Georgia® Department of Community Affairs | Technical Guidance

LIHTC & HOME Compliance Manual

March 2024 Edition

Georgia Department of Community Affairs | LIHTC and HOME Compliance Manual

Developed with technical assistance from

Costello Compliance

For up-to-date information regarding our programs (such as training, fees, deadlines, policies, etc.) please make sure to visit the DCA/GHFA website regularly.

March 2024 Edition

Contents

Updates in This Edition

Although some minor clerical or clarifying changes have been made, most of the changes apply to HOTMA or NSPIRE.

Page(s)	Brief Description of Change
12-14	Introduction to HOTMA.
27	Reference to NSPIRE relating to compliance on the last day of the taxable year.
36	Reference to NSPIRE and the owner's cert and audited financials for HOME properties.
40-43	Summary of NSPIRE inspection protocols.
44	"Findings and Cures" section added.
47	"New construction" has been changed to "newly placed in-service property" to be more accurate and inclusive of acquisition/rehabs and resyndications.
51	Owners must submit to NSPIRE inspections, with NSPIRE replacing UPCS.
61	Revised rent increase policy is provided.
68	Clarification on HOME UAs and addition of the HUD Baseline method.
69	Clarification that the PCC fees are not levied for UA-related PCCs and there is an 18-month waiting period for UA changes for new properties.
81	Reference to UPCS changed to NSPIRE relating to units suitable for occupancy.
85	Reference to VAWA lease form 91067 corrected from 90167.
88	Reference to UPCS changed to NSPIRE relating to down units.
90	Paragraph on Georgia Housing Search completely revised.
91	Clarification that the owner/agent must comply with Agency requirements when developing TSPs and consult federal and state resources. Added reference to the HCV Administrative Plan for suitability screenings of units assisted by HCVs.
93	An overview of how HOTMA relates to initial income certifications.
94	Clarification that foster adults and children do not have any of their earned or unearned income counted.
95	Clarification that income minimums should compare the portion of the rent that the household must pay under a subsidy program that assists them, not full rent.
96	Discussion of how "household" and "family" are used by HUD and by this manual.
97	Adjustments to how fosters are counted for income limits and occupancy standards under HOTMA.
98	Fosters added to the list of household members whose exemption must be documented.
99	Minor adjustments to the section on live-in assistants. Clarification that fosters do not count toward LIHTC student eligibility exceptions.
100	Changed reference from "$480" to the current "dependent deduction."
101	Clarified that persons who meet the foster child exception must have formerly been in foster care and that foster household members do not go toward meeting the exception. Added Social Security Act Title IV programs to the "TANF" student exception for accuracy.
106-107	The order of preferred verifications is changed to meet HOTMA. The Work Number is given the highest preference and verification directly to and from third parties is generally only used when a household cannot supply documents prepared by third parties (such as pay stubs and bank statements. The HOTMA

	term “transfer” (benefit) payments is introduced. $480 is changed to the “dependent deduction.
108	Appendix 3 of the HUD Handbook has been replaced with HUD Notice H-2023-10, Appendix J. Clarification on EIV and HUD forms has been added.
110	Clarification is provided that HOME must use the PHA determination of income for households in HOME units that have Housing Choice Vouchers. Also, gross income is counted, not net, if using a PHA’s determination of income.
108-109	Information is provided on verifying and using another means-tested program’s determinations of income for LIHTC purposes. Explanation is included that this does not apply to HOME units.
112	Explanation of the new $50,000 asset self-certification rule and when it applies.
113	New additions are made to the combined programs chart relating to verifications.
114	“Sporadic” income added to included income, per HOTMA. “$480” changed to “dependent deduction.
115-117	“How Income is Counted” chart revised to reflect the status and how income is counted for fosters and $480 is changed to “dependent deduction” for adult dependent full-time students. The dependent deduction amount is clarified in several examples.
117	Fast Facts changed to reflect the inclusion of sporadic income. Clarification that all income not specifically excluded in HOTMA is counted.
118	Minor adjustments to the Gross or Net income chart to make it more easily read.
119	Clarification listing where HUD HOTMA regulations relating to income are found and that major portions of the 4350.3 HUD Handbook have been replaced by Notice H 2023-10.
120-122	Information on nonrecurring income under HOTMA provided with examples and clarification that Workers' Compensation is never counted as income.
121	A section and chart with HOTMA annual adjustment factor is added.
123-125	HOTMA income exclusions are listed.
126-132	HOTMA adjustments to earned income with examples throughout this section. Clarification on when employment is garnished or otherwise adjusted and when a receipt of transmission is required for any tax returns used to verify self-employment or other net income.
133-145	HOTMA adjustments to unearned income with examples throughout this section. Workers’ Comp benefit exclusion explained. Child support and alimony court-ordered amounts are no longer relevant, as only actual income received is counted. Nonmonetary contributions from food banks are excluded. The student financial assistance section is amended completely per HOTMA, with new flow charts, another chart, and all new examples.
146-147	HOTMA asset overview provided along with the list of HOTMA asset exclusions.
148-149	Discussion of personal property, necessary and non-necessary.
150-162	HOTMA adjustments to assets with examples throughout this section. The current balance is now required for checking, not the 6-month average. New trust account rules with a new flow chart are included. Changes in the value of stocks and other assets are not income. Retirement accounts are never counted as assets. Clarification is provided that the default is to count jointly held assets as belonging to the household, unless documentation can establish differently. Updated imputed asset income rules.
163-166	All new instructions and examples on how assets are addressed per HOTMA.

168	Adjustment to DCA/GHFA policy for 100% properties. Only student status and VAWA receipts are required for annual recertifications at 100% LIHTC projects. Self-certification of income is not required. It is still required for HOME units, however. Other minor clarifications for eas of understanding were also made.
170	Agency approval for the 100% LIHTC income recertification exemption no longer is needed. The exemption automatically applies. Clarification on the HOME affordability period is provided.
174	Additional clarification that 100% LIHTC projects are automatically exempt from income recertification.
183	Clarification that HOME households that are over the 80% threshold and receive a Housing Choice Voucher already are paying rent based on income and the owner/agent does not duplicate this effort.
183-187	HOTMA-based adjustments are made throughout the discussion of calculating rent based on adjusted income for over-income HOME households. The elderly and dependent deductions are labeled that, as they will now change annually.
196	Clarification is provided that the 8823 Guide, Chapter 4, has been largely obsolete with the arrival of HOTMA.
199	Language regarding 100% projects has been changed to reflect DCA/GHFA's new policy allowing 100% projects to automatically be exempt from income recertification.
204	NSPIRE replaces UPCS. Reference is made to the fact that HOME and NHTF units must use the determination of the PHA for Housing Choice Voucher holding households.
205	NSPIRE replaces UPCS.
212	NSPIRE replaces UPCS.
218	New information on Georgia Housing Search is provided. "LURA" is added to "LURC" on the PCC changes section for clarity.
226	NSPIRE replaces UPCS.
Supplement 1	HOTMA and NSPIRE notations added throughout the glossary.
Supplement 2	HOTMA and NSPIRE notations added throughout the Combined Programs Chart
Supplement 3	A new NSPIRE checklist is provided.

Introduction

Program Background and History

The Low-Income Housing Tax Credit (LIHTC) and HOME Funds programs are used to finance the development of affordable rental housing for low-income households. The Georgia Housing and Finance Authority (GHFA) is authorized to allocate and issue LIHTCs under Section 42 of the Internal Revenue Code of 1986, as amended, to increase the supply of affordable housing in Georgia communities. GHFA also commits HOME Funds under Title II of the Cranston-Gonzalez National Affordable Housing Act. The Georgia Department of Community Affairs (DCA) administers the housing programs of GHFA and is the agency responsible for the administration and monitoring of LIHTC and HOME Funds for the state of Georgia. When discussing the various interrelated activities of GHFA and DCA, this manual will simply refer to "DCA/GHFA", or "the Agency" throughout.

The mission of DCA/GHFA is to partner with communities to help create a climate of success for Georgia's families and businesses. To achieve this mission, the Agency seeks to promote and ensure the availability of decent, safe, and affordable housing to low and moderate-income households.

This manual has been developed to assist recipients of federal and state tax credits and/or HOME Funds in maintaining a multi-family rental property during the tax credit and/or HOME affordability periods. This manual is not a substitute for the requirements of the Internal Revenue Code (IRC) Section 42 or the regulations of 26 CFR 1.42 pertaining to Tax Credits or the HOME provisions of Title II of the Cranston-Gonzalez National Affordable Housing Act and attendant regulations at 24 CFR 92 or other federal guidance for either program. By assuming its responsibility to monitor compliance for the LIHTC and HOME programs, DCA/GHFA does not assume any liability for noncompliance at a property. Compliance with the IRS and HUD requirements is the sole responsibility of the owner of any building for which LIHTC or HOME funds have been allocated/committed. Interested parties should consult with knowledgeable tax and housing professionals before entering any commitment concerning the use and claim of LIHTCs or HOME Funds.

When Combining Programs…

This manual covers both the LIHTC and HOME programs monitored by DCA/GHFA. Where these programs interact when used together in a way that requires an approach that would differ if a property was not also LIHTC or HOME, we will indicate such with an infographic using the following format:

Tax Credit | provisions are summarized here.

LIHTC and HOME | provisions that interact when combined will be summarized here.

HOME | provisions are summarized here.

See Chapter 12 of this manual and Supplement 2 | Multiple Programs Chart for further information on combining other federal programs with LIHTC and/or HOME.

Federal Guidance

This manual has not been reviewed or approved by the Internal Revenue Service (IRS) or HUD-CPD and should not be relied upon for interpretation of federal income tax or HOME legislation or regulations. However, extensive federal guidance was reviewed in the development of this manual. Notable examples that will be helpful for owners/agents in developing their compliance policies and procedures in addition to this manual are listed below.

LIHTC. The Internal Revenue Service (IRS) has provided a Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide). The 8823 Guide was intended to provide definitions of what the IRS considers to be "in compliance" and for consistency in determining when an owner is "out of compliance" and "back in compliance" when a state reports noncompliance to the IRS on Form 8823. DCA/GHFA's compliance, monitoring, and reporting policy and procedure are reflective of instructions in the 8823 Guide. The most recent revision of the 8823 Guide, formal federal LIHTC guidance, and changes brought by HUD's regulation of the Housing Opportunities Through Modernization Act (HOTMA) effective in 2024, have been used extensively in the development of this manual. Besides the final HOTMA rule in 24 CFR, HUD Notice H 2023-10 provides HOTMA updates to the HUD Handbook 4350.3, many of which apply to both LIHTC and HOME programs.

HOME. HUD Community and Planning Development (HUD-CPD) has published two guides. *Compliance in HOME Rental Projects: A Guide for Property Owners* and *Compliance in HOME Rental Projects: A Guide for PJs.* These *Guides,* taking into consideration regulation revisions in 2013 and HOTMA changes, provide substantial instructions from HUD for the HOME Funds program. These *Guides* and formal federal HOME guidance have been used extensively in the development of this manual.

Fast Facts

Monitoring Agencies

LIHTCs | are said to be "allocated" or they alternatively come from a non-allocated bond transaction. They are monitored:

- Federally | The Internal Revenue Service (IRS).
- On a state level | Generically referred to as an "Allocating Agency", "Housing Finance Agency (HFA)", or simply "State LIHTC Agency". In Georgia, the Agency is DCA/GHFA.

HOME Funds | are said to be "committed." They are monitored:

- Federally |HUD-Community Planning and Development (HUD-CPD).
- Locally | By a "Participating Jurisdiction (PJ)", or simply "HOME Agency." For Georgia state-committed HOME Funds, DCA/GHFA. Several other local PJs exist in Georgia. This manual does not cover their rules.

Monitoring Overview

LIHTC. Section 42 requires housing credit agencies to include in their LIHTC Qualified Allocation Plan (QAP) a procedure to monitor all tax credit projects for compliance with the requirements of Section 42 throughout the compliance period.

An allocating agency must have a procedure for monitoring compliance with the provisions of the tax code and notifying the IRS of any noncompliance of which it becomes aware and whether it has been corrected. Treasury Regulation 1.42-5 provides the federal requirements for compliance monitoring. The purpose of this manual concerning the LIHTC is to set forth the procedures to be followed by DCA/GHFA and the owners of tax credit projects to comply with the requirements of Section 42 and state provisions under the QAP.

Owners should be aware that Treasury Regulation 1.42-5 provides that the credit agency monitoring procedures address the requirements for housing credit agency monitoring, and do not address forms and other records that may be required by the IRS on examination or audit. It is the responsibility of the owner/agent to ensure that they are using the most current version of all program documents and forms.

Tax-Exempt Bond/LIHTC Projects. Although not all tax-exempt bond-funded housing also supports tax credits, some LIHTC properties receive their allocation of credits through a tax-exempt bond transaction. DCA/GHFA will monitor developments that received LIHTCs through the issuance of tax-exempt bonds, except where the bonds were issued in a sub-allocator jurisdiction. In those cases, the sub-allocator will be responsible for compliance monitoring unless other arrangements are made. Generally, tax-exempt bond developments with related LIHTCs must comply with the same IRS requirements and LIHTC compliance monitoring procedures as non-tax-exempt bond developments. Some minor differences in bond compliance rules will be clarified as appropriate in this manual.

HOME. Under the HOME program, Participating Jurisdictions (PJs) are responsible for managing the day-to-day operations of their HOME Programs and ensuring that HOME funds are used in keeping with program requirements. The regulations require that the performance of each owner/agent receiving HOME funds must be reviewed by the PJ at least annually. PJs must also monitor projects throughout the applicable affordability period. As the designated PJ for state-committed HOME Funds, DCA/GHFA is responsible for performing desk audits, conducting site visits, reviewing tenant files, conducting physical inspections, and providing the owner/agent with a summary report of any findings. HOME also requires PJs to analyze a property's financial position to a far greater degree than is required for LIHTCs and PJs must also review and approve rents annually for all HOME-assisted projects during the HOME affordability period.

Monitoring fees. DCA/GHFA, as the state allocating agency, is authorized by tax code to charge a reasonable fee to cover the costs of LIHTC compliance monitoring. Similar fees can also be charged to many HOME properties committed HOME Funds since August 23, 2013, that have had the fees incorporated into the projects' underwriting.

Future changes. The compliance monitoring requirements are subject to modification by the IRS and HUD-CPD. Income determination requirements for both the LIHTC and HOME programs are also subject to modification by HUD. The most recent major adjustments to HUD's income rules are found in HOTMA and were effective in 2024. Federal agencies frequently update materials. Every effort is made by DCA/GHFA to post these changes to the Agency website promptly. To keep abreast of all the changes, owners/agents should check HUD, IRS, and DCA/GHFA websites regularly. DCA/GHFA will review this manual periodically to determine if revisions are needed, but federal changes should be implemented as soon as effective until DCA/GHFA guidance can be updated.

Chapter 1 | Program Summaries

Fast Facts

IRS LIHTC Memory Aid

If you can remember "IRS", you can remember the basic provisions necessary to maintain compliance with LIHTC rules. An owner/agent must:

I	Income	Rent to income-qualified households.
R	Rent	Keep rents below required limits.
S	Safe & Sanitary	Meet physical standards. (Keep the property "decent, safe & sanitary").

Bonus!

These basic provisions form the underlying requirements for almost all affordable housing programs, including HOME. Only the specific rules vary!
(See Chapter 12 for details on combined programs).

The LIHTC Minimum Set-Aside Election

Every LIHTC property has a minimum set-aside. There are three options available in Georgia: the 20-50 test, the 40-60 test, and the Average Income test (AIT). The minimum set-aside that must be met is elected by the owner on IRS form 8609, line 10(c). The 8609 is a key compliance form issued by Georgia and then completed by the owners and submitted to the IRS and DCA/GHFA when credits are first claimed.

Once the project minimum set-aside election has been made, it cannot be changed, and it is irrevocably established on form 8609. As the name indicates, the minimum set-aside requirement establishes minimums only. Most projects have more than the minimum number of required LIHTC units and may have more restrictive income limits on some units. The Land Use Restrictive Covenants (LURC) for the property may require that the owner/agent meets additional income and rent limit restrictions and/or an additional number of low-income units.

To determine how the minimum set-aside must be met for a project, an owner/agent must understand how the minimum set-aside is calculated. Each building in a project will receive a Form 8609. Unless otherwise elected on Form 8609, each building in a development will be treated as its own project. 8609, line 8b reads, "Are you treating this building as part of a multiple building project for purposes of section 42?" Using this election, the owner can choose to group buildings that are within the same allocation into one project or divide them into separate projects by selecting "yes" on line 8b and attaching a separate document that identifies which buildings should be included as part of the multiple building project. Care must be taken here by an owner when making this election. For instance, a line 8b election of "yes" will be considered to be "no" by the IRS unless the document listing the multiple buildings that are part of the project is attached to each 8609 for the project.

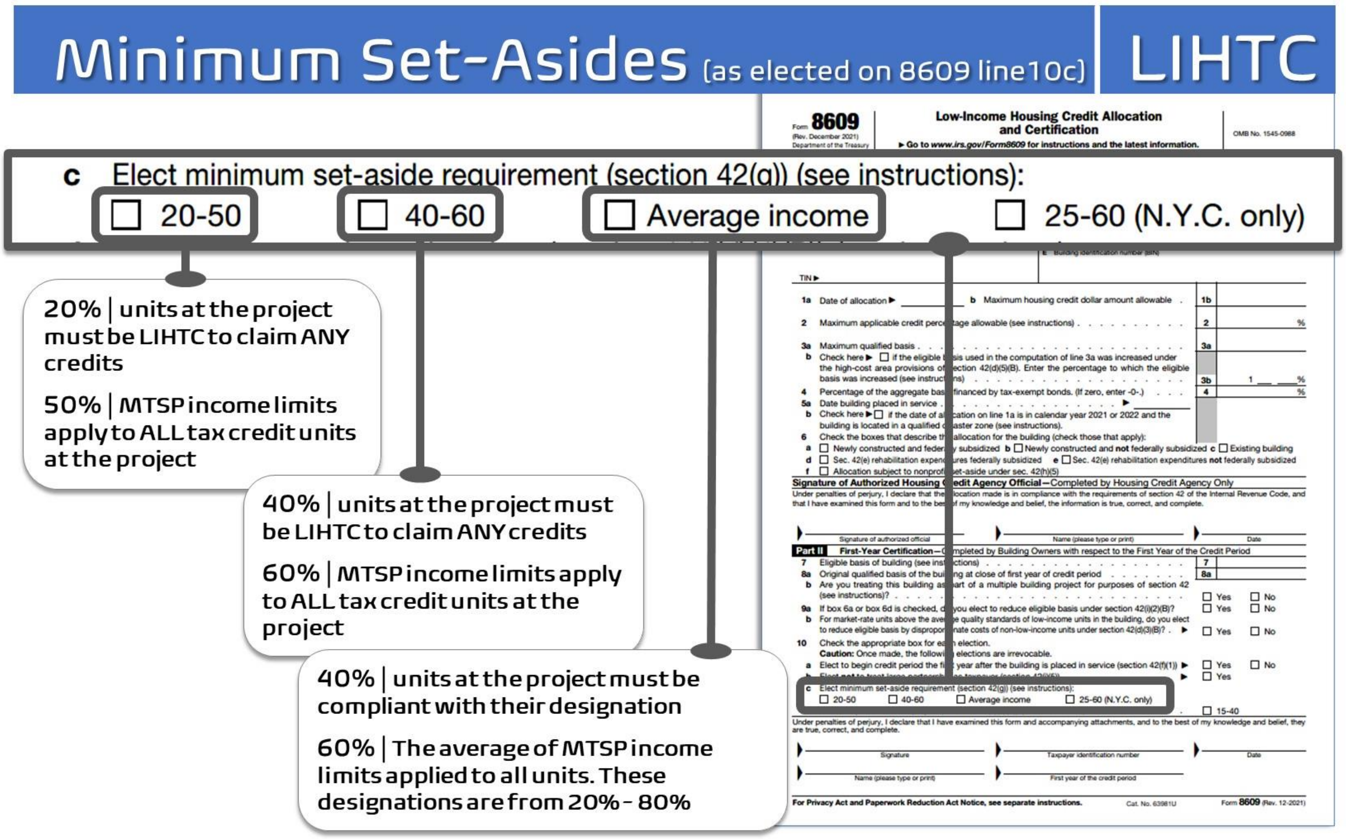
A project that has multiple buildings can be divided in the following ways:

All buildings in the project are treated as one project for LIHTC compliance and calculation purposes (see examples on the ***left*** in *"The Effect of the Multiple-Building Election on the Minimum Required Units"* page below).

All buildings in the project are treated as <u>separate</u> projects for LIHTC compliance and calculation purposes (see examples on the ***right*** in *"The Effect of the Multiple-Building Election on the Minimum Required Units"* below).

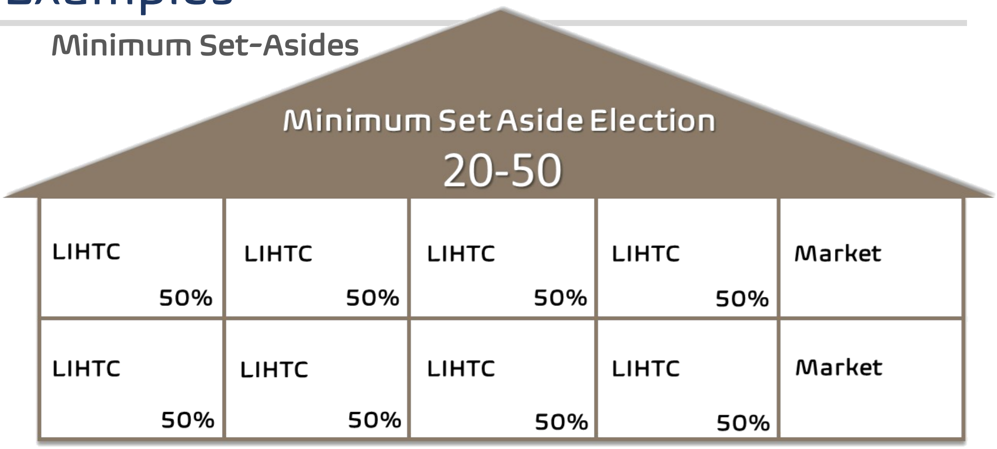
Buildings can be any <u>combination</u> of the above options, where some of the building(s) are treated as one project and other building(s) are treated as another project.

Answering "no" on line 8b on Form 8609 in a multiple-building project indicates that even if each building was part of the same tax credit allocation, they must be treated as at least two separate projects for purposes of LIHTC compliance and allocation purposes.



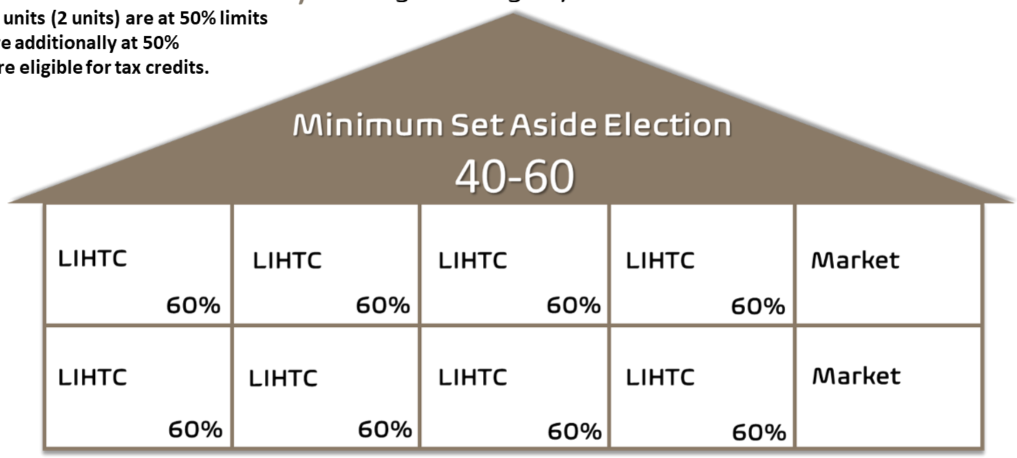
Examples

Minimum Set-Asides



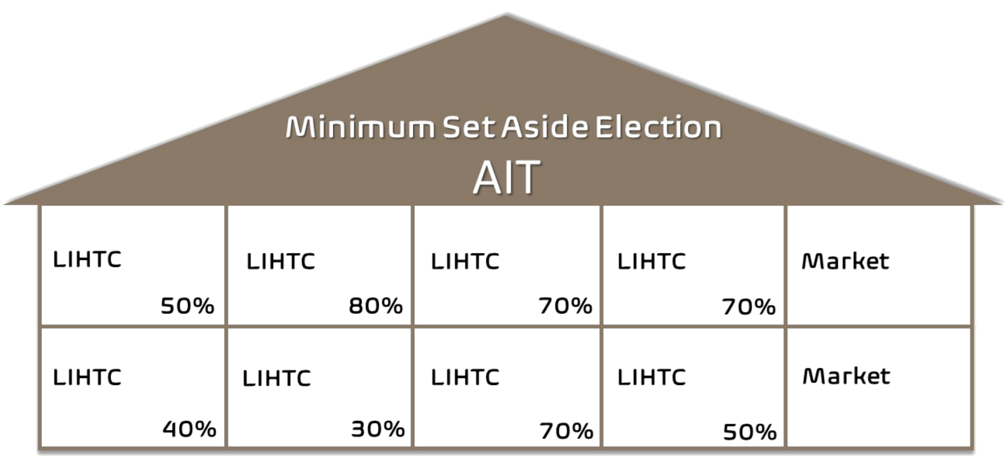
20-50 Minimum Set Aside Analysis (Single-Building Project)

- At least 20% of the units (2 units) are at 50% limits
- 8 out of 10 units are additionally at 50%
  - These units are eligible for tax credits.



40-60 Minimum Set Aside Analysis (Single-Building Project)

- At least 40% of the units (4 units) are at 60% limits
- 8 out of 10 units are additionally at 60%
  - These units are eligible for tax credits.

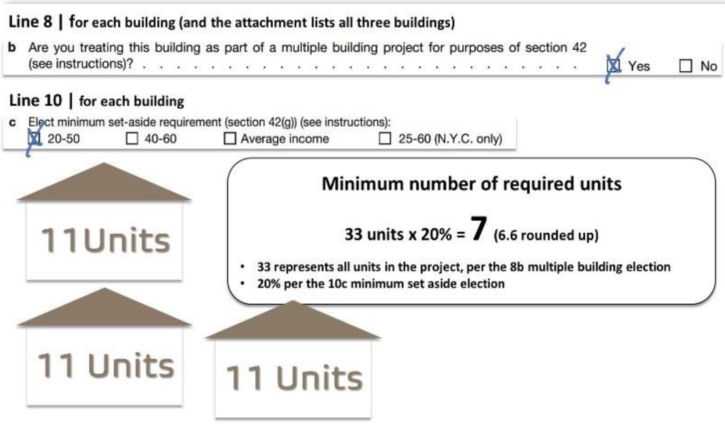


AIT Minimum Set Aside Analysis (Single-Building Project)

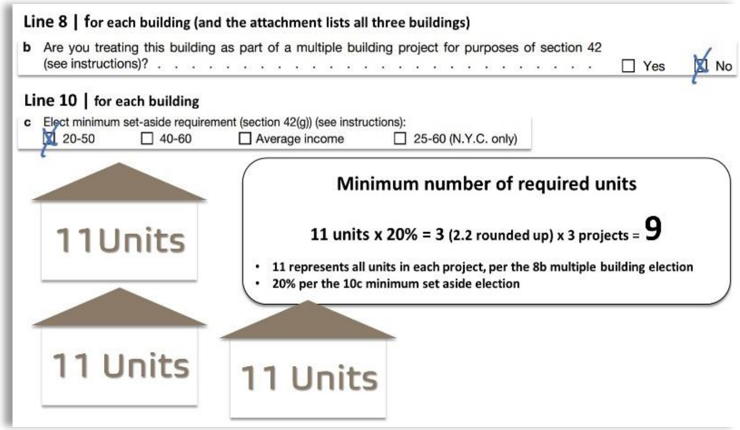
- At least 40% of the units average 60% or less and the Average Income Test minimum set aside is met
  - For example [1x30%] + [3x70%] ÷ 4 = 60%
- 8 out of 10 units are additionally designated to average no more than 60%
  - [1x30%] + [1x40%] + [2x50%] + [3x70%] + [1x80%] ÷ 8 = 57.6%
  - These units are eligible for tax credits.

The Effect of the Multiple-Building Election on the Minimum Required Units

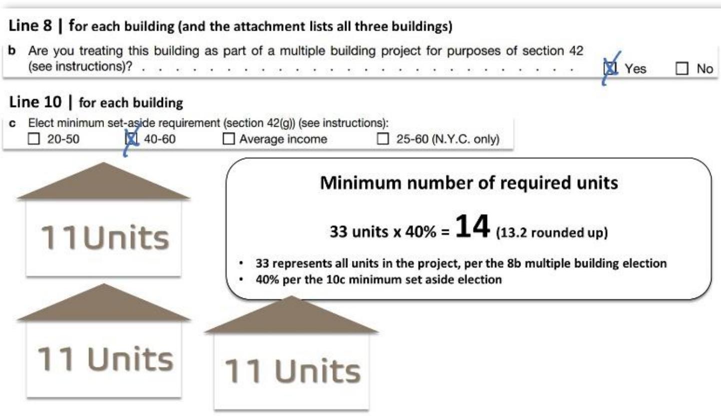
20-50 | Multiple-BIN Project



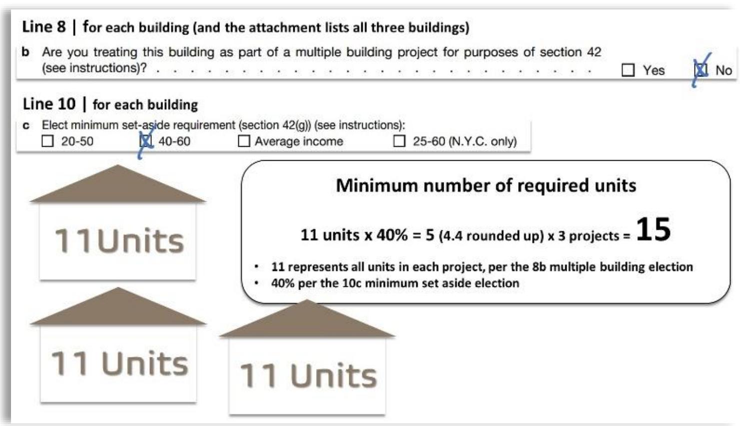
20-50 | Single-BIN Projects



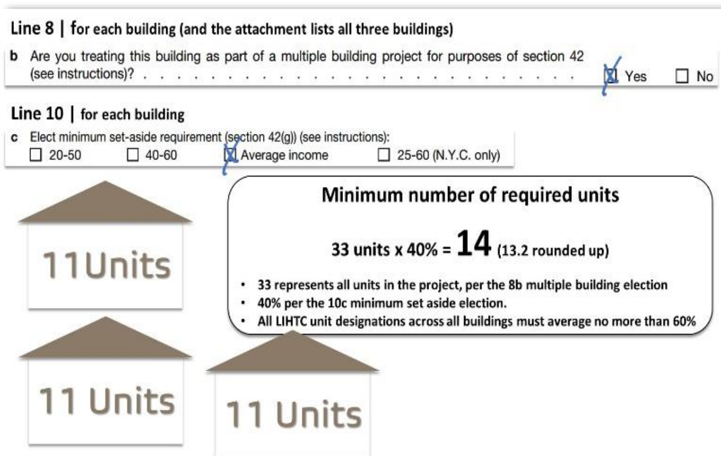
40-60 | Multiple-BIN Project



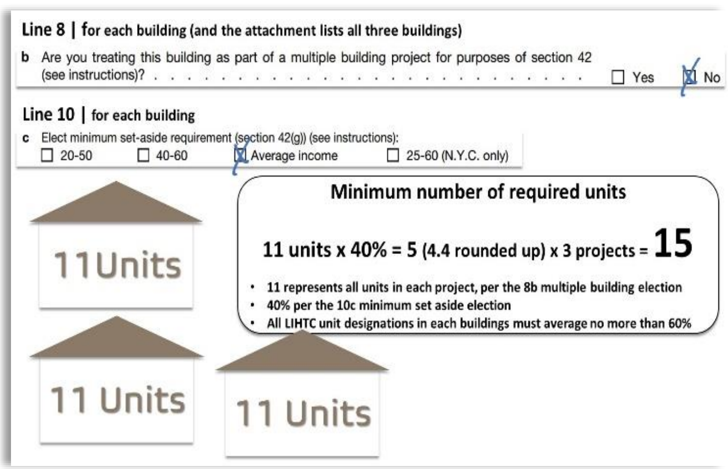
40-60 | Single-BIN Projects



Average Income Test | Multiple-BIN Project



Average Income Test | Single-BIN Projects



Example

Minimum set-aside for a Multi-BIN Project

A development consists of 20 triplexes for a total of 60 units. All buildings are included in the same multi-BIN project. The minimum number of units required by a 40-60 minimum set-aside is:

24 Units: 60 units x 40%

Example

Minimum Set-Aside for Single-BIN Projects

A development consists of 20 triplexes for a total of 60 units. Each building is considered a single-BIN project. The minimum number of units required by the 40-60 minimum set-aside is:

40 Units
3 units per BIN x 40% = 2 units
(1.2 units rounded up to the next whole unit)
x 20 projects

Several compliance issues are affected by the multiple-building election. These include how the minimum set-aside is met, unit transfers between buildings, and calculating income limits (both addressed in Chapter 3). These will be discussed throughout this manual.

If the project does not meet the minimum set-aside requirement during the first year of the credit period, the IRS states that the project (as defined by the 8b election) is prohibited from ever claiming the tax credits for that project. Subsequent violations of the minimum set-aside result in the loss of credits for the year that the minimum set-aside is not met and recapture penalties.

The Average Income Test (AIT)

The Consolidated Appropriations Act of 2018 permanently established the Average Income Test (AIT) as a new minimum set-aside election. Treasury Regulation 1.42-19 contains the final AIT regulation. Properties that select the average income set aside must comply with the Tax Credit compliance monitoring requirements within this manual, the DCA/GHFA *Allocation Average Income* policy which can be found on the Agency website, and the additional monitoring requirements found within this section of this manual for the AIT. As the minimum set-aside election is irrevocable, the Average Income Test option has only been available to projects since 2018.

Under IRC Section 42 “average test” provisions, owners designate the income and rent limitation of each unit. These designations must be part of a qualified group that must average 60% or less. The average is of the designations assigned to units, not the average of tenant household incomes. Tenant-paid rent for a unit is determined by the average income designation and not tenant income. Rent must not exceed the designation’s rent but may be lower than the rent amount of the designation. The designated levels may be from 20% to 80% MTSP, in even increments of 10%. For example, there are 40% and 50% designations, but not a designation at 45%.

To meet the AIT minimum set-aside a property is qualified when at least 40% of the housing units’ designations average 60% or less. A property is in compliance if the combined average is met by the end of the first year of the owner’s credit period and continues to be met at the end of each taxable year throughout the compliance period.

As long as a unit is part of the qualified group of units that average no more than 60%, it can be used in the applicable fraction for the building it is in. Individual buildings do not have to average 60%. The units in the qualified group must 1) be rent restricted, 2) be occupied by households that meet the income limitation for the unit, and 3) no other provision in Section 42 or the regulations denies LIHTC status to the unit. The average income unit designations shall be made as follows:

New projects – on or before initial occupancy.
Vacant previously occupied units – prior to re-occupancy.
Restoring project average – prior to the close of the taxable year.
The qualified group of units and any changes to this group and unit designations must be recorded by the owner in its books and records and the group of qualified units must be communicated to DCA/GHFA.

Calculation methodology of unit designations. HUD publishes the income limits for the various designations allowed by the AIT. Based on long-standing guidance from the IRS, 50% tax credit limits equal HUD's very low limits, 40% tax credit limits equal 80% of HUD's very low limit, and 60% tax credit limits equal 120% of HUD's very low limit. Extrapolating from this standard, the IRS and HUD calculate federal unit designations based on the HUD's very low-income 50% limit. *See the chart and example of calculation later in this chapter.*

Important note: the 30% MTSP level under the AIT is not the same as the extremely low-income (ELI) restriction required under Section 8, Section 811, the National Housing Trust Fund, and other programs that use ELI limits. The adjustments required when calculating ELI limits could result in ELI limits that are equal to anywhere from 30% to 50% MTSP limits or more, depending on the HUD program. Similarly, the "Low-income" 80% AMI limits used by HUD for public housing and HOME purposes are also calculated differently than the AIT 80% MTSP limits. Owners of properties with these programs at an AIT property should be mindful of the differences.

Reporting. Section 42 requires the following reporting:

- The owner must annually report to the Agency the grouping of qualified units for the minimum set-aside.
- The owner must annually report to the Agency the grouping of qualified units for the 60% average income test (for the applicable fraction).
- The owner must report changes in unit designations upon effectuation of the change and annually.

DCA/GHFA State AIT Provisions

AIT designations must be initially determined by the number of designations per unit size (for example "seven 2-bedrooms at 50% and ten 1-bedrooms at 40%). Planned initial designations must be indicated in the funding application.
Subsequent designation changes must be reported to DCA/GHFA through Emphasys.
For the Available Unit Rule, when more than one household is determined to be over-income, the next market unit that becomes available should be redesignated to the designation applicable to the lowest designated over-income unit. The next available market unit after that should be redesignated at the next highest designation, and so forth. The order that these redesignated units are rented is not relevant. See Chapter 7 for more details on the Available Unit Rule.
During regularly scheduled audits, DCA/GHFA shall monitor for the correct application of income limits to tenant households and shall confirm qualified households at their respective move-in date.
Reporting. The below reporting will occur via Emphasys.

DCA/GHFA will review compliance with the average income designations during:

Regularly scheduled file audit reviews
A monthly compliance internal reporting analysis
Annual Owner Certification (AOC)
Annual reporting
Upon notice of unit designation changes
The Agency reserves the right to request a rent roll at any given time. If requested by DCA, each property that has elected average income designations shall submit a rent roll spreadsheet with the AOC, dated December 31st, including the following:

- Unit Number
- Square footage
- Rental rate
- Average income designation
- Move-in date
- Next Available Unit (NAU), if applicable, with NAU form
- Identification of any units that had to change designations for federal or state-allowed reasons

Redesignation of Units

Redesignation of units occurs when an owner/agent records the change in their books and records and reports these changes to the Agency.

Under LIHTC regulation, AIT units may be redesignated for the following reasons.

- Per reasons allowed or required by any future IRS bulletin or other guidance.
- As allowed by future DCA/GHFA policy.
- To comply with certain federal laws, including:
    - The Americans with Disabilities Act **(ADA)**
    - The Fair Housing Act
    - The Violence Against Women Act **(VAWA)**
    - The Rehabilitation Act of 1973 **(Section 504)**
    - Any other State, Federal, or local law or program that protects tenants and that is identified by the IRS or DCA/GHFA.
    - **Other federal programs** that fund a property **that require the redesignation of a unit or a household** to follow the rules of that program. Some example programs that this may apply to include HOME, the National Housing Trust Fund (NHTF), Section 8, Section 811, or Rural Development. Some examples include:
        - **Redesignating units** may be required when changing a vacant unit designation prior to the next occupancy to meet Section 8 income targeting requirements. Section 8 requires 40% of all units to be rented to ELI (30%) households and these units may have previously been designated to a higher AIT level.
        - **Redesignating existing households** may occur when HOME requires increases of fixed rent from Low HOME to High HOME following household income increases after annual HOME recertification (and the new rents would exceed the existing AIT designation for the unit).
        - DCA/GHFA will only monitor the effect of changes of designation on program(s) under its jurisdiction. The owner/agent must examine the implications of redesignations on all applicable program commitments for a project.
- When households transfer between units in a project, the AIT designations swap between the involved units. Other LIHTC transfer rules apply the same as for other LIHTC projects. See Chapter 3 for the general unit transfer rules.

- To address noncompliance with the Average Income Test minimum set-aside or applicable fraction requirements.

Regardless of unit designation changes, DCA/GHFA’s rent increase policy applies.

If one or more units lose their low-income status or if there is a change in the designation of a unit and if either event would cause the average for the project to exceed 60%, then the owner/agent must address the noncompliance.

Compliance may be restored prior to the close of a taxable year in which the average income designation is again met. The following actions are acceptable for restoring compliance with the Average Income Test.

- Redesignating a noncompliant unit and one or more additional units’ income limits so that the qualified units in the project average less than 60%.
- Removing the noncompliant unit and additional unit(s) from the applicable fraction for the grouping of qualified units to average 60%.

Noncompliance and the AIT. Federal noncompliance shall be reported on Form 8823 and submitted to the IRS in accordance with Section 42. If a housing unit no longer qualifies as a Tax Credit unit and the property fails the Average Income Test, DCA/GHFA shall submit Form 8823 to the IRS with box 11e selected.

If one or more units lose their low-income status or if there is a change in the designation of a unit and if either event would cause the average for the project to exceed 60%, then the owner/agent may designate a market rate unit or may reduce the existing designation of one or more other units in the project in order to restore compliance with the average income requirement. This can be applied to market-rate, vacant, or occupied units. In the case of occupied units, the current tenants must qualify under the new, lower designation and rent must also be appropriate to the new designation.

Several types of errors in designation, redesignation, or the average as it relates to the minimum set-aside or applicable fraction(s) if discovered in the future might be correctable through the redesignation of units. If so, the correction must be within 180 days of the owner/agent or DCA/GHFA's discovery of the issue. Redesignation may not prevent the loss of tax credits, especially when implemented retroactively. An owner should consult with legal and tax professionals when addressing AIT noncompliance using the redesignation of units. DCA/GHFA will take into consideration an owner’s timely reasonable efforts to correct such noncompliance when evaluating noncompliance with the Average Income Test.

All State and Federal noncompliance shall impact the property owner’s future Qualified Application Plan (QAP) application scoring for compliance monitoring, the management company’s status on the approved management company list, and the overall rating of the property’s performance.

Management Company Requirements

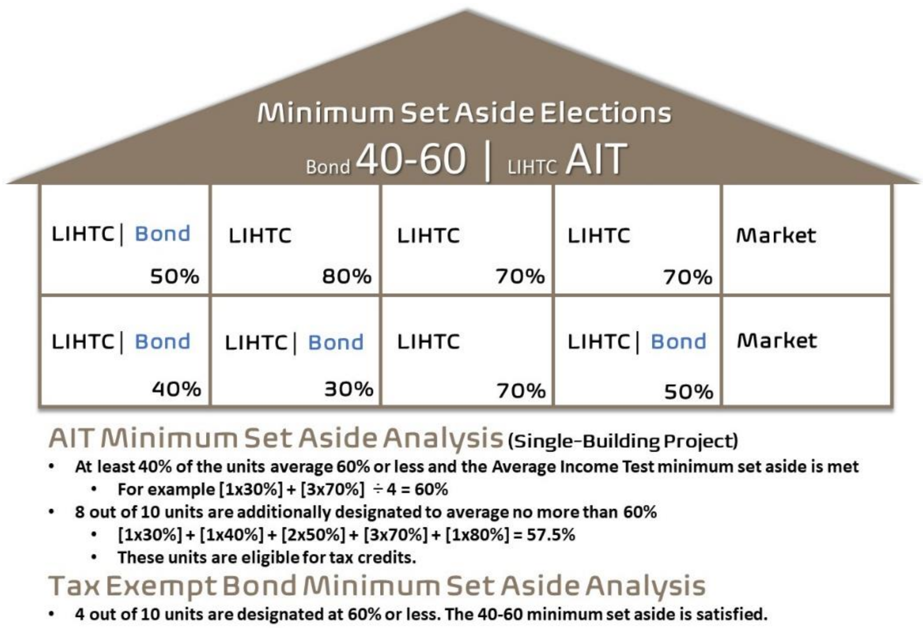
1. **Training**. A property owner or a management company acting as an agent to the owner of a property that has elected average income designation must attend AIT training conducted by a nationally recognized industry professional. Training must take place before the first building is placed in service and every year thereafter for three years. Average Income training should be completed by a Regional Manager or Compliance Manager and a certificate of completion must be submitted to DCA/GHFA.

A determination of average income noncompliance may result in the loss of the management company’s approved status and shall impact scoring for future funding applications by the property owner. A satisfactory review of average income compliance may result in the removal of the average income training requirement.

2. **Policy and Procedure Submission**. Following the Form 8609 election for average income and before the first unit is leased, a property owner must submit their average income internal compliance monitoring policy and procedures to the Agency. Property policy and procedures must include internal compliance monitoring processes for:
   - Property waitlist
   - Transfer requests
   - Recertifications
   - Marketing plan

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

Meeting the Minimum Set-Asides for an AIT and Bond Project



"HOME Funds Units"

It can be helpful to remember the phrase "HOME Funds units" because the HOME program distinguishes between units that have been financed by HOME Funds and units that are not HOME-assisted. Unlike the LIHTC program, most HOME projects are not 100% HOME-assisted. When HOME Funds are committed to a project, the PJ determines the total number and the type of units by bedroom size that will receive HOME Funds. The number of HOME units at a project is at least the percentage of the total cost of the project represented by the HOME Funds. The PJ must also determine the number of units that are High or Low HOME and will also note if the HOME units are fixed or floating HOME units. This information should be available in the HOME written agreement (Land Use Restrictive Agreement (LURA)) for a property. If an owner/agent cannot locate this information on their HOME LURA, they can contact their DCA/GHFA compliance contact for further instructions.

