisions	2027 Amount
Asset threshold	$54,898
FT student income threshold	$525
Passbook rate	0.38%

Section 3 Overview of Income

24 CFR 5.609(a)

The definition of annual income with respect to the family, includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b) received from all sources by each member of the family who is 18 years of age or older or is the family head of household or spouse, and
- Unearned income by or on behalf of each dependent who is under 18 years of age, and
- When the value of net family assets exceeds the HUD-determined threshold (adjusted annually for inflation) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income.

SUMMARY OF INCOME INCLUDED AND EXCLUDED BY HOUSEHOLD MEMBER	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Children under 18 years of age	Earned income is excluded [24 CFR 5.609(b)(3)]. All sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)]. All sources of unearned income, except those specifically excluded by the regulations, are included.

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EARNED INCOME

24 CFR 5.100

Earned income is defined as income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, Social Security, and governmental subsidies for certain benefits), or any cash or in-kind benefits. These types of contributions to household income are considered unearned income.

24 CFR 5.609(a)

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income.

The owner uses the full (gross) amount before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

One thing to consider when annualizing income is the purpose for which income is annualized. In LIHTC, 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 the investor for moving in over-income families. Therefore, industry practice is to use the most conservative calculation of income to ensure that there is no doubt that a family is income-eligible, unlike in many HUD programs where rents are income-based. However, check with your state agency as many states are moving away from this method.

For example, let’s say an owner receives a third-party employment verification that states an individual works between 15 and 25 hours per week. In the LIHTC program, 25 hours would generally be used to annualize income, which would be the most conservative approach. However, you should check with your sate allocating agency compliance manual for specific instructions as some state require that an average of hours be used.

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The verification source and method used to annualize income may vary and you should check with your state agency and owner/investor for their preferred or required method, if any. In general, employment income may be calculated using either:

- Annual income as listed on a third-party verification of employment (VOE) form from an employer or Up-Front Income (UIV) verification;
- A projection of year-to-date (YTD) income from an employment verification form or pay stubs; or
- An average of income and hours from an employment verification form or pay stubs.

Some state agencies require only one of the above methods to be used while others require more. If more than one calculation is used, industry practice is generally to use the highest income amount, but you should check with your state agency. If there is conflicting information between verification documents, you should attempt to obtain clarification from the employer.

Notice H 2023-10

When pay stubs are used to calculate employment income, the owner must collect a minimum of two current and consecutive pay stubs. Paystubs must be dated within 120 days of the date received by the owner. Check with your state agency to determine how many paystubs they require as some agencies require more than two. If paystubs are consecutive but show wildly different amounts, it is a good idea to request additional paystubs or verification from the employer to determine the reason. If non-consecutive paystubs are used for this reason, the file should be noted.

SELF-EMPLOYMENT

24 CFR 5.609(b)(28); 8823 Guide IV.G.6

Include the net income from a business, profession, or sole proprietorship business, including self-employment. Net income is gross income less allowable business expenses, interest on loans, and straight-line depreciation. The owner should include any salaries or assets withdrawn from the business, unless the withdrawal is a reimbursement of cash or assets invested in the business.

Business expenses do not include principal payments on loans, interest on loans for business expansion or capital improvements, or other expenses for business expansion or outlays for capital improvements. If the net income from a business is negative, it must be counted as zero income. A negative amount cannot be used to offset other family income.

Income from a sole proprietorship can be estimated by reviewing the individual's prior year tax returns and Schedule C. If necessary, the owner can ask the potential tenant to provide a signed Form 8821, which will allow the owner to verify the information with the IRS. 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 self-employed individual claims they do not file taxes, the owner may use the IRS Form 4506-T to verify with the IRS that no return has been filed.

24 CFR 5.609(b)(24)

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies. Independent contractors are considered self-employed, and the net income is included in annual income.

An independent contractor is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. This includes "gig" workers such as contractors who work for companies such as Uber and Lyft. These employees may work varying amounts from week-to-week, which can present a challenge for the owner when calculating income. For individuals working for rideshare companies, the owner may request a summary of payments.

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8823 Guide IV.G.6.

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

24 CFR 5.609(b)(11)

All regular pay, special pay and allowances of a member of the Armed Forces, with the exception of hostile fire pay, are included in income.

HUD 4350.3(REV-1), Chapter 5

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 co-head, or
- 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.

Section 4 Considerations When Annualizing Income

Since rents are not income-based, total annual income is calculated in order to compare the family's income and assets to the appropriate MTSP income limit at the time of eligibility. Special attention should also be taken to ensure that any lower set-aside requirements for the project are met. Adjusted income is not calculated in the LIHTC program. Once the family has been determined income-eligible to reside 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.

A factor to consider when annualizing income is that in the LIHTC program, 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, since HUD assumes that there will be interim certifications, but in the LIHTC program that guidance fits like a square peg in a round hole. The *Guide for Completing Form 8823* has helpful guidance on how to deal with these types of income.

Seasonal Employment

24 CFR 5.609(b)(24)
24 CFR 5.603(b)

Some occupations regularly work less than 12 months per year. Family members may have temporary, variable, or seasonal schedules or may work sporadically throughout the year. Provided this income does not meet the definition of nonrecurring income, seasonal employment is Included in annual income.

Earnings of seasonal workers or day laborers are included in annual income, even if the source, date, or amount of the income varies.

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A *seasonal worker* is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is 6 months or fewer); and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry. Examples include employment limited to holidays or agricultural seasons. Seasonal work may include employment as a lifeguard, ballpark vendor, or snowplow driver.

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future. It may not be possible to obtain third-party verification of employment for a day laborer, and the owner may need to rely on a self-certification as the only option. Check with the state agency to see if there are any additional requirements.

8823 Guide, G.1

If information is available on changes in income expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year.

Example 1: Seasonal Employment

Joni Jones is an applicant. For the last several years, Joni has worked part-time during the school year (8 months/year) as a teacher's aide at a local elementary school earning $8.25 an hour, 20 hours per week. 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. Her income would be annualized:

(20 x 32 x 8.25 = $5,280) + (40 x 20 x 7.75 = $6,200) = $11,480

Since no interims are possible, the owner would be required to calculate her income for the upcoming 12 months. 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 or not.

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UNEMPLOYMENT INCOME

Unemployment benefits are included in annual income if they are received at regular intervals, no matter the length of time the payments will last.

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. The Form 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 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. It is imperative to check with your state allocating agency on this topic as interpretations differ from agency to agency.

WORKER'S COMPENSATION

24 CFR 5.609(b)(5)

Any workers' compensation is always excluded from annual income regardless of the frequency or length of the payments.

ZERO OR SPORADIC INCOME

Owners are expected to make reasonable judgments regarding the most reliable method for estimating the income a household will receive during the year. If the tenant's income cannot be determined using current information, the owner may include actual income received or earned within the 12-month period before the determination of annual income.

Example 3: Sporadic Income

8823 Guide, G.1

Joni is disabled and not always able to work full-time. She has income from disability insurance and a family trust, and also works as a typist with a temp agency when she is able. Last year, she worked nearly six months, but at the time she applies for an LIHTC unit, she is not working and is uncertain when or how much she will be able to work this year.

Because Joni is not working at the time of the certification and actual income from her sporadic employment as a typist cannot be reasonably determined, the income earned during the six-month period in the prior year may be included in her income certification. The owner must make a reasonable judgment. Prior year's income should not be used to estimate Joni's future income if she can provide sufficient documentation that her earning capabilities have changed; e.g., her contract with the temp agency has been terminated.

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Example 4: Zero Income

Finally, what if when Joni applies she claims she's never worked before and has zero income? The owner could consider whether or not Joni could actually afford to rent the unit and might deny her application based on her inability to pay rent. The owner 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 owner 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. The owner should discuss with the family how they will meet their needs. The family may have legitimate reasons for being zero income, such as receiving excluded sources of income such as SNAP benefits or in-kind donations from a food bank.

A prior year's tax return and/or paycheck stubs should be used to provide support for the anticipated income amount. Many state allocating agency compliance manuals have specific requirements that must be followed for applicants/tenants with no income or sporadic income. Be sure to check your state manual.

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Section 5 Student Financial Assistance

24 CFR 5.609(b)(9)

The regulations distinguish between two categories of student financial assistance paid to both full-time and part-time students.

Title IV HEA assistance: Any assistance to students under section 479B of the Higher Education Act of 1965 (Tile IV of the HEA) must be excluded from the family's annual income.

Examples of assistance under title IV of the HEA include:

- Pell grants
- Teach grants
- Federal Work Study programs
- Federal Perkins Loans
- Income earned in employment and training programs under Section 134 of the Workforce Innovation and Opportunity Act (WIOA) (starting 1/1/24)
- Bureau of Indian Affairs/Education student assistance programs
- The Higher Education Tribal Grant
- The Tribally Controlled Colleges or Universities Grant program
- **Note:** Income received under the GI Bill is not Title IV financial aid

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Other student financial assistance: Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the Federally mandated income exclusions are excluded.

Actual covered costs are defined as the actual costs of:

- Tuition, books, and supplies;
  - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

The educational institution must meet the definition of an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)).

To qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the education institution;
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the owner.

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The financial assistance must be a grant or scholarship received from:

- The federal government;
- A state, tribal, or local government;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed;
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

When the student is receiving assistance that is excluded under both categories, the Title IV HEA Assistance must be applied first. Student financial assistance is then applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance would be considered income.

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EXAMPLE
When a student receives assistance from both Title IV of the HEA and from other sources: • Calculate the actual covered costs. • Assistance received under Title IV of the HEA is applied to the student's actual covered costs first. • Then apply the other student financial assistance to any remaining actual covered costs:
• If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the student financial assistance is excluded from income. - Actual covered costs: $25,000 - Title IV HEA assistance: $26,000 - Other student financial assistance: $5,000 - Exclude the entire Title IV HEA assistance. - Include in income: $5,000 of other financial assistance
• If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs. - Actual covered costs: $22,000 - Title IV HEA assistance: $15,000 - $22,000 actual covered costs - $15,000 Title IV HEA assistance = $7,000 remaining - Other student financial assistance: $5,000 - $5,000 other financial assistance - $7,000 remaining - Include in income: $0
- Actual covered costs: $18,000 - Title IV HEA assistance: $15,000 - $18,000 actual covered costs - $15,000 Title IV HEA assistance = $3,000 remaining - Other student financial assistance: $5,000 - $5,000 other financial assistance - $3,000 remaining - Include in income: $2,000

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Section 6 Periodic Payments and Nonrecurring Income

Periodic Payments

Periodic payments are forms of income received on a regular, periodic basis.

HUD regulations specify which periodic payments are not included in annual income but do not specify which types of periodic payments are included.

- In general, periodic payments to be included in income include payments from Social Security, annuities, insurance policies, retirement funds, pensions, lotteries, disability benefits, and other similar types of periodic receipts and withdrawals from investments as income.

Notice PIH 2019-09

- Withdrawals from ABLE accounts (i.e., tax-advantaged savings accounts under the Achieving Better Life Experience Act) are an exception and are excluded from income.
- Unemployment benefits are not considered nonrecurring and are included in annual income as periodic payments.

Lump-Sum Payments counted as Income

24 CFR 5.609(a)

Generally, lump sums received by the family such as lottery or contest winnings are not considered income since they are nonrecurring income.

However, lump-sum payments caused by delays in processing periodic payments (such as unemployment or welfare assistance benefits) are included as income since they are not explicitly excluded under the regulations.

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EXAMPLE: LUMP SUMS AS INCOME
Beverly Boone is head of household. She lost her job on October 19 and applies for unemployment benefits. She received a lump-sum payment of $900 on December 6 to cover the period from 10/20 to 12/5 and begins to receive $200 a week effective 12/6.
• The lump sum for the delayed start of her unemployment benefits is included in annual income as well as her weekly unemployment benefit amount.

24 CFR 5.609(b)(16)

However, deferred periodic amounts (whether received as a lump sum or prospective monthly payments) from the following sources are excluded:

- Social Security and Supplemental Security Income (SSI)
- Department of Veterans Affairs (VA) disability benefits

EXAMPLE: PERIODIC PAYMENTS FROM RETIREMENT ACCOUNTS
Amanda Martinez applied for SSI two years ago. When it was awarded, she received a one-time lump-sum payment for the delayed start of $8,000. She also started receiving gross monthly SSI payments of $500.
• The PHA includes the gross monthly SSI payment as income but excludes the full amount of the lump sum from her income.

SOCIAL SECURITY

PH Occ GB, Income Determination, pp. 38-39

Include the gross amount of Social Security prior to the Medicare deduction.

The monthly Medicare premium may be deducted as a health and medical care expense for qualifying families.

EXAMPLE: SOCIAL SECURITY INCOME
Brian Bruce (age 68) is the head of household. His gross SS payment is $800 per month, however $174.70 is subtracted each month for his Medicare premium.
• Include the gross amount of Brian's SS payment prior to the Medicare deduction ($800 x 12 = $9,600).

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.

- Applies to other similar benefits as well as SS.

If a recipient's Social Security income is reduced because of an IRS garnishment, or other similar garnishment, use the gross amount to calculate income.

EXAMPLE: SS REDUCTION
A family member received $1,200 per month for the past 6 months in SS income. SSA notifies the individual that they should have received only $1,100 per month. SSA adjusted their monthly payment to recoup overpayment. They will now receive $1,000 per month for the next 6 months and will then receive their regular payment of $1,100 per month after that.
• For the next 6 months, use the lower amount $1,000 x 12 = $12,000 • Once the reduction ends, use the gross amount $1,100 x 12 = $13,200

ALIMONY AND CHILD SUPPORT

24 CFR 5.609(a)

Include periodic and determinable amounts of alimony and child support since they are not specifically excluded under the regulation.

H Notice 2023-10

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive

- For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders

If child support is court-ordered but not actually paid, verification typically includes either a self-certification on non-receipt or third-party verification from the state agency in charge of child support enforcement showing that payments are not being made. Check with your state agency for specific requirements.

Some state agencies also require that all adult family members or the custodial parent in families where both parents are not present in the unit to fill out a child support affidavit stating whether they receive any type of formal or informal child support. Further, state agencies typically have different requirements when individuals are separated or estranged and no longer living with their ex-spouse but are not divorced. Check with your state agency for specific requirements.

HUD Handbook 4350.3

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 are counted as income.

When no documentation of child support, divorce, or separation is available, the owner may require the family to sign a certification stating the amount of child support received.

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NONRECURRING INCOME

24 CFR 5.609(b)(24)

Exclude from annual income nonrecurring income, which is defined as income that will not be repeated in the coming year (the 12 months following the effective date of the certification) based on information provided by the family.

- However, income received as an independent contractor, day laborer, or seasonal worker is included, even if the source, date, or amount of income varies.

H Notice 2023-10

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual recertification period is excluded from annual income as nonrecurring.

- This does not include unemployment income and other types of periodic payments received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.
- Owners may accept a self-certification from the family stating that the income will not be repeated in the coming year.

EXAMPLE: NONRECURRING INCOME
• The Watts family is moving in. • They receive income from a guaranteed income program in their city. • The payments will end 6 months after the family is admitted to the program.
• While the guaranteed income will be repeated in the coming year, it will end before the family's next annual. • The income is fully excluded.

24 CFR 5.609(b)(5)

Insurance payments and settlements for personal property losses (including but not limited to payments under health and accident insurance and workers' compensation) are excluded.

However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income.

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- Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments.

Notice H 2023-10

Income excluded as nonrecurring includes:

- Nonrecurring payments made to the family or to a third-party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

24 CFR 5.609(b)(24)

Nonrecurring income includes:

- U.S. Census Bureau for employment income (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not resulting in permanent employment.
- Direct federal or state payments for economic stimulus or recovery.
- Amounts received directly by the family as a result of state or federal refundable tax credits or state or federal tax refunds at the time they are received.
- Gifts for significant life events or milestones (e.g., holidays, birthdays, wedding gifts, baby showers, anniversaries).
- Nonmonetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

Non-monetary in-kind donations, such as food or toiletries, received from a food bank or similar organization are excluded from annual income.

- When calculating annual income, owners are prohibited from assigning monetary value to non-monetary in-kind donations received by the family.
- Non-recurring, non-monetary in-kind donations from friends and family may be excluded as non-recurring income.

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Provided they do not meet the definition of non-recurring, the owner includes regular contributions (cash or noncash) provided on a regular basis.

- May include rent and utility payments paid on behalf of the family.

Section 7 Other Income Exclusions

HOME-BASED CARE PAYMENTS FOR A FAMILY MEMBER WITH DISABILITIES

24 CFR 5.609(b)(19)

Exclude payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit.

- Federal Medicaid rules allow states to cover a wide range of institutional and home and community-based long-term services and supports (LTSS), but the type of services, populations covered, and delivery models differ substantially across states based on their individual Medicaid program structure. Many states provide benefits to individuals with a variety of disabilities, which allow such individuals to remain at home rather than reside in institutional settings such as hospitals, nursing homes, or other institutional or segregated settings.
- The previous requirement that these payments offset the cost of services or equipment has been eliminated.
- The exclusions applies to any family member with a disability, not just a developmental disability as in previous versions of the regulation.

Authorized payments may include payments to a member of the assisted family through the state Medicaid agency (including through a managed care entity) or other state or federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

- For example, an adult providing personal care services for a parent or other family member with a disability could receive direct payments from the State agency for performing those services. Amounts paid directly to a member of the assisted family by the state Medicaid agency (including through a managed care entity) or other state or federal agency (or other entities authorized by the agencies to make such payments) to enable a family member who has a disability who wishes to remain living in the assisted unit, under the applicable terms and conditions for the family member to be eligible for such payments, are excluded from the family's income.

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- This income exclusion applies only to payments to the family member for caregiving services for another member of the family residing in the assisted unit. For example, payments to the family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.
- If the agency was making payments for caregiving services to the family member for not only another member of the assisted family but also for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

EXAMPLE: HOME-BASED CARE PAYMENTS
• Sally lives in a unit with her mother Barbara who is disabled and needs care services. • Barbara wishes to remain in the unit. • Sally is providing care services for her mom and gets direct payments from the state Medicaid agency. • Amounts paid directly to Sally by the state Medicaid agency to care for Barbara are excluded.

TRAINING PROGRAMS

24 CFR 5.609(b)(12)(iv)

Exclude incremental earnings and benefits from training programs funded by HUD or qualifying federal, state, tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff.

- *Incremental earnings* means the increase between the total amount of welfare and earnings of a family member prior to enrollment in the training program, and welfare and earnings of the family member after enrollment in the training program.

Excluded amounts must be received under employment training programs with clearly defined goals and objectives and only excluded during participation in the program unless the amounts are excluded as federal financial aid under 24 CFR 5.609(b)(12)(iv)).

Publicly Assisted Programs

24 CFR 5.609(b)(12)(ii)

Exclude amounts received by a participant in publicly assisted programs which are specifically for reimbursement of out-of-pocket expenses incurred and are made solely to allow participation in a specific program.

- Clothing
- Special equipment
- Transportation
- Childcare, etc.

Civil Action Settlements

24 CFR 5.609(b)(7)

Exclude any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, which resulted in a member of the family becoming disabled.

Plan for Achieving Self-Sufficiency (PASS)

24 CFR 5.609(b)(12)(i)

Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).

Resident Service Stipends

24 CFR 5.609(b)(12)(iii)

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management that enhance the quality of life in the development.

Exclude amounts received under a resident service stipend provided they do not exceed $200 per month.

- If the individual receives an amount that exceeds $200 per month, the owner must include the entire amount in annual income.
- Individual cannot receive more than one such stipend at a time.

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Health and Medical Care Reimbursements

24 CFR 5.609(b)(6)

Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member are excluded.

Holocaust Reparation payments

24 CFR 5.609(b)(13)

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 are excluded.

Refunds and Rebates for Property Taxes

24 CFR 5.609(b)(18)

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 are excluded.

Adoption Assistance Payments

24 CFR 5.609(b)(15)

Adoption assistance payments for a child in excess of the amount of the dependent deduction, specified in 24 CFR 5.611, are excluded.

- Note, the dependent deduction will be adjusted annually for inflation.

Aid and Attendance for Veterans

24 CFR 5.609(b)(17)

Exclude payments related to aid and attendance to veterans in need to regular aid and attendance (38 USC 1521).

- Certain veterans are eligible for “aid and attendance” payments from the VA. These payments are distinct from payments made to veterans under other VA programs, including the Veterans Pension program. Owners should carefully review any income documentation provided by the family, because many types of VA income, including the Veterans Pension and the VA Survivors Pension, are included in annual income.

Notice H 2023-10

Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member are excluded.

Loan Proceeds

24 CFR 5.609(b)(20)

Exclude the net amount disbursed by a lender to or on behalf of a borrower under the terms of the loan agreement.

Funds may be received by the family or a third party.

- For example, funds may be received by an educational institution or by a car dealership to finance the purchase of a car.

Baby Bond Accounts

Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government are excluded.

- While there is currently no federal baby bond program, many states and cities have such programs.

Mismanagement of Assets Claims

24 CFR 5.609(b)(21)

Exclude payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law.

Housing Gap Payments

24 CFR 5.609(b)(23)

Replacement housing "gap" payments that offset increased rent and utility costs to families that are displaced from one federally subsidized housing unit and move into another federally subsidized housing unit (49 CFR part 24).

If the gap is reduced or eliminated because of a subsequent move by the tenant or change in the subsidy, and the tenant continues to receive the payment, the payment that is no longer needed to close the gap should be counted as income.

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CIVIL RIGHTS SETTLEMENTS AND JUDGMENTS

24 CFR 5.609(b)(25)

Exclude income from civil rights settlements or judgments, including settlements or judgments for back pay regardless of how the settlement or judgment is structured (i.e., as a lump sum or structured payment).

- This may include amounts received as a result of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets.

- For example, if the funds are deposited into the family's savings account or a revocable trust under the control of the family.

FAMILY SELF SUFFICIENCY ACCOUNT

24 CFR 5.609(b)(27)

Exclude income earned on amounts placed in a family's Family Self-Sufficiency (FSS) account.

- The exclusion does not address distributions from a family's FSS account, because such distributions (either as a final or interim distribution under the terms of the Contract of Participation) will be excluded from income under 24 CFR5.609(b)(24)(vii) as a lump-sum addition to net family assets.

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FEDERALLY MANDATED INCOME EXCLUSIONS

Federal Register 1/31/2024; 24 CFR 5.609 (b)(22)

Value of Food Stamps

- Value of allotment provided to an eligible household under the Food Stamp Act of 1977.
- This exclusion also applies to assets.

Benefits under Section 1780 of the Richard B. Russel School Lunch Act and Child Nutrition Act of 1966

- Includes WIC and reduced-price lunches.
- This exclusion also applies to assets.

Domestic Volunteer Services Act

- Payments, including for supportive services and reimbursement of out-of-pocket expenses under the Domestic Volunteer Services Act of 1973 are excluded.
- Except the exclusion does not apply when the Chief Executive Officer of the Corporation for National and Community Service determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)).
- This exclusion also applies to assets.
- 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(42 U.S.C. 8624(f)(1)).
- This exclusion also applies to assets.

Workforce Innovation and Opportunity Act of 2014

Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2))

Allowances, earning and payments to AmeriCorps participants under the National and Community Service Act of 1990

Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002

Deferred disability benefits from the Department of Veterans Affairs

- Received in a lump sum or in prospective monthly amounts

Indian Settlements/Trusts (these exclusions also apply to assets)

- Payments received under the Maine Indian Claim Settlement Act of 1980. (Pub. L. 96-420, 94 section 9(c)).
- Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)).
- Income derived from certain submarginal land of the United States held in trust for particular Indian tribes (25 U.S.C. 5506).
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation section 9(c)).
- Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94-540 section 6).
- 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. This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407-1408).
- Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))

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- Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. chapter 11 or dependency and indemnity compensation under 38 U.S.C. chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.)
- 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
- Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013- 1 and 2013-55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013-1. The first $2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407)

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Title IV of the Higher Education Act of 1965

- Amounts of student financial assistance 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 only, any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), must be considered income if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327 (as amended)).

Spina Bifida and Agent Orange settlements (these exclusions also apply to assets)

- Payments received on or 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 and Thailand service veterans born with spina bifida (42 U.S.C. 12637(d)).

Child Care and Development Block Grant Act of 1990

- The value of any childcare 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.

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Earned Income Tax Credit (EITC) refund payments

Any amount in an Achieving Better Life Experience (ABLE) account, distributions from and certain contributions to an ABLE account established under the ABLE Act of 2014 (Pub. L. 113-295.), as described in Notice PIH 2019-09/H 2019-06 or subsequent or superseding notice is excluded from income and assets.

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.

- This exclusion also applies to assets.

Title V of the Older Americans Act of 1965

- 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 Services
  - 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.

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Crime Victim Compensation

- Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)).
- This exclusion also applies to assets.

The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409)

Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116-260, section 501(j)), and the American Rescue Plan Act of 2021.

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Section 8 Types of Assets

The regulation at 24 CFR 5.603(b)(3)-(b)(4) provides a list of things that are excluded from the calculation of net family assets.

Unlike previous version of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included.

All assets are categorized as either real property or personal property.

Real Property

Notice H 2023-10; 24 CFR 5.603(b)(3)(iv)

Real property includes things like land or a home.

Equity in real property (land owned or bequeathed) or other capital investments is considered an asset.

The owner counts the net cash value of the real property after deducting reasonable costs that would be incurred in disposing of the family's real property, including repayment of any mortgage debt or other monetary liens on the real property.

- Expenses to convert to cash may include such costs as broker fees, sales commissions, settlement costs, and transfer taxes.
- Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify an exclusion from family assets.

However, the value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located is not considered an asset, including:

- Co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property;
- Property that is tied up in litigation; or
- Inherited property in dispute.

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PERSONAL PROPERTY

Personal property includes tangible items like boats as well as intangible items like bank accounts.

Personal property is categorized as either **necessary** or **non-necessary**.

NECESSARY PERSONAL PROPERTY

Necessary personal property is excluded from net family assets. It includes:

- Items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness.
- More than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home.
- Items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability.

Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

NON-NECESSARY PERSONAL PROPERTY

Non-necessary personal property includes bank accounts, other financial investments, and luxury items.

- Determining what is a necessary item of personal property is a highly fact-specific determination, and therefore it is incumbent on owners to gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

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Notice H 2023-10 Table F1

NECESSARY PERSONAL PROPERTY	NON-NECESSARY PERSONAL PROPERTY
Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) Furniture, carpets, linens, kitchenware Common appliances Common electronics (e.g., radio, television, DVD player, gaming system) Clothing Personal effects that are not luxury items cultural value, or which does not hold family (e.g., toys, books) significance Wedding and engagement rings Jewelry used in religious/cultural celebrations and ceremonies Religious and cultural items Medical equipment and supplies Health care–related supplies Musical instruments used by the family Personal computers, phones, tablets, and related equipment Professional tools of trade of the family, for example professional books Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs) Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) Recreational boat/watercraft Expensive jewelry without religious or cultural value, or which does not hold family significance Collectables (e.g., coins/stamps) Equipment/machinery that is not used to generate income for a business Items such as gems/precious metals, antique cars, artwork, etc.

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Whether or not personal property is considered an asset depends on whether it's considered necessary or non-necessary and the total cash value of the family's non-necessary personal property.

- Necessary items of personal property are excluded from net family assets.
- When the combined value of all non-necessary personal property does not exceed the HUD determined threshold, as adjusted annually by inflation, all non-necessary personal property is excluded from net family assets.
- Non-necessary personal property with a combined value greater than the HUD determined threshold, as adjusted annually by inflation, is considered part of net family assets.

Bank Accounts

Notice H 2023-10

HUD considers bank accounts non-necessary personal property.

- When the combined value of all non-necessary personal property is greater than the HUD determined threshold, as adjusted annually by inflation, checking and savings accounts are considered part of net family assets.
- When the combined value of all non-necessary personal property does not exceed the HUD determined threshold, as adjusted annually by inflation, checking and savings accounts are excluded from net family assets.

Actual income from checking and savings accounts is always included in a family's annual income.

Anticipated income must be recorded for every asset, regardless of the total value of net family assets.

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EXAMPLE 1: BANK ACCOUNTS
• Kaitlin Mitchell has a non-interest-bearing checking account worth $2,300. • This is her only asset.
• The checking account is excluded from net family assets since her non-necessary personal property does not exceed the HUD determined threshold. • Anticipated income: $0

EXAMPLE 2: BANK ACCOUNTS
• Brett Dawes has the following: - A savings account worth $8,000 that earns $1 in interest annually. - A non-interest-bearing checking account worth $100
• The checking and savings accounts are excluded from net family assets since his non-necessary personal property does not exceed the HUD determined threshold. • Anticipated income: $1

INVESTMENT ACCOUNTS

HUD considered financial investments like stocks, bonds, savings certificates, money market funds, and other investments as non-necessary personal property.

- When the combined value of all non-necessary personal property is greater than the HUD determined threshold, as adjusted annually by inflation, financial investments are considered part of net family assets.
- When the combined value of all non-necessary personal property does not exceed the HUD determined threshold, as adjusted annually by inflation, financial investments are excluded from net family assets.

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Actual income from financial investments is always included in a family's annual income. Anticipated income must be recorded for every asset, regardless of the total value of net family assets.

- When a stock issues dividends in some years but not others, the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is $0.
- When the stock never issues dividends, the actual return is $0.

TRUSTS

HUD Handbook 4350.3

A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

There are two types of trust: revocable and irrevocable.

- The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.

A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

When the creator sets up an irrevocable trust, the creator has no access to the funds in the account.

- The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the beneficiary's 21st birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.
- The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

FR 5.603(b)(4)

For **revocable** trusts:

- A revocable trust that is under the control of the household is included in net family assets when the grantor is a member of the assisted household.

- If a revocable trust is included in the calculation of net family assets, then the actual income earned by the revocable trust is also included in the family's income. For example, interest earned, rental income if property is held in the trust.
- When a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family, the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded, no household member may be the account's trustee.

For **irrevocable** trusts:

- Irrevocable trusts are not under the control of the household. They are excluded from net family assets.
- Where an irrevocable trust is excluded from net family assets, actual income earned by the trust is excluded for as long as the income from the trust is not distributed.

For both irrevocable and revocable trusts, if the value of the trust is not considered part of the family's net assets, then:

- Distributions of the principal or corpus of the trust are excluded;
- Distributions of income earned by the trust (i.e. interest, dividends, realized gains, and other earnings on the trust's principal), are included;
- Except distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor are excluded.

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EXAMPLE: IRREVOCABLE TRUST
• Candy Kim has an irrevocable trust established by her parents for her care. • Last year she received $18,000 payable in $1,500 monthly increments. • The attorney managing the trust reported that $3,500 of the funds were interest and $14,500 was principal.
• Since the trust is irrevocable, it is not counted as an asset. • The $3,500 in interest payments each year are counted as income. • The $14,500 in principal is not counted as income.

JOINTLY OWNED ASSETS

Notice H 2023-10

Jointly owned assets are assets owned by the family and one or more individuals outside of the assisted family.

The owner must include the total value of the asset in the calculation of net family assets, unless the asset is otherwise excluded or unless the assisted family can demonstrate that the asset is inaccessible to them, or that they cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value shall be included in the calculation of net family assets for the family.

Any income from a jointly owned asset must be included in annual income, unless that income is specifically excluded or unless the family demonstrates that they do not have access to the income from that asset, or that they only have access to a portion of the income from that asset.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

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Lump Sums

24 CFR 5.609(b)(24)

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 are considered in net family assets when these one-time payments are retained in an asset that is not excluded from the definition of net family assets.

- A lump sum for a deferred periodic payment (such as unemployment and disability compensation, workers compensation, child support and severance pay) is included in annual income.
- The exception to the deferred periodic payment rule is a lump sum for the delayed start of Social Security or SSI benefits, or a lump sum or prospective monthly amounts of deferred disability benefits from the Department of Veterans Affairs. Lump sums for the delayed start of these payments are not included in annual income and only become assets if the lump sum is retained in an asset that is not excluded from the definition of net family assets.

Federal tax Refunds or Refundable Tax Credits

24 CFR 5.603(b)(3)(xi)

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

Notice H 2023-10

If the federal tax refund was received during the 12 months preceding the effective date of the family's annual or interim recert, then the amount of the refund that was received by the family is subtracted from the family's net family assets.

- When the subtraction results in a negative number, then the balance of the asset is considered $0.

Owners are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below the HUD-determined threshold (adjusted annually for inflation), even in years when full verification of assets is required or if the owner does not accept self-certification of assets.

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Owners must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than the HUD determined threshold.

The anticipated income earned by the assets in which a family has deposited their federal tax refund or refundable tax credits must be included in the family's annual income unless the income is specifically excluded.

EXAMPLE: TAX REFUNDS
• Chris Erickson received a $4,500 federal tax refund on 3/1. • He deposited the entire refund into his checking account. • The checking account is his only asset. • At his 8/1 annual, he self-certifies that his account balance is $10,000. • He reports his actual income from the checking account is $100.
• The owner must subtract the $4,500 tax refund from the account's $10,000 balance. • The cash value of the checking account to be counted toward net family assets is $5,500. • Since his non-necessary personal property is less than the HUD determined threshold, the owner excludes the entire checking account from his net family assets. • The owner includes $100 as anticipated income.

RETIREMENT ACCOUNTS

24 CFR 5.603(b)(3)(iii)

Exclude from net family assets the value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals.

24 CFR 5.609(b)(26)

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals are excluded from annual income.

- In other words, any income earned on the funds while stored in a retirement account is not considered actual income from an asset.
- A listing of IRS-recognized retirement accounts may be found at https://www.irs.gov/retirement-plans/plan-sponsor/types-of-retirement-plans. IRS-recognized retirement plans include Individual Retirement Arrangements IRAs, Roth IRAs, 401(k) plans, SIMPLE 401(k) plans, 403(b) plans, SIMPLE IRA Plans (Savings Incentive Match Plans for Employees), SEP Plans (Simplified Employee Pension), SARSEP Plans (Salary Reduction Simplified Employee Pension), Payroll Deduction IRAs, Profit Sharing Plans, Defined Benefit Plans, Money Purchase Plans, Employee Stock Ownership Plans (ESOPs), Governmental Plans, 457 Plans, and Multiple Employer Plans

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

EXAMPLE: RETIREMENT ACCOUNTS
• Hannah Hall (age 72) has an IRA. • Current balance is $200,000. • The account pays approximately 2% interest annually. • She receives monthly payments from the account of $800.
• The account is not an asset. • The 2% interest earned on the account is not anticipated income since the account is not an asset. • However, the monthly payments are considered income.

PREPAID DEBIT CARDS

RHIIP Listserv Posting #296

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.

When third-party verification is required, the family provides an account balance no more than 120 days old at the time of recertification. This balance can be obtained from an ATM, though the online account service, or a paper statement. The verification document must identify the account and the account holder.

LIFE INSURANCE POLICIES

- The cash value of life insurance policies available to the individual before death is included in net family assets.
  - For example, the surrender value of a whole life policy or a universal life policy.
  - The face value of the policy is not considered an asset.
- Assets do not include the value of a term life insurance policy which has no cash value to the individual before death.

EXAMPLE: WHOLE LIFE INSURANCE
James May has a whole life insurance policy with a face value of $100,000 and a surrender value of $30,000. It pays a $100 annual dividend.
• $30,000 will be included in the calculation of net family assets. Since there is no other non-necessary personal property, the cash value of the life insurance is not included as an asset since net family assets do not exceed $54,898. • The annual dividend of $100 is included as actual income from the asset.

OTHER ASSET EXCLUSIONS

Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, which resulted in a family member being a person with a disability.