Example

Number of HOME units at a property

A project has 40 units. If 25% of a project's costs are paid for with HOME funds, at least 10 of the units will be designated HOME units.

40 units x 25% = 10 units

Fixed and Floating HOME

Every HOME project is either designated as having fixed or floating HOME units.

Fixed HOME. HOME properties with fixed HOME units will have specific HOME units that will never have to change their designation to non-HOME units. They may, however, change from High to Low HOME status. Non-HOME units in these projects are *never* subject to HOME restrictions for any reason.

Floating HOME. A property with floating HOME units must maintain a mandated mix of HOME units throughout the property, but specific units may switch status. HOME units may change from High to Low HOME *and* HOME units and non-HOME units may be exchanged as necessary to maintain compliance.

HOME program rules relating to steps to take when household income increases after move-in are particularly sensitive to whether the property is fixed or floating HOME (see Chapter 7 for further details on handling increases of income for HOME properties).

Example

Fixed HOME Property

During the initial occupancy of a project, unit 16 is established as a HOME unit, and comparable unit 15 is non-HOME.

Unit 16 will keep its designation as a HOME unit for the entire affordability period and unit 15 will remain non-HOME.

Example

Floating HOME Property

During the initial occupancy of a project, unit 16 is established as a HOME unit, and comparable unit 15 is non-HOME.

If circumstances require in the future, comparable unit 15 can be designated as HOME if it is occupied by a HOME-eligible household and the HOME rent is charged and unit 16 can become non-HOME.

Low and High HOME

Home projects may have High and Low HOME units. During the HOME affordability period, owners/agents are required to determine that all residents who will be residing in a HOME unit have a combined household income that does not exceed the applicable HOME limit before occupancy. Changes in income after a household moves in may also require changing HOME designations. Owners/agents must also ensure that the rent charged for HOME units does not exceed the applicable HOME rent limit for the unit.

The HOME program uses two specific income limits, ***very low-***income limits, and ***low***-income limits. Very low-income limits (VLI) are 50% of the Area Median Income (AMI). Low-income limits (LI) are 80% of the AMI.

Low HOME. Very low-Income households must not exceed the very low-income limit of 50% AMI. These households qualify for Low HOME units. Typically, Low HOME units that house very low-income households are subject to Low HOME rent limits. Some projects may have HOME units subject to deeper rent restrictions. Deeper rent restrictions are recorded in the property LURA.

High HOME. Low-Income households must not exceed the low-Income limits of 80% AMI. These households qualify for High HOME units. High HOME units that house low-income households are subject to High HOME rent limits.

According to the federal HOME rules, if a HOME property has five HOME units or more, at least 20% of the HOME units must be Low HOME. The remainder can be High HOME. The HOME LURA may require a certain number of units of a specific bedroom size at a certain limit or that a higher number of units be designated as Low HOME units.

LIHTC Calculation Overview

Few LIHTC owners/agents ever actually need to calculate the tax credits that are claimed for a property. However, understanding how credits are calculated and the repercussions of noncompliance can help LIHTC professionals understand why many things are done the way they are related to compliance.

Fast Facts

LIHTC BINs

Each building is identified with a Building Identification Number (BIN). The first part of the BIN indicates the state the building is in, and the next part indicates the year of the allocation of the credits. The final five numbers identify the DCA/GHFA-issued ID number (GA-ID) and building.

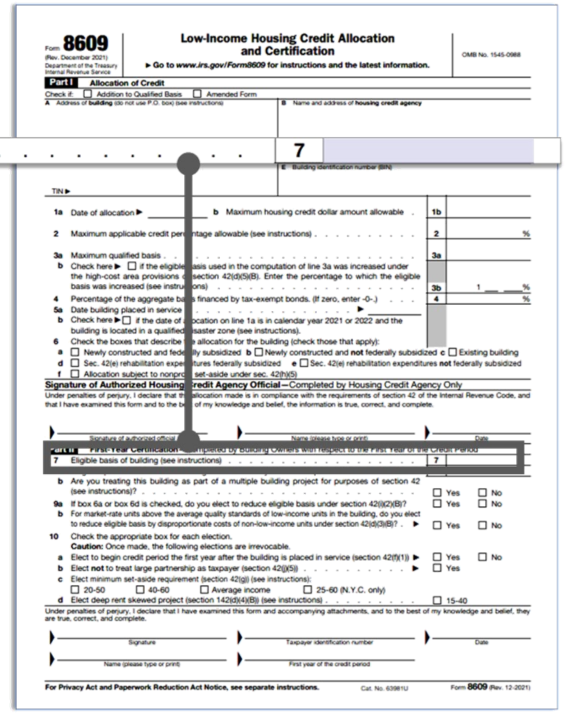
Example BIN

GA−21−02201

A building in **Georgia** that was allocated credits in **2021**. The remainder of the BIN is a unique identifier for the building based on the assigned **GA-ID**.

How tax credits are calculated for each building

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



LIHTC Accounting Term 1 | Eligible Basis

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

Example

Eligible Basis

The allowable depreciable expenses that were spent on a building totaled $13,199,500. This is the eligible basis.

LIHTC Accounting Term 2 | Applicable Fraction

Now that it has been determined how much was spent on constructing the building, it must be established how much of the money went to provide housing for low-income households. This is done by calculating the percentage of the units in the building that are LIHTC-qualified units. The term used to describe this percentage is the applicable fraction. If the percentage is expressed as a fraction, the numerator (the top part of a fraction) is the portion of the building that is LIHTC. The denominator (the lower portion of a fraction) is the entire building. If the units are of differing sizes, the percentage of units will be calculated based on the number of units and the square footage of those units. The applicable fraction is usually expressed on tax forms as a decimal and is rounded at the fourth decimal place. The lower resulting percentage will be used when claiming tax credits. The following points are additionally useful in determining the applicable fraction:

- Units that have never been occupied or are occupied by a nonqualified household cannot be included in the numerator but must be included in the denominator.
- Vacant units that were last occupied by a nonqualified household cannot be included in the numerator but must be included in the denominator. Vacant units last occupied by qualified households are included in both the numerator and the denominator.

- Units not suitable for occupancy, including tax credit units being constructed or rehabilitated during the first year credits will be claimed, cannot be included in the numerator but must be included in the denominator.
- Employee/Exempt units (units for full-time managers, full-time maintenance professionals, or security personnel employed by a property), are not included in either the numerator or denominator (see Chapter 3 for more information on employee units).

Example

Applicable Fraction

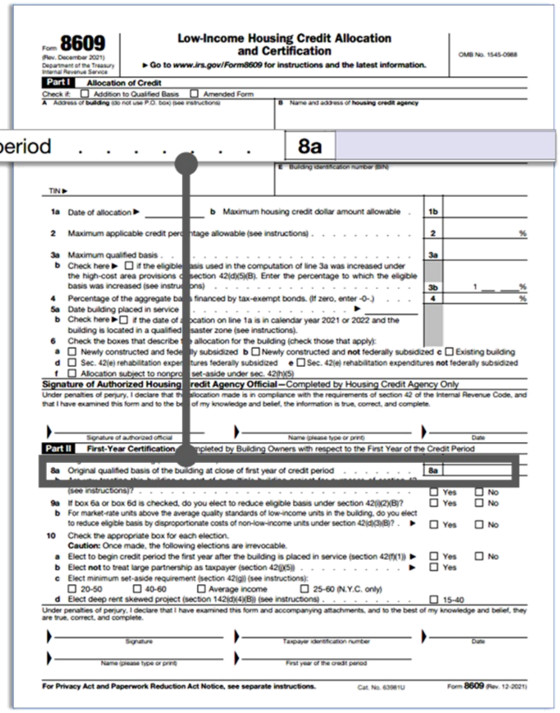
Based on the building from the last example, the building has 64 units of differing sizes with a total of 57,600 square feet. Of the units, 38 are LIHTC and total 28,800 square feet. The 26 non-LIHTC units also total 28,800 square feet.

Calculations: The unit fraction is 38/64 (59.38%). (Note: .59375 is rounded to the fourth decimal place, .5938 or 59.38%).
The square footage fraction is 28,800/57,600 (50.00%).
The lower 50.00% is the applicable fraction.

Fast Facts
The Vital Last Day of the Year

On the last day of each taxable year for a project (almost always December 31), each project must determine which units will be counted as low-income and eligible for tax credits. Any units which cannot meet the criteria for LIHTC qualification (pass an NSPIRE inspection, be charged LIHTC rent, and be occupied by a qualified household, or if vacant, last occupied by a qualified household) will not generate any credits for that entire year because it is excluded from the building's qualified basis.

LIHTC Accounting Term 3 | Qualified Basis


Form 8609 (Rev. December 2021) 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

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

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

5a Date building placed in service

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

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

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

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

10 Check the appropriate box for each election.

Caution: Once made, the following elections are irrevocable.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Form 8609 (Rev. 12-2021)

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

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

Example

Qualified Basis

Continuing the examination of the above building, the qualified basis is:

Calculation: $13,199,500 X 50.00% = $6,599,750 qualified basis

LIHTC Accounting Term 4 | Applicable Credit Percentage

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

Example

Annual Tax credits

Continuing the examination of the above building, the qualified basis is:

Calculation: $6,599,750 X 9% = $593,977.50 maximum annual tax credits X 10 years = $5,939,775 Total potential claimed credits

Note: The applicable fraction calculation will be different for the first year of the credit period and will be based on a prorated monthly average fraction. An owner/agent should work closely with investors to meet financial expectations and maximize first-year credits. Owners must also maintain the Applicable Fraction or the unit-mix commitment for claiming the full credits each year.

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

1. The factor in the calculation that most relates to a site manager’s daily duties is the applicable fraction. Keeping units in the applicable fraction means keeping them in compliance with LIHTC rules. This includes renting to qualified households, keeping rents affordable, and maintaining the property in a decent, safe, and sanitary manner. These are substantial components of

management's responsibility, both the property manager and those in supporting roles, such as maintenance, janitorial, and supervising professionals.

2. It is also important for managers to protect the eligible basis. Parts of the building included in eligible basis are subject to rules prohibiting the charging of fees beyond rent. Also, removing amenities included in eligible basis lowers the value of the property and may have a negative impact on the tax credit calculation.

Example

Removed Amenity

An internet/computer café was an amenity included in a building and the cost of the computers and the room they were in was included in the building's eligible basis. The computers aged and began to be obsolete. In the sixth year of the credit period, the equipment was in disrepair because of management neglect. Rather than fix it, the owner removed the equipment and locked the room.

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

Model Units

It is often beneficial during lease-up to show prospective tenants the amenities of the property's units. The cost to construct a fixed model unit must be included in the eligible basis and included in the denominator of the building's applicable fraction. However, it cannot be included in the numerator of the applicable fraction until rented to an LIHTC household at the end of the lease-up (see the First-Year Credit Calculations header below for more information). At all other times, any designated *permanent* model units must be considered market-rate and cannot be LIHTC units. Alternatively, an owner/agent may employ floating model units where vacant LIHTC units are temporarily furnished, and these furnishings are then moved to the next vacant LIHTC unit once rented. If this method is employed, the owner/agent must be prepared to demonstrate that a unit is never held as a vacant model unit beyond the next opportunity to rent it.

First-Year Credit Calculations

After the first year, the applicable fraction reached by the end of the first year should remain constant. First-year credits, however, are pro-rated. Starting with the first full month that the building is in service, the pro-ration calculation is based on the total of the applicable fractions at the end of each full month divided by 12 months (The first full month is when the building is in service from the first of the month on).

Because of this prorated calculation the more quickly that units are rented the greater the tax credits that can be claimed for the first year. As this means that the investors will not have to wait until year 11 to benefit from those credits the highest first-year applicable fraction possible is most desirable for the owners and investors.

Example

Credits Start First Full Month

A building is placed in service on January 17. Credits may be claimed starting in February using the applicable fraction as of the last day of February and every month-end thereafter.

The credits that cannot be claimed in the first year are claimed in the eleventh year.

A 12-unit building was placed in service on January 17. During each month of the year, one additional unit is rented to a qualified household. The building is filled by the end of the year. What is the first-year pro-rated applicable fraction?

Month	**Applicable fraction as of the last day of the month**
January	00/12
February	02/12 (the first full month the building was in service)
March	03/12
April	04/12
May	05/12
June	06/12
July	07/12
August	08/12
September	09/12
October	10/12
November	11/12
December	12/12
	77/144

This results in a first-year prorated applicable fraction of 53.47% (77 ÷ 144 = .53472).
For years 2 through 10 of the credit period, assuming no noncompliance occurs, the applicable fraction stays at 100%, the amount achieved by the end of the first year of the credit period.
In the year after the credit period (year 11), the remainder of the credits from the first year can then be claimed. As 53.47% have already been claimed in year 1, the remaining 46.53% of a full year's credits can be claimed in year 11 (100% - 53.47%). The applicable fraction of 46.53% can be used for claiming tax credits for year 11.

First-Year Safe Harbor Provision

Sometimes households are certified before the year credits are first claimed for a project. This is done for new construction when credits are deferred for a building to the year after the building is placed in service. Or it can occur when households are certified at acquisition for an acquisition/rehab or a rehab project, and the rehab is placed in service in a later year. In those cases, credits cannot be claimed until the year the rehab is placed in service, even though some or many households may have been certified, per IRS instructions, back to acquisition (see Chapter 8 for more details on tax credit acquisition/rehab rules).

These households continue to support credits if they are still in the project at the start of the first year and are tested for purposes of the Available Unit Rule before the start of credits at projects that are less than 100% LIHTC.

1. The test must be completed within 120 days before the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the Tenant Income Certification (TIC) are still current. If additional sources or amounts of income are identified, the TIC will be updated based on documentation that the household supplies.
3. If the household is over-income based on current income limits, the Available Unit Rule is applied. It is because of how the AUR works that this rule only applies to projects that are less than 100% LIHTC. At a 100% LIHTC project, ALL future move-ins will be LIHTC-qualified and the AUR has little practical implication (see Chapter 3 for more information on the Available Unit Rule (AUR)).

If the effective date of the initial TIC is 120 days or less before the required "test", it is not necessary to "test" for purposes of the Available Unit Rule. The annual tenant income recertification will be completed each year on the anniversary of the original tenant income certification's effective date.

Example

The Effective Date of Initial TIC is 120 Days or Less Before the Start of the First Year

An owner finished construction and placed in service a new building on September 22, 2022. She deferred the credits and so anticipated beginning the credit period on January 1, 2023. The project will not be 100% LIHTC. A qualified household occupied a unit the day the building was placed in service. Because the household was determined to be income-qualified within 120 days of January 1, 2023, it is not necessary to "test" for purposes of the Available Unit Rule.

If the effective date of the original tenant income certification is more than 120 days before the required "test," the household's income must be tested within 120 days before the beginning of the first year of the credit period.

Example

The Effective Date of Initial TIC is More Than 120 Days Before the Start of the Credit Period,

An owner purchased an existing building on March 1, 2022, and anticipated beginning the credit period on January 1, 2023. The project will not be 100% LIHTC. Household A, an income-qualified household was determined to be LIHTC qualified at acquisition. Because the household was determined to be income qualified more than 120 days before the beginning of the credit period on January 1, 2023, the household's income must be tested no earlier than 120 days before January 1, 2023, to determine whether the Available Unit Rule should be applied.

LIHTC Lifecycle Overview

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

1. Credit period
2. Compliance period
3. Extended use period

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

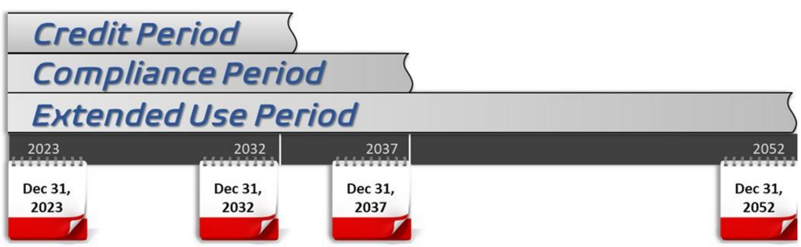
Placing in Service and the First Year of the Credit Period

A building is placed in service when it is ready for its intended purposes (to house people). For new construction, this is generally documented when the building qualifies for its Certificate of Occupancy (C of O) (see Chapter 8 for a discussion of how the placed in service date is determined for acquisition/rehab projects).

DCA/GHFA should be notified using a *Placed In Service Notification* no later than 30 days after the first building in your development is placed in service. The required Notification form can be found on the DCA/GHFA Compliance Monitoring site.

Tax credits for a building must be claimed for the first time either the year that a building is placed in service or the next. If credits are claimed the year after a building is placed in service, the owner elects to defer credits on Form 8609, line 10(a).

The Life of a Tax Credit Property



Example

Determining the end of the LIHTC Periods

First year of the credit period	**2023**
End of the credit period	**2032** (2023+9 years for a total of 10 years)
End of compliance period	**2037** (2023+14 years for a total of 15 years)
End of extended use period (min)	**2052** (2023+29 years for a minimum of 30 years)

Note: each building has its own credit, compliance, and extended use periods, even if they are part of the same multi-building project.

Credit Period

Year 1 -------------------- Year 10|-- Year 30 (+)

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

Compliance Period

Year 1 ------------------------------------ Year 15|------------------------------------ Year 30 (+)

The compliance period continues for an additional five years after the end of the credit period. It also starts with the first year of the credit period, but it continues for fourteen additional years, for a total of fifteen years. During this time, the IRS monitors the property via state compliance monitoring agencies. The law requires compliance with federal LIHTC provisions for the full fifteen years. During this time, the tax credits, even if previously claimed, are in jeopardy (see Chapter 9 for more information on noncompliance and recapture).

Extended Use Period

Year 1 -- Year 30 (+)

Starting with LIHTC allocations after 1989, the owner must agree to provide affordable housing for at least an additional fifteen years after the compliance period. The total thirty – or more – years thus committed comprise the extended use period. As with the other periods, the extended use period begins with the first year that credits are claimed. It then continues for at least twenty-nine additional years. The IRS does not monitor LIHTC projects after the compliance period, but per IRC §42(h)(6)(D), it requires owners to commit to the low-income housing program for a minimum of 30 years. DCA/GHFA monitors the entire extended use period per the LURC and will impose penalties, as necessary. The 30-year period is a minimum. Certain properties may have an extended use period of more than 30 years. This extension will be reflected in the LURC/LURA)

Important IRS Tax Forms

8609

Form IRS-8609 signifies the official allocation of tax credits for a building. Part I is completed and executed by DCA/GHFA; Part II is completed and executed by the owner. Part II must be submitted to DCA/GHFA when it is submitted to the IRS. Below are pieces of crucial information found on the form, along with line numbers current to the 2021 Form. Note: these line numbers generally do not change but check the current form in case of changes.

Key Data from Form 8609

Form 8609 (Rev. December 2021) Department of the Treasury | Low-Income Housing Credit Allocation and Certification ► Go to *www.irs.gov/Form8609* for instructions and the latest information. | OMB No. 1545-0988

INFORMATION	FORM LINE #	WHY WE NEED TO KNOW	SEE ALSO CHAPTER
ADDRESS	**A**	Compare to BIN (line E) to ensure that rules are accurately applied to the correct building	**9**
BUILDING ID # (BIN)	**E**	Identifies individual buildings	**1**
DEFERRAL ELECTION	**10(a)**	Combined with the placed in service date (line 5) establishes 1st credit year	**1 & 8**
ELIGIBLE BASIS	**7**	Used with line 8(a) to calculate the applicable fraction	**1**
MINIMUM SET-ASIDE	**10(c)**	- Federal income and rent limits - If the Average Income Test applies	**1** **1**
MULTI-BUILDING ELECTION	**8(b)**	- Determining the start of income limits - To calculate minimum set-aside commitment - Determine if between-building unit transfers are allowed	**3** **1** **3**
PLACED IN SERVICE DATE	**5**	- Start of household qualification - Start of income limits - Start of 1st credit year - along with deferral election (line 10(a)	**1 & 8** **1** **1**
QUALIFIED BASIS	**8(a)**	Used with line 8(a) to calculate the applicable fraction.	**1**
TYPE OF CREDIT	**6**	- Is the building new construction, acquisition, or rehab? - Is the building bond-financed?	**8** **12**

8586

This form is used by owners of qualified residential rental buildings in low-income housing projects to determine the amount of their annual low-income housing credit.

8611

This form is used if an owner must recapture part of the low-income housing credit they claimed in previous years because the qualified basis decreased from one year to the next, or the owner disposed of a building and did not follow the procedures that would have prevented recapture of the credit.

LIHTC and HOME Regulatory Agreements

Both LIHTC and HOME projects have regulatory documents that legally obligate the land to affordable housing use through covenants that run with the property. The LIHTC *Declaration of Land Use Restrictive Covenants* (LURC) and the HOME *Declaration of Land Use Restrictive Agreement* (LURA).

These documents must be recorded with the local county clerk's office and is a deed restriction that will be carried forward to all subsequent owners of the property.

HOME Affordability Period

The HOME affordability period is the length of time that a HOME-assisted project must meet the requirements of the HOME program. The affordability period is like the LIHTC compliance period in that the owner must comply with HOME program requirements including rent limits, tenant income limits, tenant lease protections, affirmative marketing, and property standards. Depending on the type of HOME project and the amount of the HOME investment, the affordability period can be different lengths of time. Most DCA/GHFA HOME projects have a 20-year affordability period. The HOME LURA or your DCA/GHFA contact can clarify the affordability period commitment for a specific HOME project. Note: Full payment or pre-payment of a HOME loan does not terminate the HOME LURA Affordability Period.

Note: For LIHTC projects with HOME funds, the first year of the HOME affordability period may not be the same as the first year of the LIHTC credit period.

Items to Highlight on a DCA/GHFA Regulatory Document

Current for 2022 Documents. Past and future variations may occur.

LIHTC LURC

LURC Section | LIHTC Compliance Item

- ❑ **RECITAL A** | the number of LIHTC, market, and employee units.
- ❑ **Section 1** | Definitions
- ❑ **Section 3 (n)** | Utility information
- ❑ **Section 4 (a)** | Minimum set-aside
- ❑ **Section 5** | Terms of Agreement
- ❑ **Exhibit B** | DCA/GHFA rent, income, and occupancy restrictions
- ❑ **Exhibit C** | Additional restrictions/owner elections that may apply
    - o Accessibility
    - o Waiver of qualified contract/extension of cancellation option.
    - o Resident ownership plan
    - o Nonprofit set-aside
    - o Unit and site amenities
    - o Tenancy characteristics
    - o Supportive services

HOME LURA

LURA Section | HOME Compliance Item

- ❑ **Article 1** | Definition
    - o "Affordability period"
    - o "Low-income family" may be more restrictive than the HOME 80% AMI
- ❑ **Article 2** | Use and Occupancy Limitations
- ❑ **Article 4** | Administration
    - o Reporting
    - o Compliance reviews
- ❑ **Exhibit B** | Number of HOME units at High and Low HOME and other income/rent restrictions
- ❑ **Exhibit C** | Unit, site, and supportive services amenities that must be available.

Annual Owner's Certification

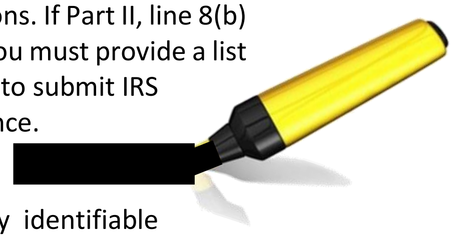
Federal regulation requires the owner of an LIHTC property to certify at least annually for each year of the 15-year compliance period if the property is in compliance with key federal provisions. DCA/GHFA also requires this during the remainder of the LIHTC extended use period. This Annual Owner's Certification covers the period from January 1 to December 31 of a year. The certification must be signed by the owner or a representative with full authority to legally bind the ownership entity. Some items must be certified under penalty of law, including but not limited to all units being able to pass an NSPIRE inspection, all household certifications complete, no down units, etc. Failing to fix these items in a year or reporting inaccurately may have tax consequences the following year. The AOC will be completed in Emphasys. HOME has similar requirements throughout the HOME affordability period. The AOC is an important federal and state requirement, and not submitting it timely will result in federal and state noncompliance findings. Current instructions and FAQs for the AOC submission process are found on the DCA/GHFA website. The Agency provides updates and instructions annually as needed.

DCA/GHFA HOME Loans and other program loans have requirements for submitting annual audited financial statements. These are to be uploaded to EMPHASYS by predetermined submitted deadlines. The owner should refer to the loan documents for additional information and specifics.

Annual Submission Requirements

The Annual Owner's Certification (AOC) must be submitted to DCA/GHFA by the specific deadline given for each calendar year. It is generally on March 1 but may be changed with prior notice from DCA/GHFA on the Agency website. The AOC form must be submitted to DCA/GHFA by the owner of the completed project(s).

When an owner receives the form 8609 final allocation of Tax Credits for each low-income building (or when tax credits result from a non-allocated bond transaction), a copy of the 8609 form(s) with Part I and Part II completed must be provided to DCA/GHFA. Part II must be signed by the owner. They may be transmitted electronically via email using current DCA/GHFA instructions. If Part II, line 8(b) is answered "yes" (the building is part of a multiple-building project) you must provide a list of all the buildings contained in that multiple-building project. Failure to submit IRS Forms 8609 and 8609-A to DCA/GHFA will be considered noncompliance.



Redacting Personally Identifiable Information (PII)

It is vital that an owner/agent completely redacts most personally identifiable information before submitting tenant files to DCA/GHFA electronically for review. This data is not needed for file review purposes. PII includes information such as social security numbers, email addresses, birth dates, and anything that can be used to distinguish a person's identity.

EIV. HUD-financed properties (such as Section 8, 811, and public housing) verify some income information through the Enterprise Income Verification (EIV) system. EIV reports cannot be used for LIHTC or HOME purposes. Nor should they be viewed by DCA/GHFA personnel when conducting LIHTC or HOME reviews. If a property has both a HUD program and LIHTC or HOME, under no circumstances should EIV reports be submitted electronically to DCA/GHFA as part of LIHTC or HOME files.

Confidentiality. Owners/agents must maintain applicant and tenant information in a way that ensures confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages and seek other relief, as appropriate. Owners must dispose of paper or electronic records in a manner that will prevent any unauthorized access to personal information, e.g., pulverize, shred, magnetically delete, etc.

Examples

Personally Identifiable Information (PII) to be Redacted

- Social security number or national identifier
- Biometric records
- Geolocation information
- Driver's license number
- Account number or username with password or PIN
- Information such as date and place of birth, mother's maiden name, and similar that, when combined with other personal or identifying information, can be linked or linkable to a specific individual.

Compliance Monitoring Review Requirements

LIHTC. State housing agencies are required to review LIHTC projects at least once every 3 years. As a part of the review, DCA/GHFA will generally physically inspect the property and at least 20% of the low-income units and the same percentage of household files. Larger properties may have a lesser sampling, based on IRS and HUD guidance. Household files will often be gathered electronically for desk audits as directed by the agency. All observed noncompliance is reported to the IRS on Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.* It will also be reported whether the noncompliance has been corrected at the time the form is submitted.

Owners must maintain ongoing tenant records to provide a historical record of tenant compliance for each unit. Under the DCA/GHFA review process, the agency will inspect the tenant income certification(s), the documentation to support the certification(s), and the rent record for each household in the required number of units. In addition, DCA/GHFA will also conduct a physical inspection of the same percentage of the low-income units at the property. Generally, the owner/agent will not be informed ahead of time of the units and households that will be reviewed. The first inspection for new projects will occur no later than the end of the second year of the credit period. DCA/GHFA reserves the right to adjust any given project’s inspection schedule and frequency of inspection for any reason.

DCA/GHFA may give an owner reasonable notice that an inspection will occur no more than 15 days before the inspection so that the owner may assemble records. Postponing an inspection is not permitted. Noncompliance that is identified and corrected by the owner before notification of an upcoming compliance review or inspection will not be reported to the IRS.

DCA/GHFA reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to the rental of tax credit units throughout the extended use period of the buildings in the project.

HOME. Properties with HOME funding are also subject to inspection every three years, but higher-risk projects may be reviewed more often.

Procedure for Compliance Inspections

In the year a compliance inspection is due, DCA/GHFA will schedule the inspection and notify the owner. Once the date and time of inspection have been decided, the Agency will issue a notification of the site visit no more than 15 days in advance of the inspection. Postponing an inspection is not permitted. Compliance violations that are uncorrected as of the date of the site visit notification may be reported on form 8823. Resident selection plans, house rules, tenant ledgers, and other information must be submitted to DCA/GHFA or made available at the time of the tenant file review, or at another time as requested by the Agency.

The compliance review includes but is not limited to, a review of (1) at least 20% of the low-income tenant files (or a lesser sampling as allowed by the IRS for very large properties) including a full inspection and calculation of income eligibility and student status, (2) utility allowance information and other documentation, and (3) an inspection of the general physical condition of the property including 20% of the low-income units (or lesser sampling as allowed by the IRS for very large properties).

Compliance Forms

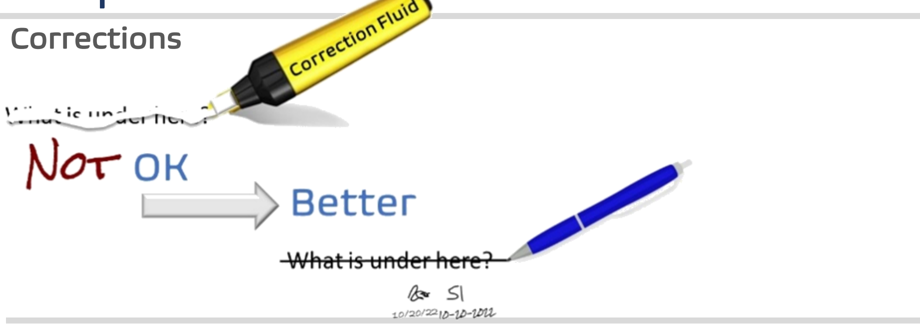
Mandatory forms. DCA/GHFA has no mandatory forms, as long as all needed information is present. DCA/GHFA reserves the right to require a change of form that is in use if it does not provide the required information.

Suggested forms. While not required for use, suggested forms provided by DCA/GHFA on their website are recommended as a best practice. There is no penalty for failing to use these forms provided that all the information requested or required is present on the owner/agent's form.

Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered with correction fluid or "white-out" will not be accepted by DCA/GHFA, as it is difficult or impossible to determine what was changed and who made the change. When a change is needed on a document (including the Tenant Income Certification and other forms signed by a household and/or the owner/agent), the owner/agent is not required to redo the form if the information on the form is clear and legible. The person making the correction should draw a line through the information that needs to be adjusted and write or type the correct information over the adjustment. All parties should then initial and date the change.

Example



DCA/GHFA Preliminary Audit Checklist

Provide the Following

- ❑ For gated communities: please provide a temporary gate code
- ❑ The DCA Property Information Form completed in its entirety
- ❑ A copy of the tenant lease
- ❑ A property rent roll by BIN # in Excel format
  - Restricted/Market units must be noted/designated
- ❑ Executed 8609 and building schedule that goes with the 8609 for all buildings (this includes acquisition and rehabilitation 8909s when applicable)

Please compare the Emphasys Occupancy Report to the Tenant Data Report before uploading. The rent roll must Include:

- ❑ Unit and building number
- ❑ Tenant names
- ❑ Current annual income
- ❑ Move-in date
- ❑ Lease expiration date
- ❑ Rent: Gross rental amount, subsidy amount, and the tenant paid rent
- ❑ Number of bedrooms
- ❑ Number of Market Units
- ❑ Designated Unit Area Median Income (AMI)

- ❑ Rent source and calculation
  - ❑ HOME/Layered – DCA/GHFA approved HOME Rent Reviews (last two years)
  - ❑ LIHTC – income limit calculation
  - ❑ RD – Approved rents (USDA)
- ❑ Utility allowances – the current and previous year.
  - Please circle and total the tenant-paid utilities.
  - If approved for any Alternative Utility Allowance, a copy of the approval letter must be provided
- ❑ HUD HOME published rents, FDIC limits, etc.
- ❑ Income calculations
- ❑ Rent floor
- ❑ HERA limits (if applicable)
- ❑ A list of units designated/equipped as Accessible and/or designated for audio and visually impaired.
- ❑ Completed DCA Utility Allowance Worksheet to identify Utility Allowance and Sources.
- ❑ Completed Building Information Form to identify buildings and fixed units.
- ❑ Completed “Affirmative Fair Housing Marketing Plan” (required for all projects).
- ❑ Completed current copy of the Tenant Selection Criteria if:
  - The property has HUD funding (NSP, HOME, TCAP, 811, HUD) and/or
  - The property has been authorized by DCA/GHFA to give preference to persons with special needs or persons with disabilities,

If submitting the Tenant Selection Criteria, include:

- ❑ “Owner Certification of Marketing Compliance" and
- ❑ "Owner Certification of Supportive Services"
  - ▪ Use this form to self-certify Supportive Services as outlined in the QAP, LURC, and LURA
  - Both forms may be signed by Managing Agent on behalf of the Owner
- ❑ A copy of the Resident Concern Notice is posted in the leasing office of the property

Follow the Emphasys submission instructions available on the DCA/GHFA website.

All buildings must be physically maintained per guidance from the IRS and HUD. Properties must be maintained in compliance with HUD's physical standards established by 24 CFR 5.703. In the past, this was the *Uniform Physical Conditions Standards (*UPCS) protocol. In 2023, this was replaced with the *National Standards for the Physical Inspection of Real Estates* (NSPIRE). NSPIRE puts a much stronger emphasis on the physical habitability of units than UPCS did and maintains a consistent focus on the health and safety aspects of deficiencies. NSPIRE standards also include a timeframe for correction specific to each deficiency. NSPIRE is the standard also followed for HUD REAC (Real Estate Assessment Center) inspections. However, LIHTC and HOME inspections do not use the overall scoring for a project that is part of REAC.

HUD has published NSPIRE standards that identify deficiencies. NSPIRE then defines specific severity codes for physical problems on a scale including "low," "moderate," "severe," and "life-threatening."

Whereas UPCS had five inspectable areas, NSPIRE consolidated those into three, "Outside" (the building), "Inside" (the building, but not in units), and "Units." What NSPIRE considers to be "Outside" was "Site" and "Building Exterior" under UPCS. "Inside" was "Common Areas" and "Building Systems." The "Units" area remains the same.

The NSPIRE standards and a wealth of information on how to use them can be found by going to the www.hud.gov website and following links to "REAC Property and Unit Inspections."

NSPIRE is a complex protocol. In 2019 HUD began the process of re-organizing UPCS and the REAC scoring system into NSPIRE. Many of the details changed, but the basic outline provided below, based on IRS summaries of its physical standard expectations, will remain relevant. The following is a quick overview of NSPIRE. However, there are many additional details provided in HUD guidance.

Note: The below listing of deficiencies is just a sampling that the IRS listed in the instructions to form 8823. There are hundreds of additional deficiencies under the NSPIRE protocol, so consult the REAC NSPIRE website and Standards for more details. See also Supplement 2 of this manual for a checklist for NSPIRE inspection.

Summary

Site components and each building must be free of health and safety hazards and be in good repair. Note | This inspectable area was both "Site" and "Building Exterior" inspectable areas under the former UPCS.

Inspectable Area

Outside

- Adequate address and signage at the site
- Missing handrails and guardrails
- Fencing and gates
- Grounds
- Mailboxes
- Project signs
- Parking lots/driveways/roads
- Play areas and equipment

- Refuse disposal
- Retaining walls
- Storm drainage
- Walkways/steps
- Doors
- FHEO & Uniform Federal Accessibility Standards (UFAS)
- Fire escapes
- Foundations
- Lighting
- Roofs
- Walls
- Windows

Some possible "outside" concerns

- Dangerous walkways or steps where cracks constitute a trip hazard
- Poor drainage
- Septic tank back-ups
- Sewer hazards
- Excess accumulated garbage/debris
- Vermin or rodent infestation
- Fire hazards
- Damaged soffits/fascia
- Missing/damaged downspouts/gutters
- Splash blocks missing
- Walls stained/peeling/need paint
- Wall cracks, gaps, damaged or missing pieces
- Back-up lighting fails when tested

Summary

Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary systems must be free of health and safety hazards, functionally adequate, operable, and in good repair. Common areas must be structurally sound, secure, and functionally adequate for the purposes intended. Note | This inspectable area includes areas that were the "Building Systems" and "Common Areas" inspectable areas under UPCS.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
NSPIRE
NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE

Inspectable Area

Inside

- Missing handrails and guardrails
- Domestic water
- Electrical systems
- Elevators
- Emergency power
- Fire protection
- HVAC
- Roof exhaust systems
- Sanitary systems

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

Some possible "inside" concerns

- Blocked access to the electrical panels by furniture or other items
- Open breaker/fuse ports
- A water heater pressure relief valve discharge tube does not extend to within 18 inches of the floor
- Clothes dryers not properly vented in a public laundry room
- Expired certification, missing, damaged, or discharged owner-owned fire extinguisher

Summary

Each dwelling unit within a building must be structurally sound, habitable, and in good repair. The dwelling unit must be free of health and safety hazards, functionally adequate, operable, and in good repair. Note | This area was also called "units" under UPCS. It has much greater emphasis under NSPIRE.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT NSPIRE NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE

Inspectable Area

Units

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

- Walls
- Windows

Some possible unit concerns

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

Life-Threatening Health and Safety

All inspectable areas must be free of life-threatening health and safety hazards. These issues are any hazardous conditions that pose a threat to the health and safety of residents and others. NSPIRE has designated many additional items to be health and safety or life-threatening when compared to UPCS and these are distributed throughout the standards. Below is a sampling of items that are "severe" or "life-threatening" and require prompt attention.

- Mold-like substances observed
- Electrical hazards
- Elevators not working as designed
- Emergency/fire exits
- Flammable materials
- Garbage and debris
- Hazards
- Sharp edges
- Infestation by rats, mice, or vermin
- Trip hazards
- Electrical, natural, or fire hazards.
- Improper ventilation
- Visually observed potential lead paint hazards where a child under age 6 resides
- Noncompliance with requirements related to lead-based paint hazards or unavailable certifications thereof
- Propane, natural, sewer, or methane gas odor
- Inoperable smoke detectors
- Blocked egress for 3rd level and below
- Improperly stored flammable materials
- Inoperable or missing GFCI outlet

"Top 20" Common Physical Inspection Findings in Georgia

1. Blocked egress
2. Tripping hazards inside
3. Fire extinguishers – missing or expired dates
4. Inoperable or missing smoke detectors
5. Dirty HVAC air filters
6. Mold and mildew from water issues
7. Infestation
8. Rusted banisters/guards on stairs and balconies
9. Cracked or broken window
10. Erosion
11. Handicap parking signage is not compliant, or installation is not compliant
12. Open drainage box – cover missing
13. Damaged dryer vent
14. Screens missing
15. Gutters filled with debris
16. A/C electrical box missing cover – exposed wiring
17. Damaged/broken concrete pad
18. Inoperable emergency lights
19. Pressure relief valve not hooked up to drain
20. GFCI – Inoperable

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

After the physical inspection. The inspector will notify the owner/agent of life-threatening violations immediately upon the conclusion of the physical inspection. They may also include severe findings requiring prompt attention. NSPIRE provides correction timeframes. Evidence of correction must be submitted within the timeframe allowed.

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

Findings and Cures

A cure's submission documentation must be uploaded to the EMPHASYS Certification Portal and must:

1. be submitted timely.
2. be in the same order as listed in the Findings Report.
3. include the Compliance Findings DCA Cover Sheet.
4. have work orders signed and dated by management/maintenance staff and specified work completed.
5. include the invoice and indicate the unit number and work completed for contractor repairs.
6. be legible and orderly.

More specifics may be found in the Findings Report Letter sent to the owner following the audit and on the DCA Findings Cover Sheet.

Local Codes

Notwithstanding the above inspection requirements, LIHTC and HOME projects must also satisfy local health, safety, and building codes. DCA/GHFA may rely on local code inspections rather than performing a separate physical inspection of the property. In addition, the Agency may elect to conduct follow-up inspections under certain conditions such as severe physical and/or health and safety deficiencies, or failure to timely correct the identified issues.

Monitoring Fees

Fees are charged on all units within a project and are submitted once the project is awarded LIHTC funding. Recipients of LIHTC funding will be required to pay the entire fee covering the 15-year compliance period. All the compliance monitoring fees, including LIHTC compliance fees and deadlines, can be found on the DCA/GHFA website.

Newer HOME properties may also be charged monitoring fees, which DCA/GHFA refers to as HOME Asset Management Fees. If so, this will be part of the project underwriting and the owner will know ahead of time.

If additional inspections or re-inspections are necessary after a compliance monitoring visit as determined by DCA/GHFA, the Agency may charge a per-unit additional inspection or re-inspection fee, including travel costs. See the Agency website for the current fees and billing and payment process.

Accessibility Disputes

Property owners under the LIHTC and HOME Fund programs are expected to maintain full compliance with all accessibility laws and regulations. This includes the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the DCA/GHFA Accessibility Manual for a property's funding year (available on the DCA/GHFA website). Section 504 applies federally to projects that receive HOME Funds (see *HOME and Section 504* header in Chapter 3) and DCA/GHFA QAP requirements impose similar standards on Georgia LIHTC projects. DCA/GHFA audits properties for accessibility issues and cites audit findings.

Audit findings made by DCA/GHFA must be promptly addressed in the manner set forth below. In doing so, however, it should be noted that any DCA/GHFA decision concerning accessibility is subject to review by the DOJ and/or HUD. These federal agencies are under no obligation to regard DCA/GHFA's accessibility decisions as conclusive proof of compliance. Any concerns by a property owner about whether full compliance with accessibility laws and regulations has been achieved are best resolved by retaining the services of a qualified accessibility consultant. A property owner must maintain compliance with all appropriate regulations regarding accessibility. When a property inspection is conducted by DCA/GHFA and findings of noncompliance are made, a property owner must demonstrate that the specific findings of noncompliance have been adequately addressed or formally disputed. When assessing the owner's response to physical non-compliance findings, the property program requirements, (LIHTC Funds) must be considered.

It is within DCA/GHFA's discretion to cite accessibility findings at any time. Agency reviews are limited in scope, and possible instances of noncompliance may exist that are not cited. The findings determined within the scope of a DCA/GHFA review may vary from year to year.

Cures for Accessibility Findings

For LIHTC properties that do not have DCA/GHFA HOME Funds, the owner is responsible for following all guidelines related to accessibility. Physical inspection findings related to accessibility are not reported on IRS form 8823 unless the state agency receives a notification of a case involving the Fair Housing Act from HUD or the DOJ. Regardless, they must be addressed by a property owner. If sufficient documentation is not submitted to DCA/GHFA to cure or adequately dispute the accessibility finding(s), the status of the property inspection will reflect an open accessibility issue. It is the owner's responsibility to report the correction of open accessibility findings listed in the property inspection report. An open accessibility issue will remain an audit finding until is it documented as corrected by the owner. Unaddressed audit findings of this nature also have the potential to adversely impact an owner's compliance scoring in a competitive LIHTC funding round.

Properties with DCA/GHFA HOME Funds also must cure accessibility findings that are not successfully disputed. Undisputed, unresolved accessibility findings in a property with HOME Funds will result in the audit remaining open until sufficient documentation has been received to close the accessibility finding. Once all cure documents are reviewed and accepted, the owner will receive an updated property report showing all findings have been addressed and that the property audit is closed.

Dispute Process for Properties

If the owner of a property disputes an accessibility non-compliance finding in the physical inspections report, the cure response must include a report from a qualified accessibility consultant with an explanation detailing the reason for the dispute and reference to any guidance that supports the dispute for DCA/GHFA review. The owner must use a qualified accessibility consultant of their choosing. The accessibility consultant must include their qualifications for approval with the report that supports the owner's dispute. DCA's qualification requirements can be found in the most recent Accessibility Manual available on the Agency's website.

If the owner's dispute regarding the accessibility finding is accepted, the property audit report will be closed showing that all findings have been cured. If the owner does not provide sufficient documentation to support the disputed accessibility finding, the property accessibility findings in the audit report will remain open until sufficient documentation is provided and accepted.

Unacceptable owner dispute responses to accessibility findings include:

1. Failure to include an opinion from a qualified accessibility consultant.
2. Report or explanation from an unaccredited employee or consultant with an identity of interest with the property.
3. Incomplete response(s).
4. Responses that fail to state that the project meets all accessibility requirements or does not include sufficient supporting documentation.

Owner dispute responses must reference the applicable federal and state accessibility laws, including but not limited to the Fair Housing Amendments Act of 1988 (FHA), the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Georgia Fair Housing Law, and/or the Georgia Access Law.

Extension Requests

For properties with HOME funds, owners may request an extension of the deadline to correct open accessibility findings. The request must include an explanation of the reason for the request, including any action taken, a formal bid or scope of work or a signed contract, and a detailed plan to cure the accessibility finding(s) with the estimated timeline for completion. If the owner requests an extension to cure accessibility findings, and the cures have been received and accepted for all other physical findings, the audit report will remain open with open accessibility finding(s) until sufficient documentation has been received to close the accessibility finding(s).

For properties without DCA/GHFA HOME funds, the owner is responsible for following all guidelines related to accessibility. The owner may request an extension to correct accessibility findings.