The value of certain education savings accounts such as Coverdell, 529, ABLE, or "baby bond" account created, authorized, or funded by federal, state, or local government.

Equity in a manufactured home where the family receives HCV assistance.

Equity in property under the Homeownership Option for which a family receives HCV assistance.

Family Self-Sufficiency accounts.

Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

Interest in Indian Trust lands.

The entire value of an Achieving a Better Life Experience (ABLE) account.

- Distributions from the account and actual or imputed income on the account is not counted as income.
- See Notice H 2019-06 for more information.

Section 9 Calculating the Value of Assets

NET FAMILY ASSETS

24 CFR 5.603(b)(1)

Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions such as settlement costs and transfer taxes.

Market value – Reasonable costs to convert an asset to cash = Net cash value

CFR 5.603(b)

To determine net family assets, the owner must calculate the net cash value of each asset. Net 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.

- Market value is what an asset is worth.
- The cash value of an asset is the amount the family would actually receive if the asset were converted to cash.
- The family is not required to actually convert an asset to cash.

Net family assets is the net cash value of all assets added together.

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EXAMPLE: NET FAMILY ASSETS

- Dave owns a $51,000 CD and a non-interest-bearing checking account worth $10,000. The penalty for early withdrawal for the CD is $400.
- The CD and the checking account are non-necessary personal property.
- The owner uses the current balance of the checking account as its net cash value.
- For the CD, the owner performs the following calculation:

Market Value		$51,000
Less reasonable costs to convert to cash		$400
Equals net cash value	=	$50,600

Dave's net family assets are:

Checking account	$10,000
+ CD	+$50,600
Equals net family assets	$60,600

INCOME FROM ASSETS

Income or returns from assets are generally considered to be interest, dividend payments, or other actual income earned on the asset.

Income from assets must be included in the family's income.

Some assets generate no income, such as:

- Non-interest-bearing checking account
- Non-necessary items of personal property such as a recreational boat

Many assets do generate income, such as:

- Interest on savings accounts
- Dividends from stock

Notice H 2023-10

Unless the income is specifically excluded, actual income from assets is always included in the family's annual income.

- Regardless of the total value of net family assets.
- Regardless of whether the asset itself is included or excluded from net family assets.

Income from assets is always anticipated, regardless of the certification type.

NET FAMILY ASSETS OF THE HUD DETERMINED THRESHOLD OR LESS

Revenue Procedure 94-65 allows for self-certification of assets if assets do not exceed $5,000. However, Section 8 regulations under HOTMA use a higher amount that is tied to an annual inflationary adjustment. For 2027, the threshold for self-certification of assets is $54,898. Since Rev. Proc. 94-65 refers to the HUD regulations for the threshold for self-certification of assets, most state agencies have generally adopted this threshold.

Check with your state allocating agency to see if self-certification is allowed and whether your state agency has adopted the higher HUD threshold.

EXAMPLE	
Jenny Jones has a savings account. This is her only asset. On her declaration form, she states the following:	
Current Value	$1,400
Actual income from the account	$1
The owner may accept self-certification of the value of the account provided the HFA allows for self-certification. The savings account is not an asset since her non-necessary personal property does not exceed $54,898. The owner does not calculate imputed income from her savings account since her assets do not exceed $54,898. The owner includes $1 as actual income from her savings account as anticipated income.	

NET FAMILY ASSETS EXCEEDING THE HUD DETERMINED THRESHOLD

When net family assets have a total value over the HUD determined threshold (as adjusted annually for inflation), the owner may not rely on the family's self-certification. Instead, the owner must obtain third-party verification of all assets and must calculate income using the following method:

- If actual returns (income) can be calculated, the owner includes actual income for each asset, which is calculated by using the market value x interest rate or rate of return.
- If actual returns cannot be calculated, imputed returns are included based on the current passbook savings rate, as determined by HUD, adjusted annually for inflation.
  - For 2027 the passbook rate is 0.38%.
- If the owner is able to calculate actual returns from some assets and unable to calculate actual returns from others, the owner uses the actual returns from those assets where the rate of return is known and uses an imputed calculation for those assets where it is unknown. The owner then adds all asset income together in order to determine final assert income.
- An asset with an actual return of $0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property).
- If the asset is a financial asset and there is no income generated (for example, a no-interest-bearing bank account or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated.

The passbook rate is never applied when net family assets are the HUD determined threshold or less. The passbook rate is only applied when net family assets exceed the HUD determined threshold and only to those assets where the rate of return is unknown.

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EXAMPLE
Dave has a CD with a $51,000 market value and a non-interest-bearing checking account worth $10,000.
• The checking account earns no anticipated income. • For the CD, the owner verifies it pays 4% interest annually. • $51,000 market value x 4% interest = $2,040 income from the CD.

EXAMPLE
Glenn and Jeri Jorgensen have the following assets: • Vacant land with a cash value of $25,000. • A savings account worth $55,000 that pays 1% interest.
• The family's total net assets are $80,000. • The actual income of the savings account is $55,000 x 1% = $550. • The owners is unable to calculate the actual income earned for the property, so imputed asset income is calculated as $25,000 x 0.38% = $95. • Final asset income is $645.

Assets Disposed of for Less than Fair Market Value

24 CFR 5.603(b)(2)

In determining net family assets, owners must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor.

- Including a disposition in trust, but not in a foreclosure or bankruptcy sale.

- In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms.
- Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

The cash value listed is the difference between the actual cash value of the asset and the amount received.

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EXAMPLE: ASSETS DISPOSED OF FOR LESS THAN MARKET VALUE
Angela Smith is a current resident. Last month she sold her home to her daughter for $5,000. She spent the $5,000 lump sum paying off credit card debt. The home was valued at $90,000 and had no loans secured against it. Ms. Smith paid broker's fees and settlement costs of $15,000. This was her only asset.
$90,000 - $15,000 in expenses to convert to cash $75,000 cash value - $5,000 received when disposed $70,000 asset disposed of
• The amount to be included in net family assets for 2 years from the date of sale is $70,000. • The actual anticipated income from the asset is $0 since Ms. Smith sold the home. Since actual income cannot be calculated, and the total net cash value of her assets is greater than the HUD-determined threshold, the owner will use the HUD-determined passbook rate to calculate anticipated income. • The $5,000 she received from her daughter is a lump sum. It is not income. It is not an asset since it was not retained as an asset. • Final asset income: $70,000 x 0.38%= $266

Section 10 Verification

Although the same regulations govern how annual income is calculated in the LIHTC and Section 8 programs, verification of income and assets is not governed by HUD regulations.

IRS Newsletter #54

The authority for documentation requirements in the LIHTC program is found in Treasury Regulation §1.42-5(b). Documentation requirements described in the 4350.3 are considered "sufficient" but are "not the authority for documentation requirements for income certifications." The verification process in the LIHTC program can differ significantly from HUD programs. For example, the HUD Handbook 4350.3 requires HUD's Enterprise Income Verification (EIV) system to be used to verify certain types of income, but EIV use is prohibited in the LIHTC program. Further, the HUD Handbook 4350.3 has not yet been updated for HOTMA.

Many state allocating agencies have very specific requirements for verification of income and assets and these requirements can vary widely. Check your state compliance manual to see if your state requires any specific documentation, including the use of specific third-party verification forms. Many states have a list of required and/or recommended forms on their website.

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 minimum expectations. Due diligence includes obtaining third-party verification where required, ensuring tenant files are complete and all forms are thoroughly filled out, and following up on any discrepancies or conflicting information. State agencies have specific requirements for how an owner must demonstrate this. Failure to demonstrate due diligence can result in noncompliance.

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THIRD-PARTY VERIFICATION

As part of the initial income certification as well as for annual recertifications, each tenant file must include documentation to support reported income.

Notice H 2023-10

Third-party verification must be dated within 120 days from the date of receipt by the owner. For fixed sources of income such as Social Security, however, a statement dated within the most current benefit year is considered acceptable verification.

Treasury Regulation §1.42-5(b) and LIHTC Newsletter, Issue 54

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

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.

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Remember, many state allocating agencies have more stringent requirements than those required by HUD 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 allocating agency may require. Further, many states prohibit the use of white out in tenant files, instead requiring that owners cross out incorrect information and indicate a change was made by initialing next to the correction. Many allocating agencies also prohibit the use of both blue and black ink in a file or the use of pencil. Be sure to become familiar with your state's requirements.

It is also important to note that some states accept HUD Forms 50058s or 50059s generated by local PHAs 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**.

Means-Tested Federal Assistance Programs

Under HOTMA, owners may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs. Check with your state agency to see if this type of verification is allowed and if the state agency imposes any additional requirements. Some state agencies prohibit this type of verification.

Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);

- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the Federal Register.

If the owner elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification.

- The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income.
- The annual income need not be broken down by family member or income type.

The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the owner:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

If the owner is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, the owner must calculate the family's annual income using other methods.

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Income Calculation In Blended Properties

A common misconception is that files in blended units must "match" each other. In other words, if a property has combined LIHTC/PBV units, the income calculations in both files need to be identical. However, it is impossible for every file in such a development to match. For example, a family living in a combined LIHTC/PBV unit might be sanctioned by the TANF department and have their portion of the rent calculated using imputed welfare income in the PBV program, but have their income calculated for the LIHTC program without any imputed welfare. Again, the TIC and HUD Form 50058 would not "match" in this case. Remember that when you are audited by your state allocating agency or HUD, each auditor is reviewing the part of the file that is specific to their own program. For example, an auditor from the allocating agency for the above LIHTC/PBV unit will not be reviewing a file to make sure that the EID was calculated properly in the PBV program.

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Section 11 Chapter 7 Post Test

1. 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
2. When is non-necessary personal property considered an asset?
   a. When net assets are $54,898 or less
   b. Never, as non-necessary personal property is not an asset
   c. Always, regardless of the amount of the family's assets
   d. When net assets are greater than $54,898
3. For the last four years, Mary works as a lunch helper at an elementary school for 8 months a year and earns $15,000. In the summer she is not employed by the school and isn't paid, so she gets a job at a restaurant making $3,000 a year. She states she will do this again this year. What is her annual income?
   a. $18,000
   b. $15,000
   c. $3,000
   d. $0
4. Mandy won the lottery and received a lump sum of $10,000. She spent the money paying off debts. How much of the lottery winnings are counted as income?
   a. $0
   b. $10,000
5. Medical expenses are deducted when calculating annual income in the tax credit program.
   a. True
   b. False

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6. The EIV system:
   a. May be used for applicants to the LIHTC program only
   b. May be used to verify income for LIHTC participants at blended sites only
   c. May never be used in the LIHTC program
   d. May be used if a waiver is granted by HUD or the state allocating agency
7. Maple Crest Manor is a 100-unit development that is 100% LIHTC and public housing. When the state allocating agency audits Maple Crest Manor's files, they will review them to ensure that income calculations for LIHTC match those in the development's public housing files.
   a. True
   b. False
8. Jackie Jinx has a non-interest-bearing checking account with a six-month average of $8076. If allowed by the state agency, is self-certification an acceptable form of verification for her asset?
   a. Yes
   b. No
9. If a family member is unemployed at the time of the initial certification, but anticipates becoming employed in the next few months, the owner is prohibited from anticipating income from future employment, since the family member is unemployed.
   a. True
   b. False
10. Wanda Watts owns a home worth $100,000 with a $50,000 mortgage. If she were to sell, she'd pay broker fees and closing costs of $5,000. What is the net cash value of her home?
   a. It depends on whether or not she wants to sell it
   b. $100,000
   c. $50,000
   d. $45,000

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11. Workers' compensation payments are excluded from annual income.
    a. True
    b. False
12. Hannah Hall is head of household. She lives with her foster child Heather. Hannah receives $200 a month in foster care payments. This is her only source of income. Heather has a non-interest-bearing checking account with an average six-month balance of $250. What is the family's total annual income?
    a. $0
    b. $550
    c. $2,400
    d. $2,250
13. Jean Jones (age 89) lives alone in an LIHTC unit. She owned a home worth $100,000 but could no longer maintain it so two months before her annual recertification she sold the home to her son for $1. There was no mortgage balance. Her sons paid all the broker fees and closing costs. At her annual recertification, the owner should:
    a. Do nothing. The home is not considered an asset disposed of for less than fair market value since she sold it to someone she is related to.
    b. Do nothing. Assets disposed of for less than fair market value only apply at initial certification
    c. Count $99,999 as the net cash value of the home for two years from the date of sale
14. Mandy Culvers lives in a LIHTC-only unit. She attends a local community college part time and receives a Pell Grant (which is funded under Title IV of the HEA) in the amount of $8,000 a year. How much of the Pell Grant is counted as income?
    a. $0
    b. $8,000
    c. It depends on what her actual covered costs are to attend school.

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15. Eric Castro is a college student and lives in a LIHTC-only unit with his parents (who are not students). He receives a scholarship from the college of $16,000 per year. He also receives Federal Work-Study (which is funded under Title IV of the HEA) in the amount of $10,000 per year. His actual covered costs to attend school for the year are $25,000. How much of Eric's scholarship and Federal Work Study is included in the family's annual income?
    a. The full amount of his scholarship is included, and the full amount of his Federal Work-Study excluded
    b. The full amount of his scholarship, and the full amount of his Federal Work-Study is excluded
    c. The full amount of his Federal Work study is excluded, and $1,000 of his scholarship is included

16. David Cheng is head of household. He works at a bakery earning $13.50 an hour and works between 35 and 38 hours per week. He also receives a $200 bonus each quarter. What is his annual income?
    a. $24,570
    b. $25,370
    c. $26,676
    d. $27,476

17. Mandy Morales works at a grocery store. She is paid $15 per hour and works 40 hours per week. She averages three hours per week in overtime at $15 an hour. What is her annual income?
    a. 31,200
    b. $33,540
    c. $34,710
    d. $46,800

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Learning Activity 7-1: Blue Lake Meadows

BLUE LAKE MEADOWS

Blue Lake Meadows, located in San Diego County, California, is a 30-unit 100% LIHTC project consisting of two- and three-bedroom comparable units in two separate buildings. Each building is not its own project. The owner elected the 40/60 MSA on the IRS Form 8609 but maintains the project as 100 percent LIHTC. The low-income housing tax credits for both buildings were placed-in-service on August 1, 2025.

BLUE LAKE MEADOWS APPLICANT LIST

As the manager of Blue Lake Meadows, you are responsible for ensuring continuing program compliance for Blue Lake Meadows. The following applications have been received for tenancy:

1.	Sue Yim	HOH	Age 22	FT Student
	Ray Yim	Son	Age 6	FT Student
	Chris Yim	Son	Age 5	FT Student
	Gross household income:	$22,100		
	Income type/source(s)	Child support/Wages		
2.	Patrick Howell	HOH	Age 45	
	Trish Howell	Spouse	Age 43	Disabled
	James Howell	Son	Age 17	FT Student
	Katie Howell	Daughter	Age 19	PT Student
	Gross household income:	$26,875		
	Income type/source(s):	Social Security/Wages		
3.	Juan Ortega	HOH	Age 20	FT Student
	Gloria Ortega	Spouse	Age 21	FT Student, formerly in foster care
	Gross household income:	$18,500		
	Income type/source(s)	Wages		
4.	Kristy Jackson	HOH	Age 30	
	Sara Jackson	Daughter	Age 10	FT Student
	Jill Jackson	Daughter	Age 8	FT Student
	Joe Jackson	Son	Age 2	
	Gross household income:	$20,075$		
	Income type/source(s)	Wages		

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5.	Jennifer Hall	HOH	Age 19	FT student; not married; no dependent children; does not collect TANF; not in a job training program; never in foster care
	Gross household income:	$17,900		
	Income type/source(s)	Wages		

FY 2025 Multifamily Tax Subsidy Project Income Limits Summary

San Diego County, California										
FY 2025 MTS Income Limit Area	Median Income	FY 2026 MTS Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
San Diego County	$73,000	50 Percent Income Limits	$28,350	$32,400	$36,450	$40,500	$43,750	$47,000	$50,250	$53,500
		60 Percent Income Limits	$34,020	$38,880	$43,740	$48,600,	$52,500	56,400	$60,300	$64,200

FY 2026 Multifamily Tax Subsidy Project Income Limits Summary

San Diego County, California										
FY 2026 MTS Income Limit Area	Median Income	FY 2025 MTS Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
San Diego County	$72,700	50 Percent Income Limits	$27,650	$31,600	$35,550	$39,450	$42,650	$45,800	$48,950	$52,100
		60 Percent Income Limits	$33,180	$37,920	$42,660	$47,340	$51,180	$54,960	$58,740	$62,520

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DETERMINATION OF MAXIMUM INCOME LIMITS

1. What is the maximum gross household income for the following to initially occupy a unit at Blue Lake Meadows, as of today's date?

   a. A one-person household _____
   b. A two-person household _____
   c. A three-person household _____
   d. A four-person household _____

2. Consider the applications received for Blue Lake Meadows. Based on their student status, which households would potentially qualify to live at Blue Lake Meadows? (Note: More than one family is eligible.)

   a. Household 1
   b. Household 2
   c. Household 3
   d. Household 4
   e. Household 5

3. Verifications of household income for tenancy at Blue Lake Meadows must be dated within _____ of receipt by the owner:

   a. 60 days
   b. 90 days
   c. 120 days
   d. 6 months

4. How many units must be LIHTC in order to maintain the federal minimum set aside?

   _____

5. Must the MSA be maintained by building or project?

   _____

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6. Edward and his girlfriend Bella are applying to live at Blue Lake Meadows. Edward and Bella just moved to the area and claim zero income. They were both employed full time less than two months ago as registered nurses in Forks, Washington. They had been working as registered nurses for 3 years in Forks making $54,898 each. Are Edward and Bella eligible to live at Blue Lake Meadows? Explain what type of information (if any) is required to determine Edward and Bella's income eligibility.

_____

_____

_____

_____

_____

_____

_____

_____

7. Applicant household #3, the Ortega family, informs you that both Juan and Gloria have started receiving Social Security benefits of $900 per month each. Their income from wages remains the same. Calculate the Ortega's gross household income.

_____

Is the Ortega family eligible to live at Blue Lake Meadows?

_____

8. Verification of social security numbers is required for households that want to live in Blue Lake Meadows?
   a. True
   b. False
9. A family consisting of an ineligible non-citizen and a U.S. citizen could not live at Blue Lake Meadows because of their citizenship status.
   a. True
   b. False

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CHAPTER 8 Setting Rents

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

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

- Recognize how maximum gross rent is determined
- Recognize how contract rents are determined
- Explain how maximum gross rent is determined when LIHTCs are mixed with Section 8 programs, public housing supportive services, and rural housing services
- Recognize how unit size is determined
- Recall how rent floors are applied
- Explain how fees affect rent
- Describe the utility allowance requirements for LIHTC units and blended units

OVERVIEW

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.

Tenant 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.

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The maximum allowance gross rents (the rent limits) are calculated using the income limits applicable to the unit, adjusted for bedroom size. Rent limits are generally published by the state allocating 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%, 60%, or Average Income Test). 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 Average Income Test 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.

Tenant Rent + utility allowance + non-optional charges = Gross Rent

Section 2 Gross Rent

Gross Rent Limits

Generally, maximum rent limits are published by state agencies on their websites. However, it is the owner's responsibility to ensure that the correct rent limits are being used at their property. An understanding of how these limits are calculated is helpful in order to be certain the correct amounts are always used, so a description of this process is included below.

The following are the steps used to calculate gross rent limits. Be sure to check your state HFA's web-site for rent limits for your area.

1. Select the appropriate income limit for your area.
2. For properties receiving tax credit allocations after 1990, the maximum rent limit is based on the number of bedrooms in each unit. It is calculated using a formula of 1.5 persons per bedroom.
   - For studio and efficiency apartments the one-person income limit should be used.
   - For a two-bedroom, the three-person income limit is used.
     - Example: 1.5 x 2 = three-person income limit
   - Whenever the number of persons occupying the unit is not a whole number, then an average of the very low income limit for a one-person household and the very low-income limit for a two-person household is used.
     - Example: A one-person household is 1.5 persons for purposes of this calculation. Let's say the one person very low-income limit is $27,550 and the two person very-low income limit is $31,500
     - $27,550 + $31,500 = $59,050/2 = $29,525 for one person.
   - This calculation is for the very low (50 percent) income limit.

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3. If necessary, adjust the calculation based on the income limits for your property. For the 60 percent income limit, multiply answer above by 1.2. For the 40 percent income limit multiply the answer above by 0.8.
   - Example: $29,525 x 1.2 = 35,430 for the 60 percent income limit
4. The maximum allowable annual gross rent is computed by multiplying by 30 percent.
   - Example: $29,525 x .30 = $8,857.50 annual gross rent limit
5. The maximum allowable monthly rent is computed by dividing the annual gross rent by twelve months.
   - Example: $8,857.50/12 = $738.13 which is the maximum allowable gross rent for a one bedroom at the 50 percent income limit

Gross Rent and HAP

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 while rents in excess of the LIHTC maximum gross rents cannot be charged, there is an exception for households that receive rental assistance through Section 8, which may include the project based rental assistance (PBRA), project based voucher (PBV), and housing choice voucher (HCV) programs. Any housing assistance payments (HAP) made on behalf of the tenant are not included in gross rent. This includes federal, state or local governmental rental assistance.

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As long as the owner receives subsidy on behalf of a tenant, the gross rent may exceed the applicable maximum gross rent limit. If no subsidy is provided (for example, a zero HAP family in the HCV or PBV programs) the tenant may not pay more than the maximum gross rent limit. Because of this, many LIHTC owners encourage households with various types of Section 8 assistance.

Example: Elmwood Court

Two-bedroom maximum gross rent limit for the area: $875

Two-bedroom utility allowance at Elmwood Court: $75

- What is the maximum contract rent the owner may charge for a 2-bedroom at Elmwood Court? $800

The Ortiz family has a housing choice voucher. They will pay the owner $400, and the PHA will pay the remainder of the rent to owner in HAP. The owner charges a rent of $925 for the Ortiz family's unit.

- What is the gross rent for this unit? $400 + $75 = $475 since HAP is not included in the calculation of gross rent
- Is this unit in compliance? Yes, because the gross rent is not above the maximum gross rent limit

Be sure to check with your state agency. Some state agencies will allow the tenant portion of the rent to exceed the maximum gross rent limit (as long as subsidy is being provided on the tenant’s behalf), while others will not and require that the tenant portion of the rent remain at or below the gross rent limit. In addition, some states have a specific list of programs that they consider to be Section 8 or comparable rental assistance programs

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Learning Activity 8-1: Calculating Gross Rent

The Gomez family has a tenant-based voucher from the local PHA. The maximum allowable gross rent for their unit is $500, but the owner is requesting a rent to owner for this unit of $600. There is no utility allowance for this unit. This amount is rent reasonable under the HCV regulations. The family pays the owner $200 in rent. The housing authority pays HAP to the owner in the amount of $400.

1. What is the gross rent for the Gomez family's unit?

   _____

2. Does the gross rent for the unit exceed the gross rent limit?

   _____

3. Is the unit compliant? Why or why not?

   _____

   _____

   _____

   _____

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Gross Rent and HCV

24 CFR 982.507(c)

In low-income housing tax credit (LIHTC) units, if the rent requested by the owner exceeds the rents for non-voucher families in the project, the PHA must perform a rent reasonable determination. In addition, the PHA must cap the rent at the payment standard for that bedroom size. In other words, in these projects, contract rent to owner is the lesser of the reasonable rent or the PHA's payment standard.

For example, if the LIHTC rent is $600 for comparable, unassisted units in the project, the PHA determined reasonable rent is $625, and the PHA payment standard for that bedroom size is $650, the rent would be $625 since that is the lesser of the reasonable rent or the payment standard.

If the rent to owner does not exceed the rent for other comparable, unassisted units in the project, a rent reasonableness determination is not required; however, the PHA may elect to conduct an analysis anyway. Further, there is no payment standard limitation on these units.

For example, if the LIHTC rent is $600 for comparable, unassisted units in the project, the owner requests a rent of $600, and the PHA payment standard for that bedroom size is $550, the rent would be $600 since the payment standard limitation does not apply.

Tenants receiving rental assistance will pay an income-based rent in accordance with HCV requirements.

Gross Rent and Standard PBV

24 CFR 983.301(b)

Except for certain LIHTC/project based voucher (PBV) units, the rent for PBV units is the lowest of:

- An amount determined by the PHA not to exceed 110 percent of the applicable fair market rent (FMR) (or an exception payment standard approved by HUD) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

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Rents are set differently for contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the IRS Code of 1986;
- The contract unit is not located in a qualified census tract (QCT);
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than tax credits; and
- The tax credit rent exceeds the applicable FMR (or any exception payment standard).

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any applicable utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

In other words, rents in certain LIHTC/PBV units may be capped at the tax credit gross rent limit minus the utility allowance.

Tenants receiving rental assistance will pay an income-based rent in accordance with PBV requirements.

Gross Rent and RAD PBV

Notice PIH 2019-23

For conversion of public housing to PBVs under the Rental Assistance Demonstration (RAD) program, no additional incremental funding is given by HUD and initial contracts rents for these RAD PBV projects are calculated using the regulations governing the standard PBV program and the project's subsidy under the public housing program, with possible adjustments for Moving to Work (MTW) agencies, rent bundling, and tenant-paid utility savings. See Attachment IC of Notice PIH 2019-23 for more information.

Tenants living in a RAD PBV unit will pay an income-based rent in accordance with PBV requirements.

Gross Rent and Standard PBRA

Rent is set in accordance with requirements for the project based rental assistance (PBRA) program under HUD's Office of Multifamily Housing. Tenants living in a PBRA unit will pay an income-based rent in accordance with the requirements of the HUD Handbook 4350.3.

Gross Rent and RAD PBRA

Notice H 2019-09

For conversion of public housing to PBRA under the Rental Assistance Demonstration (RAD) program, no additional incremental funding is given by HUD and initial contracts rents for these RAD PBRA projects are calculated using the project's subsidy under the public housing program, with possible adjustments for Moving to Work (MTW) agencies, rent bundling, and tenant-paid utility savings. See Attachment IC of Notice H 2019-09 for more information.

Tenants living in a RAD PBRA unit will pay an income-based rent in accordance with the requirements of the HUD Handbook 4350.3.

Gross Rent and Public Housing

Notice PIH 2022-33

Flat rents in public housing must be set at no less than:

- 80 percent of the applicable FMR, or
- 80 percent of the Small Area FMR (SAFMR), or where HUD does not publish an SAFMR, 80 percent of the unadjusted rent.
- The unadjusted rent is the FMR estimated directly from source data that HUD uses to calculate FMRs in nonmetropolitan areas.

However, for blended LIHTC/PH units it is possible that the minimum flat rent amount may exceed the LIHTC maximum gross rent limit. HUD clarified in PIH Notice 2022-33 that for these units only, PHAs should set flat rents so as not to exceed the LIHTC maximum rent.

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Gross Rent and HOME

Both the LIHTC program and the HOME program restrict the gross rent for the unit. Each program, however, has different maximum gross rent limits. The lower rent amount must be used when a unit is designated as LIHTC/HOME. In order to make this determination, both the HOME and LIHTC utility allowance schedules must be considered.

Gross Rent and Rural Housing Services

Gross rent does not include rental assistance payments made on behalf of a tenant by the Rural Housing Services (i.e., the Rural Development 515 Program) to the extent that any excess rent paid by Rural Housing Services is rebated back to RHS by the owner. Originally, the rent restrictions for developments with Rural Housing Services (USDA Rural Housing Services) assistance were computed using the general rules for LIHTC housing. Beginning in 1991, gross rent did not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to Rural Housing Services under Section 515 of the Housing Act of 1949. In other words, as long as the owner pays Rural Housing Services the rent amount over the limit (all of the overage), that unit is in compliance.

Example: A property with Rural Housing Services assistance had tax credits allocated to it in 2012. The maximum gross LIHTC rent is $600 and the household's calculated rent under Rural Housing Services regulations is $750, which the owner charges. The owner provides documentation that the $150 above the tax credit maximum has been remitted directly back to Rural Housing Services. There is no noncompliance.

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Gross Rent and Supportive Services

Guide for Completing Form 8823, Chapter 11

Gross rent does not include a fee for a supportive service paid to the owner by any governmental program of assistance or by any organization described in Section 501(c)(3) and exempt from tax under Section 501(a). This is the case **as long as** such program or organization provides assistance for rent, and the amount of assistance provided is not separable from the amount of assistance provided for supportive services.

Supportive services are any services provided under a planned program of services designed to enable residents of residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for people with physical or mental disabilities. In the case of a single room occupancy unit or a building described in IRC §42(i)(3)(B)(iii), Housing for the Homeless, such term includes any service provided to assist tenants in locating and retaining permanent housing.

Example: The maximum LIHTC gross rent is $600, and the owner receives a monthly payment of $800 from a tax-exempt organization to assist with the living expense of a disabled resident living in the owner's LIHTC project. This unit is not out of compliance and there is no noncompliance as long as the owner provides documentation to the HFA or the IRS that the assistance is inseparable from the rental of the unit and complies with the above rule.

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DEEP RENT SKEWING

Proc 94-10, Form 8823 Guide

If the owner elects to deep rent skew on the IRS Form 8609, the following criteria must be met:

- 15 percent or more of the units in the project must be rented to individuals at or below 40 percent of AMI.
- The deep rent skew units must have a gross rent that is no more than half of the average gross rent for the market rate units of comparable size in the project. In other words, the gross rent for the project's market units must be at least twice the gross rent for the LIHTC units of comparable size.
  - If the owner is unable to charge double the maximum LIHTC rent for the market units of comparable size, then the maximum LIHTC gross rent cannot be charged for the LIHTC units.

For example, an owner charges $1,000 for 2-bedroom market units in their project. The utility allowance is $0. The maximum gross rent for any LIHTC set aside 2-bedroom unit in the project is therefore $500 regardless of the LIHTC maximum rent. The owner would need to compare the maximum gross rent for each bedroom size to this limit when establishing unit rents.

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Section 3 Unit Size, Rent Floors, and Fees

Determining Unit Size

The maximum rent is based on the number of bedrooms in the unit. The IRS does not address the size of unit appropriate for a particular household, although state HFAs may have requirements for occupancy standards for LIHTC units. Further, some areas have local laws establishing unit density standards; owners should check those first. In absence of local laws and guidance from the state, owners may establish reasonable, nondiscriminatory occupancy standards. Chapter 3 of HUD Handbook 4350.3 may be used as a guide.

Rent Floors

IRS Revenue Ruling 94-57

When AMI decreases, rent limits will decrease as well. IRC Section 42 provides for a rent floor to protect owners from decreasing rents below those in effect when the building is allocated credits. For housing developments that received an allocation of credits in 1990 or later, the applicable rent limits may not drop below the rents that were in effect:

- The date the state agency made its initial allocation to the building; or
- At the election of the owner made no later than when the building was placed-in-service.

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While owners are not required to affirmatively select one of these dates, if the state agency requires the owner to make an election, the owner should elect the allocation date as the rent floor since this is more beneficial to the owner. This election is made on a separate document executed at the allocation of credits. This election is not listed on Form 8609 or in the regulatory agreement.

> Example: The owner selects the 40/60 MSA on the IRS Form 8609. The maximum rent floor in effect at the time the owner received the credit allocation was $500. HUD issues reduced income limits and the revised maximum 60 percent gross rent is $400. When the building is placed-in-service, the owner was going to charge $450 in rent and use a $50 utility allowance. There is no noncompliance if the owner does this since the owner may rely on the gross rent floor in place at allocation and continue to charge $500 in total gross rent.

Rent floors do not impact the applicable income limits which start being held harmless when the first building in the project is placed in service. Further, the owner's election on line 8b of the IRS Form 8609 does not affect the project's rent floor. Unlike with income limits, even if the owner elects to treat each building as its own project on IRS Form 8609, the owner may still use the same rent floor for each project, provided that the date of allocation for the low income housing tax credits is the same. The owner may not, however, use the same income limits for each project.

> Rent Floor Example: A owner was allocated tax credits in 2022 and locked in a rent floor at that time. The owner subsequently used those credits to build two projects. The owner elected to treat each building as its own project on IRS Form 8609. Project A was placed-in-service in 2023, and Project B was placed-in-service in 2024 Project A would use the 2023 income limits, and Project B would use the 2024 income limits since they are not part of a multi-building project, but both projects would use the 2022 rent floor that was locked in at the time of allocation.

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FEES FOR SERVICES

Treas. Reg. 1.42-11; Guide for Completing Form 8823, Chapter 11

The IRS has stated that charges to LIHTC tenants for services that are **not optional** generally must be 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: 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.

Charges for services such as a washer/dryer hookup fee and built-in storage sheds (paid month-to-month or in a single payment) will always be included in 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 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.

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FEES: CONDITION OF OCCUPANCY

Under Treasury Regulation §1.42-11(a)(3), the cost of services that are required as a condition of occupancy must be included in gross rent, even if federal or state law requires that the services be offered to tenants.

- Refundable fees associated with renting an LIHTC unit are not included in the gross rent computation (e.g., pet and security deposits). One-time fees are excluded as well, such as termination and unit transfer fees.
- Recurring costs or fees, which are not refundable, are included in the rent computation. Examples include fees for month-to-month tenancy and renter's insurance.
- Other optional fees, such as those associated with a garage or storage space rental will not be considered rent so long as the amenity was not included in the project's eligible basis.
- Fees charged for failure to perform according to the lease agreement are not included in gross rent. An example is a $25 late fee penalty for failure to pay rent timely or a $5 charge for key replacement.
- The IRS allows the use of optional tenant-paid insurance policies in lieu of security deposits for LIHTC units without requiring premiums to be included in gross rent. The policies cover losses or lease violations that otherwise would be payable to an owner from a security deposit under state and local landlord-tenant laws. An insurer contracts with a project owner to offer the insurance to tenants in lieu of their posting of a security deposit. At lease signing, tenants pay a one-time non-refundable premium for the insurance, which remains in effect for the duration of a tenancy. In order for this type of fee to be excluded from rent, the owner must allow tenants the option of posting a security deposit or using the insurance policy.
- Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy.

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Rent Increase Requests

For allocations made after 1995, owners are prohibited from increasing rents without first obtaining prior approval from the state agency. Exceptions include rent increases approved by HUD or Rural Housing Services since their process is similar to the IRS. In such cases, the IRS usually only requires a copy of the rent increase approval letter documenting the new rent amounts.

Overcharging Rent

Guide for Completing Form 8823, Chapter 11

Exceeding the LIHTC gross rent limits is uncorrectable noncompliance. Further, overcharging rents during the first year of the credit period can disqualify the owner from claiming any credits if the owner does not meet the minimum set-aside as a result.

The IRS has stated that once a unit has been determined to be out of compliance with rent limits, it is out of compliance for the remainder of the owner's tax year. Rebating rent overpayments to tenants does not fix the noncompliance. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit.

Example: Overcharging Rent

A unit goes out of compliance on April 2, 2025, during the third year of the compliance period. The unit will remain out of compliance until January 1, 2026, regardless of whether or not the owner took action to correct the noncompliance at some point during the year.

Section 4 Utility Allowances

Treasury Regulation 1.42-10
Guide for Completing Form 8823, Chapter 18
Notice 2009-44

The LIHTC gross rent includes a utility allowance for tenant paid utilities. Unless all utilities are paid for by the owner, a utility allowance must be calculated and used.

This allowance is different from some HUD programs in that the LIHTC utility allowance is not deducted from a percentage of the tenant's income to determine tenant rent. Rather, the LIHTC utility allowance is subtracted from the maximum gross rent limit (in addition to non-optional charges) to determine the maximum amount of rent that can be charged.