Once the accessibility corrections are made, it is the owner's responsibility to inform DCA/GHFA that this finding has been addressed. This will allow the property inspection to show that it has been closed with a closed accessibility finding. The owner is required to respond to all open accessibility findings.

Once sufficient cure documents for all non-compliance findings have been reviewed and accepted, DCA/GHFA will provide an updated property report and a close-out letter showing that all findings are cured and that the property audit is closed.

Emphasys System

The Emphasys system is a web-based certification portal used by DCA/GHFA to compile and monitor tenant and building data for properties receiving funding through the Agency. DCA/GHFA also uses Emphasys to collect the LIHTC Annual Owner Certification, conduct audits and inspections, and collect property financial data. Using Emphasys makes it easier for owners/agents to prepare for DCA/GHFA audits and to track anomalies and problems with compliance at their sites. The law mandates that certain household data (including but not limited to ethnic and demographic data) must be submitted to HUD by DCA/GHFA on an annual basis. Thus, the use of Emphasys to transmit this data securely is mandatory. The current monthly deadline for updating the previous month's tenant data, as published on the DCA/GHFA website, must be met. Failure to timely enter tenant transactions into the Emphasys system is a serious breach of an owner's agreements with DCA/GHFA and may result in audit findings, delays in receiving 8609s, and point deductions in scoring for future Agency funding.

For a newly placed in-service property, the owner will receive a welcome package that will outline required documents specific to the property and their timeline for submission. These may include Rental Assistance Contract (RAC) worksheets, the AFHMP, Placed in Service Forms, Average Income Test compliance monitoring policies and procedures, any financial reporting needed, 8609(s) with part(s) II complete, and other necessary material for the project. Software set-up is initiated at this point. Tenant transactions should be entered by the 10th of every month once the property's Super User has been notified that the property has been set up in the software and tenants have moved in.

Record Keeping and Retention – Federal and DCA/GHFA Requirements

LIHTC. The owner is responsible for keeping records for each qualified low-income building in the project that shows for each year of the compliance period and the extended use period, the number of residential rental units, the rent charged on each residential rental unit, the utility allowance charged (if applicable), the annual income certification of each low-income tenant and the documentation to support each of these items. Owners must maintain applicant and tenant information in a way that ensures confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages and seek other relief, as appropriate. Owners must dispose of paper or electronic records in a manner that will prevent any unauthorized access to personal information, e.g., pulverize, shred, magnetically delete, etc.

Owners must maintain records necessary for DCA/GHFA to conduct compliance monitoring and for the IRS to conduct any audits. Records for the first year of the credit period must be retained for six years after the deadline for filing the tax return for the last year of the compliance period. Records for all other years in the fifteen-year compliance period must be kept for a minimum of six years following the deadline for filing that year's tax returns for the property. The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the square footage of each residential rental unit).
2. The percentage of residential rental units in the buildings that are low-income units.

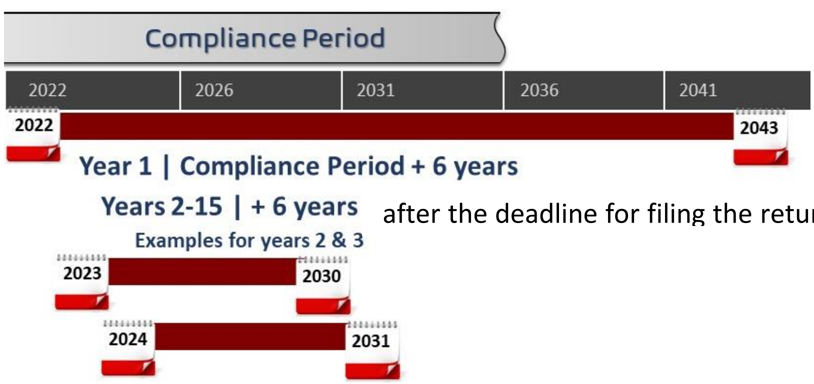
3. The rent charged for each residential rental unit in the building, supporting documentation, the applicable utility allowance, and the applicable unit percentage set aside.
4. The number of occupants in each LIHTC unit.
5. Unit vacancies in the building and information that shows when and to whom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

Example

First-Year LIHTC Record Retention

A project was placed in service in 2021 and credits are deferred and first claimed in 2022. This makes 2036 the final year of the compliance period. Until when must the first-year files and other records be kept?

April of 2043.
This is six years after the April 2037 deadline for filing the 2036 taxes.



after the deadline for filing the return for the

HOME Record Retention

For HOME projects, records must be retained for five years after the project completion date, except records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent five-year period. Thus, the last year's records must be retained for five years following the termination of the affordability period.

As LIHTC requirements are more restrictive, they must be followed for LIHTC/HOME properties.

Example

HOME Record Retention

The first year of a project's 20-year HOME affordability period started in June of 2021. This makes June of 2041 the end of the HOME affordability period.

Until when must records for the year ending in June of 2025 be kept?

June of 2030.

Until when must the 2041 files and other records be kept?

June of 2046.

Each year's HOME files must be retained for five years.

Note: As LIHTC requirements are more restrictive, they must be followed for LIHTC/HOME properties.

Electronic Document Policy

Owners/agents may comply with the record retention provisions required by the LIHTC regulations by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22, Revenue Ruling 2004-82, and HUD Notice H-2020-10, or updated versions of these.

DCA/GHFA will accept and permit the use of electronic signature systems provided that 1) the electronic signature software has the capability to audit or authenticate the signature, and 2) there are no existing restrictions imposed by State or Federal law. A solution such as DocuSign or Adobe software should be utilized in the signature process to satisfy ESIGN Act and/or Uniform Electronic Transactions Act (UETA) requirements.

The owner/agent is responsible for ensuring that tenant files are following IRS and/or HUD rules and regulations and that the signature is that of the tenant. Additionally, the owner is responsible for ensuring investor and syndicator acceptance of the use of electronic signatures. Should issues arise because of electronically signed documents, DCA/GHFA reserves the right to require 'wet' signatures. Wet signatures are required for the initial tenant certification. Owners/agents of properties being monitored by DCA/GHFA intending to take advantage of the Agency's electronic signature policy must take the following actions:

- **Owner/Management Policy.** Initially, and upon any change in the Owner/agent, the owner/agent must develop and implement a policy and procedure for the use of electronic signatures. DCA/GHFA has no liability for owner/management company electronic signature policies that do not meet IRS and/or HUD rules and regulations.
- **DCA/GHFA Request for Documents.** Hard copies of the tenant files must be provided to the Agency upon request.
- **File Format.** All household files must be made available in a format compatible with DCA/GHFA software.
- **Hard Copies.** The owner/agent policy must provide accommodations to residents who request to review and sign hard copies of documents.

Liability

As stated in the introduction to this manual, compliance with the requirements of the LIHTC and HOME programs is the responsibility of the owner of the LIHTC or HOME property. DCA/GHFA's obligation to monitor for compliance with the requirements of these programs does not make DCA/GHFA liable for an owner's non-compliance.

Summary of Compliance Monitoring Procedures, Requirements, and Penalty Criteria

The DCA/GHFA Compliance department will conduct monitoring procedures and requirements to ensure ownership and project compliance with Section 42 (m)(1)(B)(iii) of the Internal Revenue Code and all requirements as specified in the QAP.

A. DCA/GHFA will require an owner of an LIHTC project and/or tax-exempt bond/LIHTC property to maintain records for each qualified LIHTC building in the project. For each year in the compliance period, the records must show the information required by the record-keeping provisions contained in Section 1.42-5 (b) of the Treasury Regulations.
B. DCA/GHFA will require an owner to retain the records documenting compliance with Section 42 of the Internal Revenue Code (Section 42) for each year as described in Paragraph A above for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. DCA/GHFA will also require owners to retain the records for the first year of the credit period for at least 6 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.
C. DCA/GHFA will require a first-year tenant file review and issuance of a clearance letter from an industry-recognized LIHTC training and file review specialist. Each first-year file with all tax credit qualification documents must be reviewed by a specialist and a summary of their findings must be submitted to the Agency within 18 months of the date of the first building being placed in service. Failure to submit the findings will impact future scoring as applicable under the Compliance Performance section for 9% tax credit applications submitted by the owner. Each ownership entity must enter all required tenant data for each property into the DCA/GHFA online Emphasys software program by the 10th of each month for the preceding month. The required tenant data must include a report of all tenant move-ins and move-outs (to include onsite transfers) and income recertifications.
D. An owner of a LIHTC project must submit an online Annual Owner’s Certification (AOC) to DCA/GHFA under penalty of perjury and as provided in Section 1.42-5 (c)(1) of the Treasury Regulations, by the stated deadline provided on the AOC form and the Agency website each year. All AOC submissions will be reviewed for Section 42 compliance and timely submission. The Agency may deduct points from scoring in an application funding round for the owner’s failure to submit an AOC for any project by 5:00 p.m. EST on the stated deadline, as specified in the applicable QAP.
E. DCA/GHFA will notify the IRS of an ownership entity’s noncompliance or failure to submit an AOC by filing IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance for the 15-year compliance period. Under certain circumstances, the Agency may also notify HUD of a failure to submit an AOC.
F. Financial Reporting

   Annual Audited Financial Statement Requirement, LIHTC with a GHFA Loan (HOME, TCAP, etc.)

   Every property financed with a GHFA loan (HOME, TCAP, etc.) must submit audited annual financial statements, prepared by a licensed Certified Public Accountant, and form Schedule A to DCA/GHFA by May 15th, or as otherwise required by the Agency.

All financial statements must be submitted electronically. Paper financial statements will not be accepted. Properties must continue to submit audited annual financial statements until the loan is paid in full.

Each property is required to submit annual financial data utilizing Agency reporting tools as required and described in DCA/GHFA's policy documents, memorandum notices, Compliance Manual, and Asset Management Manual.

Annual financial reporting must begin once the lease-up commences and after the first financial year of operation has ended.

All Properties

Every property funded with tax credits must submit annual financial data. Annual financial data/Year-end financial data is due no later than May 15th of the following year.

Quarterly Financial Reporting

At DCA/GHFA's request, any property funded with Low-Income Housing Tax Credits must submit quarterly operating data. Quarterly financial data is due within 45 days of the last day of the month following the end of the quarter.

Each property is required to submit the financial data utilizing DCA/GHFA reporting tools as required and described in the Agency's policy documents, memorandum notices, Compliance Manual, and other guidance.

This requirement is effective through the end of the LIHTC extended use period, or HOME Funds or other affordability period, whichever is later.

Quarterly financial reporting must begin once the lease-up commences and after the first financial quarter of operation has ended.

During monitoring, if a property demonstrates financial or physical distress, DCA/GHFA may request additional financial documents for the identification of possible solutions.

G. The ownership entity of any property having received funding through DCA/GHFA must prepare and submit an Affirmative Fair Housing Marketing Plan (AFHMP).

H. During each Compliance Review/Audit, the ownership entity must submit the Owner Certification of Supportive Services form with corresponding detailed backup, (letters, sign-in sheets, etc.) relating to the event and the resident participation, as detailed in the properties LURC/LURA. Failure to make submissions will result in State noncompliance and potential point deductions as stated in the applicable QAP.

I. Each ownership entity must allow DCA/GHFA, or its designated representative, to perform on-site inspections of any LIHTC unit or building in a project through the end of the applicable compliance period. Failure to do so will result in a finding of noncompliance. These may be at the expense of the ownership entity. Each unit or building inspection will be performed using the National Standards for the Physical Inspection of Real Estate (NSPIRE) guidelines established by HUD. The NSPIRE standards and related definitions provided by HUD provide guidance for hundreds of specific standards. For any additional inspections or re-inspections required by DCA/GHFA see the current fee schedule and deadlines on the Agency website. Re-inspections may be mandated by conditions found during a regularly scheduled inspection, information released by a media outlet, a notification of a resident concern, or any other source.

J. DCA/GHFA will promptly notify the ownership entity in writing if the Agency is not provided access by either the owner or the management company to inspect and review as described above or otherwise discovers that the project does not comply with Section 42. In such an event, the ownership entity will be informed in writing of the stipulated period to supply missing documentation or to correct noncompliance commencing on the date of the notification letter.

K. DCA/GHFA may charge fees to cover the ongoing administrative expenses in monitoring compliance and to collect all expenses incurred in carrying out its duties as the Housing Credit agency, including, but not limited to, reasonable fees for legal and professional services.

L. Compliance with the requirements of Section 42 is the responsibility of the ownership entity of the building for which the LIHTC is allocated. The ownership entity of each building is responsible for compliance with all the accessibility, adaptive design, and construction requirements of the Fair Housing Act. Failure to comply with the requirements of Section 42 of the Fair Housing Act may result in the loss of tax credits according to Section 1.42-9 of the Treasury Regulations.

M. DCA/GHFA monitoring of an ownership entity's compliance with the requirements of Section 42 and the Fair Housing Act does not make the Agency or the State of Georgia liable to any ownership entity or any shareholder, officer, director, partner, member, or manager of any ownership entity or any entity comprising any ownership entity for an ownership entity's non-compliance therewith.

N. It is the policy of DCA/GHFA to immediately report to the appropriate federal agent any indication of fraud, waste, abuse, or potentially criminal activity relating to the use of federal funds.

O. DCA/GHFA will report its compliance monitoring activities annually on IRS Form 8610.

P. A copy of the IRS Form 8609, with Part II completed by the ownership entity, must be submitted to DCA/GHFA the first year tax credits are claimed for a building – at the same time, the owner submits the form to the IRS.

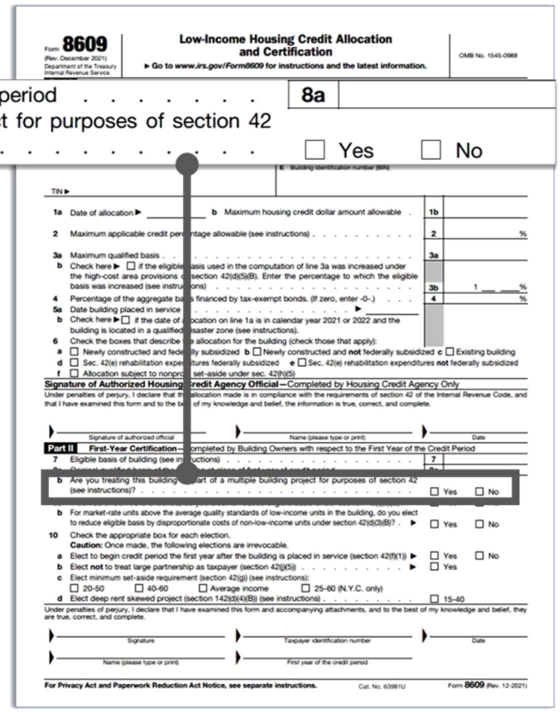
Q. The owner must submit a copy of any health, safety, or building code violation report issued by any regulatory (local, state, or federal) or third-party entity to DCA/GHFA's Compliance Department within 60 days of receipt from the entity.

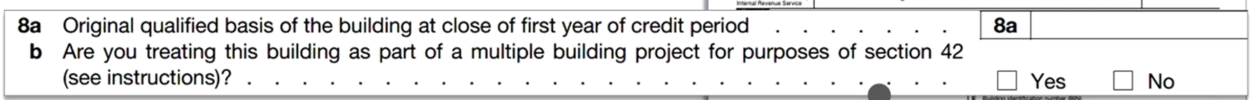
R. If an owner wishes to change the methodology used in the calculation of the Utility Allowance at any time after the initial determination has been made, the owner must submit a written request to DCA/GHFA using DCA/GHFA's Project Concept Change process. Only one request per calendar year may be granted by the Agency. Other restrictions may apply per the applicable year QAP.

S. Management companies must be approved per the Agency's Management Company Approval policy by the deadline specified in the applicable QAP. If the management company is not approved by the deadline, the applicant will be required to replace the management company in the application with a management company that is approved. For any anticipated change in a management company, beyond the initial funding application, the ownership entity must submit a request for approval of the change per DCA/GHFA's Management Company Approval policy. DCA/GHFA will provide an online publication of the Approved Management Company List to be updated no less than once per year.

Chapter 3 | Project Requirements

Multiple or Single-Building Tax Credit Projects





When an owner elects to treat more than one building as part of a multiple-building project, he or she elects to do so on Form 8609, line 8(b) and includes a list of the included buildings in the project with the 8609 for each building. This election had three major implications for the daily operation of LIHTC projects.

1. **Minimum set-aside.** The minimum percentage of units required for a LIHTC project is determined by the minimum set-aside. For the 20-50 minimum set-aside projects, a minimum of 20% of the units must be maintained as LIHTC. For the 40-60 and Average Income Test minimum set-asides, the projects must maintain at least 40% of the units in compliance. This is spread among all buildings in a project (see examples under the *Minimum set-aside* header in Chapter 1).
2. **Income Limits.** Income limits start for a project when the first building in a multiple-building project is placed in service and all future buildings can hold harmless to the limits in effect when that first building is placed in service.
3. **Unit Transfers.** Transfers of households between units are allowed between buildings within a project (see the header *Transfers* below).

Affirmative Fair Housing Marketing

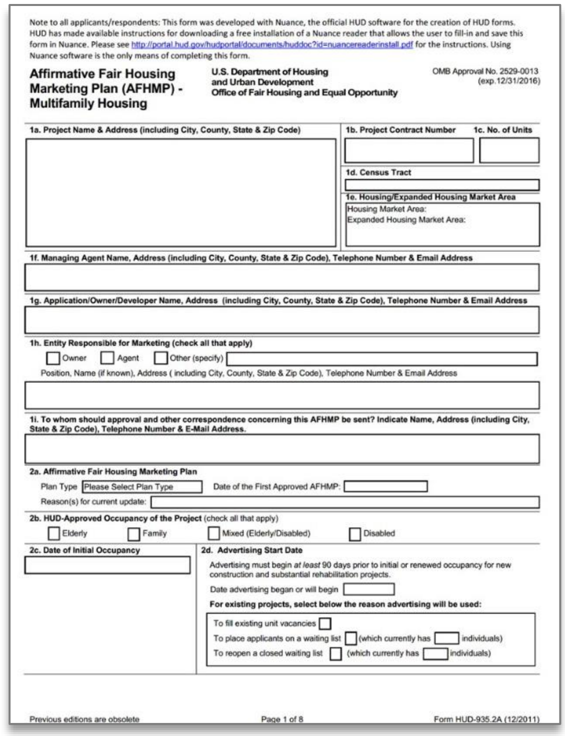
The purpose of affirmative marketing is to reach those least likely to apply and meet Fair Housing requirements. The Affirmative Fair Housing Marketing Plan (AFHMP) outlines how the project will market units to underserved tenants including tenants with special needs. The practice of affirmative marketing includes the development of marketing procedures to attract applicants from all Fair Housing-protected classes.

An approved AFHMP is federally required for all HOME properties. While affirmative marketing is not a requirement of the federal LIHTC program, it is a Georgia state requirement that an AFHMP is in place for DCA/GHFA LIHTC properties.

For LIHTC properties, the AFHMP must be submitted before issuance of the 8609(s) for a project.

The AFHMP must be re-submitted to DCA/GHFA every five years, or sooner if major changes occur affecting the Plan.

The most recent version of the HUD Form 935.2a ***Affirmative Fair Housing Marketing Plan (AFHMP) – Multifamily Housing*** is the DCA/GHFA preferred format for an AFHMP. This form is designed to help the owner/agent use recent Census Bureau data to determine percentages of persons who live in your community who may be in a protected class. The Plan then helps examine the makeup of residents of the property based on the same classes. This helps identify and develop a plan to reach out to those unlikely to apply because of protected class-related obstacles (such as language or disability-related barriers).



Note to all applicants/respondents: This form was developed with Nuance, the official HUD software for the creation of HUD forms. HUD has made available instructions for downloading a free installation of a Nuance reader that allows the user to fill-in and save this form in Nuance. Please see http://portal.hud.gov/hudportal/documents/huddoc?id=nuancereaderinstall.pdf for the instructions. Using Nuance software is the only means of completing this form.

Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0013 (exp.12/31/2016)

1a. Project Name & Address (including City, County, State & Zip Code)

1b. Project Contract Number

1c. No. of Units

1d. Census Tract

1e. Housing/Expanded Housing Market Area
Housing Market Area:
Expanded Housing Market Area:

1f. Managing Agent Name, Address (including City, County, State & Zip Code), Telephone Number & Email Address

1g. Application/Owner/Developer Name, Address (including City, County, State & Zip Code), Telephone Number & Email Address

1h. Entity Responsible for Marketing (check all that apply)
☐ Owner ☐ Agent ☐ Other (specify)
Position, Name (if known), Address (including City, County, State & Zip Code), Telephone Number & Email Address

1i. To whom should approval and other correspondence concerning this AFHMP be sent? Indicate Name, Address (including City, State & Zip Code), Telephone Number & E-Mail Address.

2a. Affirmative Fair Housing Marketing Plan
Plan Type: Please Select Plan Type   Date of the First Approved AFHMP:
Reason(s) for current update:

2b. HUD-Approved Occupancy of the Project (check all that apply)
☐ Elderly ☐ Family ☐ Mixed (Elderly/Disabled) ☐ Disabled

2c. Date of Initial Occupancy

2d. Advertising Start Date
Advertising must begin *at least* 90 days prior to initial or renewed occupancy for new construction and substantial rehabilitation projects.
Date advertising began or will begin
For existing projects, select below the reason advertising will be used:
To fill existing unit vacancies ☐
To place applicants on a waiting list ☐ (which currently has ☐ individuals)
To reopen a closed waiting list ☐ (which currently has ☐ individuals)

Previous editions are obsolete   Page 1 of 8   Form HUD-935.2A (12/2011)

Regardless of the format an owner uses, at minimum, an AFHMP must include:

- Current outreach efforts to each service provider, homeless shelter, or local disability advocacy organization in the county in which the project is located, especially showing marketing efforts to persons with disabilities and the homeless.
- Show established and maintained relationships between the management agent and community service providers.
- A referral and screening process that will be used to refer tenants to the projects, the screening criteria that will be used, and make reasonable accommodations to facilitate the admittance of persons with disabilities or the homeless into the project.
- Marketing materials showing the Fair Housing and disability logos, slogans, or statements.

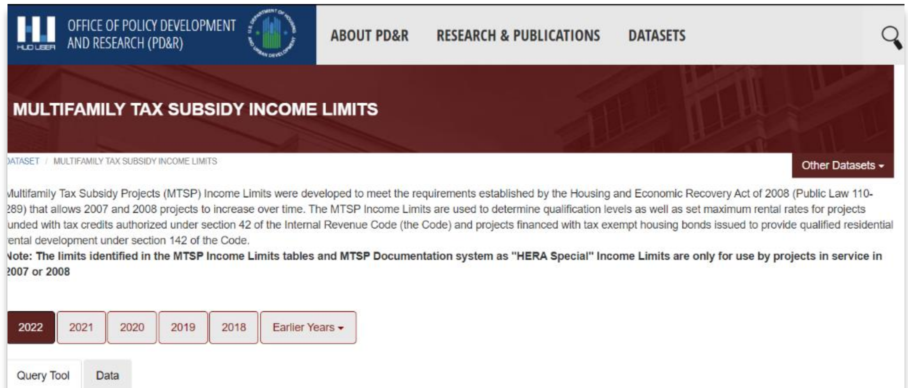
It is not sufficient for an owner/agent to develop an AFHMP. The plan must be continuously carried out and proof of actions that are taken per the plan must be retained. This is what DCA/GHFA looks for from an owner/agent to demonstrate compliance with an AFHMP:

- A thorough and complete AFHMP form, preferably the HUD form 935.2A.
    - A list of target demographic(s) and why these have been selected.
    - A list of all recent Fair Housing training, its frequency, and who is trained.
    - A description of referral and screening processes that will be used to refer and accept tenants to the property. Additional page(s) can be attached to the plan for this if needed.
    - A listing of all the agencies contacted, including specific individuals with whom the owner/agent maintains a relationship.
    - Listing all methods of outreach.
- Attached copies of researched demographic information supporting the reasoning for marketing to the groups identified.
- Attached copies of all marketing materials, including those in other languages, and showing Fair Housing logos, slogans, and/or statements.
    a) Outreach letters to the different agencies in the area.
    b) Flyers.
    c) Brochures.
    d) Newspaper/internet ads.
    e) Pictures of property signage.
    f) Proof of training – PowerPoint presentations, worksheets, certificates, sign-in sheets, etc.

g) TTY Phone Number Confirmation via a qualified provider, such as the Georgia Relay or the national 7-1-1 number.

Posting. The AFHMP must be posted prominently at each property and available to all applicants and residents.

Selecting Correct Income Limits



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

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

The minimum set-aside for a project, which is also abbreviated MSA at times by the IRS, should be distinguished from the other MSA based on context (see Chapter 1 for a discussion of minimum set-asides). To avoid confusion, this manual spells out "minimum set-aside" in all cases.

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

The MTSP income limits can be found on the HUD website.

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

- 50% (very low) and 60% Income Limits
  - Select the 50% or 60% limits based on the property's minimum set-aside (20-50 properties use the 50% limits and 40-60 use 60% limits)
- Average Income Test properties additionally use the 20%, 30%, 40%, 70%, and 80% income limits as published by HUD (which multiplies the 50% limit by .4, .6, .8, 1.4, and 1.6, respectively).

HERA Special Income Limits 50% and 60% (if applicable).

  - These limits can only be applied to projects for which at least one building in the project was placed in service before January 01, 2009.
  - Not all MSAs or counties in Georgia have projects that are eligible to use the HERA special limits. If the HERA limits are not listed in the datasets for the project's MSA or county income limits, the project is not eligible. Also, counties with HERA special limits change from year to year so it is best not to assume that if HERA special limits apply for one year that they will automatically apply to other years.

LIHTC Held Harmless, HERA Special, and National Non-Metro Options

Holding harmless. LIHTC income limits are said to be "held harmless." This means that once a project is placed in service, it never has to decrease the income limits it uses from one year to the next. Being "held harmless" is beneficial to projects where income limits might fluctuate from year to year and helps the project to better achieve economic stability. For purposes of this rule, a project "places in-service" when the first building in the project is placed in service. "Project" is defined by the 8609 8(b) multi-building election (see *Multiple or Single-Building Tax Credit Projects* above for further information on the 8(b) election).

Question | Determine if holding harmless at a prior year's limits is appropriate.

- Has any year's income limit, since the later of 2008 or the property placed in service date, been higher than current limits?
    - **If "yes", the property holds harmless at the prior higher limits.**

Questions | Determine if HERA Special limits are applicable.

- Was any building in the project placed in service before January 1, 2009?
- Does HUD list the HERA Special option for the area?
    - **If "yes" to both questions above, the property may use the HERA Special limit.**

Example

Limits Held Harmless

2021 Income limits are published

Property 1 is placed in service and uses the income limits published for 2021.

2022 Published limits for the area decrease

Property 1 continues to use the 2021 limits.
Property 2 in the same area is placed in service in 2022. It uses the 2022 limits, which are lower than the limits allowable for older Property 1.

2023 Published limits decrease again

Property 1 holds harmless at 2021 limits.
Property 2 remains at the 2022 limits.

2024 Income limits go up and exceed the 2021 limits.

Both projects will now use the 2024 limits and hold harmless to those limits, if necessary, in the future.

The national non-metropolitan average limits are allowed for some rural counties with limits that are exceptionally low. These limits only apply to properties in areas deemed to be "rural" by the USDA Rural Development housing program and that are not funded with tax-exempt bonds.

Questions | Determine if national rural limits are applicable.

- Is the project NOT financed with tax-exempt bonds?
- Is the property in a "rural" area per Rural Development rules?
- Are applicable MTSP limits otherwise lower than the national non-metropolitan limits?
    - **If "yes" to all the above, the property uses the national nonmetropolitan limits.**

Limits when a Building is Placed in Service During the 45-Day Period

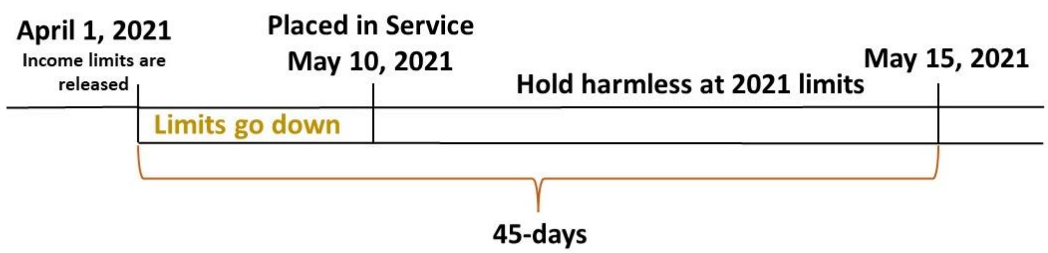
Once MTSP income limits are released by HUD, they must be implemented within 45 days. If limits decrease and a project is placed in service during this 45-day period, the owner may select whichever set of limits is in the best interest of the property, so the owner will select the prior year's higher income and rent limits.

Example

Placing a Project in Service During the 45-Day Period

2021 Income limits are effective on April 1, 2021, and they go down for an area. The 45-day period ends on May 15. The first building in a 2-building multiple-building project in the area was placed in service on May 10, 2021, and the second building was placed in service on August 21, 2021.

As the first building was placed in service within the 45-day period, the owner will select the higher 2020 income and rent limits and hold harmless to these for both buildings in the project.



Average Income Test Limits

HUD publishes the LIHTC income limits, including the designations used for the Average Income Test (AIT). These designations are calculated from the 50% MTSP limits.

Example

How HUD Calculates 20% - 80% AIT Income Limits for a 1-person household

Designation	50% limit	x adjusting factor	= Designation limit
20%		x 0.4	= $ 12,080
30%		x 0.6	= $ 18,120
40%		x 0.8	= $ 24,160
50%	$ 30,200	x 1.0	= $ 30,200
60%		x 1.2	= $ 36,240
70%		x 1.4	= $ 42,280
80%		x 1.6	= $ 48,320

FY 2021 MTSP Income Limit Area	Income Limit Category	1 Person
Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area	80 Percent Income Limits	$48,320
	70 Percent Income Limits	$42,280
	60 Percent Income Limits	$36,240
	50 Percent (Very Low) Income Limits	$30,200
	40 Percent Income Limits	$24,160
	30 Percent Income Limits	$18,120
	20 Percent Income Limits	$12,080

DCA/GHFA Set-Asides

Individual projects may be assigned set-asides in addition to the federal requirements on the LIHTC LURC or HOME LURA. Generally, deeper rent restrictions run for the compliance period but not the entire extended use period. However, the rent increase policy does apply for the entire extended use period (see “Rent Increases” section later in this chapter). The regulatory document(s) will also indicate additional relevant factors to these state set-asides, such as if they are fixed or float. Additional limits, such as a more restrictive definition of “over-income” for HOME units (from 80% to 60%, for instance) may also be spelled out in the LURA. The effect of these violations differs for the LIHTC and HOME programs, as summarized below.

- **LIHTC.** Violation of the state set-asides listed in a LURC does not result in noncompliance reports to the IRS if the federal limit based on the project’s minimum set-aside is not violated. Federal tax credits are not at risk; however, an owner is obligated to fix these issues to remain in good standing with the Agency.
- **HOME.** Violations of any LURA provisions jeopardize the HOME funding.

High and Low HOME limits

HUD-CPD publishes the HOME limits annually on the HUD-CPD website. It is important to note that HUD publishes the HOME limits, but they are released at a different time than the LIHTC limits, generally a month or two later. Unlike the LIHTC limits, these limits are not held harmless by properties and may decrease from one year to the next for a property.

Resources and assistance to support HUD's community partners | NEED HOUSING ASSISTANCE?

HUD EXCHANGE | Programs | Resources | Trainings | Program Support

Home > Programs > HOME: HOME Investment Partnerships Program > HOME Income Limits

HOME Income Limits

HOME Income Limits data are available from FY 1998 to the present.

The HOME Income Limits are calculated using the same methodology that HUD uses for calculating the income limits for the Section 8 program, in accordance with Section 3(b)(2) of the U.S. Housing Act of 1937, as amended. These limits are based on HUD estimates of median family income, with adjustments based on family size. Please note that the 30 percent income limits for the HOME program have been calculated based on the definition of Extremely Low-Income Family (ELI) as described in Consolidated Submission for CPD Programs section of 24 CFR part 91.5. Therefore, the ELI Limit is calculated as 30 percent of median family income for the area and may not be the same as the Section 8 ELI Limit for your jurisdiction. The Section 8 Limit is calculated based on the definition of ELI as described in The 2014 Consolidated Appropriations Act, (Section 238 on page 128 Stat 635) which defines ELI as very low-income families whose incomes do not exceed the higher of the Federal poverty level or 30% of area median income.

Family sizes in excess of 8 persons are calculated by adding 8% of the four-person income limit for each additional family member. That is, a 9-person limit should be 140% of the 4-person limit, the 10-person limit should be 148%.

The HOME income limit values for large households (9-12 persons) must be rounded to the nearest $50. Therefore, all values from 1 to 24 are rounded down to 0, and all values from 25 to 49 are rounded up to 50.

Related Information

- HOME Rent Limits

To view additional related information, including Area Definitions, Uncapped 80% of Median Calculations, and Memos, select a specific year from the filter below.

Atlanta-Sandy Springs-Roswell, GA HUD Metro

30% LIMITS	18100	20700	23300	25850
VERY LOW INCOME	30200	34500	38800	43100
60% LIMITS	36240	41400	46560	51720
LOW INCOME	48300	55200	62100	68950

Atlanta-Sandy Springs-Roswell, GA HUD Metro

LOW HOME RENT LIMIT	755	808
HIGH HOME RENT LIMIT	961	1031
For Information Only:		
FAIR MARKET RENT	1016	1040
50% RENT LIMIT	755	808
65% RENT LIMIT	961	1031

HOME Rent and Subsidy

When comparing tenant rents to the HOME limits, any subsidy paid on behalf of a household must be included in the rent total. This is different from the LIHTC gross rent rules, which do not include subsidy payments. The only exception to this HOME rule is for project-based subsidies paid for residents in Low HOME units. The owners may collect the full rent and subsidy for these units as long as the household is paying 30% of adjusted income and qualifies for a Low HOME unit. If they no longer qualify as a Low HOME household in the future, the owner must only collect the High HOME rent (including subsidy paid). If the property is floating HOME, the owner will likely float the HOME status to another unit and avoid loss of rent subsidy.

The following example shows how the difference between a tenant in a Low HOME unit and one in a unit designated as High HOME can make a significant difference in the property’s subsidy income stream.

The project-based subsidy exception is met by units with residents below the very low-income limits which are designated Low HOME per the HOME LURA. For this reason, owners of project-based subsidized properties such as Sections 8/811, project-based vouchers, or Rural Development often choose to request

Low HOME designations for all HOME units, along with the floating HOME designation, when the property set-asides are being established during initial project development. This allows the owner to float the HOME designation off units with households that exceed the Low HOME status later in tenancy and minimize subsidy loss.

Example

Special Rent Rule Project-Based Subsidy and Low HOME Households

A property with Section 811 assistance has the following 1-bedroom apartment rents:

Low HOME rent max	**$788**
High HOME rent max	**$833**
Section 811 Contract Rent	**$940**

Sanford moved into a HOME unit in a project where the units are fixed HOME. He paid $400, based on 30% of his income. His project-based assistance paid the rest of the contract rent ($540). Because he is below the very low-income (50%) limit and pays rent based on 30% of adjusted income, the owner is allowed by the HOME rules to collect the $940 full tenant rent and the Section 811 subsidy.

Example

Part 2 | Two years later (continued from prior example)

The HOME limits and Section 811 contract rents were still the same. By his second year's recertification, Sanford's income increased to above the very low-income (50%) limits. His portion of the rent was now $800 based on his increased income. How much subsidy can the owner keep for the unit?

$33
This meets the $833 High HOME rent, not the $140 (up to the contract rent) that they would collect for a very low-income resident. The owner/agent must work with whoever manages the project-based 811 subsidy (the contract administrator or HUD) to ensure that full subsidy is not claimed, as the tenant rent and subsidy are now capped at the High HOME limit.

Calculating Correct Tax Credit Rent Limits

HUD does not publish rent limits for the LIHTC program. To allow for fixed max rent limits by bedroom size, LIHTC rent limits are calculated starting with the HUD-published MTSP income limits using an imputed 1.5 people per bedroom.

DCA/GHFA encourages owners/agents to access the HUD MTSP and HOME income limit websites, but additionally, owners/agents may use other industry income limit calculators. The advantage of these may be that they take into consideration adjustments for property-specific LIHTC factors as explained in this chapter, like the LIHTC gross rent floor, placed in service dates, HERA Special, rural, and held harmless limits. They may also calculate the rent limits and have an adjustment factor for the utility allowances.

LIHTC Gross Rent Floor

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

Note that income limits become effective once the first building is placed in service, so the gross rent floor could be higher than the gross rents based on the income limits in place on the placed in service date. Because income limits hold harmless, there is no benefit to choosing the floor based on the placed in service date. However, selecting the allocation date to determine the gross rent floor protects against rent limit decreases between the time of allocation and when the project is placed in service.

Example

Calculating LIHTC Rent Limits

Income Limits | 1 person $36,240 | 2 person $41,400 | 3 Person $46,560

Odd Number of Bedrooms *1…3…5…7…*

1 bedroom

1.5-person income limit [1.5 x 1 BR] X 30%

Note: Since 1 + 2 ÷ 2 = 1.5:

The 1-person limit + the 2-person limit ÷ 2 = the 1.5-person limit

$36,240 + $41,400 ÷ 2 = $38,820

$38,820 X 30% = $11,646

Annual rent limits are finally converted to monthly amounts by dividing by 12 (if cents are rounded, round DOWN rather than up).

$11,646 ÷ 12 = $970.50 [1 BR monthly gross rent]

OR **$970.00**

Even Number of Bedrooms *Efficiency…2…4…6…*

2 bedrooms

3-person income limit [1.5 x 2 BR] X 30%

$46,560 X 30% = $13,968

$13,968 ÷ 12 = $1,164.00 [2 BR monthly gross rent]

Example

LIHTC gross rent floor higher than rent applicable at placed in service

Rent Decreases When Rent Limit or UA Changes

Owners/agents are required to decrease rents if the gross limits released by HUD decrease to below the gross **HOME** rents currently being charged. This will require an adjustment of tenant rent. This will have to be done by the HOME rent limit effective date. This is true even if it is mid-lease, and if the former HOME rents were approved by DCA/GHFA. As **LIHTC** limits hold harmless from one year to the next, this does not apply to the LIHTC program. However, adjustments to UAs may affect the LIHTC tenant rents chargeable to maintain compliance with the gross rent limits (See below).

If the utility allowance increases for either **LIHTC or HOME** units, rent may need to be decreased to remain under the applicable gross rent limit. This is true even if the date the UAs are effective is mid-lease.

Owners/agents are never required to charge HOME rents that are lower than the initial rents approved by DCA/GHFA at the time of HOME project commitment.

Example

HOME gross rent limit higher than later rents

Rent Increases

For all programs monitored by DCA/GHFA, proposed rent increases that exceed 5% of the net tenant rent for in-place tenants require 120-day written notification of the increase to the tenant. The required resident notice is available on the Agency website. The tenants must be given the option to terminate the lease with no penalty or fees. The tenant is obligated to fulfill the lease requirements to the effective date of the rent increase in excess of 5%. To be exempt from potential penalties and fees, the tenant will not be able to move out or stop paying rent before the date the new rent will be effective. A written notice to vacate as specified on the lease must be given by the resident. Also, only one rent increase per certification period may be implemented for each in-place household.

Properties that have implemented a rent increase for in-place tenants in an acquisition/rehab or rehab deal are not subject to the 5% rent policy for the new rents as part of the acquisition/rehab restructure. Any rent increases imposed on renewal agreements following the new rents in an acquisition/rehab deal will be subject to the rent cap.

LURC **LIHTC**	LURC LURA **LIHTC & HOME**	LURA **HOME**
Limits | MTSP limits apply and hold harmless. HERA Special and National Non-Metropolitan Income (NNMI) limits also apply.	**Limits** | The lower of HOME or LIHTC limits apply. Generally, the HOME limits will be lower.	**Limits** | HOME High and Low limits apply.
Rent subsidy payments | are not included in the rent calculation.	**Rent subsidy payments** | are included in the rent calculation for HOME units, except for project-based subsidy in Low HOME units.	**Rent subsidy payments** | are included in the rent calculation, except for project-based subsidies for Low HOME units.

Utility Allowances

In theory, what households pay for rent, other required fees, and utilities must not exceed the maximum rent limits. In actual practice, it is not possible to know what utility costs will be for most situations, as the amounts change from month to month. To address this, if residents pay for any utilities out of their pockets in LIHTC or HOME units, monthly utility cost estimates are assigned to each unit size. These are called utility allowances (UAs). Utilities paid by residents commonly include electricity, water, sewer, oil, gas, and trash. Telephone, cable TV, or internet costs that are not required as part of tenancy are considered optional items and so are excluded from the utility allowance. Tenant-paid rent plus the utility allowance must not exceed the rent limits. For HOME units, tenant-based subsidy payments and project-based subsidies for High HOME units are also included when calculating gross rent (see HOME High and Low section earlier in this chapter). UAs are calculated for each building by bedroom size.

Example

Rents and UAs

If the maximum gross rent on a unit is $550 and the tenant pays utilities with a utility allowance of $60 per month, the maximum rent chargeable to the tenant is:

$490
($550 - $60)

When all utilities are included in the household's rent payment, the project pays for utilities. In this case, there is no utility allowance to count in the gross rent calculation.

DCA/GHFA will review the property utility allowances used during the compliance period, Loan Term, or affordability period, whichever is longer. The owner must maintain all information for the established utility allowance and make the information available to DCA/GHFA. After the LIHTC compliance period and HOME affordability period, as applicable, the owner must maintain the utility allowance documentation and provide it upon request at any time during the remainder of the LIHTC extended use period.

LIHTC UAs

The IRS has offered multiple options for calculating UAs for the LIHTC program. The UAs must be analyzed for a project once each calendar year. DCA/GHFA understands that a property may have multiple utility allowance schedules because of program requirements, or because the utility source provides the greatest benefit to a project or a portfolio of projects.

The owner must establish the correct utility allowance for all programs applicable to the property, submit a request for review and approval to DCA, and maintain annual updates in their records.

1. Projects or households with other funding that provide UAs.

a. RD regulated buildings

If any unit in a project is regulated by Rural Development (RD), the UA that is part of the RD annual budget will be used for all LIHTC or HOME units.

b. HUD regulated buildings

If a building does not have RD funding (see above) and is regulated by HUD, the HUD project-based UA will apply. Examples of programs for which HUD regulates the UAs are project-based Sections 8, Section 811, and HOME.

NOTE: the HUD Utility Schedule Model (HUSM) (see below) is specifically allowed in HOME regulations for properties that were committed HOME funds on or after August 23, 2013, and thus satisfies both LIHTC and recent HOME requirements. These HOME properties are also allowed all other options available to LIHTC properties if they are based on actual utility usage at a property. This requirement eliminates the PHA estimate which is not property specific unless DCA/GHFA has received approval from HUD after a request from an owner. Properties that were committed HOME funds before August 23, 2013, continue to have the option to use the PHA estimates for HOME purposes.

c. PHA UA

Residents who have a Housing Choice Voucher have a UA that is calculated by the Public Housing Authority (PHA) that provides their voucher. For these households, the PHA UA must be used for voucher-holding households that live in buildings that are not RD- or HUD-regulated. Additionally, the utility allowance estimates from any local PHA that provides vouchers to the property can be used for all units at the property. PHA utility schedules are based on average consumption rates across a PHA's portfolio. The PHA utility allowance is the most common utility allowance method used by LIHTC and older HOME properties.

90-Day Rule. If used, these estimates must be updated within 90 days of the new estimates being released by the PHA.

Required documentation to retain for the PHA UA. The current PHA utility allowance schedule.

Fast Facts

PHA UAs

A PHA is under no obligation to inform an owner/agent of changes to their UA. When using PHA UA estimates, an owner/agent must be sure to ask the PHA if there have been any changes in the UA at least every 60 days. This allows changes to rents before the 90-day deadline, if necessary.

If a project is not RD or HUD regulated, and the owner does not use a PHA estimate, then the following options are available in Georgia. Note: If any of the following are gathered when determining UAs for any given year, these UAs must be used and the PHA estimate is not an option for that year. The owner/agent may request to use one of the following utility allowance methodologies that meet the LIHTC and HOME requirements.

2. Local Utility Company Estimate (UCE)

An estimate may be obtained from a utility company that services the same geographic area of the property by any interested party, for instance, the owner/agent or a tenant. The cost estimate must be in writing for a unit of similar size and construction. If the property is in an area that is served by multiple utility providers, the interested party can obtain a written estimate from any utility company that offers services to the project even if multiple utility companies can provide the same utility service to the property. The initiating party must retain the original documentation used to obtain the estimate.

90-Day Rule. Once the UA estimate is received, residents must be notified, and the new UA calculation data must be made available to residents and DCA/GHFA. Records shall be made available to residents at the property's office during reasonable business hours or, if there is no office, posted on an information board or other spot accessible to all, or otherwise made available. Assuming no valid objection is raised by any resident or the Agency, the UA will be effective the month following the 90-day period.