For example: The maximum gross rent limit for a one-bedroom unit at Happy Hills Apartments is $500. The utility allowance for a one-bedroom unit at Happy Hills Apartments is $50. There are no non-optional charges. The maximum rent the owner may charge is $450 ($500-$50 = $450).

Allowable utility costs include all utilities paid by the tenant directly to the provider, and not by or through the owner of the building (see section on sub-metering for exceptions), excluding telephone, internet, and cable. A separate estimate is computed for each utility. The utility allowance is computed on a building basis, not on a project-wide basis.

Which Utility Allowance Do I Use?

The utility allowance that must be used depends on whether there is any other type of funding in the unit and/or building. Examples of other types of funding include:

- **Buildings assisted by Rural Housing Service (RHS)**: If a building is receiving assistance from Rural Housing Service (RHS-assisted building), the RHS-approved utility allowance must be used for all LIHTC units in the building. This allowance must be used whether or not the building or its tenants also receive other state of federal assistance.
- **Buildings with Project-Based Rental Assistance (PBRA) (known as a HUD-assisted building)**: If the building is also HUD-assisted (for example PBRA) and the utility allowance is reviewed by HUD (or the CA) on an annual basis, use the HUD-approved utility allowance for all LIHTC units in the building. See Notice H 2015-04 for more information on calculating the UA.

- **Units occupied by tenant-based voucher holders (HCV)**: The utility allowance for any tenants receiving HUD rental assistance payments is the applicable PHA utility allowance (even if the owner is using a different UA method for all other units).
- **Units with Project Based Vouchers (PBV)**: If the unit is also a PBV-unit, use the UA for the PBV program which is the PHA's HCV utility allowance. For RAD PBV properties only, there is an option for the PHA to use a site-based utility allowance rather than the HCV UA like in the standard program. If this is the case, use the UA for the RAD PBV units.
- **Units with Public Housing (PH)**: If the unit is also a public housing unit, use the PHA's public housing utility allowance.
- **Units with HOME**: If the unit is also a HOME unit, the utility allowance provided by the PJ must be used to determine the maximum HOME rent (Low or High) that can be charged. The applicable LIHTC utility allowance must also be used to determine the maximum LIHTC rent that can be charged. The lesser of these two amounts is the maximum rent that can be charged in order to maintain compliance with both the HOME and LIHTC programs. Note, if the project also receives HOME funds, the HOME program published a final rule in 2013 prohibiting owners from using the PHA utility allowance for projects that were allocated HOME funds on or after August 23, 2013.

If none of the above situations apply, then the LIHTC owner may choose which utility allowance to use. For example, in a development where some of the units are public housing-only units and some of the units are LIHTC-only units, the owner is not required to use the public housing utility allowance in the LIHTC-only units. In 2008, the IRS issued a regulation change allowing owners to choose from the following five methods when setting the utility allowance:

- **PHA Utility Allowance:** The PHA's HCV utility allowance provides an allowance for utilities and services that are necessary in the locality to provide housing that complies with HUD's housing quality standards (HQS). The PHA utility allowance may be used, however, the rates may be higher than desired, resulting in lower rents.

  NOTE: PHAs are required to review their utility allowance schedule and must revise the allowances for a utility if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised.
- **Local Utility Allowance Estimate**: A local utility allowance estimate provided by a local utility company may be used. The utility allowance estimate must provide the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building is located. Once received, this becomes the utility allowance for all LIHTC units of similar size and construction in the building.

  In the case of a deregulated utility service, the estimate need only be obtained from one utility company even if multiple companies can provide the same utility service to the unit. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in the calculation.
- **Agency Estimate**: An estimate for each unit in the building, provided by the HFA, may also be used. The utility allowance estimate must provide the estimated per-unit-costs of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. The Agency providing the estimate must take into account, among other things, local utility rates, property type, climate and degree-day variables by region in the State, taxes and fees on utility charges, building materials, and mechanical systems. The Agency may also use actual utility company usage data and rates for the building provided consumption data is limited to specific time periods.

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- **HUD Utility Schedule Model**: The HUD Utility Schedule Model (HUD Form 52667) may be used. Utility rates used for this model must be no older than the rates in place 60 days prior to the beginning of the 90-day period when the utility allowance becomes effective.
- **Energy Consumption Model**: This model may be used, taking into consideration energy and water and sewage consumption. At a minimum, this model must take into account specific factors including, but not limited to: unit size, building orientation, design and materials, mechanical systems, appliances and characteristics of the building location. The estimates must be calculated by either a properly licensed engineer or a qualified professional approved by the HFA. The qualified professional and the building owner cannot be related within the meaning of section 267(b) or 707(b). Consumption data usage is limited to specific time periods.

CHANGES IN UTILITY ALLOWANCES

§1.42-10 (c)(1)

During the building's compliance period, all changes in the utility allowance must be put into effect no later than 90-days after the change.

If the owner is using the utility company estimate, HUD utility schedule model or the energy consumption model, the owner must submit copies of the utility estimates to the HFA and make the allowance available to all tenants in the building at the beginning of the 90-day period before the revised utility allowances can be used in determining the rent.

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ANNUAL REVIEW

§1.42-10 (c)(2)

Utility allowances must be reviewed at least once during each calendar year by the building owner. The owner is required to maintain sufficient documentation and supporting data to show that the annual review was performed. Owners should maintain utility allowance documentation from the start of the building's credit period to current in a master utility allowance file for audit purposes.

The owner must pay for all costs incurred in obtaining estimates. Owners are not required to review utility allowances or implement new utility allowances until building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

SUB-METERING

Notice 2009-44
FR Notice 3/3/2016
FR Notice 3/4/2019

Sub-metering typically includes a master meter, which is owned or controlled by the utility supplying the electricity, gas, or water, with overall utility consumption billed to the owner. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owner retains records of resident utility consumption and tenants receive documentation of utility costs as specified in their lease agreement.

The IRS has determined that utility costs paid by a tenant based on actual consumption in a sub-metered LIHTC unit are treated as paid directly by the tenant, and not by or through the owner of the building. The same rules apply to LIHTC property owners who provide low-income tenants with energy directly acquired from a renewable source that is not delivered by a local utility provider and the rate charged by the owner does not exceed the highest rate at which the local utility company would have charged the tenant if they had instead acquired the energy from the utility company.

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For these tenants:

1. The utility rates charged to tenants in each sub-metered LIHTC unit must be limited to the utility company rates incurred by the owner;
2. If the owner charges tenants a reasonable fee for the administrative costs for sub-metering, this fee will not be considered in the calculation of gross rent. This fee must not exceed an aggregate amount per unit of $5.00 per month, unless State law provides otherwise; and
3. If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowance regulations.

NOTE: The above does not apply to RHS-assisted buildings, buildings with RHS tenant assistance, HUD-regulations buildings (PBRA) and for those tenants receiving HUD assistance (PBV or HCV).

RATIO UTILITY BILLING SYSTEM (RUBS)

Ratio Utility Billing Systems (RUBS) is a method, based on an allocation formula, of allocating utility costs in a multifamily building. The formula takes into consideration the number of occupants, unit square footage, number of bathrooms, and number of water heaters. This method is not an acceptable method to use in the LIHTC program for determining the utility allowance, as the method is not based on actual tenant consumption.

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Section 5 Chapter 8 Post-Test

1. Rents in the LIHTC program are based on a percentage of tenant income.
   a. True
   b. False
2. Rents in excess of the LIHTC maximum rent can never be charged in projects with LIHTC units.
   a. True
   b. False
3. Who decides how much rent to charge for a LIHTC unit?
   a. The owner
   b. The state agency
   c. The IRS
4. The LIHTC gross rent is:
   a. The rent plus a utility allowance plus any nonoptional fees
   b. What a family with no rental subsidy would pay to the owner each month
   c. Can never exceed the LIHTC rent limit under any circumstances
   d. Based on the number of occupants in the unit
5. The maximum rent limit is based on the number of bedrooms in the unit, not the number of occupants.
   a. True
   b. False
6. The IRS establishes the size of unit a household may select in IRS regulations.
   a. True
   b. False

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7. The term rent floor means, at the choice of the owner, that the applicable rent limits may not drop below the rents that were in effect when the state agency initially allocated credits to the building.
   a. True
   b. False
8. A unit goes out of compliance with the rent limit on March 5, 2025, and a state agency auditor notes the noncompliance on April 1, 2025. The noncompliance was corrected June 1, 2025. When was the building reported back in compliance on IRS form 8823?
   a. June 1, 2025
   b. December 31, 2025
   c. January 1, 2026
9. The cost of services that are required as a condition of occupancy _____ be included in gross rent.
   a. Must
   b. Must not
10. If a utility allowance changes, it must be put into effect no later than _____ days after the change.
   a. 45
   b. 90
   c. 60
   d. None of the above: the number of days is determined by the state HFA in the QAP
11. Low-income housing tax credits may be blended with HUD subsidies such as public housing or project-based Section 8.
   a. True
   b. False

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12. In an LIHTC-only unit, who selects which utility allowance is used?
    a. The owner
    b. The HFA
    c. The family
13. The owner is only required to review utility allowances if there is a 10% or more change in utility rates from one year to the next.
    a. True
    b. False
14. Owners are allowed to charge new tenants reasonable fees associated with preparing a unit for occupancy before the new tenants occupy the unit.
    a. True
    b. False
15. Amber Valentine is a single person and is applying for an LIHTC-only unit. She is requesting a three-bedroom unit. The owner can allow a single person to live in a three-bedroom unit and not violate federal rules.
    a. True
    b. False

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CHAPTER 9 Ongoing Eligibility

Section 1 Learning Outcomes and Overview

LEARNING OUTCOMES

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

- Identify lease requirements
- Define the general use rule
- Recognize annual recertification requirements in 100 percent and mixed-use projects
- Identify the requirements for the tenant income certification (TIC) at annual recertification
- Discuss how changes in household composition are treated in 100 percent and mixed-use projects
- Define the next available unit rule (NAUR)
- Recall the recertification requirements when families move
- Define the vacant unit rule
- Identify transfer requirements

OVERVIEW

Once eligibility has been determined and unit rent has been established, owners of LIHTC projects must understand all ongoing eligibility requirements under the program. Owners of LIHTC projects must be familiar with several special rules in the LIHTC program including the general use rule, the next available unit rule, and the vacant unit rule. In addition, owners must comply with program requirements for annual recertifications of household income and composition in either 100 percent and mixed-use developments. Tenants may also wish to transfer from their LIHTC unit to another LIHTC unit in the same building or project. This chapter describes the ongoing eligibility requirements that are critical to the project's ongoing compliance under the IRS code.

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Section 2 The General Use Rule and Leases

Several unique rules apply to the low-income housing tax credit program. One of those rules is the general use rule.

THE GENERAL PUBLIC USE RULE

Treas. Reg 1.42-9

The IRS requires that all units in an 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. 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.

Examples of properties that are not available to the general public would be those provided for a member of a social organization or provided by an employer for its employees.

The general use rule was clarified on July 30, 2008, to allow occupancy restrictions and the use of property **designations** 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.

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FAIR HOUSING

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 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. However, the ADA does apply to public areas of an LIHTC property, such as the rental office or any commercial space, regardless of whether federal financial assistance is present.

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.

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LEASE CONTENTS

Because the general use rule requires that all of the units in the project be used on a non-transient basis, the minimum initial lease term must be for a minimum of six months. 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 by some state HFAs. It is recommended that you consult your state HFA for guidance in this area. Many LIHTC owners have specific lease language in their lease agreements that prohibit tenants from breaking their lease within the first six months of initial occupancy. After the initial term, the lease may allow for month-to-month tenancy.

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-to-month basis.

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While the IRS does not require the use of a model lease, it is recommended that the following minimum requirements be included:

- Legal names of the parties to the agreement and all additional occupants
- Unit address and number
- Date the lease is effective
- Term of the 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 language in the lease stating 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.

It is not permissible for an owner to refuse to rent a unit to a tenant-based voucher holder simply because of their status as a voucher holder.

The start date of the lease and the effective date of the initial certification should be concurrent.

Security Deposits

Units receiving low-income housing tax credits are encouraged to collect security deposits. The IRS does not specifically address this issue. 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 a security deposit is required, the owner should maintain evidence that the security deposit was collected and properly refunded. Refundable security deposits are not included in the calculation of the unit's gross rent.

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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. Reasonable, refundable pet fees may be charged and are not considered part of gross rent, however this is another area where states may have more restrictive requirements.

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).

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 the Form 8823 Guide as:

Form 8823 Guide, Chapter 6

"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."

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The Guide further goes on to state that:

"Physical damage to LIHC 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
Revenue Procedure 2014-49

Casualty loss that occurs as a result of a natural disaster in a presidentially declared disaster area may be provided temporary relief from numerous compliance requirements. Revenue Procedure 2014-49 provides important details about such relief including how LIHTC owners impacted by disasters can help individuals and families.

Casualty loss suffered for reasons other than presidentially declared disaster areas should reference Revenue Procedure 2007-54. These projects will not be subject to a recapture of previously claimed credits, provided the units/buildings are restored in a reasonable period of time.

Example 1: A 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-on line 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 on-line 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 on-line 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 on-line by December 31st of the same year, the unit generates a full year of credits.

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Section 3 Conducting Annual Recertifications

One Hundred Percent LIHTC Projects

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. Also note that some investors may still require annual recertifications even if the state, owner, and/or IRS do not. 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 project-based rental assistance (PBRA) in 100 percent of its units, would have to meet the annual recertification requirements for the PBRA program.

Any project that is 100 percent LIHTC will have a target applicable fraction that is 100 percent.

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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/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.

Student Status

All projects, regardless of whether their status is 100 percent LIHTC or mixed-use, must verify the student status of each member of an LIHTC household on an annual basis within 120 days before the anniversary date of the move-in.

Tenant Income Certification (TIC)

A tenant income certification (TIC) must be completed and signed by all adult household members on an annual basis no earlier than 120 days before the anniversary date of the move-in for all LIHTC units.

The owner must complete a TIC supported by documentation to establish continued eligibility. This process is identical to the move-in eligibility process, except the income limits are amended to reflect 140 percent of the median income limit as adjusted for family size.

TICs must be thoroughly and accurately completed to avoid noncompliance. Common errors include incorrect effective dates, incorrect move-in dates, incomplete Section 8 rental assistance information, incorrect income and rent limits and missing or inaccurate BIN numbers. Generally, all adult members of the household should sign the income certification.

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Generally, the effective date of the TIC is the date the household moved into the unit (See Chapter 5 for a discussion of effective dates for acq/rehab properties). The annual recertification must be completed by the anniversary of the effective date of the TIC. In other words, the anniversary of the move in date is the effective date of the TIC, not the first of the month like in some HUD programs. 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, 2024, their annual recertification the following year would need be completed with 120 days of September 15, 2025.

Note: Other programs define the term *effective date* with regard to annual recertification differently. If your project has other sources of funding, be sure to check annual recertification requirements for those programs as well.

Note: Interim recertifications are not required under the IRC.

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Learning Activity 9-1: Tenant Income Certification

The Walsh family completes an application and income certification to live at Vista View apartments, a 200-unit mixed-use LIHTC development, on April 13, 2024.

The property manager completed third-party verification and determined the family was eligible on April 21, 2024.

The head and spouse signed a lease and moved into the unit on May 10, 2024.

1. What is the effective date of the original TIC?

   _____

2. Assuming this is a mixed-used property, by when must all subsequent annual recertifications be performed?

   _____

Recertifications When Families Move

8823 Guide, Chapter 5

When families vacate the unit around the time of annual recertification, the owner has to consider whether or not an annual recertification still needs to be performed. If an owner sends notification to a household of their annual recertification—and the household gives proper notice in advance of the recertification that they will be vacating the unit—no income recertification is necessary, and the unit remains in compliance. The owner should keep documentation on file to show the household gave proper notice. For example, if an owner sent notice to a household of a November 1 recertification, and the household gave notice October 1 that they will vacate the unit on November 15th, the unit would remain in compliance. A late recertification must be completed if the household decided to stay in the unit and cancel their intent to vacate. Also, if the owner initiates eviction proceedings and a household moves out of a unit, no recertification is needed. However, if it is anticipated that the household will not leave the unit, for example the court will not uphold the eviction, a recertification is necessary within 120 days of the determination.

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Section 4 The Available Unit Rule

It is permissible for household income of LIHTC-qualified families to increase above the applicable LIHTC income limits over time, as long as the household initially qualified under the applicable LIHTC income limit and the owner can demonstrate due diligence when the family initially moved in.

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.

Once a household is considered *over-income*, the Next Available Unit Rule (NAUR) 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. The building's applicable fraction may not be restored, however, if a smaller unit is rented to a tax credit qualified household. As a result, additional units may need to be rented to additional tax credit qualified households to restore the building's applicable fraction. For this reason, it is important to monitor the applicable fraction carefully.

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 or until the unit is rented to a nonqualifying tenant (i.e. the unit is rented as a market unit).

The next available unit rule applies to both 100 percent and mixed-use projects.

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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 NAUR 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 an LIHTC unit as a market unit.

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 NAUR 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.

Definitions

For the purposes of this rule, it's important to understand several terms used by the IRS.

- **Next available unit rule (NAUR)**: 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.
- **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.
- **Nonqualified tenant:** A household whose combined gross anticipated income exceeds the applicable LIHTC rent limits.

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Restoring the Applicable Fraction

In a building with a mixture of LIHTC and market units, once the next available unit rule is satisfied and the building's applicable fraction has been restored, it may be possible to increase the rent of the over-income tenant, provided the terms and conditions of the lease agreement are followed. Certain considerations also apply, however:

If the market unit that was used to replace the over-income LIHTC unit is a *smaller* unit, the building's applicable fraction will most likely not be met, and the over-income unit should not be raised to market rent since this will reduce the applicable fraction. Essentially, the owner will need to continue to rent additional next available units to income-qualified households until the applicable fraction is restored. This must be tracked and documented very carefully.

If the next available unit rule is violated, the original over-income household is no longer qualified and the entire building is subject to recapture.

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Learning Activity 9-2: 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

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NAUR and 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)

Unit Type	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. The vacant unit must be rented at the rate of its previous designation, unless it is a market unit. If it is a market unit, it would be rented at the designation of the over-140 percent unit.

- If the comparable or smaller unit was an 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.

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Learning Activity 9-3: Average Income Test

PART I

North Coast Village consists of one building with 9 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 Average Income Test MSA?

Unit A 40% – now over-income	Unit B 80% – occupied	Unit C Market – 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 9 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

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KEY CONCEPTS

1. The next available unit rule is a building rule.
2. The next available unit rule is used to replace over-income units with new LIHTC income-qualified units as available units are rented. Alternatively, over-income units may be returned to LIHTC income-qualified status if the household's income decreases or the income limits increase.
3. No available comparable unit may be rented to a nonqualified tenant before the owner complies with the next available unit rule.
4. An over-income tenant does not need to move out.

Office of Chief Counsel Memorandum 3/16/15

5. In projects that elected the Average Income Test 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.

DEEP RENT SKEWING

The Next Available Unit Rule is applied differently in properties 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 Income averaging the units in the project to individuals whose incomes are at or below 40 percent of AMI. For these units, the next available unit rule is triggered when a resident's income increases above 170 percent of the current LIHTC 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 Unit Rule requires that the next available LIHTC unit is rented to an individual at or below 40 percent of AMI, regardless of whether the over-income individual resides in a deep rent skew unit or a low-income unit. In these properties, the owner is not required to rent available market units to low-income individuals like they are in other projects.

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The deep rent skew election also fixes LIHTC units in a project. If a project consists of 10 units, and units 1-5 are LIHTC and units 6-10 are non-LIHTC, the non-LIHTC units 6-10 never have to become LIHTC units, even if households are over-income at recertification.

Finally, the over-income unit does not have to be replaced with a unit that is comparable or smaller. The owner may rent any low-income unit in the building to a household at or below 40 percent of AMI to satisfy the rule. Once a household triggers the rule, all subsequent LIHTC units that become available must be rented to 40 percent households until the over 170 percent household moves out or their income decreases. This means that the owner may end up with more 40 percent units than originally planned, sometimes significantly more. The owner should carefully consider this at the time the deep rent skew election is made.

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Learning Activity 9-4: The Alvarez Family

The Alvarez family is a two-person family consisting of Alma and her husband Arthur. They wish to move into a one-bedroom LIHTC unit at Grove Gardens which consists of one and two-bedroom comparable units. At the time the family initially applied for an LIHTC unit, their only source of income was Arthur's social security payment of $800 per month. They have no assets. The applicable two-person income limit in place at the time the owner determined eligibility was $29,500. The owner selected the 40/60 MSA.

Unit 301 1-bdrm market	Unit 302 2-bdrm market	Unit 303 2-bdrm LIHTC	Unit 304 1-bdrm LIHTC
Unit 201 1-bdrm LIHTC **Unit 201 is occupied by the Alvarez family**	Unit 202 2-bdrm LIHTC	Unit 203 2-bdrm market **VACANT**	Unit 204 1-bdrm market **VACANT**
Unit 101 1-bdrm market	Unit 102 2-bdrm market	Unit 103 2-bdrm market	Unit 104 1-bdrm LIHTC

1. Is the Alvarez family income eligible?

_____

The Alvarez family moves into unit #201, a one-bedroom LIHTC unit. At the Alvarez family's annual recertification, the applicable income limit has not changed. However, Alma reports that she has gotten a new job at Jet Industries and she now earns $45,000 per year. Arthur also continues to collect social security.

2. Is this a mixed-use or 100 percent LIHTC development?

_____

3. Is the Alvarez family over-income?

_____

4. What must the owner do to remain in compliance?

_____

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Section 5 Changes in Household Composition

8823 Guide, Chapter 4

Household composition of LIHTC-qualified families can and will change over time. Many state HFAs prohibit additions to household composition within the first six months of the initial lease without requalifying the entire household (exceptions are typically birth, adoption, or court-awarded custody).

Decreases in household size within the first six months of the initial lease are generally less of a concern, but still may generate a reportable event of noncompliance.

The IRS has stated that decreases in household composition (after the initial lease period) are similarly addressed for projects that are 100 percent LIHTC and those that are mixed-use.

Household size *decreases* do not trigger an immediate requirement for a new TIC unless the state agency so requires. Subsequent annual income recertifications will be based on the income of the remaining members of the household. Decreases in family unit size are subject to the available unit rule.

On the other hand, the IRS states that *increases* in household size (after the initial lease period) are addressed slightly differently for projects that are maintained as 100 LIHTC versus mixed-use. The addition of a new member to an existing low-income household requires an income certification for the new member, including third-party verification.

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- In mixed-use projects, the new household member's income is added to the current household's most recent TIC. The household continues to be income-qualified and the income of the new members is taken into consideration along with the income of the existing household for the purposes of the next available unit rule.

Example 1: Additional Person Joins the Household during the Year: Mixed-Use Project

Jose and his two children initially income qualified and moved into an LIHTC unit on March 1, 2021. The project is a mixed-use project consisting of one building with 50 low-income units and 25 market rate units. The household continued to qualify at the annual income recertification for 2022 and 2023. Jose then met Carla, and they decided to marry in September 2023. The new couple would like to live in the LIHTC unit Jose occupies. Carla completes a tenant income certification. The certification effective date continues to be March 1st and the next annual income recertification is due within 120 days before March 1, 2024. When Carla's income is added to the existing household's income as determined for the March 1, 2023 annual recertification, if the household's income exceeds 140 percent of the income limit (170 percent in deep rent skewed projects), then the unit is an over-income unit and the available unit rule is applicable.

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- In 100 percent projects, the new tenant's income is typically added to the current household's original TIC, unless the state HFA 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. Again, check your state compliance manual.

Example 2: Additional Person Joins the Household during the Year: 100 Percent LIHTC Project

Sophia and her two daughters initially income qualified and moved into an LIHTC unit on March 1, 2022. The project is 100 percent LIHTC, and neither the state agency nor the owner require annual recertifications. Sophia did not complete an annual income recertification for 2023 or 2024. Sophia met Bill and they decided to marry in October 2024. The new couple would like to live in the LIHTC unit Sophia occupies. Bill completes a tenant income certification and moves into the unit on October 25, 2024. Bill will be added to the March 1, 2022, original certification.

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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: Remaining Tenants Must Be Income Qualified

Michael, an income-qualified individual, moved into a two-bedroom LIHTC unit in a mixed-use project on May 20, 2023. Jason joined the household in October 2024. At that time, Michael and Jason's combined income was below the limit for a two-person household. In January of 2025, 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 2024, then Jason must be certified as an income-qualified tenant when Michael moves out.

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Learning Activity 9-5: Changes in Household Composition

Oliver Lee and his daughter Wanda initially income qualified and moved into an LIHTC unit at Second Street Apartments on April 15, 2022. The project is a mixed-use project consisting of 25 LIHTC-only units and 15 market rate units.

1. Are annual recertifications required at this property?

   _____

2. What is the effective date of the household's first annual recertification?

   _____

3. When must the recertification be completed?

   _____

In June 2023 Oliver requests to add his girlfriend Olivia to the unit, and Olivia completes a tenant income certification. She has a full-time job at Jet Industries. On her own, Olivia's income is over the one-person income limit.

4. May Olivia move into the unit?

   _____

5. Is Olivia's income added to the initial TIC or the most recent TIC?

   _____

6. What is the effective date of the household's next annual recertification?

   _____

When Olivia's income is added to the existing household's income in June 2023, the household's income exceeds 140 percent of the applicable income limit.

7. May the household continue to reside in an LIHTC unit?

   _____

8. What must the owner do?

   _____

   _____

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In August 2024 Oliver's daughter Wanda moves out of the unit. Oliver and Olivia are now the only family members who live in the unit.

9. Is a new TIC required when Wanda moves out?

_____

In December 2024 Oliver and Olivia break up, and Oliver moves out of the LIHTC unit.

10. May Olivia remain in the unit?

_____

_____

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TENANT FRAUD

While owners may do everything they can to demonstrate due diligence and only move in eligible families, sometimes tenants commit fraud. If the owner suspects that tenants are intentionally committing fraud, the owner may wish to evict the tenant or raise their rent to market, depending on state or local landlord/tenant laws. The owner should also report any suspected or deliberate misrepresentation to the IRS using a IRS Form 211. The owner should also report any suspected deliberate misrepresentation or fraud to the state agency as soon as possible to avoid any potential loss of credits. No Form 8823 will be filed by the HFA if the tenant fraud was discovered and addressed by the owner prior to a state agency review or IRS audit, and the owner satisfies the state agency that:

- The tenant provided false information
- The owner demonstrated due diligence and has implemented needed changes to avoid future problems
- The tenant has vacated the unit (where possible)
- There is no pattern of accepting fraudulent tents

Remember, the term bright line means that the owner will not receive a Form 8823 only if the owner notifies the state agency before the state agency gives the owner notice of an upcoming audit and then corrects the noncompliance. If the misrepresentation or fraud is discovered during a state agency review or audit, the IRS requires that the state agency complete a Form 8823, regardless of the cause.

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Section 6 Moves

Treasury Regulation 1.42-15(d)

Households may move from an LIHTC unit if they have provided the owner with the required notification as described in their lease agreements. Remember, the minimum initial lease term in the LIHTC program is six months and the owner should prohibit moves during that time.

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 multibuilding 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.

Moves Within the Same Building

Treas. Reg 1.42-15(d); Rev. Rul. 2004-82

If the transfer is within the same building, a previously qualified LIHTC household living 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.

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MOVES TO ANOTHER BUILDING

If someone wants to transfer to another building, compliance differs depending on whether the buildings are part of a multi-building project or not:

- If a previously qualified LIHTC household living in an 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 an 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.

If each building is part of a multiple-building project: Moves may occur (when household is not over-income) 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.

Other Considerations

Transfers relating to reasonable accommodation or VAWA requests that would put the owner in noncompliance should be addressed with the state agency **before** the transfer is allowed.

> **Example: Transfers Relating to Reasonable Accommodation or VAWA Requests**
>
> Nicole comes to the office and requests a unit transfer at Bristlecone Apartments from Building 1 at the front of the property to Building 10, which is located at the back of the property. The request is made under the VAWA processes. Nicole's household is over-income at the time of the request for transfer. Moving a household that is over 140% of the current income limit is not allowed under the LIHTC program but may be allowed with prior approval from the state allocation agency.

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.

See the acq/rehab section of this book for more information on qualifying units during a rehabilitation.

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.

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. 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.

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The eviction process varies from state to state, and LIHTC owners should consult state landlord/tenant law as well as their state agency requirements (if any). 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 the lease once it expires. Nonrenewal of a lease does not necessarily equate with 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 like in many HUD programs. 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.

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Section 7 The Vacant Unit Rule and Staff Units

THE VACANT UNIT RULE

Treas. Reg. §1.42-5(c)(1)(ix)

The vacant unit rule states that when a low-income unit in a project becomes vacant during the year, reasonable attempts must be made to rent the unit or the next available unit of comparable or smaller size to tenants having a qualifying income **before** any units in the project are rented to tenants not having qualifying incomes.

As long as reasonable attempts are made to rent to qualified low-income households, vacant LIHTC units will continue to be included as qualified low-income units for purposes of determining the minimum set-aside and calculating the applicable fraction. What makes an attempt *reasonable* depends on several factors, including but not limited to: size and location of the development, tenant turnover rates, market conditions, and advertising methods available for the area.

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. These units would no longer be considered LIHTC-qualified.

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Keep in mind that in the LIHTC program *vacant* doesn't mean the same thing as *empty*.

- An empty unit is an LIHTC unit that has never been occupied by an LIHTC tenant. Empty units do not generate tax credits.
- A vacant unit is an LIHTC unit from which a tenant has moved. Vacant units may continue to generate tax credits as long as the vacant unit rule is satisfied.

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. Forty of the units must be rented to tenants earning 60 percent or less of AMI. The remaining sixty units are market units and have no income or rent restriction.

Mr. Jones stopped advertising efforts to LIHTC-qualified tenants on January 15, 2025, because it was quite expensive. Ten of the market rate units and 20 of the LIHTC units were vacant at the time the state agency conducted an audit. The LIHTC units were vacated between September 25, 2024 and March 31, 2025.

The project is out of compliance as of September 25, 2024 when the first currently vacant unit was vacated.

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STAFF UNITS

IRS 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 or not the facilities are reasonably required for the project based on the circumstances at the project, not whether or not rent is being charged.

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Section 8 Annual Reporting and Record Retention

Annual Reporting Requirements

Treas. Reg. §1.42-5(c)(1)

Owners of LIHTC properties are required to report annually to the state HFA that their projects were in compliance with the Internal Revenue Code (IRC) for the preceding 12-month period. Although the form and format of the requirement varies from state-to-state, the information provided must be true, accurate, and in compliance with Section 42 of the code.

Owners are required to certify the following information:

1. The project met its minimum set aside (MSA) requirements and, if applicable, deep rent skewing requirements.
2. There was no change in the applicable fraction of any building in the project. If there was, an explanation must be provided.
3. Annual recertifications were conducted and supporting documentation was collected in projects where annuals are required.
4. All LIHTC units met rent restriction requirements.
5. The building and units were suitable for occupancy.
6. The General Use Rule was met.
7. There was no change in the eligible basis for any building. If there was, an explanation must be provided.
8. Tenant facilities were provided on a comparable basis without charge to all tenants in the buildings.
9. The Vacant Unit Rule was followed.
10. The Next Available Unit Rule was met.
11. An extended use agreement was in place.
12. All LIHTC units were rented on a nontransient basis.

Check with your state allocating agency to see if any other information is required.

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Data Collection Requirements

The Housing and Economic Recovery Act of 2008 (HERA) requires each state agency administering an LIHTC program to furnish to HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of the households residing in each LIHTC property.

State agencies have assigned this data collection requirement to LIHTC owners, as they are the ones with the tenant demographic information. Many states have developed online systems for owners to upload the data directly to the HFA. HUD's LIHTC database contains information on over 36,000 projects and 2.2 million units, and can be accessed at: http://www.huduser.gov/portal/datasets/lihtc.html.

Recordkeeping and Retention

Treas. Reg 1.42-5(b)(2)

Thorough and complete record keeping is critical in the LIHTC program. Records will be reviewed by the state HFA and may be reviewed by the IRS, so clear, concise, and complete documentation will ensure that the tax credits are protected. The owner must keep records for each qualified low-income resident by building and unit number throughout the compliance period.

There are two different requirements for record retention in the LIHTC program:

- **First-year tenant records** (including initial tenant income certifications) 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 compliance period of the building, for a minimum of 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. Check with your state for any other requirements.

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Owners are responsible for keeping the following types of project records:

- Tenant files;
- Monthly unit data tracking; and
- Project files (including records regarding the use of facilities included in the project's eligible basis).

Revenue Procedure 2004-82

The IRS has stated that electronic records may be used provided they meet the requirements outlined in IRS revenue procedure 2004-82. Because the first-year records demonstrate that the project was eligible to receive the credits, hard-copy records for first-year records are also recommended.

PROJECT MASTER BINDERS

A project master binder is recommended to include all critical documents. Some of the recommended documents include:

- The tax credit application
- The state-specific Qualified Allocation Plan (QAP)
  - The QAP must be current and in effect at time of tax credit award
- Signed copies of Forms 8609 for each building
- Certificates of occupancy
- Regulatory Agreement/LURA
- Extended Use Agreement
- Income limit tables from initial lease-up to current
- Rent limit tables from the date of allocation to current
- Documentation of utility allowance from initial lease-up to current

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The following documents are recommended to be kept on-site at the project:

- State-specific compliance manual
- HUD Handbook 4350.3
- The Guide for Completing Form 8823 (The Form 8823 Guide)
- IRC Section 42
- HUD's National Standards for the Physical Inspection of Real Estate

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Section 9 Chapter 9 Post-Test

1. In the LIHTC program, the minimum initial lease term is:
   a. 12 months
   b. 6 months
   c. 30 days
   d. 24 months
2. Regardless of whether a project is mixed-use or 100 percent LIHTC, the owner must review student status for all families annually.
   a. True
   b. False
3. In the LIHTC program, when households are not over-income, moves may occur between buildings:
   a. Only if the owner receives a waiver from the HFA
   b. If the owner has elected on IRS Form 8609 that the building is part of a multi-building project
   c. Only if the household is requalified as income eligible in the new building
   d. Only as a reasonable accommodation for a person with disabilities or under VAWA
   e. In all cases
4. The next available unit rule is a:
   a. Building rule
   b. Project rule
   c. Unit rule
5. Which of the following rules states in part, that tax credit units must be used on a non-transient basis?
   a. The student rule
   b. The General Use Rule
   c. The leasing rule
   d. The Next Available Unit Rule

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6. First year tax credit records can never be stored electronically, even if they meet the IRS requirements.
   a. True
   b. False
7. A tenant income certification (TIC) must be completed and signed by all adult household members _____ of the move-in for all LIHTC units.
   a. No earlier than 120 days before the anniversary date
   b. On the anniversary date
   c. At any time before the anniversary
   d. 120 after the anniversary date
8. In both mixed-use and 100 percent LIHTC projects, household size decreases automatically trigger an immediate requirement for a new TIC.
   a. True
   b. False
9. Which of the following statements is true about changes in household composition?
   a. 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
   b. A household may add new members as long as the original head of household continues to live in the unit
   c. Once all original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income-qualified at the time they moved into the unit
   d. Once all original tenants have moved out of the unit, the remaining tenants must move out of the unit
   e. Both a and c
10. For the next available unit rule, a *comparable* unit simply means a unit that has the same number of bedrooms as the over-income unit.
   a. True
   b. False

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11. Part-time, on-site staff living in a LIHTC unit do not have to be LIHTC-income eligible.
    a. True
    b. False
12. If the vacant unit rule is violated:
    a. 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
    b. The vacant unit most recently occupied by a qualifying tenant loses its low-income status as of the date the owner violated the rule.
    c. All vacant units previously occupied by qualifying tenants lose their low-income status as of the date the most recent currently vacant unit was vacated and are no longer considered LIHTC qualified
    d. None of the above
13. Families with a housing choice voucher may not apply to LIHTC properties.
    a. True
    b. False
14. The Vacant Unit Rule states that the minimum initial lease term for an LIHTC unit is 6 months.
    a. True
    b. False
15. If a unit experiences a casualty loss event that is outside of a Presidentially Declared Disaster Area, in all circumstances the unit will not earn tax credits for the year in which the casualty loss occurred, and all previous tax credits that were earned for the unit will be recaptured.
    a. True
    b. False
16. The owner must collect a security deposit of at least $50 in the LIHTC program.
    a. True
    b. False

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17. First year tenant records must be kept for:
    a. 6 years
    b. 10 years
    c. 15 years
    d. 21 years
18. In the LIHTC program, a *vacant* unit is defined as a unit that has never been occupied by an LIHTC-qualified family.
    a. True
    b. False

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CHAPTER 10 Case Study: Lakeview Apartments

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11. Live-in Aide Affidavit
12. Social Security Verification - Third Party
13. Social Security Verification - Tenant Provided
14. Employment Verification

OVERVIEW

Lakeview Apartments is a new construction, mixed-use property located in Omaha, Nebraska. The property consists of two buildings with LIHTC and market units. The owner paid $900,000 to purchase the land and a total of $1,600,000 ($800,000 per building) in other eligible construction costs. 50 percent of the units and 60 percent of the square footage in each building is LIHTC. The property is not located in a QCT or DDA.