Required documentation to retain for UCE UAs. The property estimate of monthly utilities for each bedroom size and for the property location must be provided on the utility company letterhead and dated and signed by a representative of the utility company.

3. HUD Utility Schedule Model (HUSM)

HUD has worked with engineers to develop a model to calculate UAs for LIHTC and HOME purposes. The HUSM enables users to calculate utility schedules using a project-specific methodology by entering the property housing type and utility rate information (tariffs) for the property location. This model is based on climate and survey information from the U.S. Energy Information Administration of the Department of Energy, and it incorporates energy efficiency and Energy Star data. Rate and other data can be entered either on a HUSM spreadsheet or in an online entry option. Both versions of this model can be found on the HUDuser.org website. A keyword search "Utility Schedule Model" will lead to the web pages with the HUSM model downloads and instructions. When completing the HUSM, the property's utility rate information, and the zip code or a PHA code will be entered. This will pull up the location and heating degree data for the area to calculate the estimate. Utility rates used must be the rates in place no more than 60 days before the date the allowance is calculated.

90-Day Rule. Once the UA estimate is received, residents must be notified, and the new UA calculation data must be made available to residents and DCA/GHFA. Records shall be made available to residents at the property's office during reasonable business hours or, if there is no office, posted on an information board or other spot accessible to all, or otherwise made available. Assuming no valid objection is raised by any resident or the Agency, the UA will be effective the month following the 90-day period.

Required Documentation to retain for HUSM UAs

1. A copy of the HUD utility allowance form with the utility calculation results for each bedroom size at the property.
2. Supporting documentation showing the utility tariff for electricity and gas from the applicable utility provider.
3. Other documents that are required to calculate the applicable utility allowance for the property, including proof of LEED, Energy Star Certification, or Significant Green Retrofit eligibility, as applicable.

4. Energy Consumption or Engineer Model (ECM)

An owner/agent may retain the services of a qualified professional to calculate the allowances based on an energy consumption model. This model must take into consideration specific factors, including such items as unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The professional retained must be a properly licensed engineer or a qualified professional approved by DCA/GHFA and may not be related to the building owner within the meaning of Section 267(b) or 707(b) of the Internal Revenue Code. If the ECM report is completed by a qualified professional who is not a properly licensed engineer, the request must include the qualifications and experience of the qualified professional in providing energy consumption utility allowance reports for a minimum of two years. The owner and qualified professional must also certify that the model complies with all requirements and takes into account the specific required factors above.

Utility rates used must be the rates in place no more than 60 days before the date the allowance is calculated.

For newly constructed or rehabbed buildings with less than 12 months of consumption data, data for similarly sized and constructed units in the geographical area in which the building is located may be used.

90-Day Rule. Once the UA estimate is received, residents must be notified, and the new UA calculation data must be made available to residents and DCA/GHFA. Records shall be made available to residents at the property's office during reasonable business hours or, if there is no office, posted on an information board or other spot accessible to all, or otherwise made available. Assuming no valid objection is raised by any resident or the Agency, the UA will be effective the month following the 90-day period.

Required documentation for ECM UAs

A. Prepared by a properly licensed engineer:
   1. The projected consumption for each applicable utility, as well as the dollar amounts including taxes and fees per unit size (number of bedrooms, generally) per month.
   2. The ECM report showing the steps of the process for this determination.
   3. Letter from the engineer or architect certifying that they are not related to the owner within the meanings of Section 267(b) or 707(b) of the IRS regulations.

4. Certification that the model complies with the minimum requirements for the project type, unit sample, and consumption data.
5. Supporting documentation, if applicable (i.e., utility rates, taxes, and fees, including monthly administrative fees charged to residents).

B. Required documentation for ECM UAs prepared by an unlicensed engineer or other qualified professional:
1. Description of the firm's or energy professional's experience compiling energy consumption models for use in residential multifamily properties for a minimum of two years.
2. Resumes of staff responsible for completing the utility report.
3. Certifications and licenses that are relevant to the development and implementation of an energy consumption model, such as a professional architect license, a Certified Energy Manager, or a similar designation.

Submetering. The Georgia Water Stewardship Act of 2010 required the submetering of multifamily housing buildings permitted on or after July 1, 2010. The IRS allows submetered utilities to be included in the utility allowance for a property the same as for utilities paid directly to a utility company. If a building owner/agent charges residents a fee for administering actual consumption submeter arrangements, the maximum that can be charged is five dollars per month or another amount if designated by publication in the Internal Revenue Bulletin. This could be further capped by an amount prescribed under State or local law.

RUBS. A Ratio Utility Billing System ("RUBS") apportions utility costs on a ratio basis across units and not based on what each household is likely to incur. RUBS is <u>not</u> an acceptable method for calculating a utility allowance and cannot be used when determining the UAs for a HOME or LIHTC building. Any RUBS-based payment made by a household must be counted as rent to each household and will be limited to the appropriate rent restriction.

UA Increases. If a utility allowance increases, it may change the rent owners/agents can charge households, especially if the maximum allowable rent did not increase as much. If it turns out that the actual rent must be decreased to remain in compliance, owners/agents must be sure affected households begin paying the new rent no later than the end of the 90-day period applicable to the UA method used. This must be done, even if the adjustment is made mid-lease.

Costs. Any costs associated with obtaining utility allowance estimates are the responsibility of the owner unless the utility company estimate is chosen. Then, unless otherwise agreed upon by the parties involved, the costs are the responsibility of the party requesting the estimate.

Other Details. Utility allowances must be reviewed at least once each calendar year to ensure the estimates approximate what the households are paying. However, if the property has just been placed in service, owners/agents are not required to review the utility allowances until the 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.

Except for the PHA estimates, a review of calculations need only take place one time per calendar year even if known rate fluctuations occur. However, if the owner/agent chooses to review them more frequently, they may if they follow the proper procedures.

Rents may need to be adjusted more than once in a year because the release of income limits and utility estimates may occur at different times. Any increase in the utility allowance may cause gross rent to exceed the limit.

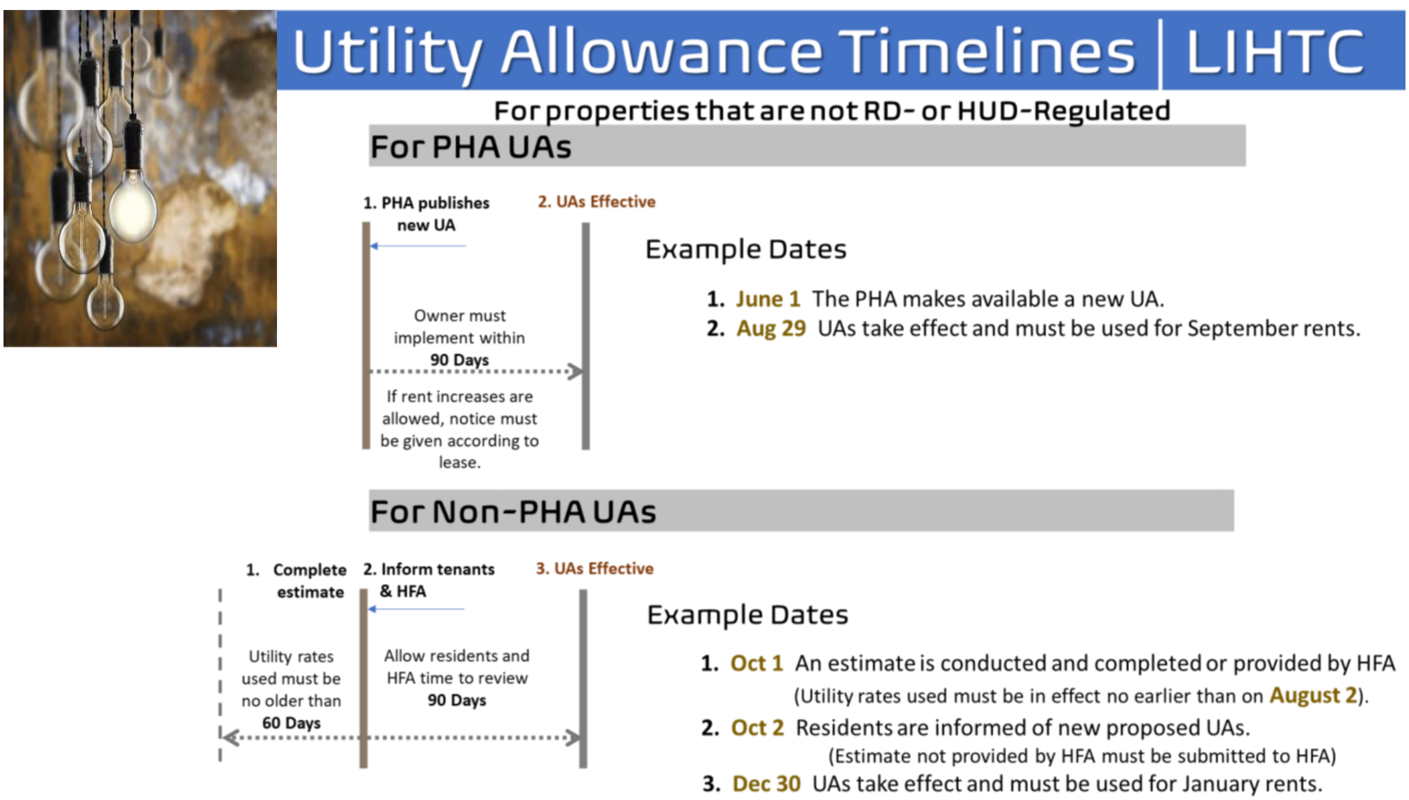
It is the owner's responsibility to contact the appropriate organization to request current utility allowance information. DCA/GHFA does not collect or maintain the various utility allowances.

Owners/agents must retain any supporting determination data. Failure to retain adequate data that will allow DCA/GHFA to conclude accurate allowances were used in the rent computation annually is considered noncompliance. Without proof of the amount of the allowance, there is no way to correctly compute the rent. In addition, an incorrect utility allowance calculation may result in noncompliance for rents that exceed the tax credit rent limits.

Example

UA and Rent Adjustment

The rent charged on a HOME unit is at the maximum allowable rent. If the $50 utility allowance is increased to $60, the rent paid by the tenant must be lowered by $10 to remain below the rent limit. The new utility allowance must be implemented the month following the end of the 90-day period applicable to the UA used. Any change to resident-paid rent must be in conformance with respective resident leases and DCA/GHFA rent increase policies.



HOME UAs

HUD believes that as more projects are constructed or rehabilitated to higher energy-efficiency standards, the use of the PHA estimates based on utilities for an area may not fairly represent actual utility costs for a property. DCA/GHFA is required to approve any alternative UA methodology change requests.

Historically, HOME PJs were required to adopt utility allowances either by developing their own utility allowances, using the local PHA UA, or establishing project-specific allowances. The PHA UAs were typically used for older properties.

The HOME rules, revised in 2013, contain a provision that applies to new projects that were committed HOME funds on or after August 23, 2013.

- **For HOME projects committed HOME funds before August 23, 2013,** the owner/agent may continue to utilize the local PHA utility allowance schedules or may develop UAs based upon the specific utilities used at the project.
- **For HOME projects committed HOME funds on or after August 23, 2013,** DCA/GHFA allows all methods allowed for LIHTC purposes above, except the PHA UA. If the utility company estimate is used, the utility company must confirm that the estimate used is based on actual utilities for a property and not for the general area.

The owner must use the same UA methodology for all HOME units between DCA/GHFA UA approvals. HUD encourages owners to align with other funders to the extent feasible when determining the UA for a project with multiple funding sources.

The methodologies used in other federal housing programs, such as the project-based Section 8 program managed by HUD Multifamily (HUD MFH), will meet the HOME regulatory requirement.

Baseline Utility Analysis (years 1, 4, 7, etc…). if an owner uses the UA methodology for HUD Multifamily Housing (HUD MFH), a baseline must be established every three years using the MFH-required sample size. For the two years after the baseline is established, the owners have the option to apply a factor-based utility allowance adjustment described below.

Factor-Based Utility Adjustment (years 2, 3…5, 6, etc…). If the baseline utility allowance has been calculated, then the owner may use a HUD-published factor-based utility adjustment for the following two years. The baseline utility allowance must be recalculated every three years.

Detailed instructions and specific steps can be found through HOME HOMEfires and HUD MFH Notices.

DCA/GHFA Published UAs

DCA/GHFA annually publishes an updated state map and Utility Allowance schedule. This map that the Agency publishes reflects the state divided into a Northern Region and a Southern Region and reflects all 159 counties. As of this writing, 10 of these counties are highlighted to reflect that they are counties having their own local Public Housing Authority and therefore these PHAs have their own utility allowances which may be obtained directly from these PHAs.

For properties located in the remaining 149 counties – if no local PHA is located in the project's jurisdiction, then the owner may elect to use the Agency-published PHA utility allowance.

The Utility Allowances published on the DCA/GHFA website annually are PHA estimates and not allowed for HOME units funded with post-August 23, 2013, HOME commitments unless DCA/GHFA has received approval from HUD after a request from an owner. They are allowable for LIHTC projects without this HOME funding.

Utility Allowance Methodology Change Requests

DCA/GHFA will review requests for a change in the property's established utility allowance methodology. Where utility allowance adjustments are pursued, they should reflect savings from energy efficiency improvements in a manner that is fair to tenants, financially feasible for owners and reduces long-term public subsidy expenditures. DCA/GHFA will not consider requests to change the RD or HUD utility allowance methodology if these apply to a property.

Owners changing their established utility allowance to one of the approved utility allowance methodologies must make the documents available to residents and DCA/GHFA 90 days before the date the UAs are implemented.

Residents have the right to question the requested change in utility allowance methodology during this 90-day time frame.

Utility allowance change requests must include the project ID, the project name, and be submitted via DCA/GHFA's Project Concept Change process following current instructions on the DCA/GHFA website. Each request for a change in utility allowance methodology must include:

1. Cover letter with the current utility allowance and proposed utility methodology
2. 90-day Notice to the residents
3. Utility allowance schedule or report
4. Supporting documentation as required (see above for the specific utility methodology requirements).

Although the PCC submission process is used for utility allowance methodology change requests, the PCC fee does not apply.

DCA/GHFA will provide a written response within 15 business days of receiving complete and accurate information from the owner.

There is an 18-month waiting period for newly funded properties. The utility allowance methodology may not be changed until 18 months after a building is placed in service.

Allowable Fees and Charges

Non-Optional Fees

Any fee that is non-optional and charged to residents as a condition of occupancy must be included in the gross rent and indicated in the lease. Allowable required month-to-month fees are considered rent and the gross rent must include these amounts and the total rent charged must be below the applicable rent limit. When completing the Tenant Income Certification and reporting in Emphasys, the fee amounts must be included as a non-optional charge with the tenant-paid rent.

Charging an application fee is acceptable if the fee is reasonable and reflects the average out-of-pocket cost of running screening checks. They should not be designed to make a profit. For instance, the average costs to run credit and criminal background checks are an allowable basis for an application fee but charging a larger fee to discourage lower-income households from applying is not. Other acceptable fees, if reasonable, are those for late rent, insufficient fund checks (NSF), and fees for not turning utilities into a household's name within a specific period after move-in (usually 24 hours).

Optional Fees

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

Fees Not Permitted

When owners/agents charge fees that are not permitted under IRS guidelines, these charges will be reported as noncompliance to the IRS regardless of whether they cause the gross rent limit to be exceeded. The QAP for the year a property was allocated credits may also specify if a fee is allowed. Owners/agents should check the QAP to see if restrictions apply before applying the below.

Examples

Fees that are not permitted

- Fees for the use of residential facilities, such as swimming pools, parking areas, storage, or recreational facilities, when the cost of the facilities was included in a building's eligible basis.
- Fees that an owner requires residents to pay as a condition of their occupancy, even if these fees are not paid to the owner. Examples are requiring mandatory renter's insurance or fees for month-to-month tenancy.
- Fees for the routine "turning" of units to make the units rent-ready. Mandatory carpet cleaning fees, for instance, are not acceptable. Carpets must be left unusually dirty or damaged beyond normal wear and tear to justify charging a tenant for their cleaning. If "unit transfer fees" or similar fees are charged, DCA/GHFA will request documentation from the owner which must clearly document what the fees cover and whether the fees are used for preparing a unit for occupancy.

Fees | Allowed & Not Allowed

Allowed?	Fee Type	Notes
YES	**Application Fees**	Must not exceed the average out-of-pocket costs to run background checks.
NO	**Fees to Pay for 3rd-Party Verification**	If there is a cost for verification directly from the 3rd-party, documentation supplied to the household by the third party can be used. If an owner opts to require verification that costs money, the owner must bear the cost. NOTE: This is not to be confused with fees for recouping actual costs for processing background checks, such as criminal and credit, at application.
YES	**Unit Transfer Fees**	Must not exceed the average out-of-pocket costs to process a unit transfer and may not include expenses to make ready either unit involved in the transfer.
NO	**Month-to-Month Tenancy Fees**	The IRS considers this a non-optional fee even if the tenant is given the option to sign a longer-term lease.
Yes	**Security Deposits**	The security deposit due to the tenant shall be the entire amount given by the tenant as a security deposit, minus any amount of unpaid accrued rent, the amount due, if any, for reasonable cleaning expenses, the amount due, if any, for reasonable trash disposal expenses and the amount of physical damage to the premises, other than ordinary wear and tear, which the landlord has suffered because of the tenant's noncompliance with their agreement to maintain the unit.

Allowed?	Fee Type	Notes
NO	**Required Renter's Insurance**	An owner may suggest that residents secure insurance, but only if the insurance is optional and not a condition of occupancy.
Yes	**Pet Deposits and Monthly Pet Rent**	Pet deposits must be fully refundable if the unit is left reasonably clean and the pet did not cause damage beyond normal wear and tear.
NO	**Assistance Animal Deposits**	Assistance animals help people with disabilities, are not pets, and are not legally subject to deposits. However, actual costs to repair damage caused by such animals beyond normal wear and tear may be charged.
YES	**Coin-Operated Laundry Machines or other vending machines**	If the area where the machines are is accessible to all residents and the machines are not included in eligible basis.
NO	**Community Room or Other Common Area Usage or Rental Fee**	Community facilities in eligible basis must be available without charge. A deposit may be charged if fully refundable if the room is left clean and undamaged. A clear written policy must exist explaining to residents the expectations concerning how to avoid withheld deposits. An owner/agent should keep detailed documentation of refundable deposits for DCA/GHFA's review upon request. The ability to use common areas via refundable deposit is for property tenants only.
YES	**Late Rent Fees**	May be charged if the rates are explicitly spelled out in writing.
NO	**Parking or Storage Fees**	Only acceptable for LIHTC projects if the parking lot or storage units are not in eligible basis.
YES	**Service Fees** **(For example, lockout or key loss)**	May be charged if the rates are explicitly spelled out in writing.
NO	**Make-Ready Fees**	These are also known as cleaning, turnaround, preparation, mandatory carpet cleaning, and unit turnaround fees. Only costs beyond normal wear-and-tear* may be charged. Helpful hint: pictures are very effective in documenting the state a unit was left in and demonstrating damage beyond normal wear and tear.
YES	**Maintenance completed by the owner that is normally required to be completed by the household**	Examples may be removing furniture after the household vacates a unit or changing unit light bulbs. These may be charged if the rates are explicitly spelled out in writing.
YES	**Lease Breakage Fees**	Having a contingency lease breakage fee does not make a lease transient. This is true even if the tenant breaks the lease sooner than the agreed-upon lease term.

If it is determined that an LIHTC resident has been overcharged rent or has been charged inappropriate fees at any point within a certification year, DCA/GHFA will require the owner to refund the excess rent or fee amount to the resident for all months affected. The IRS has indicated that they will likely disallow credits on the affected unit for the taxable year that rent was overcharged. The earliest an LIHTC unit that was overcharged rent or charged inappropriate fees will be considered back in compliance is the start of the following tax year provided the unit is rent-compliant at the start of the new year.

Owners/agents must not adopt the practice of deducting too much from security deposits for items that represent normal wear and tear, or such charges could be determined to be unacceptable fees. When developing security deposit refund policies, owners/agents will want to consider the provisions contained within the following guidance based on direction from HUD.

Normal Wear & Tear vs. Tenant Damage

Normal Wear & Tear	Tenant Damage
Normal costs of turning an apartment after a household vacates may not be charged to either the former or the next household. Costs an owner incurs for the basic cleaning and repairing of items necessary to make a unit ready for occupancy are part of the costs of doing business.	**Tenant damages** usually require more extensive repair and at a greater cost than "normal wear and tear" and are often the result of a tenant's abuse or negligence and not the result of normal living activities.
Walls & Ceilings	
• Small chips in plaster • Nail holes, pinholes, or cracks in walls • Fading, peeling, or cracked paint • Slightly torn or faded wallpaper	• Gaping holes in walls or plaster • Holes in the ceiling from removed fixtures • Drawing, crayon marking, or wallpaper that the owner did not approve • Seriously damaged or ruined wallpaper
Doors & Windows	
• Door sticking from humidity • Cracked windows from faulty foundation/building settling	• Doors ripped off hinges • Broken windows
Floors	
• Floors needing a coat of varnish • Carpet faded/worn thin from walking • Loose grouting and bathroom tiles	• Chipped or gouged wood floors • Holes, stains, or burns in the carpet • Missing or cracked bathroom tiles
Fixtures	
• Worn or scratched enamel in old bathtubs, sinks, or toilets • Partially clogged sinks caused by aging pipes • Rusty shower rod • Dirty or faded lamps or window shades	• Chipped and broken enamel in bathtubs and sinks • Clogged or damaged toilet from improper use • Missing or bent shower rods • Missing fixtures

- HOME Rent and Fee Approval Process

Under the HOME rules, DCA/GHFA is required to complete an annual rent review and approval for all properties funded by HOME. Owner/agents are provided a HOME Rent Review form and instructions that are used to complete the reviews for HOME properties in the Agency's portfolio. This form allows DCA/GHFA to efficiently review and approve the property's rent and maximum gross rent amounts. The HOME Rent Review form considers the HUD-published High HOME and Low HOME rent to determine the gross HOME rent. This means that if a property has both LIHTC and HOME funding the two program requirements will be considered separately, and the lesser of the two will be used as the gross rent for HOME-designated units. The HOME income limits are separate from the HOME rent limits. The HOME income limits are only used to calculate the deeper HOME rent restrictions when there is no other governing income limit. For instance, if the property is HOME only with a deeper rent restriction, then the HOME income limits will be used to calculate the rent amount at the lower set-aside. The rent limits are based upon the County or MSA area, whether the property has LIHTC funding, and the effective date of the LIHTC gross rent floor election (if applicable) (see earlier in this chapter for more information on the gross rent floor). For copies of the HOME Rent Review Form, please visit the DCA/GHFA website. This review is done as part of the annual HOME rent approval process.

Fast Facts

PHA Voucher Rents & UAs

When owners/agents request the tenant rent that a PHA will pay for a household on a Housing Choice Voucher, they must keep in mind the fact that all subsidy must be added to tenant rent when determining the HOME limit. Simply requesting the HOME-approved net rent helps maintain compliance with this rule. However, the PHA will use a utility allowance that is often different than the HOME-approved UA. DCA/GHFA will use the approved HOME rents and UAs when determining compliance with the HOME rules and owners/agents must be careful not to confuse these UAs.

HOME Fees. DCA/GHFA generally applies the fee principles from the above Allowable Fees and Charges section to HOME properties. However, the federal HOME rules require that the Agency explicitly approve all fees charged to HOME tenants. DCA/GHFA is required to assess whether all proposed fees are customary in an area and if they are affordable to HOME residents. As stated in the above section, these should generally simply offset the owner's out-of-pocket expenses. Reasonable late fees, NSF check fees, application fees, and fees charged to households that do not turn utilities into their name promptly are all customary in Georgia. The specific amounts of these fees, however, and any additional fees charged must be approved before the owner/agent charges the fees and any time that the owner seeks to change fees.

Rent Limits and Rental Assistance

LIHTC. Subsidy received from Project-Based Section 8, Housing Choice Vouchers, Rural Development, or other similar sources is not included in tenant rent. Even with the subsidy excluded, at times the gross rent (tenant rent + utility allowance) will be more than the LIHTC rent limit. Households receiving project-based or tenant-based rental assistance who pay 30% of their adjusted income may be required to pay rent that exceeds the LIHTC rent limit while they receive rental subsidy. If at any point the household no longer receives rental assistance, the LIHTC rent limit cannot be exceeded.

HOME. Most subsidy that households receive must be counted when determining compliance with the HOME gross rent rules. There is an exception for project-based rental assistance for households in Low HOME units (see earlier in this chapter for further information on subsidy and HOME rents).

Example

HOME Rent and a Housing Choice Voucher Holder

The max approved Low HOME net rent after the HOME utility allowance for a unit is $823. A tenant living in the unit is receiving rental assistance from a Housing Choice Voucher. The tenant pays the owner $110 toward their rent. If the subsidy the owner collects does not exceed $713, the unit is in compliance with the HOME rent rule.

Tenant rent ($110) + subsidy ($713) must always be at or below the net HOME rent limit ($823).
Note: this rule applies whether the unit is low- or High HOME. Only the applicable net Low or High HOME limit would differ.

Example

HOME Rent and Project-Based Rental Assistance in a High HOME Unit

The max approved High HOME net rent after the HOME utility allowance for a unit is $933. A tenant living in the unit is receiving rental assistance from a project-based rental assistance contract. The tenant pays the owner $450 toward their rent. Under the project-based rental assistance contract, the owner collects $560 in subsidy. As the owner cannot collect more than $483, this is more than allowed under HOME rules and is noncompliant. The excess subsidy will have to be paid back to HUD on this unit – and all High HOME units with this subsidy.

Tenant rent ($450) + subsidy ($483) is limited to keep rent at the net HOME rent limit ($933).

For details on an exception for project-based subsidy and Low HOME units, see the Chapter 3 header HOME Rent and Subsidy. In that same section, also note how to avoid the above common noncompliance at HOME/project-based subsidy properties by proper project set-up during the development stage.

Minimum Lease Requirements

LIHTC. LIHTC housing is not to be "transitory," or temporary. For this reason, tax credit properties are required to have an initial lease of at least six months for all new move-ins. The initial term can be more than six months, with a year term being the most common. After the initial term, owners/agents are free to apply terms of their choice if no provision of the lease violates LIHTC requirements or Fair Housing law. LIHTC projects with additional funding programs, such as project-based Section 8, often have a specific lease dictated by the other program. As long as these leases do not conflict with LIHTC requirements, they can be used.

LIHTC Transitional Housing and SROs.

There are exceptions to the six-month lease rule for qualified transitional housing and Single Room Occupancy (SRO) units that may share bathrooms, cooking facilities, and dining areas. Federal rules allow for month-to-month leases for the following types of housing:

- A building that is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart M. McKinney Homeless Act) to independent living within

24 months. Also, government entities or qualified nonprofit organizations must provide such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

- SROs.

Owners/agents of LIHTC SRO or transitional housing projects should check their LURC or contact DCA/GHFA to ensure that the project is designated in such a way that it meets one of these exceptions and qualifies to apply the lesser lease term.

The lease must reflect the correct date of move-in or the date the tenant takes possession of the unit.

In general, at a minimum, the lease must include:

- The legal name of the parties to the agreement and all other occupants
- A description of the unit to be rented
- The date the lease becomes effective
- The term of the lease
- The total amount of rent charged for the unit, including subsidy payments
- The use of the premises
- The rights and obligations of the parties, including the obligation of the household to annually recertify its income and student status. This may be included in an addendum to the lease (see LIHTC Lease Language below).
- The signatures of all adult household members and/or persons under the age of 18 who are the head of household, co-head, or spouse. There may be exceptions to the signature requirements, such as adult full-time students over the age of 18 who are treated as dependents.
- A statement explaining that the development is participating in the LIHTC program and that tax credit units are under certain program regulations including income eligibility, student eligibility, and annual recertification of household income. This may also be included in an addendum to the lease (see LIHTC Lease Language below).

LIHTC Lease Language

To ensure that the information necessary to establish tenant eligibility can be reliably obtained, owners should incorporate into their LIHTC lease or a lease addendum the following two specific provisions establishing LIHTC obligations of tenancy.

1. The tenant certifies the accuracy of the information provided in connection with the examination or re-examination of the eligibility of the tenant household.
2. The tenant agrees that the annual income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy and that he or she will comply promptly with all requests for information with respect thereto from the landlord or the Georgia Department of Community Affairs. The tenant’s failure to provide such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information thereto shall be deemed a violation of substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

Lease provisions enforcing annual recertification requirements as applicable to the project and establishing that continuous student eligibility is a condition of occupancy are also strongly recommended.

DCA/GHFA provides a lease addendum on the DCA/GHFA website for LIHTC units that meets the federal and state requirements.

LIHTC Lease Termination

The LIHTC rules prohibit "the eviction or the termination of tenancy (other than for good cause)" of LIHTC residents during the entire extended use period. This clearly prohibits eviction or termination of tenancy mid-lease without good cause. What about when a lease is up for renewal? Is simply not renewing a lease that has expired "eviction" or "termination of tenancy"? The IRS has clarified that "neither the owner nor the tenant is obligated to renew a lease once it expires" and that nonrenewal of leases does not necessarily equate to "termination of tenancy." [8823 Guide 26-4] If an owner intends to non-renew a lease, they will have to ensure that doing so is acceptable under state law. Please be aware that DCA/GHFA will not give legal advice on federal or state law. Competent counsel should be sought on most questions relating to leasing specifics.

HOME Required and Prohibited Lease Provisions

A written lease agreement must be provided for tenants of HOME-assisted units. The terms of the lease must be for a minimum of one year unless the tenant and owner agree to a lesser term. However, the terms of the lease can never be less than 30 days.

HOME regulations have required lease clauses and also prohibited provisions (see *Prohibited and Required HOME Lease Clauses* information below). To ensure HOME units meet the leasing provisions, DCA/GHFA has developed a lease addendum to accompany the owner-developed lease. The verbiage from this form must be part of all lease HOME agreements. The DCA/GHFA HOME Lease Addendum must be signed by all tenants and management of HOME-assisted units and be attached to the lease. The only exception to the requirement to use the DCA/GHFA HOME lease addendum is for HUD projects using HUD model leases. These may use the HUD-approved leases without the DCA/GHFA addendum.

HOME Lease Terminations

An owner cannot terminate the tenancy or refuse to renew the lease of a tenant in a HOME unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal/state/local law, or other good cause. Any termination or refusal to renew must be preceded by not less than 30 days' notice. This notice must be in writing and specify the grounds for the action and the basis for termination/nonrenewal in the lease or house rules.

The 30-day waiting period is not required if the grounds for the termination or refusal to renew involve a direct threat to the safety of the tenants or employees of the housing, or an imminent and serious threat to the property (and the termination or refusal to renew follows the requirements of State and local law).

General Lease Requirements

DCA/GHFA requires the following additional documentation to be executed with LIHTC and HOME units. In addition to the LIHTC and HOME addenda, the following must be addressed. Although addressed as addenda, these could also be clauses in the owner/agent's lease. DCA/GHFA does not have required forms for these items.

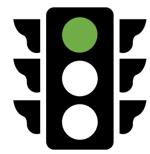
- ❑ Bed Bugs Addendum.
- ❑ Mold Addendum.
- ❑ Lead-Based Paint Addendum and EPA-required documentation.
- ❑ Assistance animal information. Residents have a right to reasonable accommodation under the Fair Housing Act, including assistance animals.
- ❑ Disparate impact language regarding tenant selection. The owner/agent does not directly discriminate in any tenant selection procedure, nor do they discriminate through the disparate impact of any tenant selection procedure based on any Fair Housing Act or Georgia protected class.
- ❑ Release and consent of information form.

- ❑ Handicap priority addendum for accessible units occupied by households who do not need the features of the unit. The household agrees to relocate to an available comparable non-accessible unit at any time that a household needing the features of the unit applies for occupancy.

Lease Cosigners

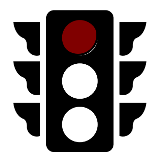
At times an owner/agent may seek assurance that a household will be able to pay rent. Perhaps a household's rental history, relatively low income, or other factors are a cause for concern. Requiring a co-signer or guarantor who will guarantee that rent will be paid is acceptable. The co-signer who does not reside in the unit is not required to be counted as a household member, their income is not added for LIHTC or HOME income eligibility, and the fact that the co-signer may pay rent as a contingency does not mean that the rent paid will be counted as income unless the co-signer anticipates routinely paying the rent.

Required HOME Lease Clauses



1. **Required Term |** Leases must be executed for at least one year unless the owner/agent and the tenant agree to a shorter period. If the tenant has agreed to a different lease term, that agreement should be noted in writing in the tenant's file. A lease may *not* be for a period of fewer than 30 days.
2. **HOME Rents |** The lease must specify the initial allowable HOME rents.
3. **Rent Changes |** The lease must clearly state that the owner/agent reserves the right to adjust rents, based on changes in the HOME limits, or in the event a tenant's income increases above the applicable HOME income limit.
4. **Income Eligibility/Annual Recertification |** The lease must state that the tenant's failure to cooperate in the income recertification process is a violation of the lease.
5. **Annual Unit Inspections |** The lease must state that the owner retains the right to inspect, and permit the PJ and HUD, to inspect HOME-assisted units.
6. **Lead Warning |** For projects that were built before 1978, the lease must include a Lead-Based Paint addendum/warning statement.

Prohibited HOME Lease Clauses



1. **Agreement to Be Sued |** Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
2. **Treatment of Property |** Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to the disposition of personal property left by a tenant who has vacated a property. The owner may dispose of personal property in accordance with state law.
3. **Excusing Owner from Responsibility |** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
4. **Waiver of Notice |** Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
5. **Waiver of Legal Proceedings |** Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant can present a defense, or before a court decision on the rights of the parties.
6. **Waiver of a Jury Trial |** Agreement by the tenant to waive any right to a trial by jury.
7. **Waiver of Right to Appeal Court Decision |** Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease.
8. **Tenant Chargeable with the Cost of Legal Actions Regardless of the Outcome |** Agreement by the tenant to pay attorney's fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant may be obligated to pay costs if the tenant loses.
9. **Require Tenants to Accept Supportive Services |** (with an exception for transitional housing residents).

LURC LIHTC	LURC LURA LIHTC & HOME	LURA HOME
Term | The initial lease term for new move-ins must be no less than 6 months.	**Term** | The initial lease term for new move-ins must be a year unless a lesser term is negotiated. In no case can the initial term be less than 6 months.	**Term** | The initial lease term for new move-ins must be a year unless a lesser term is negotiated. In no case can the initial term be less than 30 days.
Notice of termination | Follow state law when giving notice of termination of tenancy.	**Notice of termination** | Notice of termination must never be less than 30 days without good cause for HOME units.	**Notice of termination** | Notice of termination must never be less than 30 days without good cause.

Employee Units

LIHTC

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

Example

Applicable Fraction & Employee Units

In a building consisting of 100 units, 98 units are occupied by LIHTC-qualified households and two units are each occupied by a full-time manager and a full-time maintenance tech. The applicable fraction would not be 98/100 or 98%. Rather the employee units are removed from both the numerator and the denominator of the applicable fraction.

The correct applicable fraction is 98/98 (100%).

Example

Employee to Multiple Properties

A manager runs two 100% LIHTC projects that are adjacent to each other, and a maintenance professional serves these two projects and another one that the company manages across town.

As they are employed by multiple properties, neither employee is eligible for an employee common area unit. As there are no market units available, they must be LIHTC eligible if they reside at either of the projects.

It is important to note that, for this rule, the term "full-time" is not directly related to a set number of hours worked (such as 40 hours weekly). Full-time is defined as a substantial amount of time and should be determined based on the specific needs of the property. Some of these needs to consider include the number of units overseen by the employee and the duties the employee performs—including being on call during non-business hours such as nights and weekends for emergencies.

The employee unit designations and status must be updated and maintained in Emphasys at all times. Any request to make changes must be submitted to DCA/GHFA via a Project Concept Change Request, per the current DCA/GHFA Project Concept Change Request policy as published on the Agency website and discussed in Chapter 10.

Once the request is received, a response will be provided. The response will acknowledge the request, and provide an amendment to the LURC, as necessary. The request for a permanent change must be accompanied by payment at the current amount dictated by the current Project Concept Change Request policy. A temporary approval, if applicable and at DCA/GHFA's sole discretion, that may not require a change to the LURC may be granted for an initial period of 1 year or as determined by the Agency.

For the most part, DCA/GHFA will rely on the owner's determination of whether an employee unit is reasonably required by the development. However, if the Agency becomes aware that the unit is not occupied by a full-time employee or security person, as represented by the owner, it may become a noncompliance issue.

A unit occupied by a **part-time** manager, caretaker, or maintenance person must either be treated as a qualified low-income unit or as a market-rate unit. If the unit is treated as a qualified low-income unit, then the household must meet all LIHTC eligibility criteria. Please note that any reduction in rent when compared to other comparable units in exchange for services must be considered income.

HOME

HOME Conflict of Interest Requirement. According to HOME regulations, no owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the required HOME affordability period. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

Exceptions. Upon written request of a housing owner or developer, DCA/GHFA may grant an exception to the provisions above on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, DCA/GHFA considers the following factors:

- Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.
- Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question.
- Whether the HOME tenant protection requirements are being observed.
- Whether the HOME affirmative marketing requirements are being observed and followed.
- Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

Community Service Facilities

Generally, amenities at a property that are included in eligible basis are in place to benefit residents and guests. However, there is a specific allowance for some properties where community service facilities are allowed on-site that serve the community that the property is in, and not just the residents. These could include such uses as daycare, career counseling, literacy training, education and tutorial services, recreation, and outpatient clinical health care. For instance, hair salons are commonly requested community service facilities at DCA/GHFA properties. The portion of building costs for these specific community service facilities is allowed to be included in eligible basis. Below are the federal requirements for these facilities. Owners/agents must carefully review these requirements and those of the applicable QAP if they seek to have community service facilities at a property. Implementing such facilities when not eligible will lose the amount of the costs for the facilities from the eligible basis and the IRS reports that there is no way to fix the resulting credit loss. The cost to the tax credits for the building could be significant.

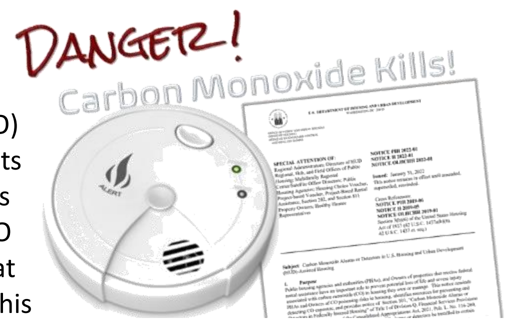
1. The property must be located in a qualified census tract, as established by HUD. This is very important, as many LIHTC properties are not in QCTs and are not eligible for community service facilities to be included in eligible basis.
2. The property must be subject to the allowance for depreciation and not otherwise accounted for.
3. The property must be used throughout the taxable year in providing any community service facility.
4. The facility must be designed to serve primarily individuals whose income is 60 percent or less of the area's median income. This requirement is satisfied if the following conditions are met:
   - The facility must be used to provide services that will improve the quality of life for community residents, i.e., daycare, career counseling, literacy training, education (including tutorial services), recreation, and outpatient clinical health care.
   - The owner must demonstrate that the services provided at the facility will be appropriate and helpful to individuals in the area of the project whose income is 60 percent or less of the area median income. This may, for example, be demonstrated in the market study done during the LIHTC development process.
   - The facility must be located on the same tract of land as one of the buildings that comprise the qualified low-income housing project.
   - If fees are charged for the services provided, they must be affordable to individuals whose income is 60 percent or less of the area median income.

- Costs for buildings placed in service on or before July 30, 2008, the increase in the adjusted basis of any building that includes the community service facility cannot exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part. All community service facilities that are part of the same qualified low-income housing project are treated as one facility.
- Costs for buildings placed in service after July 30, 2008, the allowable community service facility cannot exceed (1) 25 percent of the eligible basis of the qualified low-income housing project of which it is a part and does not exceed $15,000,000, plus (2) 10 percent of the eligible basis of the project in excess of (1) above.

Physical Requirements of Qualified Units, Suitable for Occupancy

The HUD NSPIRE standards must be met for all LIHTC and HOME properties (see Chapter 2 for more information on DCA/GHFA compliance monitoring and NSPIRE.

CO Detectors



Starting in December of 2022, properties with HUD funding and units housing households that are assisted by Housing Choice Vouchers (HCV) must have carbon monoxide (CO) detectors installed in many units. For instance, covered units include those with open-flame appliances (such as natural gas furnaces) and those with attached garages where the risk of CO presence is significant. HUD and Public Housing Authorities that provide vouchers will monitor and enforce compliance with this requirement. Both the LIHTC and HOME programs prohibit denying households simply because the households benefit from vouchers (see Chapter 4). Because of this, owners/agents of LIHTC and HOME properties will need to be prepared to pay for the installation of CO detectors in units housing voucher-funded residents. This cannot be passed on to the residents. HUD Notices H-2019-05 and H 2022-01 provide further education on the HUD CO detector requirements and reference further guidance sources.

HOME and Section 504

Owners/Managers of HOME-assisted rental properties are subject to several laws that ensure nondiscrimination in housing and require accessibility for persons with disabilities. This includes Section 504 of the Rehabilitation Act of 1973. This law requires extra steps to be taken for federally funded properties to ensure accessibility.

Generally, a newly constructed and substantially rehabilitated property with five or more units that are federally assisted must have a certain number of units that are accessible to persons with mobility disabilities (5% of units at the property), and for persons with sensory impairments (an additional 2% of units). This is determined before construction begins. Accessible units must be maintained to the UFAS standard throughout the affordability period.

Fast Facts

HOME Accessibility Requirements

- Persons with disabilities must be afforded equal access to and enjoyment of HOME-assisted housing. This means owners may have to modify rules, policies, or practices to accommodate the needs of a tenant or applicant with disabilities.
- Accessible units in a HOME-assisted property must conform to the Uniform Federal Accessibility Standards (UFAS) throughout the affordability period.

Owners/agents of properties with accessible units must develop procedures so that information regarding the availability of accessible units reaches eligible persons with disabilities. Reasonable, nondiscriminatory steps must also be taken to make sure that accessible units that become available are offered first to persons with disabilities who require the accessibility features.

Owners/agents must take the following steps when an accessible unit becomes vacant, regardless of the status of the waiting list:

- **First**, the unit must be offered to a current occupant of the property who might require or benefit from the accessibility feature(s) of the unit.
- **Second**, the unit must be offered to an eligible, qualified applicant on the waiting list who requires the accessibility feature(s) of the unit.
- **Third**, market the accessible unit widely to the disabled community.
- **Last**, the unit can be offered to a non-disabled person on the waiting list.

After the owner/agent has made all reasonable efforts to attract a tenant with a disability and has followed the steps above, the accessible unit may be rented to a non-disabled tenant. HUD strongly encourages owners to include a special provision in their tenant leases when a non-disabled tenant occupies an accessible unit. This lease provision would state that if a household that requires the accessible feature(s) of the unit applies for occupancy, and is eligible for the accessible unit, the non-disabled tenant would move to a comparable non-accessible unit.

Accessible units are not necessarily always designated HOME units at a HOME project. In properties that are comprised of both assisted and non-assisted units, the DCA/GHFA determines if the accessible units are designated as HOME-assisted or not and establishes the mix for the owner. This is true whether the property has fixed or floating HOME units. If the property has floating HOME units, it is expected that the accessible units will float in and out of the HOME inventory as do non-accessible units.

TTY Phone Numbers

An accessible phone number for persons with hearing impairments (the federal 7-1-1 number or other) must be listed for all DCA/GHFA property websites, main property signs, and application and other outreach paperwork.

The Violence Against Women Act (VAWA)

The Violence Against Women Act of 1994 (VAWA) is a United States federal law that provides funding and rules designed to protect victims of certain violent crimes. Covered violence includes domestic violence, dating violence, sexual assault, and stalking. DCA/GHFA applies VAWA to all agency-monitored programs.

VAWA was reauthorized in 2000, 2005, 2013, and 2022. The 2005 version first introduced provisions that applied to Section 8 programs and public housing.

The 2013 reauthorization greatly expanded the housing programs covered by the Act to include LIHTC and HOME-funded properties. Final regulations were released by HUD on November 16, 2016. This guidance has been incorporated in the following pages.

With the 2022 reauthorization, congress required that HUD establish a gender-based violence prevention office and a Violence Against Women Act Director. The law also established that the Secretary of HUD and the Attorney General will implement and enforce VAWA in a manner that provides the same rights and remedies as those provided under the Fair Housing Act.

Although women are mentioned in the name of the law because women are statistically far more likely to be victims of violence covered by VAWA, the VAWA law protects both male and female victims.

Application Denial/Eviction Protections.

Among VAWA details are three specific provisions for victims of domestic violence. The first requires that "an applicant for or tenant of assisted housing under a covered housing program may not be denied admission to, be denied assistance under, terminated from participation in, or evicted from housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy."

A victim is not protected from eviction or termination based on their own lease violations or good cause unrelated to the violence of which they were a victim.

Lease Bifurcation

The second main VAWA provision helps owners so that they don't evict victims (who are protected in the first provision above) with perpetrators. The owner may seek to "bifurcate" ("separate" or "split") household leases, allowing eviction of the perpetrator of the violent crime while retaining the victim. The remaining members of the household are given a chance to qualify for the housing they reside in. If they do not qualify without the perpetrator, then they must be given a reasonable time to locate other housing or to establish eligibility under another housing program.