The initial lease up for Building A occurred in 2014. Building B leased up in 2015. The Murdock family filled out an application to live in Building A on August 20, 2014. They were brought in for an eligibility interview on October 1, 2014. The family signed a lease and moved into unit 101, which is a 4-bedroom, LIHTC-only unit on October 15, 2014. They were the first family to occupy their unit in Building A.

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Scenario 1: Using the IRS Form 8609, answer the following questions about Lakeview Apartments.

1. Does Lakeview Apartments earn 4% or 9% credits? (Hint: Review the 8609, line 6b) Why?

   _____

2. What is the eligible basis for each building?

   _____

3. What is the applicable fraction for each building?

   _____

4. What is the qualified basis for each building?

   _____

5. When was Building A placed-in-service?

   _____

6. In what month could the Murdock family's unit begin generating tax credits?

   _____

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Scenario 2: You are an auditor for the Nebraska Investment Finance Authority. You are auditing the first- year tenant files for Lakeview Apartments. Using the tenant income certification (TIC) and verifications provided, answer the following questions about the Murdock family's file.

1. What is the household's total income from assets to be included in annual income?

2. What is the family's total annual income?

3. How many people are part of the family for purposes of income limits?

4. Was the Murdock family income eligible when they moved in to Lakeview Apartments? (Note: Income limits remained the same in 2015 and 2016)

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5. Given their family size, may the Murdock family live in a 4-bedroom unit? Why or why not?

6. Is the family eligible under the student rule?

7. Assuming the utility allowance for a 4-bedroom unit at Lakeview Apartments is $150, what is the maximum rent the owner may charge the Murdock family?

8. If the family had a voucher, how would this effect the amount of rent the owner could charge for the unit?

Scenario 3: You are the property manager at Lakeview Apartments and you are conducting an annual recertification for the Murdock family. Answer the following questions.

1. Are annual recertifications required for LIHTC families at Lakeview Apartments?

2. What is the effective date of the Murdock's recertification each year?

3. By when must you complete the Murdock's recertification each year?

4. At the time of the recertification, Matt Murdock reports that he was promoted to manager in September and now makes $4,000 per month. There have been no other changes in the family's income or assets. What action, if any, must the property manager take given this information?

5. At the recertification, the family also tells you that they want to transfer to a unit in Building B. May the family transfer?

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Form **8609**
(Rev. May 2018)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

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)

Lakeview Apartments, Building A
1135 Lakeview Lane
Omaha, NE 68105

B Name and address of **housing credit agency**

Nebraska Investment Finance Authority
200 Commerce Court
Lincoln, NE 68508

C Name, address, and TIN of **building owner** receiving allocation

Walters Development, LLC
1875 Corral Street
San Diego, CA 92020
TIN ▶ 111111111

D Employer identification number of agency

82-2222222

E Building identification number (BIN)

NE1412345

1a	Date of allocation ▶ 02/01/2014 **b** Maximum housing credit dollar amount allowable	1b	
2	Maximum applicable credit percentage allowable (see instructions)	2	%
3a	Maximum qualified basis	3a	
b	Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	3b	1 ___ ___ %
4	Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)	4	%
5	Date building placed in service ▶ 09/01/2014		

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 ▶ Wanda Walters 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 ☐ Average income ☐ 25-60 (N.Y.C. only)
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) ☐ 15-40

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

▶ Signature ▶ 111111111 Taxpayer identification number ▶ Date

▶ Wanda Walters Name (please type or print) ▶ 2015 First year of the credit period

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

Form **8609**
(Rev. May 2018)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

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)

Lakeview Apartments, Building B
1135 Lakeview Lane
Omaha, NE 68105

B Name and address of **housing credit agency**

Nebraska Investment Finance Authority
200 Commerce Court
Lincoln, NE 68508

C Name, address, and TIN of **building owner** receiving allocation

Walters Development, LLC
1875 Corral Street
San Diego, CA 92020
TIN ▶ 111111111

D Employer identification number of agency

82-2222222

E Building identification number (BIN)

NE1412346

1a	Date of allocation ▶ 02/01/2014 **b** Maximum housing credit dollar amount allowable	1b	
2	Maximum applicable credit percentage allowable (see instructions)	2	%
3a	Maximum qualified basis	3a	
b	Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	3b	1 ___ ___ %
4	Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)	4	%
5	Date building placed in service ▶ 02/01/2015		

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.

▶	▶ Wanda Walters	▶
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 ☐ Average income ☐ 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) ☐ 15-40

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

▶	▶ 111111111	▶
Signature	Taxpayer identification number	Date
▶ Wanda Walters	▶ 2015	
Name (please type or print)	First year of the credit period	

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

TENANT INCOME CERTIFICATION

☐ Initial Certification ☐ Recertification ☐ Other _____

Effective Date: _____
Move-In Date: _____
(MM-DD-YYYY)

PART I - DEVELOPMENT DATA

Property Name: _____ County: _____ TCAC# CA-_____ BIN #:_____

Address: _____ Unit Number: _____ # Bedrooms: _____ Square Footage: _____

PART II. HOUSEHOLD COMPOSITION

☐ Vacant (Check if unit was vacant on December 31 of the Effective Date Year)

HH Mbr #	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Last 4 digits of Social Security #
1				HEAD			
2							
3							
4							
5							
6							
7							

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	$	$	$	$

Add totals from (A) through (D), above TOTAL INCOME (E): $

PART IV. INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
		TOTALS:	$	$

Enter Column (H) Total If over $5000 $_____ X Passbook Rate 0.06% = (J) Imputed Income $

Enter the greater of the total of column I, or J: imputed income **TOTAL INCOME FROM ASSETS (K)** $

(L) Total Annual Household Income from all Sources [Add (E) + (K)] $

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	*(Date)*	Signature	*(Date)*
Signature	*(Date)*	Signature	*(Date)*

FY 2014 MULTIFAMILY TAX SUBSIDY PROJECT INCOME LIMITS SUMMARY

FY 2014 MTS Income Limit Area	Median Income	FY 2014 MTS Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person
Douglas County	$73,000	50 Percent Income Limits	$25,550	$29,200	$32,850	***$36,500***	$39,450
		60 Percent Income Limits	$30,660	$35,040	$39,420	***$43,800***	$47,340

Nebraska 2013 Maximum Rent Limits- Douglas County

	Efficiency	1 bedroom	2 bedroom	3 bedroom	4 bedroom	5 bedroom
50% income level	$236	$381	$418	$545	$655	$763
60% income level	$336	$418	$582	$634	$766	$896

Lakeview Apartments

1135 Lakeview Lane

Omaha, NE 68105

P: (402)444-4444 F: (402)555-4444

Please return the completed application to the property management office. Applications are placed on a waiting list according to date and time of application.

1. **Contact Information**

Name of Head of Household:	Spouse Name (If any):		
Matt Murdock	Sylvia Murdock		
Current Address: Street	City	State	Zip
1800 B Street	Omaha	NE	68105
Daytime Phone:	Evening Phone:		
(402) 444-1222	(402) 555-1232		
Bedroom Size Requested:	1 2 3 (4)		

2. **Household Composition**

Name	Relation	DOB	Gender	Student (Y/N)	If yes, PT/FT
Matt Murdock	HOH	4/13/61	M	N	—
Sylvia Murdock	Spouse	1/7/62	F	Y	PT
Sally Mason	live-in aide	8/3/75	F	Y	PT
—	—	—	—	—	—
—	—	—	—	—	—
—	—	—	—	—	—

Do all household members reside in the household 100% of the time? Y

Anticipated changes in household size in next 12 months? N

Anticipated changes in student status in next 12 months? N

Are all occupants full-time students? N

3. Anticipated Household Income

Yes	No	Do you or anyone in the household have:	Annual Amount
✓		Wages or salaries	12,000 Matt 1200Sall
	✓	Child Support	—
	✓	Alimony	—
✓		Social Security	6,600
	✓	Supplemental Security Income (SSI)	—
	✓	Public Assistance (TANF/AFDC)	—
	✓	VA Benefits	—
	✓	Pension Income	—
	✓	Unemployment	—
	✓	Income from Insurance	—
	✓	Disability, Death Benefits, Insurance Dividends	—
	✓	Worker's Compensation	—
	✓	Severance Pay	—
	✓	Net Business Income	—
	✓	Regular gifts from persons outside of the unit	—
	✓	Armed Services Pay	—
	✓	Annuities	—
	✓	Retirement Savings	—
✓		Educational grants/scholarships	2,800
	✓	Self Employment	—
	✓	Other	—
		Total	22,600

4. Asset Income

Yes	No	Do you or anyone in the household have:	Annual Amount
✓		Savings Account	$ 5,000
✓		Checking Account	$ 800
✓		Certificate of Deposit	$ 1,000
	✓	Money Market	—
	✓	Safety Deposit Box	—
	✓	Money in a Trust	—
	✓	Stocks or Bonds	—
	✓	Treasury Bills	—
	✓	Retirement Fund	—
	✓	Annuities	—
	✓	Pension	—
	✓	Personal property held as an investment	—
	✓	Property	—
	✓	Lump Sums	—
✓		Have you disposed of any assets in the last two years? I sold my car.	$2,000
		Total	$8,800

Signature of all parties to this application, 18 and older:

Matt Murdock 8/20/14
Head of Household

Eileen Murdock 8/20/14
Applicant

Applicant

Applicant

BANK VERIFICATION

THIS SECTION TO BE COMPLETED BY TENANT AND EXECUTED BY MANAGEMENT

TO: Bank U.S.
Name & Address of Financial Institution
51 3rd Ave
Omaha NE 68105

402-555-7762
Phone Number
402-555-7763
Fax Number

RE: Matt Murdock
Applicant/Tenant Name
Sylvia Murdock
Applicant/Tenant Name

111-11-1111
Social Security Number
222-22-2222
Social Security Number

Unit # (if assigned)

I hereby authorize release of my asset information.

Matt Murdock
Signature of Applicant/Tenant — Date: 10/1/14

Sylvia Murdock
Signature of Applicant/Tenant — Date: 10/1/14

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential and will be used solely for the purpose of determining eligibility for occupancy. Your prompt response is crucial and greatly appreciated.

Brett Jones
Signature of Owner's Representative

Return Form To: 1135 Lakeview Lane
Omaha, NE. 68105

THIS SECTION TO BE COMPLETED BY FINANCIAL INSTITUTION

SAVINGS ACCOUNT:
Acct #: AB677HJ
Current Balance $ 4,989.15
Current % Rate .075%

SAVINGS ACCOUNT:
Acct #:
Current Balance $
Current % Rate

CHECKING ACCOUNT:
Acct #: BD897HJ
Average Balance for the Past Six Months: $ 1567.60
Current Balance: $ 1,842.60
Rate of Interest: 0 %

CHECKING ACCOUNT:
Acct #:
Average Balance for the Past Six Months: $
Current Balance: $
Rate of Interest: %

Please list other asset accounts below (Certificates of Deposit, Money Market Accounts, etc.)

Account Number	Balance	Type of Account	Rate of Interest	Cash Value*
B7653	$ 1,022.50	CD	2.25 %	$
	$		%	$
	$		%	$

*NOTE: CASH VALUE IS THE CURRENT VALUE MINUS ANY PENALTIES FOR EARLY WITHDRAWAL.

Roberta Meyers — Signature
Roberta Meyers, Bank Mgr — Printed Name & Title — Date

Bank U.S., 51 3rd Ave, Omaha NE 68105
Bank Name and Address

402-555-7762 — Phone #
402-511-6611 — Fax #
rmyers@bankus.com — E-mail

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

(Updated 12/14)

Bank U.S.

We treat your money as though it were our own

51 3rd Street
Omaha, NE 68105
(402)555-7762

October 4, 2014

Re: Matt and Sylvia Murdock

Account Number: B7653

60 Month B.U.S. Certificate of Deposit

Date of initial deposit: April 1, 2013
Date CD reaches maturity: April 1, 2016
Amount of initial deposit $1,000.00

Date	Beginning balance	Ending balance	Average Yearly Rate
4/1/13 thru 4/1/14	$1,000	$1,022.50	2.25%

Next yearly statement date: 4/1/15

www.bankus.com/cd

Bank U.S.

Effective Date May 4, 2011

Certificates of Deposit (CDs) are a wise choice and provide a fixed, predictable rate of return. If you are able to commit funds for a specified period of time, you can enjoy higher fixed interest rates and the security of FDIC insurance. The yields below are available to customers with a qualified Bank US checking account.[1]

CD Specials:

CD special interest rates apply on to the initial term. CD will automatically renew for the same term at the standard (non-special) interest rate

Term (Months)	Rate	APY
9	0.50%	0.50%
13	0.60%	0.60%
24	0.85%	0.85%
30	1.00%	1.01%
48	1.24%	1.25%
60	2.23%	2.25%

Note: **There is a penalty for withdrawing funds prior to the maturity date.** If the term of the CD is less than 365 days, the early withdrawal penalty is equal to $25.00 plus 1% of the amount withdrawn. For terms of one year or more, the early withdrawal penalty is equal to $25.00 plus 2.5% of the amount withdrawn. If the withdrawal occurs within seven days after the date of deposit, the amount of the early withdrawal penalty shall be calculated as above, but in no event shall it be less than the accrued interest.

Exhibit 17-1
Student Status Verification

Head of Household Name: Matt Murdock

Check A, B, or C, as applicable (note that students include those attending public or private elementary schools, middle or junior high schools, senior high schools, colleges universities, technical, trade, or mechanical schools, but does not include those attending on-the-job training courses):

A. X Household contains at least one occupant who is not a student, has not been a student, and will not be a student for five or more months during the current and/or upcoming calendar year (months need not be consecutive). If this item is checked, no further information is needed.

B. _____ Household contains all students, but is qualified because the following occupant(s) _____ is/are a part-time student(s). Documentation of part time student status is required for at least one member of the household.

C. _____ Household contains all full-time students for five or more months during the current and/or upcoming calendar year (months need not be consecutive). If this item is checked, questions 1-5, below must be completed:

1. Is at least one student receiving assistance under Title IV of the Social Security Act? Yes No
2. Was at least one student previously under the care and placement responsibility of the state agency responsible for administering foster care? (provide documentation of participation) Yes No
3. Does at least one student participate in a program receiving assistance under the Job Training Partnership Act, Workforce Investment Act, or under other similar, federal, state or local laws? (attach documentation of participation) Yes No
4. Is at least one student a single parent with child(ren) *and* this parent is not a dependent of another individual *and* the child(ren) is/are not dependent(s) of someone other than a parent? Yes No
5. Are the students married and entitled to file a joint tax return? Yes No

*Households composed entirely of full-time student that are income eligible and satisfy one or more of the above conditions are considered eligible. If questions 1-5 are marked **NO**, or verification does not support the exception indicated, the household is considered an ineligible student household.*

Verification completed by: Matt Murdock

Date completed: 10/1/14

STUDENT FINANCIAL AID VERIFICATION

THIS SECTION TO BE COMPLETED BY TENANT AND EXECUTED BY MANAGEMENT

TO: Broadway University
Name & Address of Financial Aid Provider
1955 University Ave
Omaha NE 68105

(402) 402-4022
Phone Number
(402) 404-4044
Fax Number

RE: Sylvia Murdock
Applicant/Tenant Name

222-22-2222
Social Security Number

Unit # (if assigned)

☐ If you are 24 years of age or older with dependent child(ren), please check here.
☐ If you are a student residing with your parent(s), who are applying for or receiving Section 8 assistance, please check here.

I hereby authorize release of my financial aid information.

Sylvia Murdock
Signature of Applicant/Tenant

10/1/14
Date

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential and will be used solely for the purpose of determining eligibility for occupancy. Your prompt response is crucial and greatly appreciated.

Brett Jones
Signature of Owner's Representative

Return Form To: 1135 Lakeview Lane
Omaha, Nebraska 68105

THIS SECTION TO BE COMPLETED BY FINANCIAL AID PROVIDER AND/OR EDUCATIONAL INSTITUTION

The above-named individual has applied for residency or is currently residing in housing that requires verification of student status. Please provide the information requested below.