Emergency Transfers.

A third VAWA protection requires owners/agents to allow emergency transfers for victims who feel unsafe in their units. This can mean a move to a different unit in the same building, a different building in the same unit, or leaving the property altogether. The victim determines where they will feel safest. The owner/agent must have a transfer policy in place, but the financial cost of the transfer is borne by the person seeking a transfer.

VAWA Procedure and Forms

Four new forms were created by HUD to implement the new VAWA requirements. Discussion of the use of these forms provides a nice summary of the VAWA process.

1. **HUD 5380** ***Notice of Occupancy Rights under the Violence Against Women Act***
    - This form provides information to the applicant or tenant about their rights under the VAWA. This form replaced the old HUD-91066 form, which should be discarded if still being used. It is initially to be provided to applicants and households as follows:
        - At move-in
        - When the owner/agent is considering taking a negative action against a household. Negative actions include denying an application or starting eviction.
2. **HUD 5382** ***Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking and Alternate Documentation***

- The HUD 5382 form must be provided to the applicant or tenant at the time that the owner/agent distributes the HUD-5380. This allows victims to disclose that the reasons for the negative action may be related to the applicant or resident being a victim of violence.
- According to the VAWA statute, the victim (not the owner/agent) decides how best to document their status. If not using the 5383 or other self- certification they may choose other documentation such as:
  - A letter or other documentation from a doctor or other professional assisting the victim because of the violence.
  - Court or tribal paperwork describing the violence (such as a restraining order or police reports).
- The form may be completed by the applicant or tenant seeking to invoke their VAWA rights or someone doing so on their behalf.
- The form states that the household member may be asked to provide third-party documentation but is not required to do so if doing so potentially puts them at risk of further violence.
- This form must be used with the language provided "as is" and care must be taken that the most current version is being used.
- An owner/agent must allow 14 business days for the household to provide documentation of their status before proceeding with the negative action. The owner may but is not required to provide an extension for extenuating circumstances. If the applicant or tenant does not provide documentation by the time allowed, the owner is under no further obligation under VAWA and may proceed with the negative action.

3. **HUD 5383** ***Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking***
   - This form is to be distributed to and completed by any household member who is seeking an emergency transfer while residing at a covered property.
   - HUD advised that the owner/agent MAY require tenants to provide a written emergency transfer request. They may also accept other written or oral requests for a transfer. It is best if this policy is made clear in a property's tenant selection policy and applied consistently.
   - An owner/agent may ask for but may not require third-party documentation if the victim refuses or does not have the documentation. The form lists a variety of acceptable documentation. The form advises the tenant that they only need to provide documentation if it is safe for them to do so.
4. **HUD 5381** ***Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking***
   - All properties are required to develop and implement an Emergency Transfer Plan, using the HUD 5381 as a model.
   - The plan allows victims to transfer to another available and safe unit assisted under a covered program.
   - The tenant must expressly request the transfer and reasonable confidentiality measures must be incorporated to prevent the perpetrator from discovering the location of the new unit. Situations where a transfer would be allowed might include:
     - The victim reasonably believes that they are threatened with imminent harm of further violence if they remain in their current unit.
     - A sexual assault occurred on the premises within 90 days before the transfer request.

Acknowledgment of Receipt of HUD Forms 5380 and 5382. Either copies of the VAWA Notice of Rights and Emergency Transfer Plan, signed by the household, or a signed acknowledgment of receipt of these forms should be retained in each LIHTC or HOME household's file at initial move-in and recertification.

Conflicting Victim Certifications. There may be rare cases where an owner does not seek but nevertheless receives, conflicting information. This could be the case when two residents of a unit who are at risk of eviction for noise complaints submit Victim Certs that they are each a victim of violence at the other's hand that resulted in excessive noise. In these cases, the owner may require third-party documentation, such as letters from care professionals or police reports. The owner/agent must give 30 days for the victims to provide clarifying third-party documentation. If unsuccessful, the owner may consider allowing each person to separate and establish a separate household or other solution that does not involve evicting potential victims.

Confidentiality. An owner's VAWA policy must establish recordkeeping and reporting requirements. Documentation relating to a victim must be maintained in confidence and may not be entered into any shared database or disclosed to any other entity. Exceptions are applicable if:

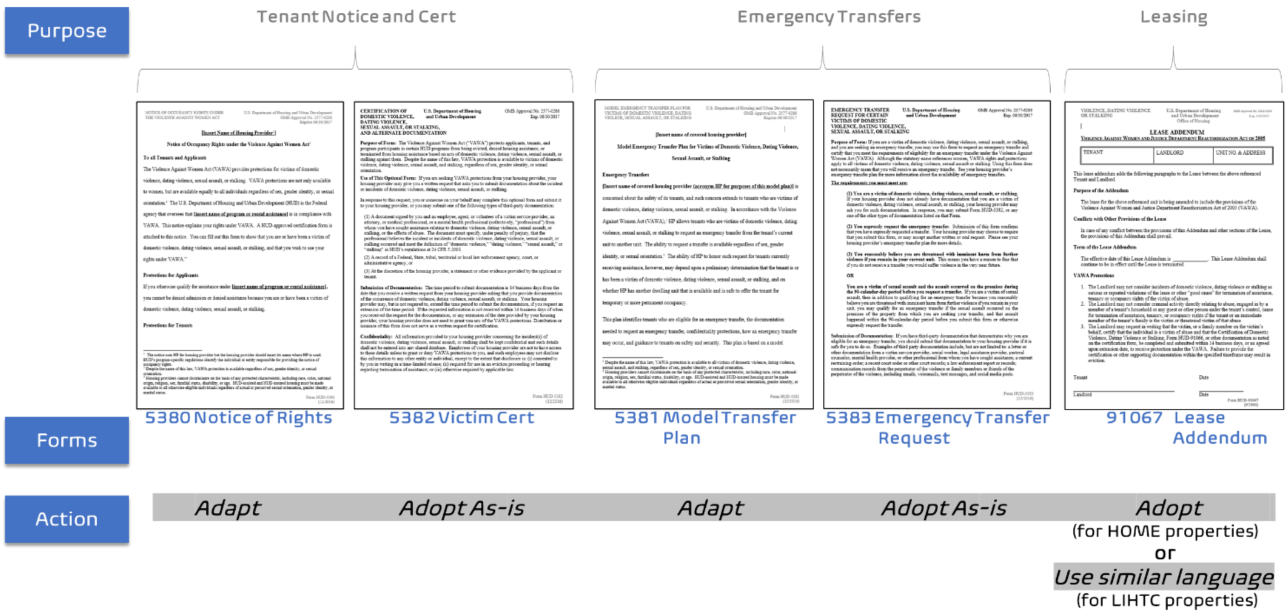
- The victim requests or consents to the disclosure
- The documentation is required in the bifurcation eviction proceedings, or
- Otherwise, as required by applicable law.

VAWA and Leases

HUD 91067 Lease Addendum for HOME. Although not specifically designed for HOME, the existing lease addendum form HUD 91067 used by HUD Multifamily for Section 8 VAWA purposes is to be utilized until an updated document is released by HUD. The lease addendum must be signed by all adult household members who are required to sign the lease agreement according to an owner/agent's management policy.

LIHTC. There is no regulation requiring a VAWA lease addendum for LIHTC properties. The HUD 91067 lease addendum is specific to HUD programs. However, the Agency requires projects with all funding types to comply with VAWA. An owner may choose to use an addendum like the HUD 91067 or incorporate similar language into their LIHTC leases.

VAWA Forms



Occupancy Standards

An owner is obligated to develop and apply consistent occupancy standards – the number of people allowed to occupy each unit size. This ensures that everyone is treated consistently. A standard that Fair Housing experts commonly recommend is two people per bedroom, plus one additional person for the unit. This would result in allowing up to 5 people in a 2 bedroom. However, the size of units, non-bedroom rooms that could be used as sleeping quarters, construction features, and other factors may come into play in an owner's determination of the occupancy standards for a project. DCA/GHFA also expects that the owner will take care to ensure that units are not *underutilized* by small households, making larger units unavailable to larger households that need them. Minimum occupancy standards help ensure this. Competent legal counsel should be sought if an owner has questions about establishing their occupancy standards per Fair Housing principles.

LIHTC General Public Use

Section 42 requires that LIHTC units must be "available to the general public." This has two implications: (1) there is a substantial limit on occupancy preferences or restrictions, and (2) the property must meet Fair Housing standards.

Occupancy Preferences or Restrictions

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

Fair Housing

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

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. Georgia law additionally prohibits discrimination based on these same bases.

In addition to prohibiting protected-class-based discrimination, the Fair Housing Act also has affirmative requirements to benefit persons with disabilities. These include a right to reasonable accommodation and modifications needed to allow equal enjoyment of the property.

Reasonable accommodations are adjustments to owner/agent policy and procedures. A common example of accommodation is assigning a parking spot close to a resident's unit when the resident has a mobility impairment, and the owner usually does not assign parking. Another extremely common accommodation relates to animals that provide physical assistance or emotional support related to a disability. Owners/agents are required to bear the cost of reasonable accommodation and cannot have different fees and conditions based on disability. This means that extra fees and deposits cannot be charged for assistance animals, and these are not subject to pet fees that an owner may charge for animals that are simply pets and not related to a disability. Additionally, assistance animals must be allowed, even if an owner/agent generally prohibits pets.

Reasonable modifications are disability-related changes to the physical unit or common areas. Common examples of modifications include ramps for wheelchairs, grab bars in bathrooms, lever handles on doors, and raised toilets. Although residents with disabilities have a right to reasonable modification, whether the owner or resident pays for a modification depends on funding sources and other factors. Competent advice should be sought in determining who should pay for a modification.

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

The Department of Housing and Urban Development (HUD) enforces the Fair Housing Act. DCA/GHFA will refer complainants to the Georgia Commission on Equal Opportunity (GCEO) and/or the U.S. Department of Housing and Urban Development (HUD).

Per the Violence Against Women Reauthorization Acts of 2013 and 2022, tenant selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking (see VAWA header in this chapter for more information on VAWA). Starting in 2022, VAWA violations bear the same penalties as Fair Housing Act violations.

Fair Housing Act and VAWA violations bear potentially costly implications and owners/agents should give significant priority to providing training on these topics for policymakers and all staff with any contact with applicants/residents.

Vacant Units

Vacant units that were formerly occupied by eligible LIHTC households continue to qualify for tax credits if reasonable attempts are made to rent the LIHTC units before any market units in the project are rented. This is called the Vacant Unit Rule (VUR). If there are vacancies in LIHTC units at any time, the owner/agent should keep proof of newspaper and internet advertising, as well as banners at the property and any other marketing efforts expended to fill the vacant tax credit unit(s).

Additionally, the following guidelines apply to the VUR:

- Units must be made rent-ready in a reasonable time to continue claiming tax credits. This is true even if there is no waiting list.
- For vacant units to continue to qualify as rent-ready, do not allow vacant units to be utilized as "supply closets" for maintenance repairs and supplies for other units within the property. Also, fixtures and appliances from vacant units should not be "cannibalized" for occupied units.
- If the VUR is violated, each unit of comparable or smaller size to the vacant LIHTC unit that is rented to market-rate households before renting to an income-qualified household will be reported to the IRS as a violation.
- Vacant LIHTC units can be used to support tax credits in newly placed in-service developments. In most cases, all vacant units that have not been occupied by a qualified household should be rented before any newly vacant unit is rented to a second household. This helps to ensure that tax credits can be taken on all units.

DCA/GHFA may require further documentation that units are ready for occupancy if they are vacant for over 30 days. This is generally the maximum period that the Agency considers reasonable to turn most units.

Down Units. Vacant units not ready for occupancy within the above-stated guidelines may be considered down units and reported to the IRS on form 8823. Units with major life-threatening violations will also be reported as such. All units and common areas must satisfy HUD NSPIRE requirements.

Notice of Casualty Loss. DCA/GHFA must be notified within 72 hours of losses resulting from a major event such as a hurricane, fire, flood, or any incident that results in a household being transferred or removed from the unit for more than 48 hours, or if an occupied unit or common area will not pass a Uniform Physical Conditions Standards inspection.

Unit Transfers

LIHTC Transfers

The IRS considers each building in a property to be a separate project unless the owner elects to treat more than one building in a property as part of a multiple-building project. Owners make the election for multiple building projects on Part II, line 8b of IRS form 8609. Until DCA/GHFA becomes aware of an owner's final official election, the Agency will consider the multiple building election as indicated by the owner during the setup of Emphasys. The owner will need to carefully consider the compliance implications of making an official 8609 multiple-building election that differs from what is indicated in Emphasys.

Agents of properties containing multiple LIHTC buildings should obtain copies of the property's filed 8609s and use caution when determining if a transfer or move-out/move-in applies (as explained below).

Transfer within the same building. When a current household moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household whose income exceeds the applicable income limitation moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. For buildings within Average Income Test properties, transfers swap AIT designations.

Transfer to a different building that is not part of the same project. If a household moves to a building that is part of another project within the same property (per the 8609s for the development), it must be treated as a move-out for the vacated unit. To treat the newly occupied unit as a qualified LIHTC unit the household must be certified and meet initial eligibility requirements as a new move-in. If the Average Income Test applies to the new project, the household must qualify for the designation applicable to the new unit.

Transfer to a different building that is part of the same project. When a household moves to an LIHTC unit in a different building within the same 8609 project, the vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. This is limited to households whose income is not greater than 140% of the current applicable LIHTC income limit for the household size. If a household whose income exceeds 140% of the applicable income limit wishes to move to a different building in the same project, the newly occupied unit would be treated as a non-qualifying unit. Mixed-income properties can rely on the most recent income certification of household income to determine if the household exceeds the 140% limit. Properties that are 100% LIHTC and are exempt from income recertification requirements may allow transfers between buildings in the same project even though the household's current income is not known.

Fast Facts

Transfers & Market Units

For projects that are mixed-income (less than 100% LIHTC), DCA/GHFA policy limits market (non-LIHTC) household unit transfers to within the building in which the household resides.

Transfers and the Average Income Test. A household in a unit included in a property's average income test that transfers units within the property takes the designation applicable to the original unit with them to the new unit, and the units will swap status.

HOME Transfers

DCA/GHFA applies the same basic principles to HOME project transfers as apply to the LIHTC (as explained above). However, the owner/agent will have to independently review the effect on the HOME status of units if they are involved in the transfer. The HOME fixed or floating status will affect the options.

Floating HOME. If a transfer occurs between comparably sized units, one HOME and one non-HOME, the owner/agent may choose to float the HOME designation to a new unit. The best interest of the existing HOME tenant should be the primary concern, but HOME and LIHTC program compliance must also be maintained. If the transfer is not between comparable units, the HOME status cannot float to the unit of a different size, but the household may be given the option to transfer to a HOME unit if one is available.

Example

Unit Transfer and Floating HOME

A project is LIHTC and HOME. A resident in a Low HOME LIHTC unit requests a transfer to a vacant first-floor non-HOME unit in the project as a reasonable accommodation. As the project is floating HOME, the owner may choose to float the Low HOME designation to the new unit and allow the household to retain its lower HOME rent. Regardless of the HOME status, the household's qualified LIHTC status will transfer with the household to the new unit. The TIC and lease will be adjusted to reflect the new unit and the annual recert will continue to be due on the anniversary of the original move-in to the property.

Fixed HOME. Fixed HOME unit designations are set during the initial lease-up and never change for any reason. Transfers to fixed HOME units must qualify for the Low or High HOME status applicable to the unit at the time of transfer. This may limit the units available for a household's transfer.

DCA/GHFA will assume the HOME units are designated Fixed if not stated in the LURA or QAP.

Example

Unit Transfer and Fixed HOME

A project is LIHTC and HOME. A non-HOME LIHTC household has an increase in family members and requests a larger unit. There are two units available in the project in the size they need. One is a Low HOME unit, and one is non-HOME. The household does not qualify for a Low HOME unit. Only the non-HOME unit can be considered available for the household transfer. The units switch LIHTC status, and the TIC and lease will be adjusted to reflect the new unit and the annual recert will continue to be due on the anniversary of the original move-in to the property.

Georgia Housing Search

All DCA/GHFA properties are required to be listed on the Georgia Housing Search website at

www.georgiahousingsearch.org.

Within 30 days from the beginning of the lease up, and no later than 45 days after assuming management responsibilities, owners/agents must list all DCA/GHFA-funded properties on this website. Quarterly updates are required and must include a listing of vacancies. In addition, owners/agents must include at a minimum: photos of the development sign/monument, front entrance to the complex or the typical unit front entrance area, and interior photos of unit rooms for each bedroom size (living room, bedrooms, kitchen, bathrooms). All contact information in the listing must reflect the ownership and/or management company and leasing contacts as well. As the listings are updated quarterly, owners/agents should send a link to the listing to DCA/GHFA. Failure to comply with the Georgia Housing Search requirement will trigger state noncompliance and possible point deductions for future DCA/GHFA funding applications.

Chapter 4 | Qualified Household Determinations – Overview

Tenant Selection Policies

It is the owner's responsibility to create policies and procedures for screening and processing applications and selecting qualified tenants to lease units. DCA/GHFA will not qualify or approve tenants, and cannot offer specific guidance on management policies, including lease or house rules for a property. The Agency is only responsible for the administration and monitoring of affordable housing programs. However, the owner does need to ensure they comply with the DCA/GHFA requirements, guidelines, and the applicable QAP. The owner would need to consult with a tax accountant, attorney, or other professional for specific questions regarding income certifications and processing tenant files.

To ensure that everyone who applies is treated fairly and that program requirements are covered, owners/agents must adopt a written Tenant Selection Policy (TSP). Both LIHTC and HOME projects should have TSPs. The TSP may be reviewed by DCA/GHFA when conducting monitoring duties. If an owner accepts electronic applications, the TSP must be posted on their website. The TSP Guidance below is an outline of required and suggested topics. These are based on best-practice guidance in the HUD Multifamily Programs Handbook. For program topics covered in this manual, chapter references are included.

Additionally, it is suggested that owners consult Federal and State guidance as well as this manual as they develop their TSP. Please keep in mind the Housing Choice Voucher (HCV) Administrative Plan, when qualifying HCV applicants as this outlines the expectations in "suitability screening."

Tenant Selection Policy Guidance Part 1 | HUD Multifamily

Based on HUD Handbook 4350.3 - Figure 4-2

A. Required Topics

1. Program eligibility requirements and project-specific requirements.
2. Income limits, including federal and state limits [see Chapter 3 of this manual].
3. Procedures for accepting applications and selecting from the waiting list:
    - Fees
    - Procedures for accepting applications and pre-applications.
    - Procedures for applying any preferences.
    - Applicant screening criteria:
        - Required drug-related or criminal activity criteria.
        - Other allowable screening criteria.
    - Procedures for rejecting ineligible applicants.
4. Occupancy standards [Chapter 3].
5. Unit transfer policies, including the selection of in-place residents versus applicants from the waiting list when vacancies occur [Chapter 4].
6. Policies to comply with Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and other relevant civil rights laws and statutes [Chapter 3].
7. Policy for opening and closing the waiting list for the property.
8. Eligibility of students [Chapter 4].
9. VAWA Protections [Chapter3]

B. Recommended Topics

1. Procedures for identifying applicant needs for the features of accessible units or reasonable accommodations [Chapter 3].
2. How the waiting list is updated.
3. Policy for notifying applicants and potential applicants of changes in the tenant selection policy.
4. Procedures for assigning units with originally constructed design features for persons with physical disabilities [Chapter 3].
5. Charges for facilities and services.
6. Security deposit requirements.
7. Unit inspections.
8. Annual recertification requirements [Chapter 7].
9. Implementation of house rule changes.

Tenant Selection Policy Guidance Part 2 | HUD CPD

HUD-CPD has also supplied additional HOME guidance on selection procedures that are adaptable for most affordable housing. Owners/agents can use these guidelines to develop fair tenant selection procedures:

- Tenant selection procedures should specify the criteria that will be used to select tenants (see above).
    - **Tenants should be selected based on objective criteria.** These criteria should be related solely to program qualification and the tenant's ability to pay the rent and abide by the terms of the lease, such as household income, housing history, credit history, and/or lack of criminal record. Property owners/managers must apply selection criteria consistently to all applicants, following Fair Housing laws. The policies themselves, even if consistently applied, must also avoid any disparate impact on any Far Housing protected class.
    - **Tenant selection criteria should expressly prohibit bias in the selection process.** This includes prohibiting discrimination and favoritism toward friends or relatives, or other situations in which there may be a conflict of interest.
    - Tenant selection criteria can give preference to persons with special needs only when established by a federal provision or DCA/GHFA has so directed.
- Tenant selection procedures must state that owners/managers will provide a written explanation of the grounds for rejection to all rejected applicants. This notice must be made promptly.
- The tenant selection procedures should specify that there is a waiting list and describe how it will be maintained. An Owner/agent must be able to present the waiting list in an auditable manner if requested by the Agency. Owners/agents must select tenants in the chronological order of application, to the extent practicable.
- The tenant selection procedures should describe the HOME requirements that impact tenants and tenant selection in terms that are clear and easy to understand. Specifically, the procedures should describe all of the following:
    - How vacant units will be filled.
    - HOME unit occupancy requirements.
    - Nondiscrimination policies and affirmative marketing procedures.
    - Marketing strategy for accessible units.
    - What tenant selection records must be maintained.
    - CHDO tenant participation plan, if applicable.

Avoiding Disparate Impact Discrimination

A quick checklist of some factors to consider when developing tenant selection criminal criteria, based on HUD Fair Housing guidance

- ❑ Do not apply blanket "no felony" policies.
- ❑ Do not use arrest records.
- ❑ Use reasonable time frames when considering how long ago a crime was committed. HUD cites studies that indicate that 6-7 years after committing a crime, a person is no more likely to commit that crime again than a person without that same background.
- ❑ Remember the point of the rules: protect people and property. Not all crimes, if repeated, would harm residents, employees, or property.
- ❑ Be willing to do an individualized assessment of all the details of a case.

Initial Income Certifications

Renting to qualified households is a major component of meeting affordable housing requirements (see the *Fast Fact Overview Summary of LIHTC Requirements* in Chapter 1). Along with student status, income eligibility establishes if a household is "qualified." HUD is the primary government housing agency in the United States. When housing program rules have been established relating to how household income is calculated for most affordable housing programs, the federal rules most often borrow from pre-existing HUD rules. This is true of both the LIHTC and HOME programs as both utilize the Section 8 HUD method of determining annual income. This makes the rest of this and the following two chapters essentially identical for both programs!

HOTMA Update 2024! | Starting in 2024, HUD regulations for the Housing Opportunities Through Modernization Act (HOTMA) became effective. This regulation significantly impacts how income and assets are calculated for HUD housing. It also changes all the programs that use the HUD income rules including the LIHTC, HOME, and NHTF programs. This manual has been updated with HOTMA changes. Many of the updates are indicated with the HOTMA call-out used at the start of this paragraph.

Application to Move-in

1. Take a completed application.
2. Determine student status and verify, as necessary.
3. Verify income.
4. Calculate household income.
5. Compare household income to the applicable income limits.
6. Complete a Tenant Income Certification (TIC).
7. Execute lease and other management-specific paperwork.
8. Move the household in.

The Household Income Certification Process Overview

For units to remain compliant, they must be occupied by eligible households. If the rules regarding income increases are followed (see Chapter 7), and each household is qualified at move-in and throughout tenancy, benefits will continue to flow through vacancies and subsequent residents.

Potential tenants for rent-restricted units should be advised early in the application process of the maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of all persons 18 years of age or older (except live-in aides and foster adults) and any unearned income of minor children (except foster children) expecting to occupy the unit must be included, verified, and certified on a Tenant Income Certification form (TIC). After initial certification, a household's income may increase without implication to their tenancy. The LIHTC Available Unit Rule obligates the owner/agent to take certain actions if the household income exceeds 140% of the maximum income limit in the future (80% for HOME), but this does not ever include evicting the over-income household (see Chapter 7 for more details on increases of income). The only eligibility issue that will continually put the household at risk for continued tenancy is their student status.

Application Processing

In general, certain steps are taken to ensure that a household qualifies for an affordable housing program. Owners/agents may take the steps in a slightly different order (based on clear written policies), but each must be done before the completion of the certification process. Below are the basic steps to qualify a household to occupy a program unit.

When beginning the certification process, all adult household members should be interviewed. The basics of the housing programs funding the property should be explained. Any questions that the applicant household has should be addressed.

Application to Move-in

1. Take a completed application.

2. Determine student status and verify, as necessary.
3. Verify income.
4. Calculate household income.
5. Compare household income to the applicable income limits.
6. Complete a Tenant Income Certification (TIC).
7. Execute lease and other management-specific paperwork.
8. Move the household in.

Some suggested topics for applicant interviews

- ❑ For LIHTC and HOME units, there are maximum income limits that apply.
- ❑ The application should be fully completed, with no blanks or unanswered questions.
- ❑ The anticipated income of all adult persons and children in their care occupying the unit must be verified and this information must be included in the application.
- ❑ Eligibility will continue to be reviewed on an annual basis through recertification. This includes income and student status recertification, as applicable to the project (see Chapter 7).

The owner/agent should stick to questions that relate to eligibility for the housing program and owner criteria. Reasonable and Fair Housing-compliant screening criteria are allowed. Common examples of screening criteria include credit checks, criminal background, and income minimums.

If minimum household income requirements are in place, for households receiving rental subsidy this minimum income to rental amount should include only the tenant's portion of the rent as calculated by any subsidy administering agency.

DCA/GHFA does not require a specific application packet and recognizes that owners/agents are in the best position to design application forms that meet the needs of their properties and the programs that they work with. However, at a minimum, a well-designed application will address student status as discussed in this Chapter and each of the income and asset sources detailed in Chapters 4 – 6. Households should generally complete the application themselves unless they request a reasonable accommodation related to a disability that interferes with their ability to complete paperwork.

The application can be obtained up to 120 days before the initial or annual certification. If an adult household member is unable to sign the application during the certification process, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Owners must maintain applicant and tenant information in a way that ensures confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages and seek other relief, as appropriate. Owners must dispose of paper or electronic records in a manner that will prevent any unauthorized access to personal information, e.g., pulverize, shred, magnetically delete, etc.

Fast Facts

Application Tips

- A “yes” or “no” checklist format best establishes that a household is providing a definite answer to each question.
- There must be no white-out or blank spaces throughout the application or recertification questionnaire.

When a manager completes an application/questionnaire on behalf of a household member as a reasonable accommodation, the manager should read every question (explaining as necessary) and record the response. The individual should also be allowed to carefully review the information and sign an affidavit that the form is complete and accurate.

Effective Dates

A Tenant Income Certification (TIC) will have an effective date. This is generally the date that the information was true and completed by all parties. In most situations, the paperwork will all be gathered before the effective date. Regardless of the effective date, the signature date should always be the date that the form is signed. Backdating a signature is a form of fraud and should never occur. For new move-ins, the effective date should be the date of move-in and paperwork should precede it. For recertifications, the effective date should always be the anniversary of the move-in date (see the paragraph below for an exception). For acquisition/rehab projects, there are special rules relating to effective dates (see Chapter 8).

Merging the dates at recertification is acceptable for properties with certification requirements for other programs. However, the recertification effective date cannot be more than 12 months (365 days) after the previous effective date. Additionally, please note the files clarifying that this was done to “marry” or merge the recertification dates for audit review reference purposes. Notify the Agency before implementation at your property. The TIC for RD housing programs is form 3560-8. This form satisfies the requirements of an LIHTC or HOME TIC and can be used as such for RD/LIHTC or RD/HOME properties.

Example

Merging certifications

An owner acquires a Section 8 property on May 1. Each existing household is qualified for LIHTC purposes to the May 1 date. A household has an annual Section 8 certification due seven months later on December 1. The Section 8 certification paperwork is completed, along with all the additional LIHTC paperwork. A note is placed in the file. Both HUD and LIHTC recertifications will be due by December of the next year.

Household Size

“Household” vs. “Family.” Technically, HUD considers a “household” to include all persons who are legal residents (including fosters and live-in assistants), while “families” are members counted for income limit purposes. This distinction is crucial for many HUD rules, primarily relating to expenses and allowances. As this distinction is less vital for the programs covered by this Manual and the term “family” is often believed to imply that persons must be related by blood or marriage, we use the term "household" to describe those counted toward the income limits. The few times that fosters or live-in assistants relate to passages herein, the context will make the meaning of the term "household" clear, or the difference will be explained.

For Fair Housing purposes, owners/agents generally avoid specific rules relating to children. However, since children cannot legally live on their own and generally must be assigned care, there are some specific rules relating to when children are or are not counted that may be present in a household. Household members include:

- Children who are subject to joint custody and will be in the unit at least 50% of the time.
- Dependent students who are away at school.
- Children of the household who are away in foster care that are anticipated to return to the household to live with their parents.
- Children who are in the process of being adopted.
- Unborn children. It is only acceptable to verify the existence of unborn children through a self-affidavit from the pregnant woman. No further verification is allowable. If adding an unborn child is necessary for income-limit eligibility and the child does not come to term, the household's LIHTC qualification will not be affected as long as a self-certification establishing the pregnancy was in the file at the time of move-in. Unborn children are also counted as non-students for purposes of the student rules.

Emancipated persons under the age of 18 who enter into a lease under state law are treated as adults, and their full annual income must also be counted. These persons will either be the head, spouse, or co-head. If other emancipated household members are not the head, spouse, or co-head and do not sign the lease, they are treated as dependents like other minors.

Temporarily absent individuals are also counted. Examples include members temporarily in a hospital or nursing home or future spouses or roommates. To ensure that an owner/agent knows about planned future household members, an application must ask if there are any definite plans to add any such members, and if household additions are planned their income must be verified and included in income calculations for the household.

Temporarily absent members may also include persons on active military duty who are heads of households, spouses, or co-heads; or anyone who has a spouse or dependent that resides in the unit.

When determining a household's size for income limit purposes, the following individuals are excluded (even though they reside in the unit). Their income is also excluded. They are also not counted when determining if a household is made up of full-time students and they do not help a student household meet any student exceptions.

- Live-in assistants for persons with disabilities.
- Foster children (and adults) as defined by state law. Foster adults are usually people with disabilities unrelated to the household who are unable to live alone and are placed by a foster agency.
- Children subject to joint custody who will be in the unit less than 50% of the time.
- Temporary visitors and/or guests. An owner must establish in their lease or house rules a reasonable period that a guest can visit before needing to be considered a household member.

Occupancy standards (that is the number of bedrooms assigned) do include these people, as they are legal residents.

Absent Members

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

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

IRS and HUD guidance requires that reasonable leniency be applied for those absent on active military duty with a dependent child in a unit. For instance, it may be reasonable to determine that a person in the military and their child are not household members when the child is temporarily relocated to an LIHTC or HOME unit. This may be because the grandparent is temporarily caring for the child while the parent is on active duty, even though the military member's dependent is in the unit. Additionally, the income of a guardian who is in a unit temporarily to care for the children of a head of household who is on active duty may be excluded. Note that these exceptions only apply to dependents. If a person residing in a unit has a spouse on active duty, the absent spouse and their income must be included. Finally, it is possible that allowing leases to remain in effect for a reasonable period without recertification (if required), depending on the length of deployment, is acceptable even though the adult members of the military family are temporarily absent from the unit.

Example

Resident on Active Duty with Spouse in Unit

An adult daughter is living with her mother in a unit while her husband is absent on active duty. Both she and her husband, and their income, must be counted (in addition to her mother's income).

Example

Resident on Active Duty with Dependents in Unit | 1

The single-parent head of the household goes on active duty and her adult brother moves into her unit to provide care for her child while she is gone.

The head and child are still counted, but the temporary caregiving brother (and any income he has) should be excluded.

Example

Resident on Active Duty with Dependents in Unit | 2

A single parent goes on active duty and moves her child into her parent's unit so that they can care for her child while she is gone.

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

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

Example

Household Size

The head of a household lives with her three children – two sons and a daughter. One son lives with her full-time. Her other two children are subject to joint custody and live in her unit part-time. Her son who is subject to joint custody resides in the unit exactly half of the time. Her daughter who is also subject to joint custody, is in the unit for the summers. For income limit purposes, how many people are in this household?

Three
The head and her sons. The daughter is not physically present in the unit for at least 50% of the year and is not counted.

Live-in Assistants

A person with disabilities qualifies for reasonable accommodation under the Fair Housing Act. A common accommodation is to have a person live with a disabled person because of disability-related needs and not to count that person or their income toward the income limits.

A live-in assistant must…

(1) be determined to be essential to the care and well-being of the persons, **(2)** not be obligated for the support of the persons, and **(3)** be living in the unit only to provide the necessary supportive services and would not be in the unit for any other reason.

Relatives of household members coming in from outside the household potentially qualify as live-in assistants, as long as they meet all of the requirements of live-in assistants. For instance, adult children often return home to care for an elderly parent. Court cases have established that even a spouse may qualify if it can be proved that the live-in assistant spouse would truly not have been in the unit except to provide assistance. It is important in these cases that the facts be examined, that the eligibility of a live-in assistant is carefully documented, and that legal counsel is sought, if necessary.

The necessity of a live-in assistant who is not counted toward the income limits must be verified by a qualified third party. They are also subject to the same criminal background check applied to all persons living at the property. They are not leaseholders. This means that, although they may be listed as residing in the unit on the lease, they are not signers of the lease. They may be required to sign an agreement to follow the rules applicable to the property, however. They also do not have any surviving rights to reside in the unit once the person that they are caring for vacates the unit.

Although not used for income limit, student status, or income calculation purposes, a live-in assistant will be counted when determining the correct unit size per the owner/agent's occupancy policy.

Student Status

LIHTC Student Rules

Application to Move-in

1. Take a completed application.
2. **Determine student status and verify, as necessary.**
3. Verify income.
4. Calculate household income.
5. Compare household income to the applicable income limits.
6. Complete a Tenant Income Certification (TIC).
7. Execute lease and other management-specific paperwork.
8. Move the household in.

The IRS Code prohibits tax credit projects from being used as dormitories. For this and other reasons, generally, households made up entirely of full-time students do not qualify.

When determining eligibility, the owner/agent should start with the question:

"Are ALL household members (including minors) full-time students?" Note: fosters and live-in aides are not considered for this rule.

- If the answer is "no", the household is LIHTC student-eligible, and no further action is needed.
- If the answer is "yes", the household must meet one of five exceptions to qualify.

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

- Attends a school with facilities and a regular student body (including online-based learning). This 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.
- Attends school all or part of any 5 months out of the calendar year (not necessarily consecutively).
- Is considered full-time by the school that they attend, based on that school's definition of a full-time workload.

Note about the 5-month rule: This means that a person who attended school full-time for any part of five months during a calendar year is a student for the rest of the calendar year, even after they leave school or graduate.

Example

Five-Month Student Rule

In October of this year, a single applicant applied to live in a tax credit unit. Although no longer in school, he finished school on May 11th of the year and was a full-time student all year until graduation. If he wants to move into a unit in November, will this household be considered a full-time student household? If yes, when will he no longer be considered a full-time student?

Yes | January 1st of the next year

If a person indicates that they are a full-time student, the manager does not need to verify the student's status further. The only exception to this is if the status of an adult-dependent full-time student is needed to establish their eligibility for limiting their earned income to the dependent deduction (see later in this chapter for more on that).

Fast Facts

Unborn Children & Student Status

DCA/GHFA considers an unborn child to qualify as a non-student when considering the student status rules.

LIHTC Student Verification

Student status should be determined with the initial application and interview before move-in. These should ask the correct questions to determine if the household is made up of full-time students, and which exceptions (if any) they may meet. Based on this household certification, further verification that the household meets an exception may need to be gathered. If one individual is attending school part-time and everyone else is a full-time student, student status must be verified with the school for the part-time student. The school will define what constitutes "full-time." Student status must also be addressed annually and verified, as necessary.

LIHTC Student Exceptions

There are five exceptions to the student rule prohibiting households made up entirely of full-time students. Full-time student households must meet one of the exceptions continually to live in an LIHTC unit for the period that everyone is a full-time student.

1. Any of the adult household members are married and entitled to file a joint tax return.
Verification required | copy of joint tax return or marriage certificate.

2. An adult member is a single parent with a minor child in the unit, the adult is not a tax dependent of any third party, and the children are not claimed as a tax dependent by anyone other than one of their parents (even if the other parent is not in the unit).
Verification| Copy of tax returns (if possible) or a signed affidavit that the adult in the household is not a dependent of anyone outside the household and that, if the children are claimed on anyone's taxes, it is only by one of their parents.

Note: For the single-parent exemption, as long as there is a parent and a child in the unit who meet the above criteria, the household qualifies, even if others in the unit are not parents or children.

Example

Single Parent Student Exception

Imzadi lives with her 14-year-old son William Jr. and her adult sister Beverly. They apply for an LIHTC unit. All three household members are full-time students. Imzadi files an independent tax return, but William's father, who does not live in the unit, claims William Jr. on his tax return.

Even though Beverly is not a parent or a dependent in the household, the household qualifies because they have at least one parent-child combination, and the child is a dependent of one of his parents.

3. The household includes a member who receives welfare assistance in the form of Temporary Assistance to Needy Families (TANF), foster care assistance, or adoption assistance under Title IV of the Social Security Act.
Verification | A TANF, foster care, or adoption assistance award letter.

4. The household includes a member who *formerly* received foster care assistance for whom a state agency had placement and care responsibility (that means they were a foster child or adult placed in the foster care system funded under part B or E of title IV of the Social Security Act). This does not include current foster children or adults living in the unit.

Verification | Foster paperwork from the placing welfare agency.

5. The household contains a member who gets assistance from the Job Training Partnership Act (JTPA) or similar programs. (NOTE: The "Workforce Investment Act" (1998) and then the "Workforce Innovation and Opportunity Act" (2014) have replaced JTPA).

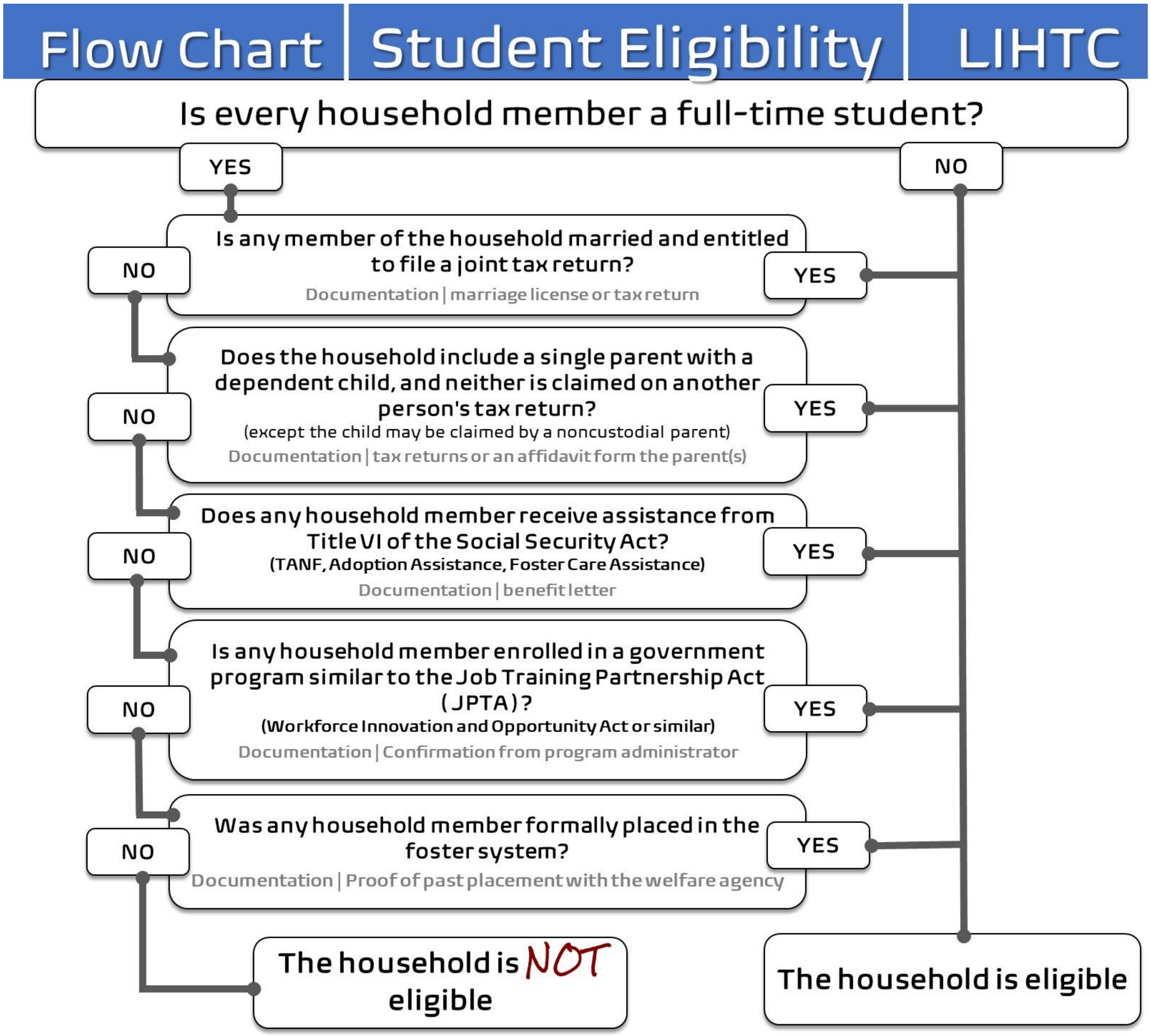
Verification | As JTPA programs are no longer in existence, to identify JTPA-similar programs that are not part of the Workforce Act programs, verification from the administrator of the training program must establish that the program:

a. Gets federal, state, or local government funding; and,
b. Has a mission similar to the one for the former JTPA program (see below).

Fast Facts

Mission Statement of the JTPA

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



HOME Student Rules

The HOME program also has rules relating to student status. The program adopted the Section 8 student rules in a 2013 HOME regulation revision. The Section 8 student eligibility rules are very different from the LIHTC rules. The Section 8 student rules focus on individual students rather than households. They are designed to prevent any household containing a person who may be a tax dependent of parents outside the household from getting assisted housing. Understanding this premise should help the owner/agent to understand some aspects of the rule. For instance, this is why the age of 24 (the year a student can no longer be a tax dependent in many cases) occurs in the rule. One ineligible student disqualifies a household from qualifying as a HOME unit. Good questions must be asked in the application process to help establish HOME student eligibility. The application must ask the correct questions to determine if the household has any full- or part-time students that may trigger the rule, and which exception (if any) they meet. Student status must be examined before move-in and at each recertification during the HOME affordability period. Eligibility for an exception must be documented for each potentially ineligible student member of a household.

To determine eligibility for HOME occupancy, an individual adult, full-time or part-time student at an institute of higher learning must be one of the below:

- A dependent of the household
- 24 years old or older
- Married
- A U.S. military veteran
- Have a dependent child(ren) living with them in the unit
- An orphan or ward of the court
- Disabled and was receiving section 8 assistance on 11-30-2005

If the answer is "yes" to one or more of the above, the student may qualify for occupancy. If the answer is “no” to each of the above, then the student must be independent from their parents to qualify, or their parents must qualify. The student can demonstrate his or her independence from parents, including that they:

- Must be of legal contract age under state law AND
- Have established a household separate from parents or guardians for at least one year

OR

Meet the U.S. Department of Education's definition of an independent student, including being any one of the below:

- At least 24 years old by December 31 of the current year
- A veteran of the U.S. Armed Forces
- Have legal dependents other than a spouse (i.e., an elderly dependent parent)
- A graduate or professional student
- Married
- Is an emancipated minor or was one before they became an adult
- Is or was an orphan or a ward of the State or in foster care at any point since age 13
- Been established this school year to be an unaccompanied homeless child or youth and self-supporting as defined by:
    - The McKinney-Vento Act,
    - Runaway and Homeless Youth Act or
    - A financial aid administrator.

1. If the student meets the U.S. Dept. of Education definition of Independence, above, the student qualifies.
2. If not, they must not be claimed as a tax dependent by parents or legal guardians pursuant to IRS regulations, AND the parents must provide signed certification if financial support will be provided.

If none of the above applies, the student must demonstrate that they are income-qualified AND that the student's parents or guardian, individually or jointly, are at or below the low-income limits (80% AMI). Documentation, such as tax returns or third-party verification, must be gathered to establish the parents’ income. Owners must establish a policy on how they will consistently address the verification process in these cases.

Finally, student eligibility status must be examined at each recertification.

Flow Chart | Student Eligibility | HOME

Is any adult household member a student (full or part time)?

YES / NO

Does the student meet any ONE of the following?

- A dependent of the household
- 24 years old or older
- Married
- A U.S. military veteran
- Have dependent child(ren) living with them in the unit
- An orphan or ward of the court
- Disabled and was receiving Section 8 assistance on 11-30-2005

Documentation | As appropriate to the exception

NO / YES

Is the student an "independent student"?

"Independent Student" | Option 1

Does the student meet ALL of the below?

- Is of legal contract age under state law
- Have established a household separate from parents or guardians for at least one year
  A separate apartment or home
  NOT a dorm or other student housing
- Are not claimed as a tax dependent by parents or legal guardians pursuant to IRS regulations
- The parents provide a signed certification if financial support will be provided.

Documentation | As appropriate to each item

NO / YES

"Independent Student" | Option 2

Does the student meet ANY ONE of the following?

- Have legal dependents other than a spouse
  Such as an elderly dependent parent
- A graduate or professional student
- Is an emancipated minor, or was one before they became an adult
- Is or was an orphan or a ward of the State or in foster care at any point since age 13
- Has been established this school year to be an unaccompanied homeless child or youth and self supporting as defined by:
  - The McKinney-Vento Act,
  - Runaway and Homeless Youth Act or
  - A financial aid administrator

Documentation | As appropriate to each item

NO / YES

Are the parents of the student income-eligible for the HUD low-income limit for the area they live?

Documentation | Tax returns or other verification of income

NO / YES

The student is NOT eligible

Household does not qualify.

The student is eligible

If all students are eligible, household qualifies.

Effect of Changes in Student Status

Student status is examined every year with the annual recertification for both the LIHTC and HOME programs. 100% LIHTC projects that are exempt from income recertification must still examine each household's student status through self-certification and any needed verification of applicable exemptions every year within 120 days before the anniversary of the household's original move-in.

LIHTC households must stay in continual compliance. Unlike income increases, student status can result in termination of tenancy for households that become student-ineligible. An LIHTC lease must address this possibility to allow for lease termination and households should be required to report changes in student status.

HOME households that contain any student that does not meet the exceptions at annual recertification must be treated as "over-income" (as we treat households over the 80% AMI limits) and the rules relating to income increases will be applied (see Chapter 7 for the rules relating to income increases at annual recertification). For those students who are not independent from their parents, parental income should be considered for income-based rent calculations.

At projects where all units are HOME, or where the units are fixed HOME, all HOME households that move in must be student-eligible at move-in. Until the household that violates the student rules moves out or meets the HOME student rules, there is temporary non-compliance, but no action is required other than charging the household rent based on income if the property is not LIHTC funded.

At a project with floating units where all units are not funded with HOME, the next non-HOME unit of similar size must be rented to a household that meets all the HOME requirements, including the student rule. The new move-in replaces the HOME unit that is in violation of the HOME student rule. The original household that does not meet the HOME student rule has now been replaced and the unit is no longer a HOME unit. The household loses the protections of the HOME program, including HOME rent, as allowed by their lease.

Students | See the earlier section for full descriptions.

Tax credits cannot be claimed for a unit that contains a household that becomes an ineligible student household. The lease should be designed so that the household is in violation of its lease to allow termination of tenancy.

Students | Violations of the LIHTC rule result in termination of tenancy. Violation of the HOME rule does not, but the household in violation is treated as "over-income" (over 80%). Floating HOME units may change the designation to make a non-LIHTC unit HOME, if available. For fixed HOME, the owner/agent will need to decide which program's non-compliance represents the greatest risk to the project.

NOTE: Households in units that are only subject to one program are only subject to the student rule for the program applicable to the unit.

Students | See the earlier section for full descriptions.

A household that contains an ineligible student after recertification will be treated as "over-income", but their tenancy is not terminated.

Verification Requirements

Application to Move-in

1. Take a completed application.
2. Determine student status and verify, as necessary.
3. **Verify income.**
4. Calculate household income.
5. Compare household income to the applicable income limits.
6. Complete a Tenant Income Certification (TIC).
7. Execute lease and other management-specific paperwork.
8. Move the household in.

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

Example

Authentic Verifications

An owner/agent uses printouts of an applicant's bank statement to verify information about the household's balance and income. The printout contains the URL, which is ***HTTPS//:(name of the bank).com*** in the footer.

An owner receives a scanned completed verification via email from an employer. The email address that the verification comes from contains the name of the verifier followed by ***@(name of the employing company).com***.

These are signs that support the authenticity of the verifications used.

Types of Verification

DCA/GHFA looks for the following methods of verification, in order of preference:

1. **Third-party verification documents that are prepared by third parties and supplied by the household (HOME rules call these "source documents").**

Earned income.

- Information obtained from Equifax's *Work Number for Everyone* service or other private or government database documentation systems. HUD refers to these as "Upfront Income Verification" (UIV) and prefers this type of verification over other options when available. The Work Number provides the two months of wage history required by HOME and is allowed for LIHTC purposes. Owners/agents are not required to pay for the Work Number, but they are encouraged to consider using the service when feasible. Not all employers work with the Work Number, so even if an owner/agent uses Work Number verification, it will not work for all applicants/tenants.

- **Employment or military pay.** A minimum of two recent and consecutive paystubs for LIHTC-only units. An owner must follow its written policy regarding the number of stubs gathered and be consistent. Two months of recent consecutive pay stubs brought in by the household is nonoptional for HOME units and UIV (such as the Work Number) or paystubs must be gathered for persons applying for or living in HOME units who have been employed for two months or more, even if verification of employment from the employer is gathered as well). The most recent pay stub (or pay period reflected on the UIV) must meet the 120-day/120-day lifespan requirement listed below. Military pay stubs are called *Leave and Earnings Statements* (LES).
- *Verification of Employment* (VOE) forms that are completed by the employer. If they will be using a VOE, the owner/agent must obtain the applicant/tenant's consent for the release of information before contacting third parties. This is of medium acceptability and is used when UIV (such as the Work Number) or pay stubs are not available. For example, this may apply to a very new job.

Unearned income such as a pension, social security, unemployment, child support/alimony, temporary disability benefits, and other "transfer" (benefit) payments, etc.

- Statements supplied by the household. The Social Security benefits award letter (dated or with an applicable effective date), Unemployment benefit letter, Temporary Disability letter, Child Support printouts, bank statements, or similar documentation. Note: Annual fixed benefit letters that cover the benefit year can be used for the entire applicable year.
- Verification forms completed by third parties, when the above are not available.

Assets.

- Bank statements, investment statements, real estate listings, mortgage deeds, or similar documentation.
- A verification form that is completed by a financial institution, when the above are not available or doesn't provide the needed information.

Student status.

See the student status section in this chapter for ways to verify student eligibility. Self-certifications of student status are not allowed for a student who attends school part-time and is the only person in a household who is not a full-time student. It is also not allowed when determining if an adult-dependent is a full-time student and thus eligible for limiting earned income to the dependent deduction annually. Student status must be verified with the school attended in these cases.

2. **Self-Certification.**
   If third-party verification of income or assets has been substantially delayed, has been attempted to no avail, or is not possible, self-certifications made under penalties of perjury may be acceptable for minor issues or matters that don't significantly affect eligibility.

   Other than every 6th year of a HOME project's affordability period. Self-certification is also acceptable for recertification for 100% LIHTC properties and HOME recertifications, except for every 6th year of the HOME affordability period.

Notes:

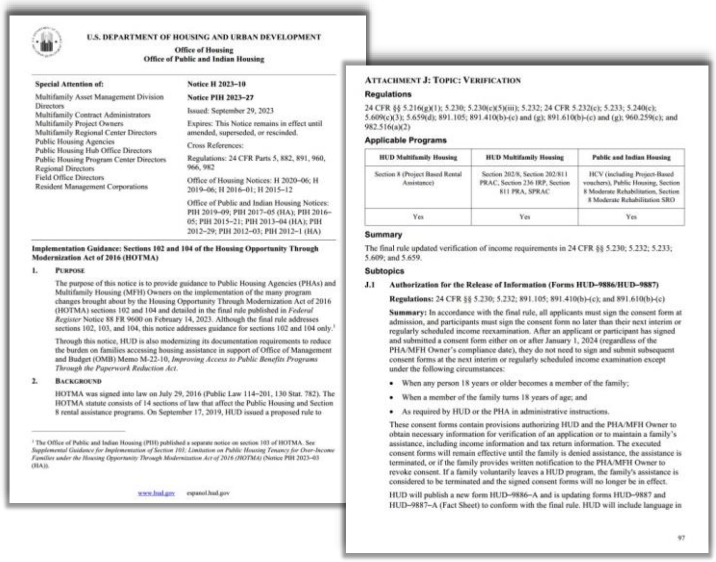
- If an applicant does not yet have enough consecutive pay stubs because they have recently started a job, the agent must thoroughly document the file explaining the situation, gather the pay stubs that do exist (if any), and also gather a VOE that provides enough information to complete the needed employment calculations.
- If a verification form is incomplete and missing key information needed to establish eligibility, an owner/agent may document a clarifying phone or email conversation with the verifier. If documenting a phone conversation, the clarification record must include the third party's name, position, and contact information, the information reported by the third party, the name of the owner/agent who conducted the telephone interview, and the date and time of the telephone call. DCA/GHFA reserves the right to contact the third party to verify the content of the clarification and needs enough information to do so.
- When verifying information over the telephone, it is important to be certain that the person on the telephone is the party they claim to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office.
- The tenant file must be documented to show failed attempts to obtain third-party written clarification before verbal clarification was used.

Fast Facts

Minimum Number of Stubs Needed to cover two months

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

Verification Help from HUD



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Housing
Office of Public and Indian Housing

Special Attention of:
Multifamily Asset Management Division Directors
Multifamily Contract Administrators
Multifamily Project Owners
Multifamily Regional Center Directors
Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

Notice H 2023–10
Notice PIH 2023–27
Issued: September 29, 2023
Expires: This Notice remains in effect until amended, superseded, or rescinded.
Cross References:
Regulations: 24 CFR Parts 5, 882, 891, 960, 966, 982
Office of Housing Notices: H 2020–06; H 2019–06; H 2016–01; H 2015–12
Office of Public and Indian Housing Notices: PIH 2019–09; PIH 2017–05 (HA); PIH 2016–05; PIH 2015–21; PIH 2013–04 (HA); PIH 2012–29; PIH 2012–03; PIH 2012–1 (HA)

Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA)

1. PURPOSE

The purpose of this notice is to provide guidance to Public Housing Agencies (PHAs) and Multifamily Housing (MFH) Owners on the implementation of the many program changes brought about by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) sections 102 and 104 and detailed in the final rule published in *Federal Register* Notice 88 FR 9600 on February 14, 2023. Although the final rule addresses sections 102, 103, and 104, this notice addresses guidance for sections 102 and 104 only.[1]

Through this notice, HUD is also modernizing its documentation requirements to reduce the burden on families accessing housing assistance in support of Office of Management and Budget (OMB) Memo M-22-10, *Improving Access to Public Benefits Programs Through the Paperwork Reduction Act*.

2. BACKGROUND

HOTMA was signed into law on July 29, 2016 (Public Law 114–201, 130 Stat. 782). The HOTMA statute consists of 14 sections of law that affect the Public Housing and Section 8 rental assistance programs. On September 17, 2019, HUD issued a proposed rule to

[1] The Office of Public and Indian Housing (PIH) published a separate notice on section 103 of HOTMA. See *Supplemental Guidance for Implementation of Section 103: Limitation on Public Housing Tenancy for Over-Income Families under the Housing Opportunity Through Modernization Act of 2016 (HOTMA)* (Notice PIH 2023–03 (HA)).

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ATTACHMENT J: TOPIC: VERIFICATION

Regulations

24 CFR §§ 5.216(g)(1); 5.230; 5.230(c)(5)(iii); 5.232; 24 CFR 5.232(c); 5.233; 5.240(c); 5.609(c)(3); 5.659(d); 891.105; 891.410(b)-(c) and (g); 891.610(b)-(c) and (g); 960.259(c); and 982.516(a)(2)

Applicable Programs

HUD Multifamily Housing	HUD Multifamily Housing	Public and Indian Housing
Section 8 (Project Based Rental Assistance)	Section 202/8, Section 202/811 PRAC, Section 236 IRP, Section 811 PRA, SPRAC	HCV (including Project-Based vouchers), Public Housing, Section 8 Moderate Rehabilitation, Section 8 Moderate Rehabilitation SRO
Yes	Yes	Yes

Summary

The final rule updated verification of income requirements in 24 CFR §§ 5.230; 5.232; 5.233; 5.609; and 5.659.

Subtopics

J.1 **Authorization for the Release of Information (Forms HUD–9886/HUD–9887)**

Regulations: 24 CFR §§ 5.230; 5.232; 891.105; 891.410(b)-(c); and 891.610(b)-(c)

Summary: In accordance with the final rule, all applicants must sign the consent form at admission, and participants must sign the consent form no later than their next interim or regularly scheduled income reexamination. After an applicant or participant has signed and submitted a consent form either on or after January 1, 2024 (regardless of the PHA/MFH Owner's compliance date), they do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a member of the family turns 18 years of age; and
- As required by HUD or the PHA in administrative instructions.

These consent forms contain provisions authorizing HUD and the PHA/MFH Owner to obtain necessary information for verification of an application or to maintain a family's assistance, including income information and tax return information. The executed consent forms will remain effective until the family is denied assistance, the assistance is terminated, or if the family provides written notification to the PHA/MFH Owner to revoke consent. If a family voluntarily leaves a HUD program, the family's assistance is considered to be terminated and the signed consent forms will no longer be in effect.

HUD will publish a new form HUD–9886–A and is updating forms HUD–9887 and HUD–9887–A (Fact Sheet) to conform with the final rule. HUD will include language in

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Guidance found in the HUD Notice H-2023-10 HOTMA *Implementation Guidance, Appendix J – Verification* can be used as best practices for LIHTC and HOME owners/agents relating to what forms of verification are allowed. When reviewing Appendix J, it is important to note that HUD has an internet-based income verification system, EIV, (Enterprise Income Verification). EIV is used to verify income information after a household moves in, such as at annual recertifications. EIV is available to HUD property staff; its use is for HUD purposes only and the income reports that EIV generates cannot be used as a basis for LIHTC or HOME income calculations. Additionally, EIV reports must not be shown to DCA/GHFA LIHTC or HOME compliance staff, or other independent auditors hired by owners/investors. HUD Forms 9887 and 9887-A, and other specific forms with assigned numbers are also HUD-specific forms. Any reference to EIV or specific forms with numbers in Appendix J does not apply to the LIHTC and HOME programs and these forms should only be used by LIHTC or HOME owners/agents if the property is also HUD-funded. Although these must be used for HUD purposes, HUD/LIHTC or HUD/HOME properties should arrange alternate verification in addition to EIV and organize files in such a way that EIV reports can be removed when DCA/GHFA is monitoring files for LIHTC or HOME compliance.

Lifespan of Verifications

LIHTC. Verifications must meet both of the following criteria for LIHTC households.

1. No older than 120 days on the date they are received.
2. Used for a certification effective within 120 days of receipt.

If verifications are more than 120 days old from the date of receipt by the owner, the owner must obtain new verifications. For paystubs, at least the most recent stub must cover a pay period that ends no more than 120 days before the effective date of the certification. If the certification effective date is more than 120 days after the date of receipt, the owner must obtain new verification. Because the life span of a verification hinges on two dates (the date of receipt and the TIC effective date), the lifespan of specific verifications will vary in each situation. However, in theory, a verification could be up to 240 days old by the effective date of a certification it is used for (if it were 120 days old when received and used for a cert effective date that was 120 days later). In this case, a clarification is required in each resident file.

If a unit is also HOME, the verification must be no more than 6 months old by the cert effective date.

HOME properties without LIHTC financing may use verifications that are up to 6 months old by the effective date of the certification.

For both LIHTC and HOME, if verifications are not date-stamped, the signature on a verification of employment, the pay date on a paystub, or another identifying date on the verification will be used to determine compliance with the LIHTC 120-day/120-day timelines. This may limit a verification's useful life. It is important to ensure that fax machines have accurate date settings, as tracking information at the top or bottom of a fax can be used to establish when it was received. Date stamps are preferable even on faxes as they provide a consistent method for identifying the date of receipt by the owner across all forms of verification.

Award letters for annual social security and other fixed-income sources are acceptable for certifications effective throughout the year the award letter covers, even if they are older than 120 days from receipt. This does not apply to SSI or other benefits which may change more often than once a year.

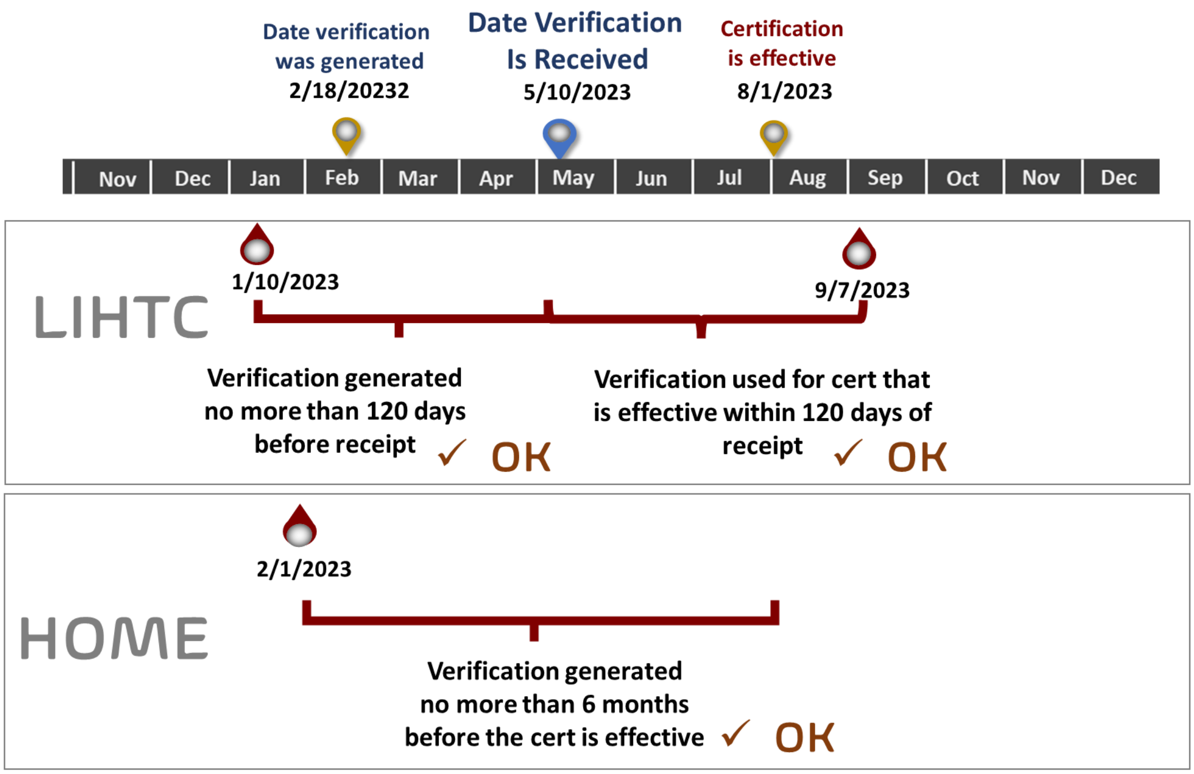
Example

Verification lifespan | 1

An owner/agent receives two months of pay stubs, the last dated two weeks before receipt. These are then used for a move-in that is four weeks after the verification is received. The most recent stub is less than 120 days old when received and used for a certification within 120 days from receipt – it is acceptable. If the unit was also HOME (or HOME-only), the pay stubs are also acceptable because the most recent is no older than 6 months old as of the effective date of the certification.

Example

Verification Lifespan | 2



Prohibition of Use of Enterprise Income Verification (EIV) Reports

HUD-financed properties (such as Sections 8 and 811 and public housing) verify some income information through the Enterprise Income Verification (EIV) system. The owner/agent has serious legal obligations regarding with whom EIV information can be shared. EIV reports are not allowed to be used for LIHTC or HOME purposes. Nor should they be viewed by DCA/GHFA personnel when conducting LIHTC or HOME reviews. If a property has both a HUD program and LIHTC or HOME, EIV reports should not be in the LIHTC/HOME portion of a tenant file or should be stored in such a way as they are removable from the file. ***Under no circumstances should EIV reports be submitted electronically to DCA/GHFA as part of LIHTC or HOME files.***

PHA Verification of Household Income

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

Owners/agents are legally prohibited from refusing to lease to a prospective LIHTC tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

Note: The 50058 only serves as verification of income. Other paperwork such as an application, student status paperwork, and a TIC must also be included in the file. Student financial assistance income is covered in the PHA verification of income. However, such verification does not address LIHTC student eligibility status. Separate student eligibility verification must still be obtained (see Chapter 5 for further information on student financial assistance as income).

HOTMA Update 2024! | **HOME.** While it is an option for LIHTC purposes, the provision to accept PHA verification of income is REQUIRED for households in HOME units that hold Housing Choice Vouchers with the PHA at move-in and recertification. The basic process for verification is the same as for the LIHTC program. It is the gross income that is used for HOME purposes, before any adjustments that the PHA may make before rent is calculated.

Owners/agents are legally prohibited from refusing to lease to a prospective HOME tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

Other Means-Tested Program Determinations of Household Income for the LIHTC

HOTMA Update 2024! | HOTMA expanded the above PHA verification rules into a bigger allowance, although ***this does not apply to HOME units***. It allows owners/agents to use income determinations from, not just PHAs, but several other means-tested programs listed below. The income determination of the program must have occurred in the last 12 months from receipt by the owner/agent. These programs determine eligibility using income limits and have their own rules to determine income. They do not have to use HUD rules to be acceptable for HUD purposes. HUD refers to this verification process as a “safe harbor.” The allowed programs are:

- Temporary Assistance for Needy Families **(TANF)**.
- Medicaid.
- The Supplemental Nutrition Assistance Program **(SNAP)**.
- The Earned Income Tax Credit **(EITC)**.
- The Low-Income Housing Credit **(LIHTC)**.
- The Special Supplemental Nutrition Program for Women, Infants, and Children **(WIC)**.
- Supplemental Security Income **(SSI)**.
- Other programs administered by the HUD.
- Other means-tested forms of Federal public assistance for which HUD has established a memorandum of understanding.
- Other Federal benefit determinations made in other forms of means-tested Federal public assistance that HUD determines to have comparable reliability and announces through the Federal Register.

Verification. If an owner/agent of an LIHTC property uses the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information using third-party verification. The third-party verification must state the family size, must be for the entire family (that is, the family members listed in the documentation must match the owner’s records of who resides in the unit), 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. Annual income includes income earned from assets, therefore when using this safe harbor to verify a household’s income, owners/agents will neither further inquire about a family’s net family assets, nor about the income earned from those assets.

The safe harbor third-party verification may be in the form of an award letter from the relevant federal program and must show that the family’s income determination was made in the previous 12 months.

The verification will be considered acceptable if the documentation meets the criteria that the income determination was made ***within the 12 months prior to the receipt of the verification*** by the owner/agent. This satisfies all verification date requirements for the safe harbor income determinations. The safe harbor documentation will be considered acceptable if any of the following dates fall into the 12 months before the receipt of the documentation by the owner/agent:

- The income determination effective date.
- The program administrator's signature date.
- The household's signature date.
- The report's effective date.
- Other report-specific dates that verify the income determination date.

The only information that owners/agents are permitted to use to determine income under this safe harbor is the total gross income determination made by the federal means-test program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters. However, these determinations and any other information must not be considered by the owner/agent for purposes of the HOTMA safe harbor provision. Owner/agents are not permitted to mix and match safe harbor income determinations and other income verifications. If using the safe harbor, the one verification covers all household income.

Note: as the safe harbor provision allows owner/agents to use other programs' income determinations, PHAs are also allowed to use the LIHTC owner/agent determination of income for their certifications using information provided by the owner/agent per the same above rules. For instance, the LIHTC TIC may be used, or a form supplied by the PHA to be completed by the owner/agent. This is because the LIHTC is explicitly on the list of allowable means-tested programs. Similarly, HOME is an 'other program administered by HUD', and HOME income determination may be used by PHAs. HUD and DCA/GHFA encourage all parties to work together to utilize the HOTMA safe harbor to minimize the number of times households must provide sensitive information, to make the certification process as efficient as possible, and to reduce property vacancy losses.

When Household Assets Do Not Exceed $50,000 [as adjusted]

HOTMA Update 2024! | When the cash value of a household's assets is $50,000, as adjusted, or less, third-party verification of assets is not required, and self-certification is allowed. The household is required to complete a certification of assets affidavit indicating that household assets do not exceed $50,000.

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

Tax-exempt bonds. This provision is specific to the tax credit and HOME programs and does not meet bond requirements. Many owners of bond properties with tax credits will simply choose not to use the asset statement for the entire property but at a minimum, they must demonstrate that the 20% or 40% of the units that are needed to meet the bond minimum set-aside include households whose assets were verified through source documentation and not self-affidavit.

HOME. This provision is acceptable for HOME move-ins. It is also acceptable for HOME recertifications on years that do not require source documentation. In other words, it can be used for recertifications every year except every sixth year of the affordability, when HOME requires full verification.

Example

Questionable Asset Certification

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

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

Electronic Documents

Per IRS guidance in Revenue Procedure 97-22 and Revenue Ruling 2004-82, DCA/GHFA permits the secure electronic storage of records instead of hard copies, as long as the electronic storage system includes reasonable controls for accuracy and reliability and maintains documents that are legible and readable. Similarly, the Agency accepts electronic signatures from tenants, owner agents, and third-party income verifiers (see Chapter 2 for a more detailed discussion of the Agency Electronic Document Policy).

LURC — LIHTC

Verifications are good | if no more than 120 days old upon receipt and used for a certification effective no more than 120 days after receipt. If 2-months of wage history are used, this standard applies to the most recent paystub in the series. Annual benefit statements for fixed income sources. Can be used for the entire applicable year.

PHA and Other Means Tested Program Verification | The PHA can verify income for voucher-holding households as a knowledgeable third party. This applies to other means-tested programs as well.
Assets | If the cash value of household assets does not exceed $50,000, as adjusted, the household may complete an Under $50,000 Asset Certification form instead of third-party verification.

LURC LURA — LIHTC & HOME

Verifications are good | if no more than 120 days old upon receipt and used for a certification effective no more than 120 days after receipt but must also be no older than 6 months after they are completed by the third party.

For the 2-month wage history required, this standard applies to the most recent paystub in the series.

PHA Verification | The PHA determination of income MUST be used as a third party for voucher-holding households at move-in and recertification while the voucher assistance is being received. For non-voucher recipients, verification from other means-tested programs may be used in LIHTC-only units.
Assets | If the cash value of household assets does not exceed $50,000, as adjusted, the household may complete an Under $50,000 Asset Certification form instead of third-party verification at initial move-in. Every 6th year of the HOME affordability period, the assets must be verified with source documents. For other years, the Under $50,000 Asset Certification may be used instead of third-party verification.

LURA — HOME

Verifications are good | 6 months after they are completed by the third party. If pay stubs, the last one must be no more than 6 months from the effective date.

PHA Verification | The PHA determination of income MUST be used as a third party for voucher-holding households at move-in and recertification while the voucher assistance is being received. For non-voucher recipients, verification from other means-tested programs may not be used.
Assets | If the cash value of household assets does not exceed $50,000, as adjusted, the household may complete an Under $50,000 Asset Certification form instead of third-party verification at initial move-in. Every 6th year of the HOME affordability period, the assets must be verified with source documents. For other years, the Under $50,000 Asset Certification may be used instead of third-party verification.

Chapter 5 | Qualified Household Determinations – Periodic and Sporadic Income

Income by Household Member Type

Application to Move-in

1. Take a completed application.
2. Determine student status and verify, as necessary.
3. Verify income.
4. **Calculate household income.**
5. Compare household income to the applicable income limits.
6. Complete a Tenant Income Certification (TIC).
7. Execute lease and other management-specific paperwork.
8. Move the household in.

For most household members all earned, unearned, and asset income is counted as income. There are a few exceptions as explained below.

Minor Dependents

All earned income from minor dependents is excluded.

All minors under age 18 are considered dependents of the household they reside in unless they are emancipated and the head of the household. Foster children are not counted as dependents, and all their income is also excluded. At times, a minor member of the household who is age 17 at the time of certification will be turning 18 during the year. These cases will need to be examined closely. If the 17-year-old has any earned income, it will need to be verified and the annual income prorated for the portion of the year that they will be an adult. If the owner/agent determines that the dependent will continue to be a dependent because they will still be a full-time student, only part of the dependent deduction of their earned income will be prorated for the remainder of the year that they are anticipated to be an adult-dependent full-time student (see adult dependent heading below for more details).

Persons under the age of 18 who enter a lease under state law ("emancipated minors") are treated as adults, and their full annual income must be counted. These people will be either the head, spouse, or co-head. If they are not leaseholders, then they will be treated as dependents, like other minors.

Persons under the age of 18 who enter into a lease under state law are treated as adults, and their full annual income must be counted. These people will be either the head, spouse, or co-head.

Fast Facts

How Income is Counted
by household member

Members	Earned Income	Unearned & Asset Income
Head, Spouse, Co-Head	YES	YES
Other Adult	YES	YES
Dependents		
- Child Under 18	NO	YES
- Adult Full-time Student (Not Head, Spouse, Co-Head)	YES (up to the dependent deduction)	YES
Temporarily Absent Member	YES	YES
Permanently in a Hospital/Nursing Home	Household Decision– Income is counted if part of the household	
Non-Members		
Live-in Attendant	NO	NO
Foster Child or Adult	NO	NO
Guest*	NO	NO

*NOTE: the term "guest" identifying a temporary resident should be defined in the lease.

Example

17-Year-old Earned Income

A 17-year-old is a junior in high school who lives with her parents. She makes $6,780 a year at her job. She will turn age 18 four months after her family moves into their apartment and is anticipated to continue to be a student for the remaining eight months of the certification year. The dependent deduction that year was $480. The owner/agent counts $480 of her earned income. Is this correct?

NO

Wages for the 4 months she is a minor dependent

$ 0

Wages for 8 months she is an adult dependent full-time student

($480 ÷ 12 x 8) $ 320

Total $ 320

Note: If the student was not anticipated to be a full-time student when she turns 18, her entire earned income would have been pro-rated for the 8 months she will be an adult.

Adult Dependents

Earned income over the dependent deduction a year is excluded for adult dependents. Adults who are not the head, co-head, or spouse and who are full-time students qualify as dependents. For example, a student attending college full-time while living with her parents will qualify to have her income limited to the dependent deduction.

Live-in Assistants

All income belonging to a live-in assistant for a person with disabilities is excluded.

Example

Dependent Income | Minor

15-year-old Thomas is a dependent of his father, who is the head of the household and a widower. Thomas makes $12,000 a year working for a local grocery store. He also receives $6,300 annual gross social security benefits from his deceased mother. He puts his earnings and benefit money into a checking account, which is anticipated to generate $20 a year in interest. He is the sole owner of the account. The dependent deduction that year was $480. The manager determines that his income contribution to the household is $480 (the first $480 of his earned income). Is this correct?

NO

Wages (earned income from a minor is not counted)

$ 0

Social Security (unearned income of a minor is counted in full)

$ 6,300

Asset Income (counted in full)

$ 20

Total $ 6,320

Example

Dependent Income | Adult Dependent

Five years later, 20-year-old Thomas is an adult full-time student and is still considered a dependent of his father because of his student status. He now makes $21,000 as an assistant manager for the grocery store. He also receives $6,801 annual Social Security gross benefits from his deceased mother. He puts his earnings and benefit money into a checking account, which is anticipated to generate $23 a year in interest. He is the sole owner of the account. The dependent deduction that year was $550. The manager determines that his income contribution to the household is $7,374. Is this correct?

YES

Wages (earned income for an adult dependent is limited to $550)

$ 550

Social Security (Unearned Income is counted in full)

$ 6,801

Asset Income (counted in full)

$ 23

Total $ 7,374

Example

Dependent Income | Spouse

Chris is the head of the household. He works a job with a total anticipated income of $32,435. His spouse, Mary, is an adult full-time student. She also works a full-time job with an anticipated annual income of $34,222. The dependent deduction that year was $480. The manager determines that the household income is $32,915 (Chris's job + $480 from the adult full-time student, Mary). Is this correct?

NO

Wages (earned income for Chris)
$ 32,435
Wages (earned income for Mary)
$ 34,222
Total $ 66,657

Note: A full-time student who is the head of the household, a spouse, or a co-head is not eligible to be counted as a dependent, so both household members must have their earned income counted in full.

Anticipated Income

Fast Facts

"Periodic" or "Sporadic" vs. "Nonrecurring"

HUD does not provide definitions for the terms periodic and sporadic, although the terms are used throughout HUD guidance. With HOTMA, both are counted as income. Only "nonrecurring" income is excluded and explicitly defined by HUD. For DCA/GHFA purposes in LIHTC and HOME properties, the following definitions will be used.

Periodic | Occurring or appearing at regular intervals, on a pre-determined schedule. Often in the same or similar amounts. Periodic income is counted in household income.

Sporadic | Occurring occasionally, irregularly, on no pre-determined schedule or amount. If it occurs more than once and has not definitely ended, it is not "nonrecurring." Gig income is often sporadic. Sporadic income is counted in household income.

Nonrecurring | Income that will end within the 12 months following a certification date and will not be repeated beyond the coming year. Nonrecurring income is excluded from household income.

Annual income, as defined by HUD, is the amount of income that is used to determine a household's eligibility for federal LIHTC and DCA/GHFA HOME Funds housing. Annual income is all amounts not specifically excluded by regulation, monetary or not, that are received by any household member and amounts anticipated to be received from sources outside the household during the 12 months following income certification. Income is anticipated based on current circumstances annualized. Verifiable changes are taken into consideration. Anticipated income does not mean the owner/agent guessing or requiring the household to guess, what might possibly happen. Per the IRS 8823 Guide, owners/agents 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 months before the determination of annual income. Future changes in income that occur that could not be anticipated as of the effective date of a certification do not call into question the validity of the certification.

Annual income is not the same as adjusted income. Annual income generally corresponds to gross income, with no adjustments (deductions) for childcare, medical expenses, dependents, etc. Adjusted income is used in some federal housing programs, such as HUD Sections 8/811 and Rural Development Section 515 to determine the level of rental benefit provided to a household. However, it is not used in the LIHTC or HOME program (see Chapter 7 for an exception where HOME units without LIHTCs that exceed 80% AMI at a HOME recertification may have rent based on adjusted income).

Fast Facts

Gross or Net Income?

Usually, annual income includes GROSS income, which is the total income before any deductions. However, there are cases where NET income is used. Below is a list of these cases. Further details on each can be found in the discussion throughout this chapter. Note: this list is not necessarily all-inclusive and other appropriate times to use net income may exist.

1. Social security is reduced by:
   - **Delayed benefits**
   - **Adjustments for prior overpayment**
   - **Court-ordered splits**
2. State or local government or private pensions are reduced by:
   - **Court-ordered splits**
3. VA benefits for Section 8 assistance recipients are reduced by:
   - **Delayed benefits**
4. Earned income for adult dependent full-time students is reduced to:
   - **A total of the dependent deduction applicable that year**
5. Adoption assistance payments are reduced to:
   - **A total of the dependent deduction applicable that year**
6. Self-employment is reduced by:
   - **Business expenses allowed by IRS rules**
7. Rental income is reduced by:
   - **Rental business expenses allowed by IRS rules.**
8. Military pay is reduced by:
   - **Hostile fire pay**
9. Income from assets (for instance, NET rental income from real estate assets).

Note: Net income is never lower than $0, even if the net amount is a loss.

"Conservative" Methodologies

According to Treasury Regulations, "tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the U.S. Housing Act of 1937." [Treas. Reg. §1.42-5(b)(1)(vii)] DCA/GHFA is aware that some LIHTC professionals and state LIHTC agencies have developed very restrictive calculation methodologies that are more stringent than the Section 8 program requires. While viewed as more "conservative," these methods are not consistent with Section 8 rules. DCA/GHFA only requires compliance with the regulation and does not add additional rules that could exclude otherwise eligible households. Some of these non-HUD methodologies include using the highest of a range of hours supplied by an employer or basing income determinations on the HIGHER of information provided by the employer and a calculation of annual income based on year-to-date information. Generally, HUD would use the average of the hours given and use anticipated information supplied by the employer. It is understood that the use of non-HUD methodologies is often required by investors/owners. While DCA/GHFA does not forbid these methodologies, it does not feel it is in the best interest of the program to exclude households that qualify based on Section 8 methodologies but do not qualify based on more conservative methods. DCA/GHFA will not find an owner/agent who uses averages in a range or other basic HUD methodology to be out of compliance if a household is qualified by the owner/agent using HUD methods, even if another method would determine the household to be over-income. As HUD nowhere requires that owners always conduct a comparative year-to-date analysis, they have never provided YTD calculation instructions. LIHTC professionals have many different calculations that they favor as "accurate", but these are opinions only without federal guidance. Of course, to satisfy Fair Housing equal treatment, any approach developed by an owner/agent must be consistently applied to each household at a property.

Example

Year-to-Date (where an owner/agent chooses to analyze YTD)

An employer anticipates on a verification of employment that an applicant will make $31,228 a year. Per the owner/agent policy, the applicant's year-to-date income annualizes to $34,345 a year. What annual income may be used?

$31,228

There are many reasons the recent past income may not reflect what is anticipated in the future, and DCA/GHFA does not require YTD analysis. If the owner chooses to examine YTD and it is crucial to eligibility (in this example because the income limit is below $34,345 but above $31,228), an owner/agent may, according to consistent company policy, determine why there is a discrepancy through further interaction with the employer.

Excluding the household automatically as over-income is strongly discouraged by DCA/GHFA.

HUD Regulation 24 CFR 5.609(b)

HOTMA Update 2024! | Annual income includes all amounts that are not specifically excluded by HUD regulation. HUD Regulation 24 CFR 5.609(b) provides a complete list of exclusions. Effective 01/01/2024, this replaced relevant portions of the HUD Handbook 4350.3, especially Exhibit 5-1. HUD Notice H-2023-10 – HOTMA Implementation Guidance provides additional guidance on how to apply HOTMA changes.

Zero, Low, or Sporadic Income

If a household's income cannot be based on current income information due to the household reporting little to zero income, or income fluctuates greatly (this is referred to as "sporadic" – not on any set schedule), income may be determined based on actual amounts received or earned within the last twelve months. This should not be used if it is verifiably inaccurate. For instance, if a person had a job with sporadic income for the last twelve months, but no longer has that job, counting the sporadic income that will not recur would be inaccurate.

Owners/agents should design a form or questionnaire for households that claim zero or very low-income. For instance, this form would need to be used any time that verified income does not cover rent and other reasonable expenses. This questionnaire will help an owner/agent to determine if the household has any countable income that the household may not have thought to reveal on other documentation. The questionnaire, for example, should ask how the household is going to pay their rent, provide a list of other specific expenses, and ask how the household will meet these. Although the design of the questionnaire is up to the owner/agent, if it is not filled out in its entirety in a way that a reasonable person would accept, the form will be considered incomplete by DCA/GHFA, and the unit considered out of compliance. The answer "rental assistance" explains how the rent will be paid, but not how other necessities are covered, and is not, therefore, a complete answer. These questionnaires often reveal that cash or non-cash contributions are being received from persons or organizations outside of the household, that they are receiving income that we do not count (like food stamps or food and toiletries from a food bank), or that the person intends to use their assets to meet their needs. Then the owner/agent will need to assess if these are counted as income or not.

If the questionnaire reveals that a household intends to use assets to pay expenses, the owner/agent will also obtain verification of the asset(s) listed.

Nonrecurring Income

HOTMA Update 2024! | Income that will end sometime in the 12 months following the effective date of the certification and will not be repeated in the following certification year, is considered nonrecurring and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker is not excluded, even though the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This does not include payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended, such as unemployment benefits. However, Workers' Compensation is always excluded, even if it lasts more than a year. If documentation from third parties is unclear, owners/agents may accept a self-certification from the family stating that the income will not be repeated in the coming year. Examples of nonrecurring income include the following (these are examples and not an exhaustive list).

- Payments from the U.S. Census Bureau for employment (relating to the decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.
- Direct Federal or State payments intended for economic stimulus or recovery.
- Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.
- Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.
- Gifts for holidays, birthdays, or other significant life events or milestones {such as wedding gifts, baby showers, anniversaries).
- Non-monetary, 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.

Example

Nonrecurring Income | Workers' Comp Year One

A household is moving into an LIHTC property on 4/01/2024. The head of the household was injured at work shortly before their move-in date and she is anticipated to receive Workers' Compensation for 18 months after move-in. How much of the benefits should be counted at move-in?

$0. Workers' Compensation is excluded from income.

Example

Nonrecurring Income | Workers' Comp Year Two

Continuing the previous example, the property is not 100% LIHTC and so households are subject to annual income recertification. Leading up to the household's 2025 income recertification, the Workers' Compensation that the head of household is still receiving will end 6 months into the certification year. How much of the benefits should be counted?

$0. Workers' Compensation is excluded from income.

Example

Nonrecurring Income | Employer Out of Business

Scott Cork lives at an LIHTC property that is less than 100% LIHTC. He worked for five months over the past year for a company that has since gone out of business. During the income recertification interview, the owner/agent asks Scott whether he expects to work for the company again in the coming year. Justin provides proof that the company went out of business. How much of this income is counted?

The owner/agent must exclude Scott's earned income received from the company that went out of business from the family's annual income.

Example

Nonrecurring Income | Sporadic Contractor

Missy Pantello works as an independent phone installation contractor during various times of the year, when her client phone companies require additional contract support. Missy reasonably believes that she will be contracted again the following year based on discussions with her clients.

The owner/agent must include the income that Missy earns as an independent contractor in the family's annual income.

Example

Nonrecurring Income | Research Stipend

Mario Gomez lives at a project that requires income recertification for all residents because it is less than 100% LIHTC. He reports for the annual reexamination to be effective 7/01/2024 that he receives monthly payments for participation in a research project that is expected to last for 18 months and will end on 12/31/2025. How will this income be handled for the 2024 and 2025 recerts?

2024 | The owner/agent includes this as income because the amounts will be received through the next annual recertification on 7/01/2025.
2025 | The income will end on 12/31/2025, so the owner/agent will exclude the income received after the 7/01/2025 recertification.

Annual Adjustment Factors

After HOTMA, several factors affecting income calculations will change annually. Most of these will be adjusted for inflation based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). This is the same factor used to determine social security COLAs. The one exception is the passbook savings rate, which will be adjusted based on an average of recent FDIC national average passbook savings rates. The factors that will affect LIHTC and HOME income calculations are listed below. This manual will refer to these factors with the amount at the outset of HOTMA, then "as adjusted." For instance, "non-necessary personal property that exceeds $50,000, as adjusted, is excluded." That means that the amount will be different depending on the year involved.

HUD intends to publish a Notice each year before September 1, to allow for factors to be in place by January 1 of the applicable year the factors will apply. Owner/agents will need to be aware of the changes to ensure that the factors are in place (most likely by updating property management software) in time to conduct accurate income determinations. Auditors reviewing past years will need to maintain an accurate list, by year, of past factors, as adjusted.

Annual Adjustment Factors

Factor	Pre-HOTMA	At start of HOTMA (2024)
Passbook savings rate	.06%	.4%
Threshold to impute asset income	$5,000	$50,000
Threshold to self-certify asset value and income	$5,000	$50,000
Threshold where non-necessary personal property is excluded.	N/A	$50,000

Annual dependent deduction
• Not used directly for LIHTC/HOME, but does set these limits:
  o Earned income for adult full-time student dependents
  o Adoption assistance payments
	$480	$480

Income Types

Periodic and Sporadic Income Includes

Earned Income

- Employment
- Self-employment
  - Including rental income – if it is the household's main source of income
- Military pay

Unearned Income

- Social Security and other benefits
- Unemployment and other payments in lieu of earnings
- Welfare/TANF
- Periodic allowances, such as alimony, child support, or cash or non-cash contributions
- Student financial assistance

This list covers most of the periodic and sporadic income types most owner agents will encounter. What if a category doesn't seem to exactly fit? Any periodic or sporadic income is counted – unless it is found on the list of income exclusions found in HUD regulations (see below).

Periodic Income Exclusions

HOTMA Update 2024! | Below is a list of income commonly found in Georgia that is not counted as part of household income. See 24 *CFR 5.609(b)* for the full list.

- Earned income of children under age 18.
- Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.
- 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.
- 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, that resulted in a member of the family becoming disabled.
- Income of a live-in aide, foster child, or foster adult.
- Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- 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).
- Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (such as special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.

- Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.
- Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in 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. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
- Earned income of dependent full-time students in excess of the annually-adjusted amount of the deduction for a dependent.
- Adoption assistance payments for a child in excess of the annually-adjusted amount of the deduction for a dependent.
- Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.
- 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.
- 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. 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.
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (such as proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).
- 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.
- Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary. Examples include:
    - The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
    - Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (including employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired

Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, and senior companions).
    - Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.
    - The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, and 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*.
    - Payments received from programs funded under Title V of the Older Americans Act of 1985 (such as Green Thumb, Senior Aides, and Older American Community Service Employment Program).
    - Any amount received under the Richard B. Russell School Lunch Act and the Child Nutrition Act of 1966, including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC).
- Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out-of-pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.
- Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. See the "Nonrecurring Income" section above for more information.
- Civil rights settlements or judgments, including settlements or judgments for back pay.
- Income earned on amounts placed in a family's Family Self Sufficiency Account.
- The amount of rental subsidy paid to the owner on behalf of a household by a Public Housing Authority or other administrator.

HOTMA Update 2024! | The below merges still-current guidance from the HUD 4350.3 Handbook with new HOTMA-based rules.

Earned Income Overview

Earned income is income that is earned through the performance of specific tasks. Specifically, HUD includes in their major categories of income the earned income categories of employment, self-employment, and military pay. The main reason that these are differentiated from unearned income is that this type of income will be completely excluded for minor dependent children) and limited to the dependent deduction annually for adult dependent full-time students (see the chart *How Household Members' Income is Counted* earlier in this chapter).