Student currently attends school: *(please circle one)* **Full Time** **Part Time**

Total scholarships, grants, gifts etc. *(public or private, excluding student loans)* received is:

	Source	Spring 2014	Summer 20___	Fall 2014
Scholarships		$	$	$
Grants	PELL	$ 1400.00	$ N/A	$ 1400.00
Other Contributions		$	$	$
Cost of Tuition		$	$	$

Expected Date of Graduation: June 2017

I hereby certify that the information supplied in this section is true and complete to the best of my knowledge.

Signature: Tim Mason
Date: Oct 4 2014
Printed Name: Tim Mason
Tel. #: (402) 623-1823
Title: Financial Counselor
Fax #: (402) 623-2700
Educational Institution: Broadway University
E-mail: TMason@Broadwayuu

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.
(Updated 12/14)

Dr. Consuela Chavez, MD

1587 W. Main Street

Omaha, NE 6811

P: (402)457-2400

F: (402)555-1577

drcchavez@aol.com

To whom it may concern:

Sylvia Murdock is a patient under my care. She is a person with disabilities. She needs a live-in attendant to help her around the house and with her medication schedule. If you have any questions, please call me.

Consuela Chavez, MD

License #12349458

LIVE-IN CARE ATTENDANT AFFIDAVIT

I, Sally Mason, will be residing with Sylvia Murdock
(Name of Live-in Aide) (Name of tenant)

their Live-in Care Attendant. I understand that the definition of a live-in aide means a person who resides with one or more elderly persons, or near-elderly person(s), or person(s) with disabilities, and who

(1) X is determined to be **essential** to the care and well-being of the said person;

(2) X is **not** obligated for the [financial] support of the said person; and

(3) X would not be living in the unit **except** to provide the necessary supportive services.

Please initial the above items that are applicable <u>and</u> provide verification of need from applicant/tenant's health care professional or case manager.

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

Sally Mason	Sally Mason	10/1/14
Signature of Live-in Care Attendant	Printed Name	Date

(Updated 12/14)

SOCIAL SECURITY VERIFICATION

THIS SECTION TO BE COMPLETED BY TENANT AND EXECUTED BY MANAGEMENT

TO: Omaha SSA
Name and Address of Social Security Administration
1877 4th Street
Omaha NE 68111

(402)4567890
Phone Number

(402) 456-7891
Fax Number

RE: Sylvia Murdock
Applicant/Tenant Name

111-11-1111
Social Security Number

Unit # (if assigned)

I hereby authorize release of my Social Security information.

Sylvia Murdock
Signature of Applicant/Tenant

10/1/14
Date

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential and will be used solely for the purpose of determining eligibility for occupancy. Your prompt response is crucial and greatly appreciated.

Beth Jones
Signature of Owner's Representative

Return Form To: 1135 LAKEVIEW LANE
Omaha, Nebraska 68105

THIS SECTION TO BE COMPLETED BY APPROPRIATE SOCIAL SECURITY PERSONNEL

☑ The gross amount of the monthly Social Security Benefit is (do not subtract Medicare deduction) $ 560 —

The above amount became effective 1 / 14
Month / Year

☐ The monthly payment of the Supplemental Security Income payment is $ _____

The above amount became effective ___ / ___
Month / Year

☐ Other information needed: _____

Complete only if you are unable to verify information requested:

☐ Claim Still Pending
☐ No record based on identifying information
☐ Other _____

Gordon Hammersmith — Social Security Official's Signature
GORDON HAMMERSMITH — Printed Name
10-3-14 — Date

OMAHA SSA, 1877 4th St. OMAHA NE 08111
Social Security Administration's Name and Address

(402) 456-7890 — Phone #
(402) 456-7891 — Fax #
E-mail

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.
(Updated 12/14)

SOCIAL SECURITY ADMINISTRATION

Date: September 1, 2014
Claim Number: 456-78-9012

Social Security Administration
5130 W. Maine Street
Omaha, NE 68105

Sylvia Murdock
1800 B Street
Omaha, NE 68105

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Beginning January 2014, the full monthly
Social Security payment before any deductions is.....$500.00

We deduct $96.00 for medical insurance premiums each month.

The regular monthly Social Security payment beginning January, 2014 is....$404.00
(We must round down to the whole dollar.)

The benefit amount shown is current as of the date on this letter.

EMPLOYMENT VERIFICATION

THIS SECTION TO BE COMPLETED BY TENANT AND EXECUTED BY MANAGEMENT

TO: Harry's Hardware
Employer [company] Name & Address
1594 Drake Drive
Omaha NE 68105

402-333-3333
Phone Number

402-444-4444
Fax Number

RE: Matt Murdock
Applicant/Tenant Name

111-11-1111
Social Security Number

Unit # (if assigned)

I hereby authorize release of my employment information.

Matt Murdock
Signature of Applicant/Tenant

10/1/14
Date

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential and will be used solely for the purpose of determining eligibility for occupancy. Your prompt response is crucial and greatly appreciated.

Brett Jones
Signature of Owner's Representative

Return Form To: 1135 Lakeview Lane
Omaha, NE. 68105

THIS SECTION TO BE COMPLETED BY EMPLOYER

PLEASE COMPLETE EVERY LINE – IF IT DOES NOT APPLY PLEASE WRITE N/A OR NONE

Employee Name: Matt Murdock Job Title: Sales Clerk

Presently Employed: Yes X Date First Employed Oct 1, 2008 No ___ Last Day of Employment ___

Current Wages/Salary: $ 1,000 per (circle only one) hourly weekly bi-weekly semi-monthly (monthly) yearly other ___

Frequency of Pay: (circle only one) daily weekly bi-weekly semi-monthly (monthly) yearly other ___

Ave # of regular hours per wk: 40 Year-to-date **gross** earnings: $ 9,000 From 1/1/14 through 9/30/14

Number of pay periods included in the YTD earnings above: ___

Overtime Rate: $ Ø per hour Average # of overtime hours per week: Ø

Shift Differential Rate: $ Ø per hour Average # of shift differential hours per week: Ø

Commissions, bonuses, tips, other: $ Ø (circle only one) hourly weekly bi-weekly semi-monthly monthly yearly other ___

List any anticipated change in the employee's rate of pay within the next 12 months: $100 per Month ; Effective date: 3/1/15

If the employee's work is seasonal or sporadic, please indicate the layoff period(s): ___

Does the employee participate in a 401K/Retirement account? ☐ Yes ☒ No Employee can access the account? ☐ Yes ☒ No

Additional remarks: ___

Harry Hansen
Employer's Signature

HARRY HANSEN
Employer's Printed Name

10/3/14
Date

HARRY'S HARDWARE 1594 Drake Drive
Employer [Company] Name and Address

402 333-3333
Phone #

402 444-4444
Fax #

HH619@gmail.com
E-mail

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction. (Updated 12/14)

Notes

CHAPTER 11 Study Guide

Define the following terms:

1. Form 8609:

2. Form 8823:

3. Tax credit:

4. Tax deduction:

5. Placed-in-service date:

6. General Use Rule:

7. Next Available Unit Rule:

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8. Vacant Unit Rule:

9. Hold Harmless:

10. Empty Unit:

11. Vacant unit:

12. The four federal minimum set-aside options are:

13. The federal compliance period for the LIHTC program is _____ years.
The extended use period for the LIHTC program is a minimum _____ years.
The total compliance period for the LIHTC program is a minimum of _____ years of continuous compliance.

14. List the activities for which low-income housing tax credits may be used:

15. In the LIHTC program, the IRS form 8609 documents if each building is its own project or if it's part of a multi-building project.
    a. True
    b. False

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16. In order to qualify as a tax credit unit, what three requirements must be met:

17. The _____ period may begin in the same year a building is placed in service or may be deferred for _____ after a building is placed in service.

18. Owners can begin to claim low-income housing tax credits once:

19. The placed-in-service date for a new construction building is:

20. The qualified basis is used to calculate what?

21. The applicable fraction is the lower of the following two percentages:

22. A building's applicable fraction does not need to be maintained during the extended use period.
    a. True
    b. False

23. Which of the following are generally always included in eligible basis? Select all that apply.
    a. Soil tests
    b. The cost for buying the land
    c. Construction costs
    d. Utility connection fees

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24. Define the following terms:

Accelerated Credits

Bright Line

2/3 or 15-Year Credits

25. What happens if a building fails to meet its MSA by the end of the first year of the credit period?

26. The student rule for the LIHTC program applies to: Select all that apply.
    a. Full-time students
    b. Part-time students
    c. Children in elementary school

27. When do new income limits need to be implemented?

28. Once an LIHTC unit has been determined to be out of compliance with the LIHTC rent limits, the unit is out of compliance for the remainder of the owner's tax year.
    a. True
    b. False

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29. Annual recertifications are never required in the LIHTC program.
    a. True
    b. False
30. In the LIHTC program, the Next Available Unit Rule is:
    a. A project rule
    b. A building rule
    c. It depends on the QAP

31. First year records must be kept _____years beyond the initial federal compliance period for a total of _____years.

32. In the LIHTC program, how often are reports documenting compliance with IRS code required to be submitted to the HFA?
    a. Annually
    b. Quarterly
    c. Monthly
33. List the required inspection protocol in the LIHTC program and when inspections must be conducted by the HFA.

_____

_____

_____

_____

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Notes

CHAPTER 12 Study Guide Answers

Define the following terms:

1. IRS Form 8609:

Lists important information for managing compliance, including the owner's minimum set aside election, if the owner has chosen to deep rent skew, whether the building is part of a multi-building project, the BIN, and the placed-in-service date.

2. Form 8823:

During the federal compliance period, when the HFA identifies an instance of noncompliance or the HFA becomes aware of the sale of an LIHTC building, the HFA is required to notify the IRS using this form.

3. Tax credit:

Tax credits are subtracted directly from one's tax liability. Credits reduce liability dollar-for-dollar.

4. Tax deduction:

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.

5. Placed-in-service date:

The date an LIHTC building is ready for occupancy. Date from which compliance monitoring begins and from which units have the potential to generate tax credits.

6. General Use Rule:

The IRS requires that all projects be available for use by the general public and all units in the project be used on a non-transient basis.

7. Next Available Unit Rule:

When a household's income increases above 140 percent of the applicable income limit (170 in deep rent skewed projects) the next available comparable or smaller unit in the building must be rented to a tax credit-eligible household.

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8. **Vacant Unit Rule:**

When an LIHTC unit in the project becomes vacant, the unit continues to generate a tax credit as long as reasonable attempts are made to rent the unit.

9. Hold Harmless:

Once a project is placed-in-service, income limits for that project may go up but can never go down.

10. Empty Unit:

A unit that has never been occupied by a LIHTC eligible household.

11. Vacant unit:

A unit from which a LIHTC eligible household has moved.

12. The four federal minimum set-aside options are:

20/50	***Income Averaging***
40/60	***25/60 (New York City only)***

13. The federal compliance period for the LIHTC program is ***15*** years.
The extended use period for the LIHTC program is a minimum ***15*** years.
The total compliance period for the LIHTC program is a minimum of ***30*** years of continuous compliance.

14. List the activities for which low-income housing tax credits may be used:

Build, acquire, rehabilitate

15. In the LIHTC program, the IRS form 8609 documents if each building is its own project or if it's part of a multi-building project.
    a. True **
    b. False

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16. In order to qualify as a tax credit unit, what three requirements must be met:

Suitable for occupancy
Rent restricted
Initially occupied by an income-eligible household

17. The ***credit*** period may begin in the same year a building is placed in service or may be deferred for ***one year*** after a building is placed in service.

18. Owners can begin to claim low-income housing tax credits once:

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

19. The placed-in-service date for a new construction building is:

The date the certificates of occupancy are issued

20. The qualified basis is used to calculate what?

The amount of credits a building can claim annually

21. The applicable fraction is the lower of the following 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

22. A building's applicable fraction does not need to be maintained during the extended use period.
    a. True
    b. False **

23. Which of the following are generally always included in eligible basis? Select all that apply.
    a. Soil tests **
    b. The cost for buying the land
    c. Construction costs **
    d. Utility connection fees **

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24. Define the following terms:

Accelerated Credits

Credits earned in years 11 to 15 of the federal compliance period that are claimed in years one through 10

Bright Line

The date of notification of an upcoming compliance review

2/3 or 15-Year Credits

The building failed to meet its applicable fraction by the end of the first year of the credit period. The owner will be ineligible to receive the credits not claimed in year one, which is the difference between the actual applicable fraction and the target applicable fraction. The owner essentially loses out on the credits they would have claimed in year 11 had they met their applicable fraction by the end of the first year of the credit period.

25. What happens if a building fails to meet its MSA by the end of the first year of the credit period?

No credits may be claimed on that building ever

26. The student rule for the LIHTC program applies to: Select all that apply.
    a. Full-time students **
    b. Part-time students
    c. Children in elementary school **
27. When do new income limits need to be implemented?

Within 45 days of HUD publishing them

28. Once an LIHTC unit has been determined to be out of compliance with the LIHTC rent limits, the unit is out of compliance for the remainder of the owner's tax year.
    a. True **
    b. False

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29. Annual recertifications are never required in the LIHTC program.
    a. True
    b. False **
30. In the LIHTC program, the Next Available Unit Rule is:
    a. A project rule
    b. A building rule **
    c. It depends on the QAP

31. First year records must be kept ***6*** years beyond the initial federal compliance period for a total of ***21*** years.
32. In the LIHTC program, how often are reports documenting compliance with IRS code required to be submitted to the HFA?
    a. Annually **
    b. Quarterly
    c. Monthly
33. List the required inspection protocol in the LIHTC program and when inspections must be conducted by the HFA.

    Either NSPIRE or local inspection standards as outlined in the QAP.

    The HFA is required to conduct an inspection at least once every three years.

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Notes

CHAPTER 13 Acronyms

Acronym	Definition
ADA	Americans With Disabilities Act (Section 504)
AFFH	Affirmatively Furthering Fair Housing
AFS	Annual Audited Financial Statements
AMI	Area Median Gross Income
AIT	Average Income Test
ARRA	American Recovery and Reinvestment Act
CFR	Code of Federal Regulations
CO	Certificate of Occupancy
DDA	Difficult Development Area
EIV	Enterprise Income Verification System
Fair Housing Act	1968 act (amended in 1974 and 1988) providing HUD Secretary with fair housing enforcement and investigation responsibilities
FFY	Federal Fiscal Year
FHEO	Fair Housing and Equal Opportunity (HUD Office of)
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/mod housing within a state.
HOME	Home Investment Partnerships (CPD program)
HOTMA	Housing Opportunities Through Modernization Act of 2016
HUD	U.S. department of Housing and Urban Development
IRS	Internal Revenue Service
LGBTQI	Collectively refers to the lesbian, gay, bisexual, queer, intersex, and transgender community
LIHTC	Low Income Housing Tax Credit
LDP	Limited Denial of Participation
LURA	Land Use Restriction Agreement
MSA	Metropolitan Statistical Area
MSA	Minimum Set-Aside
MTSP	Multifamily Tax Subsidy Project
NAUR	Next Available Unit Rule

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Acronym	Definition
NCSHA	National Council of State Housing Agencies
NSPIRE	National Standards for the Physical Inspection of Real Estate
OIG	Office of Inspector General
OMB	U.S. Office of Management and Budget
PBCA	Performance-Based Contract Administrator
PBRA	Project-Based Rental Assistance
PBV	Project-Based Voucher
PH	Public Housing
PHA	Public Housing Authority
PILOT	Payment in Lieu of Taxes
PIS	Placed-in Service
QAP	Qualified Allocation Plan
QCT	Qualified Census Tract
RAD	Rental Assistance Demonstration program
REAC	Real Estate Assessment Center
SWICA	State Wage Information Collection Agency
TANF	Temporary Assistance to Needy Families
TIC	Tenant Income Certification
TSP	Tenant Selection Plan
UFAS	Uniform Federal Accessibility Standards
UPCS	Uniform Physical Condition Standards
VAWA	Violence Against Women Act

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CHAPTER 14 Post-Test Answer Keys

CHAPTER 2: OVERVIEW AND PROJECT STRUCTURE

1. 20/50, 40/60, Income Test 2. b 3. c 4. c 5. b	6. a 7. b 8. New construction, rehabilitation, acquisition 9. b 10. Credit and deduction	11. b 12. a 13. June 5 July 14. b

CHAPTER 3: LIHTC APPLICATION PROCESS & CALCULATING CREDITS

1. a 2. c 3. a	4. a 5. a 6. d	7. a 8. a 9. b	10. b 11. b 12. b	13. b

CHAPTER 4: COMPLIANCE MONITORING AND AVOIDING RECAPTURE

1. c 2. d 3. b 4. a) Recapture b) Disallowance c) Accelerated 5. There is a decrease in the applicable fraction; There is a decrease in the eligible basis	6. For certain types of noncompliance identified and corrected by the owner before notification from the state HFA of an upcoming compliance review is not reported to the IRS during the federal compliance period	7. b 8. d 9. b 10. a 11. a 12. c 13. b 14. d

CHAPTER 5: EARNING CREDITS DURING THE FIRST YEAR

1. d 2. c	3. a 4. b	5. b

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CHAPTER 6: ELIGIBILITY

1. b 2. c 3. b 4. b 5. d	6. Income limits may go up, but they may not go down after a project's first building is placed-in-service	7. a 8. d 9. b 10. Green Acres Apartments: $29,000 Meadow Brook Commons: 28,500 Sunset Homes: 28,0500

CHAPTER 7: CALCULATING GROSS ANNUAL INCOME

1. b 2. d 3. a	4. a 5. b 6. c	7. b 8. a 9. b	10. d 11. a 12. a	13. c 14. a 15. c	16. c 17. b

CHAPTER 8: SETTING RENTS

1. b 2. b 3. a	4. a 5. a 6. b	7. a 8. c 9. a	10. b 11. a 12. a	13. b 14. b 15. a

CHAPTER 9: ONGOING ELIGIBILITY

1. b 2. a 3. b 4. a 5. b	6. b 7. a 8. b 9. e 10. b	11. b 12. a 13. b 14. b 15. b	16. b 17. d 18. b

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