What the HUD Handbook Says About... Employment Income

Exhibit 5-1 Inclusions (1) | 4350.3 5-5 C

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

Fast Facts: Pay Periods

Pay wage cycle:	Multiply by:
Hourly	Hours per week x 52
Weekly wages	52
Bi-weekly wages	26
Semi-monthly wages	24
Monthly wages	12
Annual Salary	1

When annualizing employment income, the frequency of payment must first be determined. Once the pay period is determined, the calculations must reflect the correct number of pay periods a year to annualize the income. For temporary employment, multiply by the number of periods expected to work over the next 12 months from the date of certification. This may often be based on the previous 12-month period if no other information is available. When ranges on items such as the number of hours are provided by the employer, an average should be used. When a family member's wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, owners/agents must use the gross amount of the income, before the reduction, to determine a family's annual income.

Example

Range of Hours

An employer anticipates that a person will work 35-40 hours a week.

An average of 37.5 hours should be used in the calculation.

At times verification will indicate that a change is anticipated to the rate of pay within the next 12 months. See the example below demonstrating a calculation when such a change is expected.

Example

A change in anticipated employment income

A verification of employment form completed by an employer for a new job indicates that they anticipate giving a household member a raise 18 weeks after the household moves in and that the employee works 28-32 hours a week. The manager performs the following calculation:

Hourly rate at move-in	**$9.00 per hour**
Rate after 18 weeks	**$10.00 per hour**
Average hours worked	**30 (28 + 32 ÷ 2)**
18 weeks x 30 hours x $9.00	**$ 4,860**
34 weeks x 30 hours x $10.00	**$10,200**
Annual Income	**$15,060**

As you examine the above, please note:

Calculations must always start with the move-in date. When calculating a raise, care should be taken that the date of move-in is the starting point, not the date that the manager is calculating the income.

Check the assumptions. By looking at the assumed weeks above (18 + 34), the manager can see that the assumed total of weeks is 52, and thus correct. However, if 18 and 45 weeks were used (for a total of 53) the math results will be incorrect.

Example

Bi-weekly or semi-monthly pay

The income limit for a property is $29,000.

Cara applies to live at the property and has a job making $1,200 per semi-monthly pay period. Ken also applies. He is employed and is making $1,200 bi-weekly.

			Qualified?
Cara:	**$1,200 x 24 =**	**$ 28,800**	**YES**
Ken:	**$1,200 x 26 =**	**$ 31,200**	**NO**

Cara qualifies, but Ken does not.

Example

Seasonal Employment

To make extra income, each autumn Crystal works part-time for two months cleaning rooms at a local hunting lodge during their busy hunting season. She makes $970 a month at this. How much annual income should be counted for this job?

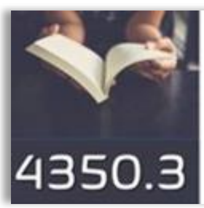
$1,940 ($970 x 2 months). As there is an established pattern of seasonal work, the anticipated annual income is limited to the two months' income likely to be earned the next year.

Example

Per Diem Reimbursement for Expenses v. "Other Compensation."

An employee who travels for their employer is fully reimbursed for the lodging costs that the employee pays for and provided a per diem payment for food costs. The hotel costs are simply an employer expense, even if paid initially by the employee because it is reimbursed dollar for dollar. The per diem, however, is "other compensation" income as the employee may or may not use the amount for work-related expenses.

Mileage-based reimbursements from an employer for the personal use of a vehicle are treated as reimbursement and not "other income."



What the HUD Handbook Says About…

Self-Employment Income

HOTMA 24 CFR 5.609(28) & Exhibit 5-1 Inclusions (2) & Exhibit 5-2 (A)(3)

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

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

HOTMA Update 2024! | Income from self-employment may be documented using last year's tax return if the business owner has filed one. Income tax returns with corresponding official tax forms and schedules attached and ***including third-party receipt of transmission*** for the income tax return filed (that is the tax preparer's transmittal receipt, summary of transmittal from an online source, etc.) are an acceptable form of written, third-party verification. Alternatively, a resident can provide information to annualize income from net income for the current year's business activity based on the number of full months in business, with the totals documented on a Schedule C (or form E or F, respectively, for net income from rental property (or a corporation), or a farm). The business owner may also use a profit & loss statement from the most recent quarter or other period.

Fast Facts

Annualizing Net Business Income Based on a Partial Year

Net Income Year-to-Date ÷
Number of Months in Business during the Current Year
x 12

Tax Forms to Establish Net Income

A small business	Schedule C
Rental property	Schedule E
Interest in a corporation	Schedule E
Farming	Schedule F

The "Gig Economy" – Internet-Based Businesses

Examples of internet-based businesses include app-based rideshare services (Uber or Lyft), app-based food delivery (DoorDash or GrubHub), or websites that provide individual jobs to people. (FreeLance.com or Fiverr.com). These types of businesses are generally considered self-employment. They are not "nonrecurring" though they may be sporadic. Printouts from the website that the person works with can provide the gross income from the business, and perhaps some information on expenses (such as mileage for ride-share services). If the person can provide additional documentation of expenses, these also may be factored in to establish net income.

Home Offices. A household may use a portion of its unit as a principal place of business and claim the associated expenses as tax deductions. Additionally, many people have had to transition to remote work from home for pandemics and other compelling reasons. Using a unit for work does not create a problem with LIHTC or HOME programs as long as the unit is the household's primary residence. Owners/agents may limit business use of units for liability or other important reasons but should be reasonable in this.

If the household is providing daycare services, the tenant must follow Georgia state law licensing rules relating to a daycare facility or homes that apply to the level of daycare they are providing.

Example

Business Income Based on a Partial Former Year

Connor owns a business that began on July 1 of the prior year. The tax return and Schedule C that he provided along with transmittal confirmation to the IRS the previous year show a total gross income for the year of $8,000, and a net income of $3,000. The business is anticipated to do similarly this year. What is the anticipated income for this year?

$6,000 ($3,000 x 2)
Net income from half of last year, multiplied by two to cover the full year.

Example

Annualized Current-Year Business Income

In October, a person applies for a unit. She has not filed taxes for her business, but she provided the agent with a Schedule C, supported by documentation of income and expenses for the year so far – from January 1 through September 30. During that time, the applicant had a net income of $21,042. What is the anticipated income?

$28,056 ($21,042 ÷ 9 x 12)

Example

Business Losses

Juan started a new business on January 1 of last year. Tax returns showed a loss of $6,336 last year. It is anticipated to do similarly this year. Juan's husband has employment income that is anticipated to total $40,000. They have no other income. What is the total anticipated household income?

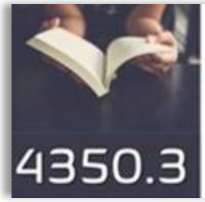
$40,000 | $0 + $40,000.
Juan's net business losses do not offset other household income.

Example

Internet-Based Service

Cammie started working for an app-based food delivery service on February 1. She is applying for an apartment the following September. She provides a printout from the food delivery service website showing that she had made $16,999 through August 31. The printout also shows mileage that, when multiplied by the current IRS business mileage rate, totals $6,345. She can provide no other evidence of expenses. What is her income from the job?

$18,264 ([$16,999 - $6,345] ÷ 7 x 12)



What the HUD Handbook Says About…
Rental Income

HOTMA 24 CFR 5.609(28)& Exhibit 5-2 (A)(3)

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

If a person owns rental property, usually the property represents an asset, with the net rental income being the asset's income (see "Real Estate" section of Chapter 6). However, if the person's main source of income is real estate, then the net income is counted as business income. It is not both an asset (with income) and business income. It is one or the other, depending on whether it is the household's primary source of income. See Chapter 6 for a discussion of how to treat real estate and rental income from it.

Example

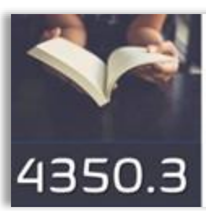
Rental Income as a Business

A household owns seven duplexes and rents these out. This is the main source of income for the household. The net income from the rental activity will be treated as income from a business, listed on the ***income*** section of the Tenant Income Certification (TIC) form, and the real estate duplexes will not be counted as assets.

Example

Rental Income as Income from Assets

An elderly couple moves out of their home to live in an apartment. Rather than sell the home, they rent it out. They have social security and retirement benefits that are their primary sources of income. The net income from the rental property will be treated as income from the asset, which will be listed in the ***assets*** section of the TIC.



What the HUD Handbook Says About…
Military Pay

HOTMA 24 CFR 5.609(11) & Exhibit 5-1 Inclusions (8) & Exclusions (7)

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

Military pay stubs are called Leave and Earnings Statements (LES). These are usually how military pay is best verified. If the person is unavailable, such as when they are out of the country on active duty in a war zone, they generally grant someone Military Power of Attorney (POA) to handle business affairs while they are away. This person can conduct transactions on behalf of the absent person, including securing housing, signing renewals, Tenant Income Certifications, and other needed affordable housing paperwork. This person can also generally secure LES documents.

Example

Military Pay

Samantha is the head of a household applying for a HOME unit but is away from the unit on active duty. Her husband has power of attorney for her and secures the last two months of Leave and Earnings Statements. Her total monthly military pay is $5,623. Among the monthly allowances listed on the LES are:

$3,550 Basic Pay
$ 225 Hostile Fire Pay (HFP)
$ 225 Imminent Danger Pay (IDP)
$1,623 Basic Allowance Housing (BAH).

What amount is counted?

$5,398 ($5,623 - $225)
The HFP is the only excluded military allowance.

Unearned Income Overview

As discussed above, earned income is handled differently for minor household members and adult dependents. In contrast, unearned income is counted for all household members except foster members and live-in assistants. Unearned income is everything that is not earned income. This includes "transfer" (benefit) payments that do not involve an exchange of goods or services.

What the HUD Handbook Says About...

Social Security & Other Benefits

HOTMA 24 CFR 5.609(16) & Exhibit 5-1 Inclusions (4) & Exclusions (13)

"The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action)." However, not counted are "deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts."

Social security payments are counted before any amount is deducted for Medicare or garnishments for past due child support or alimony.

Fast Facts

When to Count NET Social Security

- Benefits received for delayed benefits are not counted as income, whether these are paid as a lump sum or in monthly installments.
- When social security benefits are being reduced for prior overpayment, the amount after the adjustment is counted.
- If a state or local government, social security, or other private pension is split due to a divorce or court action, only the portion of the benefit that is court-ordered to be paid to the person is counted.

Example

Social Security Delayed Benefits

After appealing a denial for social security disability benefits, a person is determined to be disabled and is eligible for benefits going back to their original application for benefits. They begin to receive $1,024 a month. This includes the current $884 monthly benefits as well as the owed benefits from the past in $140 monthly installments. What income should be counted?

$884
Delayed benefits are excluded.

Example

Social Security Prior Overpayments

Because of past under-reported earned income, an SSI recipient has their SSI reduced from $575 monthly to $501. This will continue for the next two years until the prior overpayment is paid back. The owner/agent only counts the net benefit of $501 a month. Was this accurate?

Yes
The amount after the adjustment for prior overpayment is the accurate amount to count.

Example

Social Security | Verification Does Not Reflect COLA

A social security recipient is anticipated to move into an affordable housing unit on November 1, 2021. The most recent Social Security benefit letter from November 2020 that she provided during her certification process showed that she had 2021 monthly Social Security benefit income of $931. A 5.9% COLA for 2022 was announced on October 13, 2021. What is the correct annual income calculation?

Step 1: **Calculate the remaining 2021 income.**
$931 x 2 = $1,862
(Income for November and December 2021)

Step 2: **Calculate the 2022 monthly income with COLA.**
$931 x 1.059 = $985.929 (2022 monthly benefit)
(Note: multiplying a number by 1.059 is the mathematical equivalent of adding 5.9%)

Step 3: **Calculate the total 2022 income.**
$985.929 x 10 = $ 9,859.29
(Income for January-October 2022)

Step 4: **Add 2021 and 2022 benefit income.**
$1,862 + $ 9,859.29 = $11,721.29 annual benefit income

Example

Social Security | Verification Reflects Announced COLA

An SSI recipient is anticipated to move into an affordable housing unit on January 1, 2022. When his income is verified, he brings in the benefit letter that he received in October 2021 that included the 5.9% COLA for 2022. The monthly SSI benefit listed in the letter is $605. What is the correct annual income calculation?

$7,260 ($605 x 12)
No COLA calculation is necessary, as the COLA is already included in the amount on the letter.

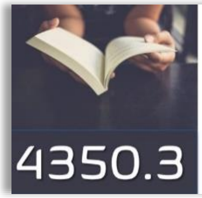
Example

Social Security | Garnished

Eric receives gross social security benefits of $1,580. His Medicare deduction at move-in was $148.50. He was also being garnished $390 for past-due child support. What is the correct annual income calculation?

$18,960 ($1,580 x 12)

The amount before the Medicare premium and garnishment.



What the HUD Handbook Says About…

Payments in Lieu of Earnings

HOTMA 24 CFR 5.609(5) & Exhibit 5-1 Inclusions (5)

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

Unemployment compensation must be annualized unless a future job is verified. It is possible that an applicant may regularly receive unemployment each year during their off-season. For example, this may be true for construction workers or teachers.

HOTMA Update 2024! | Workers' Compensation is excluded. HUD regulations consider these to be "nonrecurring" regardless of how long it will last. ***This does not apply to unemployment benefits, as these may be extended and are not "nonrecurring."***

Example

Workers' Compensation "Nonrecurring"

Halley is injured at work and is anticipated to be off work and on Workers' Compensation benefits for 18 months after she moves into affordable housing.

Workers' Comp benefits are excluded regardless of how long paid.

In cases of a verifiable job replacing unemployment, or where there is a pattern of seasonal unemployment, the unemployment can be counted for the time it is anticipated it will be received, then the employment income is counted for the rest of the certification year.

Example

Unemployment Benefits While Searching for Work

A printout from the unemployment agency indicates that unemployment benefits a person receives are to be paid for 18 more weeks at a rate of $301 per week. No future job has been secured. What annual income should be counted for the benefits?

$15,652 ($301 x 52 weeks)

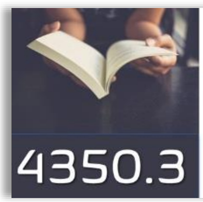
Example

Unemployment Benefits with Job Secured

A teacher works nine months during the school year and is eligible for unemployment benefits during the three summer months. He moves in at the start of summer and is receiving unemployment benefits at that time. The owner/agent verifies that he is anticipated to start back to work when the school year begins. The owner/agent has heard that you should always count the maximum possible income and counts the job as if the teacher will receive it all year and annualizes his weekly unemployment for 52 weeks. Is this correct?

No

As a pattern of three months of annual unemployment has been established along with the seasonable employment, unemployment payments should only be anticipated for the three summer months and employment for the other nine. Although perhaps well-intentioned, the owner/agent may be denying housing to a household that qualifies if the rules are applied accurately.



What the HUD Handbook Says About…

Welfare Assistance

Exhibit 5-1 Inclusions (6)

a) Count "welfare assistance received by the family.

b) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- *The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus*
- *The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage."*

NOTE: At the time of the writing of this manual, it does not appear that any Georgia areas have welfare that is adjusted by the actual cost of shelter and utilities.

Example

Welfare

A welfare verification shows Melissa's TANF benefit of $330 a month and food stamps of $445 monthly. What is Melissa's total annual income from welfare?

$ 3,960 ($ 330 TANF x 12)
The food stamp benefits are not counted.

What the HUD Handbook Says About…

Alimony/Child Support & Gift Income

HOTMA 24 CFR 5.609(24) & Exhibit 5-1 Inclusions (7)

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

HOTMA Update 2024! | Alimony and child support that are ***received*** are income. Court-ordered amounts that are not received are no longer counted, regardless of whether the amounts are being pursued. This is a change effective 01/01/2024 with HOTMA guidance from HUD. This means that a court order is only useful as third-party verification if the full amount is being received. If amounts received vary from month to month, then an average of the amounts that are actually received is counted.

Fast Facts

Alimony & Child Support Treated the Same

An owner/agent should ensure that they ask about alimony exactly as they do child support. It has been observed that many owners ask many details about child support, but not about alimony. This could well be discriminatory against families with children and illegal under the Fair Housing Act.

Example

Alimony

Karl has a court order to receive alimony of $520 a month. His ex-wife has not paid, and Karl has made no efforts to pursue collection of the arrears. How much monthly alimony must be counted?

$ 0
Even though no efforts to pursue collection have occurred, only amounts received are counted as income.

Example

Child Support | Full Amount Not Received

Polly has a court-ordered right to receive child support of $993 a month. Her ex-husband has paid sporadic amounts most months. A printout from the enforcement agency shows the following payments. What annual child support should be counted?

Jan:	**$ 910**
Feb:	**$ 447**
Mar:	**$ 670**
Apr	**$ 0**
May:	**$ 993**
Jun:	**$ 100**
July	**$ 100**
Total	**$ 3,220**

$5,520 ($3,220 ÷ 7 x 12)

Example

Child Support in Excess of Court Order

Cliff has a court-ordered right to receive child support of $920 a month. His ex-wife is catching up on arrears and is paying $1,200 a month. How much annual child support must be counted?

$14,400
Full amounts received are counted.

Income includes regular contributions to the household received from persons or organizations outside the household. This includes amounts paid for bills that would normally be considered household expenses.

Fast Facts

Excluded Gift Income

All periodic cash and non-cash contributions to the household from friends, relatives, or organizations outside the household are counted as income except:

- Groceries that are given to the household (NOT the money to buy groceries, which IS counted).
- Childcare that is paid directly to the care provider for children in the household.
- Amounts received in reimbursement of medical expenses.
- Nonmonetary in-kind contributions such as food and toiletries from a food bank or similar organization.

Example

Gift Income

Chandler and his daughter apply for a unit and report on their application that they have zero income as Chandler is not employed and has no unemployment or other benefits. Upon completing the owner/agent's questionnaire, however, cash and non-cash contributions are revealed and verified with relatives who are providing the contributions. Chandler's aunt, who does not live in the unit, gives him $200 a week in cash that Chandler uses to buy groceries and anticipates that she will also buy about $20 a month for diapers for Chandler's daughter. Chandler's grandmother, who also does not live in the unit, anticipates paying Chandler's utilities of $140 a month. She also writes a check to Chandler's daycare provider for $680 a month. Finally, Chandler estimates that he will get about $190 a month in food and toiletries from a local food bank. How much of the contributions from Chandler's family should be counted as income to him?

$12,320

[Money for groceries of $200 x 52 = $10,400] + [Diapers for $20 x 12 = $240] + [Utility payments of $140 x 12 = $1,680].

Childcare paid directly to the provider and noncash contributions from the food bank are excluded. Money given to the household, even if they buy groceries with it, is counted because the household has discretion over how cash is used.

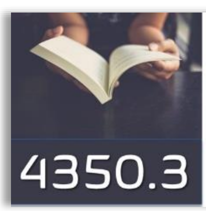
Example

Use of Vehicle

Although Guy's father doesn't live with him, Guy uses his father's car every day to get to work. The title of the car is in the father's name. His father also makes the car payments, and he is responsible for maintenance. Should the use of the car be considered a regular non-cash contribution to the household?

No

This is not counted unless the tenant has exclusive use of the vehicle or the vehicle is in the tenant's name.



What the HUD Handbook Says About...

Student Financial Assistance

HOTMA 24 CFR 5.609 (9) & Exhibit 5-1 Inclusions (8) & Exclusions (6)

For Section 8 programs while certain appropriations language is in place "…any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children.

For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income. (Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)"

HOTMA Update 2024! | Before HOTMA, for households not receiving Section 8 assistance, any scholarships or grants were excluded as income while assistance income was counted for Section 8 recipients. HOTMA introduced a new way to calculate student assistance income. Eventually, it is expected that all households will apply the HOTMA student assistance rules. However, language in HUD annual appropriations bills for recent years present a different rule for Section 8 recipients. Until the appropriations language changes, HUD has opted to continue to follow the former student assistance rules for households receiving Section 8 assistance (project-based or Housing Choice Vouchers). The new HOTMA student assistance rules apply to every other household.

If and when the involved appropriations language is removed from HUD funding bills, all households will follow the new HOTMA rule. Owners/agents should watch for this development when it is announced by HUD. The primary differences between the Section 8 and HOTMA student assistance approaches are how the Higher Education Act of 1965 (HEA) assistance and money from private sources (such as parents and grandparents) are counted. Under HOTMA, HEA assistance is not counted as income, and money from private sources is gift income, not student assistance.

Student Assistance for Section 8 Recipients (while certain HUD annual Appropriations Act language exists).

As stated above, student financial assistance for Section 8-assisted households includes:

1. Pell Grants and other programs funded by the Higher Education Act of 1965
2. Assistance from private sources (such as parents or grandparents)
3. Assistance from an institute of higher learning (such as scholarships or other cash assistance)

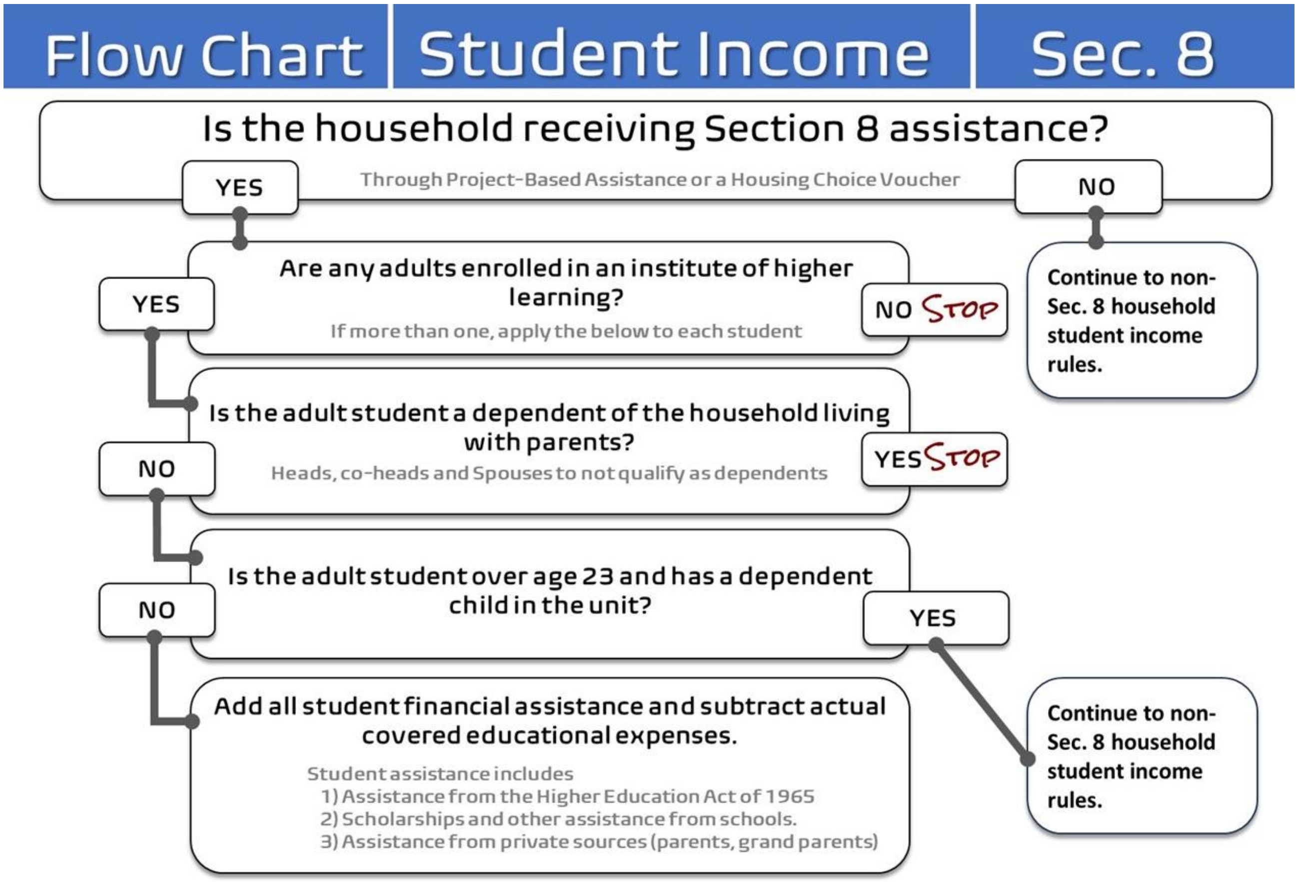
Generally, for LIHTC and HOME households, student financial assistance is counted per the HOTMA student assistance rules. However, there is an exception for LIHTC households (with or without HOME) that receive Section 8 rental assistance while the HUD Appropriations Act language is in place.

If the household is in an LIHTC unit (with or without HOME) and is receiving Section 8 rental assistance (through a Section 8 Housing Choice Voucher or project-based Section 8), income is counted differently. This makes it an important compliance matter to ask a household in an LIHTC unit if they are receiving or anticipate receiving Section 8 assistance.

For Section 8 recipients, student assistance received by any student (full- or part-time) who attends an institute of higher learning, must be counted; EXCEPT:

- Students who are over the age of 23 and have a dependent child.
- Students who are dependents of the household.

All amounts of student assistance more than total student actual covered costs are counted as income. Student loans are not considered student assistance and are never counted as income. Total student actual covered costs include all the costs a student must pay to attend school, such as tuition and other fees, room and board, course books, etc. These are the same as actual covered costs in the non-Section 8-assisted HOTMA student assistance rule.



Note: this will not apply for any year that HUD appropriations bills remove this approach. Once the language is removed, the HOTMA Non-Section 8 approach will apply to all households (see below).

HOME-Only. *HOTMA Update 2024!* | For HOME units (with or without LIHTC funding), the same student financial assistance rules apply as the LIHTC.

LURC

LIHTC

Student assistance |

For Section 8-recipient households with project-based Section 8 or a Housing Choice Voucher, student assistance in excess of tuition is counted.

For Non-Section 8-recipient households, HOTMA student rules apply.

LURC LURA

LIHTC & HOME

Student assistance |

For Section 8-recipient households with project-based Section 8 or a Housing Choice Voucher, student assistance in excess of tuition is counted.

For Non-Section 8-recipient households, HOTMA student rules apply.

LURA

HOME

Student assistance |

For Section 8-recipient households with project-based Section 8 or a Housing Choice Voucher, student assistance in excess of tuition is counted.

For Non-Section 8-recipient households, HOTMA student rules apply.

Example

Student Financial Assistance Section 8 Recipient | Counted

Wayne is 21 years old and lives in an LIHTC unit with his dependent son Bruce. They have rent assistance through a Section 8 Housing Choice Voucher. Wayne goes to school part-time. His tuition is $5,500 a year and required lab fees are $1,000 annually. He has no other student covered costs Wayne's grandparents pay $10,000 a year toward his tuition and other school expenses. What student financial assistance will be counted?

Student assistance	**$ 10,000**
Tuition	**$ 6,500**
Total	**$ 3,500**

Wayne is not over age 23. Even with a dependent in his household, he must also meet the age requirement. He does not meet an exception and must have some of his student assistance counted. If he had met the exception, the HOTMA non-Section 8 student assistance rule would have been applied.

Student Financial Assistance for Non-Section 8 Recipients [HOTMA]

Assistance from section 479B of the Higher Education Act of 1965 (HEA) is excluded from a family's income. Note that assistance from the HEA may be partially counted as student assistance for Section 8 assistance recipients while certain HUD appropriations language exists (see above).

Below is a list of HEA Title IV programs. There may be additional sub-programs:

Grants to Students in Attendance at Institutions of Higher Education

- Federal Pell Grants
- Federal early outreach and student services programs
  - Federal TRIO Programs
  - Gaining Early Awareness and Readiness for Undergraduate Programs
  - Model Program Community Partnership and Counseling Grants
  - National Student Savings Demonstration Program
- Federal supplemental educational opportunity grants
- Leveraging Educational Assistance Partnership program
- Special programs for students whose families are engaged in migrant and seasonal farmwork
- Robert C. Byrd Honors Scholarship Program
- Childcare access means parents in school
- Teach grants
- Scholarships for veteran's dependents

Federal Family Education Loan Programs

Federal Work-Study Programs

William D. Ford Federal Direct Loan Program

Federal Perkins Loans

Higher Education Relief Opportunities for Students

Note that the following is added effective July 1, 2024

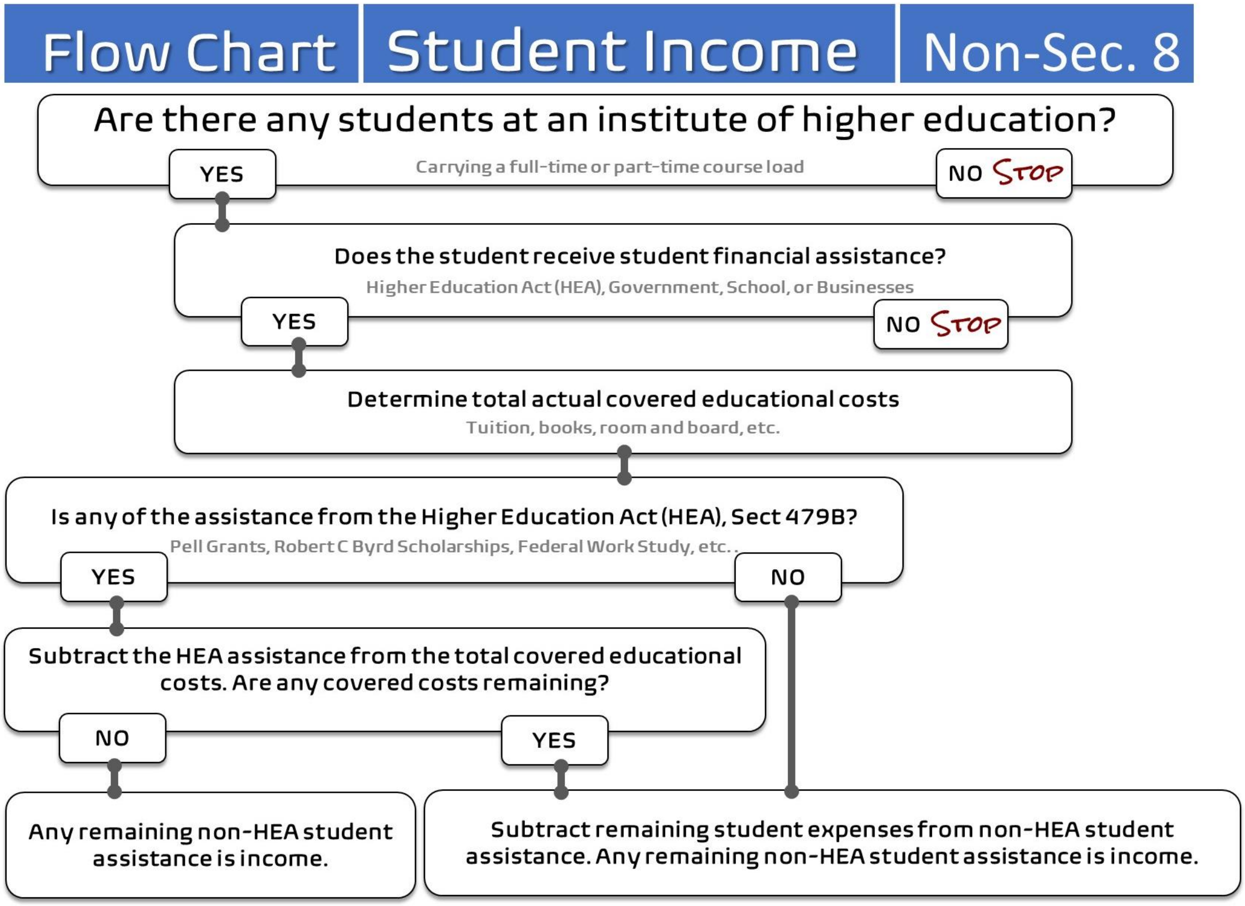
Section 134 of the Workforce Innovation and Opportunity Act (WIOA).

- This includes income earned in employment and training programs including workforce investment activities for adults and workers dislocated as a result of permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster that results in mass job dislocation, to assist such adults or workers in obtaining reemployment as soon as possible.

Other non-HEA student assistance for purposes of the HOTMA student assistance rule may come from the Federal government, a State, Tribe, or local government, a private nonprofit foundation, a business, or an institution of higher education. It may be paid directly to the student or the educational institution on the student's behalf. Student financial assistance paid to the student must be verified with the entity responsible for the assistance. ***Student assistance does NOT include*** financial support provided to the student in the form of a fee for services performed (such as any work-study or teaching fellowship that is not from the HEA of 1965) which is counted as income. It also does not include gifts, including gifts from private sources such as family or friends. ***Note that assistance from private sources is counted as student assistance for Section 8 assistance recipients while certain HUD appropriations language exists (see above).***

Non-HEA student assistance is excluded to the extent that it covers 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 an institution of higher education. It is counted as income if it exceeds these costs.

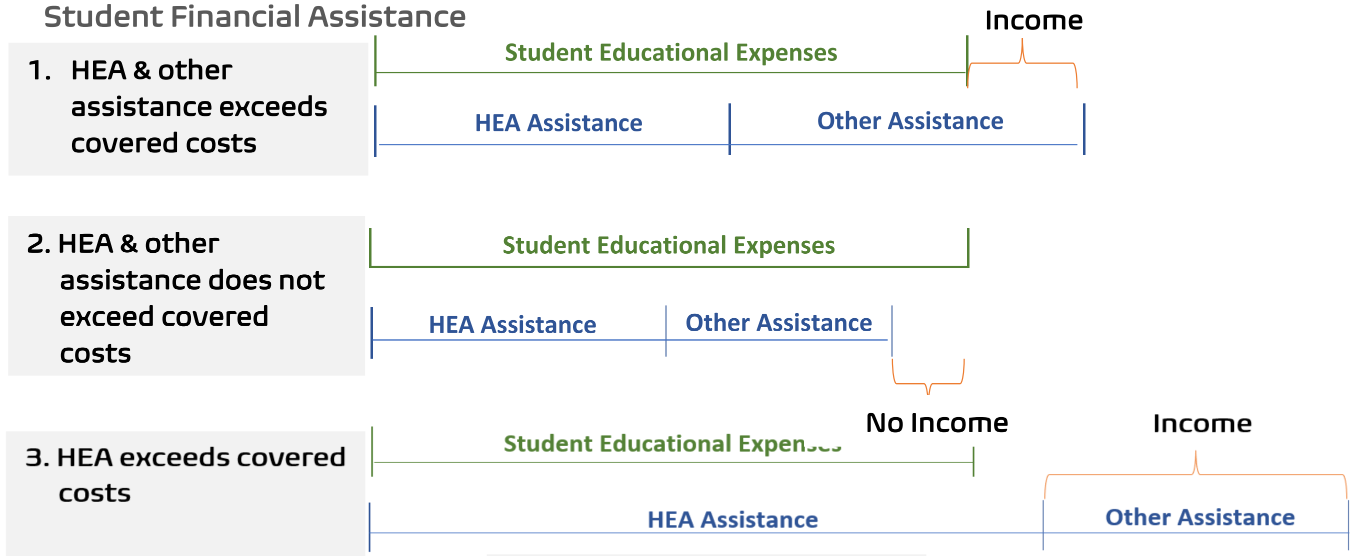
Important note: although HEA assistance is not counted as income, it is subtracted to covered student expenses FIRST to determine if any remaining assistance exceeds the remainder of the covered costs. If there is an excess, the remaining student assistance is income.



Note: this will not apply to Section 8 assistance recipients for any year that HUD appropriations bills dictate this. Once the language is removed, the HOTMA Non-Section 8 approach will apply to all households.

Charts

Student Financial Assistance



NOTE | HEA assistance is never income

Example

Student Assistance | Section 8 vs. Non-Section 8 Households

A household pays for school in the following ways.

A Pell Grant	**$ 10,000**
A scholarship from a local business	**$ 6,000**
Parents outside the household **Paid in semester installments**	**$ 20,000**
Total covered education costs	**$29,000.**

Section 8-assisted household income is $ 7,000

- **The student costs minus all three types of income leaves $7,000.**

Non-Sec 8 household income is $ 0 student assistance & $20,000 gift income.

- **Student costs exceed assistance, but the gift income is counted.**

Example

Student Assistance | HEA Assistance Exceeds Expenses

A non-Section 8 assisted household has the following assistance.

A Pell Grant	**$12,000**
A scholarship from a local business	**$ 6,000**
Covered education costs	**$10,500**

$6,000 of the scholarship is counted as income.
As the HEA Pell assistance covers the entire covered costs, the entire scholarship is income.

Example

Student Assistance | Expenses Exceed HEA Assistance

A non-Section 8-assisted household has these forms of student financial assistance.

A Pell Grant	**$12,000**
A scholarship from a local business	**$ 6,000**
Covered education costs	**$15,000.**

$3,000 of the scholarship is counted as income.

- **The HEA Pell assistance and $3,000 of the scholarship cover the expenses. The remaining $3,000 is income.**

Chapter 6 | Qualified Household Determinations – Asset Income

Assets | Overview

The value of assets owned by a household is not crucial to eligibility and there is no limit on the assets a household may own for the LIHTC or HOME programs. This is a contrast to HUD Section 8 and public housing programs that may limit assets and real property after HOTMA took effect. The factor that is important to the qualification process is the income that is generated from the assets. This income is added to total household income and thus may affect household income eligibility.

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

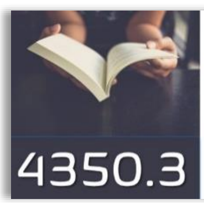
HUD Regulation 24 CFR 5.603 definition "Net Family Assets"

HOTMA Update 2024! | Assets include all amounts that are not specifically excluded by HUD regulation. HUD Regulation 24 CFR 5.603 definitions of "Net Family Assets" provides a complete list of exclusions. Effective 01/01/2024, this replaced the HUD Handbook 4350.3 Exhibit 5-2.

Fast Facts

Asset Definitions

- **Assets |** Items of value that may be turned into cash.
- **Market value |** The money a person would likely pay to acquire the asset.
- **Cash value |** The market value less the costs to convert the asset to cash.



What the HUD Handbook Says About…

Assets That are Excluded

24 CFR 5.603 "Net Family Assets"

HOTMA Update 2024! | Net family assets DO NOT include the following.

IMPORTANT: Effective 01/01/2024, former exclusion lists are obsolete. Any income that the below assets receive is counted unless the income is specifically excluded by 24 CFR 5.609(b). The below notes clarify when income is not counted from these assets.

1. *The value of necessary items of personal property.*
2. *The combined value of all non-necessary items of personal property if the combined total value does not exceed $50,000 (adjusted for inflation based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)). Note | These assets are assigned a $0 value, but any income is counted for each.*

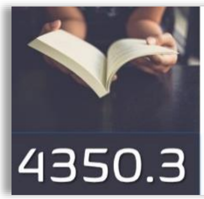
3. *The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals. Note | These retirement accounts are never counted as assets. However, once periodic withdrawals are made, these withdrawals are income. This was true prior to HOTMA.*
4. *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. Note | An example would be property that is subject to a lawsuit and not sellable by a household during the pending action.*
5. *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, that resulted in a family member being a person with a disability.*
6. *The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any ''baby bond'' account created, authorized, or funded by Federal, State, or local government. Notes | Income from these account types are also specifically excluded. According to HUD, baby bonds are "money held in trust by the government for children until they are adults." These "are being authorized in various States and localities in an effort to combat the wealth gap and address systemic poverty."*
7. *Interests in Indian trust land.*
8. *Equity in a manufactured home where the family receives assistance under 24 CFR part 982.*
9. *Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982. Note | Exclusions 8 & 9 relate to Housing Choice Vouchers that assist manufactured and other homeowners.*
10. *Family Self-Sufficiency (FSS) Accounts. Note | Income earned by FSS accounts are specifically excluded. FSS is a program that enables HUD-assisted families in public housing to increase their earned income and reduce dependency on welfare assistance and rental subsidies. Goals are set that a family must work toward to graduate from the program. An interest-bearing FSS escrow account is established by the PHA for each participating family. Any increases in the family's rent as a result of increased earned income during the family's participation in the program result in a credit to the family's escrow account. Once a family graduates from the program, they may access the escrow and use it for any purpose.*
11. *Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family. Note | HUD instructs owners/agents to subtract the value of any tax return that a household has received in the last 12 months from the total net assets. This applies if the total net assets exceed $50,000, as adjusted. Alternatively, the amount subtracted from the net assets may decrease the value of total net assets to below $50,000 and may result in allowing self-certification of assets and eliminate the need to impute asset income.*

Types of Assets

HOTMA Update 2024! | There are three types of assets under HOTMA rules. These are each treated as listed below.

Asset Type	How Counted
1. Necessary personal property	Excluded as assets
2. Non-necessary personal property	1. **If total $50,000 or less |** Values excluded, income is included. 2. **If total exceeds $50,000 |** Values and income are included.
3. Real property	Included as assets and income included.

Specific Asset Types



What the HUD Handbook Says About…
Personal Property

HOTMA 24 CFR 24 CFR 5.603 "Net Family Assets"(1)&(2) & Exhibit 5-2 (A)(8)

HOTMA Update 2024! | Formerly, personal property was only counted as an asset if it was being "held as an investment." This included gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry was not considered an asset. With HOTMA rules, all assets are either personal property or real property. Only "necessary" personal property is excluded.

Necessary vs. Non-necessary Personal Property

Necessary personal property are 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. Necessary personal property includes 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. Necessary personal property also includes 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. *Necessary personal property does not include bank accounts, other financial investments, or luxury items.*

Items of personal property that do not qualify as necessary personal property will be classified as non-necessary personal property. Determining what is a necessary item of personal property is a highly fact-specific determination, and therefore an owner/agent must gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

The following table lists examples of necessary and non-necessary personal property based on HUD guidance. This is not an exhaustive list.

Necessary Personal Property **Excluded as Assets**	Non-Necessary Personal Property • **If the total of all is over $50,000** Include in assets and income is counted. • **If the total of all is $50,000 or less** Exclude values from assets, but income is counted.
• Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (such as a bike, motorcycle, skateboard, or scooter) • Furniture, carpets, linens, kitchenware • Common appliances • Common electronics (such as a radio, television, DVD player, gaming system) • Clothing • Personal effects that are not luxury items (such as toys, and books) • Wedding and engagement rings • Jewelry used in religious/cultural celebrations and ceremonies • Religious and cultural items • Medical equipment and supplies • Healthcare–related supplies • Musical instruments used by the family • Personal computers, phones, tablets, and related equipment • Professional tools of the 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 (such as a treadmill, stationary bike, kayak, paddleboard, ski equipment)	• Recreational cars/vehicles not needed for day-to-day transportation (such as campers, motorhomes, travel trailers, all-terrain vehicles (ATVs)) • Bank accounts or other financial investments (such as checking accounts, savings accounts, stocks/ bonds) • Recreational boat/watercraft • Expensive jewelry without religious or cultural value, or which does not hold family significance • Collectibles (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.

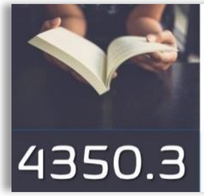
Quiz | Personal Property

True or False

If a person has inherited an antique automobile valued at $100,000 or more, it is automatically considered personal property held as an investment.

False

In the case of a vehicle, it is crucial to determine if the car is used to commute to work or school and for other daily purposes, which would make it "necessary personal property." No value automatically makes an owner/agent consider personal property to be "non-necessary." The holder's use is the determining factor.



What the HUD Handbook Says About...
Cash, Checking & Savings

Exhibit 5-2 (A)(1)

"Cash held in savings and checking accounts, safe deposit boxes, homes, etc." For savings and checking accounts, the current balance is used. "Assets held in foreign countries are considered assets."

HOTMA Update 2024! **|** Generally, the value of an asset is determined using the current balance the day it is verified. Starting on 01/01/2024, this includes checking accounts. Before this, checking used a 6-month average.

If statements are used to verify checking or savings, one recent statement must be gathered.

Debit Cards. Many benefits (such as social security, SSI, unemployment, or welfare) are paid to recipients on a "Direct Debit Express" or similar debit card. For accounts of this type, this debit card is the only evidence that the asset exists. The balance on the debit card is an asset and it is verified like a savings account using the current balance. Documents such as ATM slips showing the balance, a management-created certification completed after calling the online account service, or paper statements from the applicant can be used. Note that original ATM slips on thermal paper will fade very quickly and should be photocopied to preserve the information.

Example

Checking and Savings

A family has a checking account that has a 6-month average balance of $3,200 and a current balance of $50. They also have a savings account that has a 6-month average of $720 and a current balance of $23. If these are the household's only assets, what is the total value of the accounts?

$ 0
The checking current balance of $50
+ the savings current balance of $23
Because total non-necessary personal property does not exceed $50,000 (as adjusted), each piece of non-necessary personal property is assigned a $0 value. Any actual income will be counted for each.

Fast Facts

Internet or App-Based Assets

Cash apps and **digital wallets** that hold balances are also assets. Examples of these internet-based accounts include *Venmo, PayPal, GoFundMe, Cash App, ApplePay, Samsung Pay, Google Wallet,* and *Google Pay*. Individual stores, such as *Wal-Mart* and *Starbucks* may also have cash-holding apps.

Apps that simply facilitate the transfer of funds from one account to another and do not themselves hold any money are not assets. An example of a transfer app is *Zelle*.

Example

Internet Fund Account

A family has a GoFundMe account set up on their behalf for a one-time medical emergency that they have access to. The fund raised $23,257.47. Their type of GoFundMe takes 2.9%, or $674.47, as a service fee. What is the value of the account?

$ 22,583 ($ 23,257.47- $ 674.47)

Note: If this fund is closed, contributions by other people are nonrecurring income and are not counted. However, if they open the account to more contributions, the income is no longer "nonrecurring" and the contributions are counted as income. The balance continues to be an asset.

ABLE Accounts. The Achieving Better Life Experience (ABLE) Act was signed into law on December 19, 2014. ABLE allows States to establish and maintain a program under which contributions may be made to a tax-advantaged ABLE savings account to provide for the qualified disability expenses of the designated beneficiary of the account.

The ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under federal income-based housing programs. In Notice HUD-H-2019-06, HUD instructed that the entire value of the individual's ABLE account is excluded from the household's assets. This means that interest on the ABLE account balance will not be counted as income. HUD also clarified that distributions from the ABLE account are also not considered income. However, all wage income received is included as income, even the part that is deposited into the ABLE account.

HUD also has determined that If someone other than the designated beneficiary contributes directly to the ABLE account, that contribution will not be counted as income to the beneficiary. This could include the employer, a relative, or other interested party. Any person can contribute to someone's ABLE account.

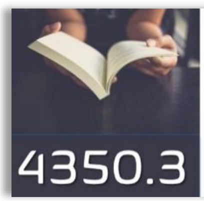
Example

ABLE Account

Fred lives alone, is employed, and owns an ABLE account. He receives $26,789 in wages annually from his employer. From his wages, Fred chooses to deposit $100 a month to the ABLE account ($1,200 annually). In addition to wages, the employer also contributes $100 a month directly into the account. Fred's mother contributes $100 in cash to Fred's household and his father puts $100 a month directly into the ABLE account ($1,200 annually from each parent). Fred withdraws about $235 a month from the ABLE account to meet disability-related needs ($2,820 annually).

Of these amounts, which are counted as income to Fred? Is the ABLE account an asset? Are the withdrawals from the account counted as income?

Income includes wages of $26,789 and gift income of $1,200 from his mother. Note: The full wage income is counted, even though Fred chooses to deposit some of it into his ABLE account.
The ABLE Account is not an asset.
Direct contributions totaling $2,400 to the account from his employer and father are not income.
The periodic withdrawals of $2,820 from the account are also not income.



What the HUD Handbook Says About…

Trust accounts

HOTMA 24 CFR 5.609(2) & Exhibit 5-2 (A)(2)

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

A trust is an account in which a trustee holds funds for a specific purpose. If an applicant or tenant has set up a trust, it will generally be either "revocable" or "irrevocable."

HOTMA Update 2024! | Before HOTMA, different types of trusts were handled differently. Special needs trusts, for instance, were handled differently than other trusts. With HOTMA, all trust accounts are handled in the same manner. The first question to ask is if the trust is in control of the family. In other words, the household could cash in or change the revocable trust (meaning that it can be cashed or changed). The next question is whether the household is receiving any distributions from the trust.

When a trust is in the control of a household. If so, it is an asset to the household, and income is counted as the trust generates it. Distributions/withdrawals from the trust in the household's control are not counted as income.

When a trust is NOT in the control of a household. If so, it is NOT an asset to the household. Distributions received from the trust are income except for the following two exclusions:

1. Distributions from the principle or corpus of the trust.
2. Distributions that are made to pay for the health and medical expenses of a minor child.

Fast Facts
Trust Terms

When reading trust documents, the following terms will be useful in establishing how to value and count income for the trust:

Creator/Grantor The original owner of the assets that were put into the trust.

Beneficiary The person that the trust is set up to benefit.

Revocable A trust that can be cashed in or have the terms changed. The opposite is a non-revocable or irrevocable trust, which cannot be changed and are not accessible to any household. A revocable trust ***in the control*** of a household is considered assets to the household. An owner/agent must verify the cash value and any income the trust is earning via statements or other third-party verification.

Nonrevocable When the creator of a nonrevocable (or irrevocable) trust establishes the trust, it is no longer accessible to them. It is also not accessible to the beneficiary. It is not a current asset to any party, but may produce distributions that are income to the creator or the beneficiary.

Disposed Trust If the trust was created within two years before an income certification for a beneficiary outside the creator's household, the creator disposed of the assets in the trust, so a disposed of asset value will be assigned, and income may be calculated if imputing asset income applies to the disposed trust. See the sections below in this chapter on assets disposed of and imputing asset income for further details.
If the applicant is receiving something in return for the trust (such as a funeral trust, where the applicant will receive funeral benefits), this would not be considered a disposed of asset

Flow Chart | Trusts

Secure the Trust Agreement and Determine

1. Is it an asset? Who (if anyone) is in control of the trust balance?
Is the Trust Revocable or Nonrevocable?

REVOCABLE

Is the Tenant the...

- **GRANTOR** — The trust is asset to the creator.
- **BENEFICIARY** — Likely not an asset if the grantor is alive. After death, trust terms will govern.

NONREVOCABLE

Is the Tenant the...

- **GRANTOR** — Not a current asset, but it may be a disposed of asset.
- **BENEFICIARY** — May or may not be an asset to the beneficiary if the grantor is alive. After death, trust terms will govern.

2. Does the trust provide periodic distributions? If so, who receives them?
Can be the grantor or the beneficiary.

- **If a household has control of the asset,** income from the asset is counted as it is earned by the trust.
- **If a household has no control of the asset,** any disbursements are income to the recipient(s) except:
    1. Distributions from the principle or corpus of the trust.
    2. Distributions used to pay for the health and medical expenses for a minor child.

Example

Trust | The Applicant/Tenant is the Trust Beneficiary

Gaston is 19 and applies for a unit. He lists a trust as an asset on his application. The owner/agent secures the trust documentation. Gaston is the beneficiary of the trust, which was created by his grandparents. It is worth $579,000. According to the terms of the trust, he will not have access to any balance of the trust until he reaches age 30. He does receive $550 a month from the income generated by the trust until age 30. What are the asset value and annual income that must be counted for this trust to Gaston?

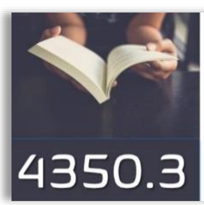
$0 and $6,600 ($550 x 12)
As he has no access to the account, it is not an asset.
The monthly payments from the trust income are counted.

Example

Trust | The Applicant/Tenant is the Trust Creator

Shallon and Leonora are Gaston's (from above) grandparents, and they apply for a unit. They also list the trust as an asset on their application. The owner/agent secures the trust documentation. They created the trust 18 months before the anticipated move-in date. The trust is irrevocable and is worth $579,000. They retained no access to any balance and are not getting any periodic amounts from the trust. What is the asset value that must be counted for Shallon and Leonora?

$579,000
The amount put into an inaccessible trust is counted as a disposed-of asset for 24 months, which continues 6 months after move-in. Income will be pro-rated and imputed at the current passbook savings rate for 6 months after move-in (see the header on disposed of assets, below).



What the HUD Handbook Says About...
Real Estate

Exhibit 5-2 (A)(3)

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

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

See also Chapter 5, under the header *Rental Income* for examples of when rental income is treated as income from a business and when it is treated as income from assets.

Determining Real Estate Value & Income

Value	Annual Income
Fair Market Value	Annual rental payments
- Outstanding mortgage principal	- Annual mortgage interest payments
- Cost to sell	- Other allowed expenses*
Cash Value	**Annual Net Income**

*Taxes, insurance, maintenance (or other tax form Schedule E costs)

Real Estate Verification

More than other assets, often several types of documents are needed to verify the value and income from real estate. Some of these documents, and what they may help establish are listed below.

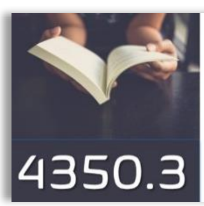
- **Asset verification forms** completed by a real estate professional who provides all the necessary information. It is often difficult to find a broker who will complete this paperwork. So other options are most often needed.
- **Tax returns** establish net income from the rental property.
- **Seller's agreements** establish market and cash values if the property is currently for sale.
- **Tax assessment statements** establish the assessed value of the property.
  - Market value = assessed value ÷ the assessment ratio percentage
- **Mortgage statements** show the principal mortgage balance to establish cash value and interest paid on the mortgage to use if offsetting rental income from the property.

Example

Calculating Market Value from an Assessment Statement

An applicant provides an assessment statement for their real estate that shows an assessed value of $66,880. The owner/agent calls the local assessor's office and discovers that the assessment ratio is 19% and documents this conversation. What is the market value?

$ 352,000 ($ 66,880 ÷ 19%)



What the HUD Handbook Says About...

Seller-Financed Mortgages

Exhibit 5-2 (A)(10)

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

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

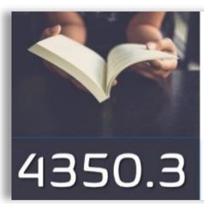
Example

Contract for Deed

A household sells its home and farm to a buyer on a contract for deed. When they move into an affordable housing unit, the principal balance of the mortgage is $62,010. The combined payment of principal and interest expected to be received for the year after move-in is $6,504. The amortization schedule totals those payments into $2,789 in principal and $3,715 in interest.

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

1) $ 3,715
The anticipated interest payments.
2) $ 59,221
($ 62,010 – $ 2,789 principal payment)



What the HUD Handbook Says About…
Stocks & Mutual Funds

Exhibit 5-2 (A)(4)

"<u>Stocks…mutual funds</u>. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets varies from one day to another. The value of the asset may go up or down the day before or after [income] is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received."

HOTMA Update 2024! | Increases and decreases in value for accounts that have values based on the market (such as stocks or mutual funds) are NOT income. Interest or dividends are income if stocks are paying these. If no dividends are being paid, the stocks or mutual funds will have $0 income and will not be subject to imputed asset income. If *dividends are paid, but the amount is unknown, then asset income will be imputed on the asset.*

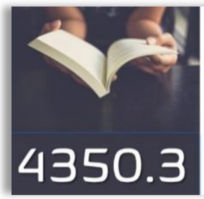
Example

Mutual Funds

A resident owns 822 shares of a mutual fund. The fund value is $5.50 per share and the dividend paid is $.50 semi-annually. What is the:

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

a) $4,521 | 822 shares x $5.50.
b) $ 822 | 822 shares x $.50 x 2.



What the HUD Handbook Says About…

Bonds, T-bills, CDs, & Money Market Accounts

Exhibit 5-2 (A)(4)

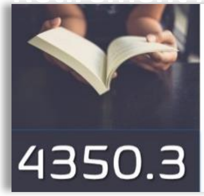
"Bonds, treasury bills, certificates of deposit…and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets varies from one day to another. The value of the asset may go up or down the day before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

Example

Certificate of Deposit

A certificate of deposit has a market value of $1,450. The penalty for early withdrawal is $145, resulting in a cash value of $1,305. The interest rate is 1.5%. What is the anticipated annual income on the CD?

$ 21.75
The market value of $1,450 x 1.5%.



What the HUD Handbook Says About...
Retirement Accounts

HOTMA 24 CFR 5.605 Net Family Assets (3)(iii) & 4350.3 5-6 (P)

HOTMA Update 2024! | Accounts recognized as retirement accounts by the IRS are no longer counted as assets at any point. Periodic distributions or withdrawals, once the person starts taking them, are income.

This includes any Required Minimum Distribution (RMD) that a person is required to take upon reaching a certain age.

Types of retirement accounts recognized by the IRS according to IRS.gov:

- 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
- Multiple Employer Plans

Example

Retirement Account | Periodic Withdrawals

A 401(k) account that a retired person has full access to has a balance of $420,000. The resident is withdrawing $425 monthly from the account.

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

1) No. 401(k)s are never assets.
As periodic withdrawals are being made, these are income.
2) $ 5,100
$ 425 monthly withdrawals x 12 months. This is listed on the periodic income portion of the TIC, not the asset section.

Example

Retirement Account | RMD

An IRA account that a retired person has full access to has a balance of $62,345. The resident has reached an age where they must withdraw a required minimum distribution (RMD) of $2,619 annually from the account.

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

1) No. IRA accounts are never assets.
As periodic withdrawals are being made in the form of the RMD, these are income.
2) $ 2,619
This is listed on the income portion of the TIC, not the asset section.

Example

Retirement Accounts | without Access

Marilyn is working for an employer that provides a retirement fund. It is valued at $16,180. It is verified that Marilyn will not be able to collect the money until she retires in many years. What is the asset value?

$0
Retirement accounts are never considered assets.

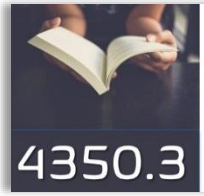
Example

Retirement Account | No Periodic Withdrawals

An IRA that a retired person has full access to has a balance of $41,244. The resident is not making periodic withdrawals, but the IRA verification lists an interest rate of .75%.

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

1) No:
IRAs are never considered assets.
2) $ 0
Only periodic withdrawals are income from retirement accounts.



What the HUD Handbook Says About...
Whole/Universal Life Accounts

Exhibit 5-2 (A)(7)

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

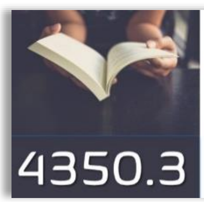
Example

Life Insurance

Frank has two life insurance policies. The first policy is universal life. It has a death benefit of $800,000. Its cash value is $16,800 with an interest rate of 1.75%. The other is term life, with a death benefit of $250,000. What is the income that will be counted for these life insurance policies?

$294

For the universal life policy, the income is the value of $16,800 x 1.75%.
The term life insurance is not counted.



What the HUD Handbook Says About...
Lump-Sum One-Time Receipts

HOTMA 24 CFR 5.609(b)(24)(vii) & Exhibit 5-2 (A)(9)

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

Usually, the amounts are spent or put into accounts that are verified and counted as assets. Care should be taken to ensure that the amount is not double counted.

Example

Lump-sum one-time receipt

A month before moving in, Emily gets a one-time insurance settlement for $54,000. She pays off medical bills and the remainder of the money is put into a CD. Then, the balance of the CD is verified by the owner/agent to be $36,766. Without any other information on household assets, what is the total value of these assets?

$36,766

Jointly Held Assets

Assets owned by more than one person and where one or more of the persons do not live in the unit should be prorated according to the percentage of ownership by household members if this can be documented. HUD suggests that establishing the persons who contributed to the asset, who receives any interest, and who pay any taxes on the interest are possible evidence as to who owns the asset. If no percentage is specified or provided by state or local law or exact ownership is not otherwise determinable, assume that the asset belongs to the household in full.

Example

Jointly Held Assets | 1

Marcus and his spouse John jointly own a piece of real estate with a value of $63,000. Marcus applies to live at an affordable housing property. During the application process, the manager determines that John is permanently confined to a nursing home and that Marcus has decided not to include John as part of the household. The land cannot be sold without John's permission. What amount should the manager count for the real estate?

$31,500

Two people jointly own this asset. Only one member is counted in the household, therefore, only 50% of the asset value is counted.

Example

Jointly Held Assets | 2

Candace moves into a unit. The manager notices that her three children are named along with Candace on a Certificate of Deposit, which has a cash value of $98,000. Upon investigation, it is determined that the children are on the CD solely for survivorship reasons. Candace funded the CD, received the 1099-INT form from the bank showing the interest, and will pay any taxes. The manager decides to prorate the asset among the account holders and count $24,500 to Candace. Was that correct?

No

All evidence is that Candace is the account owner. Being on an account for survivorship reasons or as a payee does not make a person an owner of the account.

Example

Jointly Held Assets | 3

Margo inherited a piece of land and farm buildings worth $ 1,001,000 along with her 6 siblings. The manager documents that it cannot be sold except with the consensus of all the siblings. The manager decides to prorate the asset among the siblings and count $143,000 to Margo. Was that correct?

Yes

Margo truly only owns 1/7th of the real estate.

Special Asset Rule | Disposed-of Assets

HUD would generally discourage people from giving away their assets to qualify for affordable housing units. If a household member gives away assets for substantially less than they were worth, HUD rules require that the portion of the asset that was given away still be included as a household asset for two years from the time the asset was given away or sold. This rule applies when the difference between the market value and the amount received is more than $1,000.

The disposed of asset value is the cash value of the asset, less the amounts received.

Fast Facts

Disposed Assets Do NOT Include

Assets lost to foreclosure, bankruptcy, divorce, or separation settlements are not counted as disposed of assets. Assets put into an irrevocable trust for another member of the same household are also not counted as disposed. Neither are assets that are simply used to buy goods or services that are not counted as assets.

Example

Internet Fund Account

In the earlier example in this chapter under *Cash, Checking, and Savings*, a family had a GoFundMe account set up on their behalf that they have access to. The fund raised $23,257.45, which was counted at move-in. At their first recertification, it was determined that during the year they used $19,455 to pay medical bills and the remainder of the money paid for a vacation. What is the value of the account?

$0

The household paid bills or otherwise spent the cash balance. They did not deliberately sell or give away the asset for less than fair market value.

Special Asset Rule | Imputed Asset Income

HOTMA Update 2024! | Residents in affordable housing with a substantial amount of assets may have some assets that cannot have income calculated. A piece of real property that is not being rented, for instance, does not have income that can otherwise be assigned.

If the total **cash** value of a household's assets exceeds $50,000, imputed income must be calculated for assets that cannot otherwise have income calculated using the current HUD passbook rate. This rate is based on the recent average FDIC passbook interest rate for the country. This amount will change annually. Imputed asset income is no longer done on total household assets, but rather just on individual assets. The imputed asset income is then added to the income for assets that can be determined to calculate total income from assets. An annual HUD Multi-family Notice issued before September 1 will establish the current passbook rate for the following year.

Steps to Address Assets:

Step 1 | Collect a list of assets from the household.

Step 2 | Identify assets as necessary personal property, non-necessary personal property, and real property.

Step 3 | Exclude any necessary personal property.

Step 4 | Determine the total value of non-necessary personal property.

- If the total value of all non-necessary personal property is $50,000 or less, assign a $0 value to each piece of non-necessary personal property, but assign income to the asset.
- If the total value of all non-necessary personal property exceeds $50,000, assign the full value and income to each piece of non-necessary personal property.

Step 5 | Add non-necessary personal property to any real property. If the total value exceeds $50,000, impute asset income for any assets that cannot otherwise have income determined. Fully verify all assets, and subtract any tax return or refundable tax credit the household received in the past 12 months.

Example

Household Asset Income 1

A household discloses the following assets.

Asset	Market Value	Cash Value	Annual Income
Cars for daily commutes	$ 34,000	$ 34,000	$ 0
Checking (no interest rate)	$ 120	$ 120	$ 0
Certificate of Deposit	$ 5,320	$ 3,912	$ 113
Mutual Fund (no dividend)	$ 1,212	$ 998	$ 0
Real Estate (leased out)	$ 400,009	$ 20,234	$ 1,799
TOTAL	**$ 440,661**	**$ 59,264**	**$ 1,912**

What income is counted for these assets? The applicable passbook savings rate was .4%

$1,912

Step 1 | All of the assets are disclosed, as listed above.

Step 2 | The cars are necessary personal property. The rest (except for the real property) are non-necessary personal property.

Step 3 | The cars are removed.

Step 4 | Non-necessary personal property totals $5,030
[$120 checking + $3,912 CD + $998 mutual fund]
Non-necessary does not exceed $50,000, so values are excluded, but any income ($113 here) is counted.

Step 5 | Cash value of net assets total $20,234 (see below).
Total net assets do not exceed $50,000, so no assets have asset income imputed and added to other income.

Asset	Market Value	Cash Value	Annual Income
Checking (no interest rate)	$ 0	$ 0	$ 0
Certificate of Deposit	$ 0	$ 0	$ 113
Mutual Fund	$ 0	$ 0	$ 0
Real Estate	$ 400,009	$ 20,234	$ 1,799
TOTAL	**$ 400,009**	**$ 20,234**	**$ 1,912**

Example

Household Asset Income 2

A household has the following assets.

Asset	Market Value	Cash Value	Annual Income
Checking (no interest)	$ 620	$ 620	$ 0
Real Estate	$ 290,123	($ 4,000) *	$ 0
TOTAL	**$ 290,743**	**$ 620**	**$ 0**

* The mortgage balance on the property exceeds the market value by $4,000.

The applicable passbook savings rate was .4%. What income from assets will be used?

$0

Since the cash value of assets does not exceed $50,000, actual income will be used.

Step 1 | All of the assets are disclosed, as listed above.

Step 2 | No necessary personal property is listed.

Step 3 | N/A.

Step 4 | Non-necessary personal property totals $620 [$620 checking]

Non-necessary assets do not exceed $50,000, so values are excluded, but any income is counted. In this case, there is no income.

Step 5 | Cash value of net assets total $0 (see below).

Total net assets do not exceed $50,000, so no assets have asset income imputed.

Asset	Market Value	Cash Value	Annual Income
Checking (no interest)	$ 0	$ 0	$ 0
Real Estate	$ 290,123	($ 4,000)	$ 0
TOTAL	**$ 290,123**	**$ 0**	**$ 0**

Example

Tax Return and Assets

A household has a checking account with a current balance of $900 and a certificate of deposit worth $52,367. The checking account has 0% interest and the CD has 1%. Eleven months before the household had a tax return of $3,100.

What is the [1] value of net family assets and [2] the income from assets? [3] Is imputing asset income necessary?

[1] $50,167. [$53,267 – tax return of $3,100].

[2] $523.67 [$52,367 x 1%]

[3] No. While total net assets exceed $50,000, an actual income can be calculated on both assets and imputing is not necessary.

Example Household Asset Income 3

A household discloses the following assets.

Asset	Market Value	Cash Value	Annual Income
Car for daily commutes	$ 22,000	$ 22,000	$ 0
Checking (no interest rate)	$ 240	$ 240	$ 0
Bonds	$ 1,230	$ 1,230	$ 48
Real Estate (not leased out)	$ 601,567	$ 601,567	$ 0
TOTAL	**$ 625,037**	**$ 625,037**	**$ 48**

What income is counted for these assets? The applicable passbook savings rate was .4%

$2,454.27

Step 1 | All of the assets are disclosed, as listed above.

Step 2 | The car is necessary personal property. The rest (except for the real property) are non-necessary personal property.

Step 3 | The car is removed.

Step 4 | Non-necessary personal property totals $1,470

[$240 checking + $1,230 CD]

Non-necessary does not exceed $50,000, so values are excluded, but any income ($48 here) is counted.

Step 5 | Cash value of net assets total $601,567 (see below).

Total net assets exceed $50,000, so assets that cannot otherwise have income calculated have asset income imputed and added to other income.

Asset	Market Value	Cash Value	Annual Income
Checking (no interest rate)	$ 0	$ 0	$ 0.00
Bonds	$ 0	$ 0	$ 48.00
Real Estate (not leased out)	$601,567	$601,567	$ 2,406.27 (imputed income)
TOTAL	**$ 601,567**	**$601,567**	**$2,454.27**

Example

Imputing Income with Disposed Asset

Reed and Sue moved into a unit on 08/01/2024. They had given a home to their son Franklin on 01/01/2023. The home's cash value was $210,000.

a) The owner/agent must count the value of the home as if they still own it until when?

b) Assuming a HUD Passbook Rate of .4%, what is the amount of imputed income that should be included for the disposed of asset on their move-in certification?

a) 01/01/2025.

b) $ 350.00

$ 210,000 x .4% (.004) = $840 ÷ 12 x 5.

As the 24-month period ended during the first certification year, the imputed income was prorated for the five months (Aug-Dec) until the asset was no longer counted. Note: because the one asset alone has a net value that exceeds $50,000, asset income will be imputed for all assets that cannot otherwise have income calculated because total net household assets exceed $50,000.

Example

Charitable Donations

Wanda moved into a unit on 01/01/2024. She had made a charitable donation to a cancer foundation totaling $340,000 on 06/01/2023.

a) The value of the disposed of cash must be counted until when?

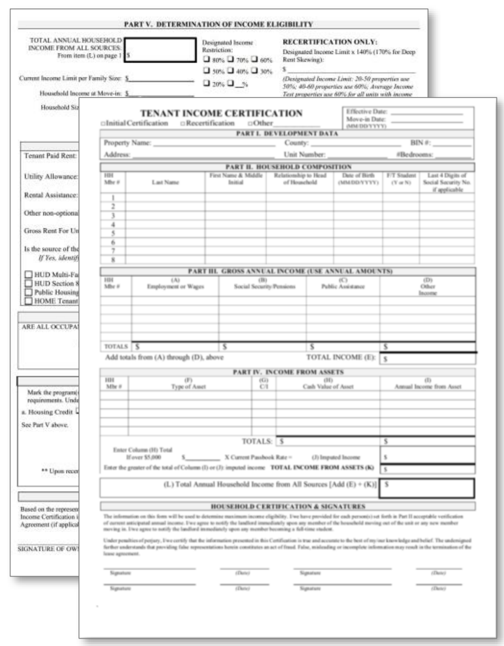
b) Assuming a HUD Passbook Rate of .4%, what is the amount of imputed income that was included on their move-in certification?

a) 06/01/2025.
b) $1,360
$ 340,000 x .4% (.004)

The Tenant Income Certification (TIC) Form

Application to Move-in

1. Take a completed application.
2. Determine student status and verify, as necessary.
3. Verify income.
4. Calculate household income.
5. **Compare household income to the applicable income limits.**
6. **Complete a Tenant Income Certification (TIC).**
7. **Execute lease and other management-specific paperwork.**
8. **Move the household in.**



The Tenant Income Certification is a form that captures data collected in the certification process and analyses these compared to the LIHTC and HOME qualification standards. A recommended TIC is available on the DCA/GHFA website. If this TIC is not used, all the same data must be present on the TIC used. Data captured on the form includes a listing of household members, total periodic income and asset numbers, and student status. It also provides an analysis of the income and rent limits. The use of this TIC form is required to ensure the consistency necessary for accurate monitoring of LIHTC/HOME properties. The form is a legal document that, when fully executed, qualifies the applicant to live in a LIHTC and/or HOME unit. It is not to be used as a rental application.

After all income and asset information has been verified and computed, management personnel must prepare the TIC. It must be signed and dated by all household members over age 18 (and by any household members under age 18 who are treated as adults because they are the head of household, co-head, or spouse) and by the owner or owner's agent at the initial move-in and upon annual recertification. The effective date of the initial certification should be the move-in date. For projects receiving their credit allocation due to acquisition and/or rehabilitation and where there are existing households, the effective date of the first LIHTC certification for those existing households cannot be earlier than the acquisition date. DCA/GHFA recommends that the initial TIC be signed no earlier than 5 days before the effective date and no later than the effective date. Annual recertification must be effective on or before the anniversary of the initial certification.

A TIC that is unsigned, undated, or completed late - either after the date the household occupied the unit or after the anniversary date of the initial certification, will cause the unit to be considered out of compliance until a proper and complete certification or recertification is performed. The IRS and DCA/GHFA consider late certifications and recertification to demonstrate a lack of owner/agent due diligence. To avoid issues of noncompliance and exposure to loss of tax credits, DCA/GHFA strongly advises owners/agents to certify and recertify on a timely basis.

If a tenant over the age of 18 is unable to sign the forms on time, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Note: Supporting documentation (application/questionnaires, income and asset verifications, student certifications, etc.) is considered part of the Tenant Income Certification as a whole and must be included in the file supporting the information on the TIC.

Management should instruct the prospective tenant(s) to sign the TIC exactly as the name appears on the form. The tenant's legal name should be given and used just as it will appear on the lease. A unit does not qualify for tax credits unless the household is certified and under a lease.

Rural Development and HUD properties. The TIC for RD housing programs is form 3560-8. This form satisfies the requirements of an LIHTC or HOME TIC and can be used as such for RD/LIHTC or RD/HOME properties. Similarly, the HUD 50059 for HUD multifamily and the 50058 for Public and Indian Housing programs can serve as an LIHTC TIC for those properties.

File Organization

To maintain compliance, owners/agents must have well-organized files and workspaces. Consistent and neat files also go a long way to ensure that file audits go smoothly. Certain documents such as the rental application, student status documentation, income, and asset verifications, the TIC, race and ethnicity declaration, the lease, and any addendum(s) are crucial for establishing compliance and must remain with the household file for the duration of their tenancy at the property.

Anatomy of Good Household Files

1. **Initial certifications and new move-in files.** The following should be found in all initial certification and new move-in files. Owner/agent may use their own forms as long as they, at minimum, meet the standards established in this manual, HUD, and IRS guidance. The owner/agent may also require their own documents in addition to these. No white-out should be used. Single cross-out lines should be used to show corrections, and these should be initialed and dated.
   - ❑ A complete rental application/compliance questionnaire (time & date stamped when received).
   - ❑ Demographic (race and ethnicity) data self-certifications. Appropriate Fields on the TIC must be populated. NOTE: Applicant has the right to decline or not disclose.
   - ❑ A Tenant Income Certification (TIC).
   - ❑ Student status self-certifications for LIHTC and HOME, as applicable.
     - If needed for student households (LIHTC) or potentially ineligible individual students (HOME): verification of meeting a student status exception.
   - ❑ Certain self-certifications, either separate or part of the application, when applicable.
     - Gift income (cash and noncash contributions), zero income, child support, alimony.
   - ❑ Worksheet for income & expenses or calculation tapes demonstrating annual income calculations.
   - ❑ PHA verification of income (required for HOME households with Housing Choice Vouchers).

     OR
   - ❑ Verification of income/assets prepared by third parties, such as:
     - Employment, commission, tips, unemployment, child support, alimony, TANF, food stamps, pensions, workman's comp, veterans' benefits, social security, SSI, SSDI, self-employment, etc.…

     AND
   - ❑ Certification of assets less than $50,000, as adjusted, if total cash value does not exceed $50,000.

     OR
   - ❑ Verification of assets if the total cash value exceeds $50,000, as adjusted.
   - ❑ Clarifying notes.
   - ❑ Lease and any applicable addendums.
   - ❑ Unit inspection documentation.
   - ❑ Release of Information consents for each household member aged 18 and older.
   - ❑ EPA's Lead Hazard Information Pamphlet and Disclosure form for buildings built before 1978 (or acknowledgment of receipt of the pamphlet).
2. **Annual recertification files**

   For LIHTC-only units at 100% LIHTC properties and HOME units every year except every sixth year of the HOME affordability period.
   - ❑ Student questions and verifications, as necessary to establish eligible LIHTC and HOME student status. [This and the receipt of the VAWA forms (below) are all that are needed for 100% LIHTC properties].
   - ❑ Receipt of annual VAWA forms.
   - ❑ **HOME only** | Self-certification of household income.

     OR
   - ❑ HOME-PHA verification of income (required of HOME households with Housing Choice Vouchers).
   - ❑ HOME-Adjusted Income Letter for units (if applicable)

- ❑ HOME-Adjusted Income Worksheet, Adjusted Rent Letter, and NAU form for over-income units listed on Rent-Roll (if applicable)

For LIHTC-only units at less than 100% LIHTC properties and for HOME units every 6th year of the HOME affordability period. The following should be found in all recertification files. Owner/agent may use their own forms as long as they, at minimum, meet the standards established in this manual, HUD, and IRS guidance. The owner/agent may also require their own documents in addition to these.

- ❑ A complete recertification compliance questionnaire (time & date stamped when received).
- ❑ A Tenant Income Certification (TIC).
- ❑ Student status self-certifications for LIHTC and HOME, as applicable.
  - If needed for student households (LIHTC) or potentially ineligible individual students (HOME): verification of meeting a student status exception.
- ❑ Certain self-certifications, either separate or part of the questionnaire, when applicable.
  - Gift income (cash and noncash contributions), zero income, child support, alimony.
- ❑ Worksheet for income & expenses or calculation tapes demonstrating annual income calculations.
- ❑ PHA verification of income (required for HOME households with Housing Choice Vouchers).

  OR
- ❑ Verification of income/assets prepared by third parties, such as:
  - Employment, commission, tips, unemployment, child support, alimony, TANF, food stamps, pensions, workman's comp, veterans' benefits, social security, SSI, SSDI, self-employment, etc...

  AND
- ❑ LIHTC Certification of assets less than $50,000, as adjusted, if total cash value does not exceed $50,000 (for LIHTC)

  OR
- ❑ Verification of assets if the total cash value exceeds $50,000, as adjusted, for LIHTC and all HOME units during every 6th year of the HOME affordability period.
- ❑ Clarifying notes.
- ❑ Any lease updates and applicable addendums.
- ❑ Unit inspection documentation.
- ❑ Release of Information consents for each household member aged 18 and older.

3. **Project information.** The following documentation is not in household files but must be on hand for any file review or at the Agency's request at any time.
   - ❑ *Utility allowances and how the UA totals were determined.
   - ❑ *Income limits. Documentation of limits used (LIHTC/HOME, as applicable).
   - ❑ *Rent limits. Documentation of limits used (LIHTC/HOME, as applicable).

Chapter 7 | Recertifications and Increases of Income

Recertification Cycles

100% LIHTC. For projects that are completely LIHTC, each unit must be recertified annually using a Self-Certification form. These projects are exempted from income recertification based on the tax code and no recertification waiver is necessary. Although by law income certification is not required annually, student status must still be examined every year. The TIC must be signed and dated no more than 120 days before the move-in anniversary date.

The recertification exemption applies only to the LIHTC program for tax credit purposes. Units funded by certain other programs, such as HOME, Rural Development, Section 8, etc., have income recertification requirements that must be separately met for those units. DCA/GHFA does allow owners of HUD properties rehabbed with LIHTCs the option to do one LIHTC self-certification on the HUD effective date following the initial acquisition certification and allow that as the annual effective date from then on.

Less than 100% LIHTC. For projects that have any non-LIHTC (market) units, each unit must be fully recertified annually using source documentation. Student status must also be annually examined, and any student exemption a full-time student household meets must be documented. The student certification must be signed and dated no more than 120 days before the move-in anniversary date. DCA/GHFA does allow owners of HUD properties rehabbed with LIHTCs the option to do one LIHTC full certification on the HUD effective date following the initial acquisition certification and allow that as the annual effective date from then on.

See Chapter 8 for an example of adjusted HUD/LIHTC certification effective dates at an acquisition/rehab project.

HOTMA Update 2024! | **HOME.** Households in HOME units must be recertified annually, once every calendar year. Full source documentation must be used at move-in, and then every sixth year of the HOME affordability period. If a household in a HOME unit also receives assistance from a Housing Choice Voucher, the income determination of the PHA must be used. For recertifications that are due in years other than every sixth year, self-certification, or verification of income from a PHA for voucher holders is acceptable. The six-year cycle applies to the affordability period, not the tenant residency. The affordability period starts on a specific date as defined in the HOME regulations and documented in the IDIS system.

Owners/agents are allowed to fully certify each year using full source documents, but the cost to the property and disruption of households should be weighed seriously when making this decision. Federal HOME rules and DCA/GHFA are concerned with cost management at HOME properties and the intended time and staff savings built into federal recert program rules are significant. These benefits are especially available for HOME-only or HOME with LIHTC projects that are 100% LIHTC and not subject to any LIHTC income recertifications. Mixed-income LIHTC projects with market units are subject to annual income recertification and HOME units will be recertified at the same time.

A household may indicate that they are now over the 80% income limit during one of the years that self-certification is allowed at recert. If this is true at a HOME-only property and rent based on adjusted income must be calculated, the owner should switch to source documents to ensure accurate calculations. A household receiving assistance from a Housing Choice Voucher will already be paying rent based on 30% of adjusted income and no additional calculation by the owner/agent will be necessary.

Example

Every Sixth-Year HOME Recert Cycle

Damian moves in on the 4th year of a HOME property's affordability period. He is fully source document certified, as all move-ins are. The next year, Jon moves in and is fully certified. As this is the 5th year of the affordability period, Damian provides self-certification for his recertification. The following year is the 6th year of the affordability period and all recerts that year are fully certified, including Damian and Jon. The next year, both Damian and Jon are eligible for self-certification and will be for the following ***years until the 12th year of the affordability period, when all recerts will again be fully certified***.

Year of HOME Affordability Period	**Person |** Type of cert	**Full Cert**	**Self-Cert**
4	**Damian |** Move-in	✗	
5	**Damian** | Recert		✗
	Jon | Move-in	✗	
6	**Damian |** Recert	✗	
	Jon | Recert	✗	
7	**Damian** | Recert		✗
	Jon | Recert		✗

The recertification process should begin 120 days before the anniversary date of the original move-in. Recertifications that are done or effective after the anniversary date cause a noncompliance event. However, if an owner sends timely notice(s) informing a tenant that annual recertification is due, but the household vacates the unit after the anniversary date, the unit will not be considered out of compliance. Owners must document the file regarding attempts to complete the recertification by the due date and when the tenant moves out of the unit. This must also be disclosed on the TIC. Similarly, if an owner takes action to remove a noncompliant household by initiating an eviction action the unit will not be considered out of compliance. If the household does not vacate the unit because the court does not support the eviction, a recertification will be required within 120 days of the court determination.

Changes in Household Size

Generally, an owner/agent must follow state law and their own policy concerning tenant leases when adding or removing household members. This section will cover the compliance-related steps to take (at a minimum) as described by the IRS. Other funding programs may require additional steps, such as complete recertification of all household members whenever household composition changes (see Chapter 11 for a discussion of other program rules when combined with LIHTC or HOME).

Neither the IRS nor DCA/GHFA puts a time limit on how soon after moving in a household can add or subtract members, but an owner/agent must make a reasonable examination of the facts of a case to ensure that a household is not manipulating the income limits. For instance, a household may be manipulating income limits if they claimed that someone was not in the unit at move-in but there is evidence that the individual was in the household from the initial communication or application interview. Similarly manipulative would be intending to add the household member from the beginning knowing that they would not have qualified at move-in with that person's income.

In most cases, it is impossible to prove intent, so definite facts must be evaluated and cited if concluding that there was an effort to manipulate income limits. Discovering during a unit inspection that a person that a household has asked to add is already living there just a few months after move-in would be significant evidence toward manipulating the limits. Another example may be when a household asks soon after moving in to add a member that was on the original application. However, they were removed during the eligibility determination when it became likely they wouldn't qualify with the person's income. Short of such strong evidence, DCA/GHFA does not assume that a household is manipulating income limits when seeking to add or subtract members, even if relatively soon after move-in, and the below rules can be applied. The simple fact that the household would not have qualified if the changes to the household had been applicable at move-in is not evidence of manipulation of the limits.

When adding members to the household after initial move-in, the IRS requires that the new member's income be verified and added to the rest of the household's income that was verified on the household's most recent certification. Other paperwork required for new move-ins will also need to be completed for the new member, including background checks and an application with student status, income, and asset questions. Once the income is totaled, the owner/agent will apply the Available Unit Rule (AUR) if the new additional income puts the household over the 140% limit. The AUR has a minimal impact on 100% LIHTC properties (see Chapter 7 regarding the AUR). However, the move-in income for the new member will possibly be relevant later if all original household members ever vacate the unit, as described below. Note that a certification done in conjunction with adding a household member does not "re-set" the due date for the annual recertification. The annual recertification will be due on the household's regular anniversary date.

The federal HOME program is silent on how to handle changes in household composition for HOME purposes. DCA/GHFA applies the LIHTC rules, as explained below, to HOME projects when a new member joins the household between income certifications. When the next scheduled annual HOME recertification is conducted, the HOME rules will be applied. Depending on if income increases for the household at the annual examination, High or Low HOME status may be addressed at that time.

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

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

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

Example

Adding Household Members

A single resident qualified and moved into her unit in 2020. In 2022, her boyfriend passes the usual background checks and moves into the unit. His personal income is verified to be over the 2022 income limit.

First, the Available Unit Rule (AUR) must be tested. Since the project is not 100% LIHTC and is subject to full income recertification, the manager adds his move-in income to the existing household income that was verified at the most recent annual certification four months earlier. The household is determined to be over the 140% limit for a two-person household. The AUR is in effect and an eligible household must be moved into the next available unit in the building they live in until the applicable fraction is restored. If this unit is also HOME, the Low or High HOME status will be addressed at the next annual certification, as usual for HOME.

Second, as he is personally above the income limit for one person when he moves in, he will NOT qualify in the future for continued occupancy if his girlfriend ever moves out because he would not have qualified if he had entered the property by himself in 2022. This will be true unless:

1. **At a future recertification, they together are below the income limit**

   OR
2. **The boyfriend is below the income limit at the time that the girlfriend leaves the unit.**

Example

Subtracting Household Members

Chris H and her cousin Chris P, apply for a mixed-income (less than 100% LIHTC) property. Chris H self-certifies that she is pregnant, so the household is certified as a three-person household. Five months later the pregnancy ends in a miscarriage. It is not necessary to recertify the remaining household members. If the income of the remaining household members exceeds 140% of the current income limit at the next recertification, the Available Unit Rule will be applied. Independently, the HOME status will be adjusted if the unit is also HOME and income is “over-income” for the HOME designation on the unit (see later in this chapter for more information on the LIHTC and HOME rules on increases of income).

Changes in Student Status

Both the LIHTC and HOME programs require that households be continuously student-eligible. Student status must be examined annually, even for 100% LIHTC projects that are not subject to annual income recertification.

LIHTC. If a household becomes LIHTC student-ineligible, the unit no longer supports tax credits. Owners/agents should include in tenant selection criteria a process or policy that states what is required for the student rule requirements. This information is also included in the LIHTC lease addendum.

HOME. A household that contains any student that is ineligible under HOME student rules is treated as if the household is "over-income" for a High HOME unit (as if they were over the 80% limits). For non-LIHTC HOME units where income is based on adjusted income, the calculation of income will include the income from the student's parents for any student who is ineligible because they are determined not to be independent from their parents.

The Tax Credit Available Unit Rule (AUR)

100% LIHTC Properties

At properties where all units are LIHTC, owners/agents must demonstrate due diligence when moving in new households to ensure that all units that become available are rented to LIHTC-eligible households. Failure to do so could result in the loss of several or even all units to noncompliance. Thus, owners must take due diligence measures very seriously (see Chapter 9 for further discussion of due diligence and noncompliance). As long as an owner can demonstrate a reasonable measure of due diligence, DCA/GHFA will treat the noncompliance as a mistake despite efforts to avoid errors and only note the one unit's noncompliance.

Note that HOME and other programs may have full recertification requirements that are different than the LIHTC rules. An owner will apply the other program's rules to affected units, but the LIHTC-only units are still exempt by law from income recertification for all LIHTC purposes. Unless the other program is also monitored by DCA/GHFA, the Agency will consider all units exempt from income recertification for 100% LIHTC projects, and not review income recertification information after the initial move-in. If the DCA/GHFA does monitor the other program, income recertifications will be reviewed for compliance with the other program, but any noncompliance with the other program will not be treated as LIHTC noncompliance.

Less than 100% LIHTC Properties

LIHTC units at properties with any non-LIHTC (market) units are subject to full income and student recertification every year. When recertified, if a household's income exceeds 140% of the current income limit, they are considered "over-income". Credits can continue to be claimed on the over-income unit if the next available unit of comparable or smaller size in the same building is rented to an LIHTC household. The goal is to restore the applicable fraction, not counting the over-income unit. Therefore, more than one market unit may need to be rented to LIHTC households if an over-income unit is larger than the next available unit. Over-income units must continue to charge LIHTC rents until the next available unit(s) are rented and all over-income LIHTC units are replaced.

Fast Facts
Definitions of LIHTC "Over-Income"

At Move-in	Over the ***current income limit***
At Recertification	Over ***140% of the current income limit*** **Special rule for Average Income Test properties.** Units designated **20–60%** **140% of the 60%** income limit. Units designated **70 & 80%** **140% of 70 & 80%** income limits, respectively.

If the next available unit is not rented to an LIHTC household when over-income households exist at a property, all comparable or larger units that exceed 140% will no longer be LIHTC for both the building's applicable fraction and the project's minimum set-asides. A unit is no longer "available" if a legally binding agreement is in place before the effective date of the recertification that determined the household to be over-income. For example, if a lease is signed by a market household, but they have not moved in, the unit is not "available" for purposes of the AUR. Allowing the market household to move in would be acceptable, even after the over 140% income recertification is effective. However, market units not legally reserved are subject to the AUR. Once all over-income units are replaced with new LIHTC units per the AUR, the over-income households can be treated as market and rents can be raised to the market rate as soon as the lease allows. These units are no longer subject to annual income recertification. However, they cannot be evicted solely because their income has increased. The tenant files must have a clarification record of the change in status from LIHTC to market and a log must be maintained for audit purposes.

Example

Available Unit Rule | Correctly Followed

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

Example

Available Unit Rule | Not Correctly Followed

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

For Average Income Test Properties. The AUR is followed by renting each unit that becomes vacant to a household that is at or below the set-aside that is designated to determine the 60% average required by the Average Income Test minimum set-aside. When a market unit becomes available, the vacant unit must be redesignated to a designation that will maintain the average of unit designates for the project at 60% or less. If more than one unit is over-income at the same time, the ***redesignations*** must be done in an order to keep the average at 60% or less, but once the market units are redesignated, the order in which they are ***rented*** is not significant.

Example

Available Unit Rule – The Average Income Test

A 70% unit is recertified to be over 140% of the 70% income limit in June. The AUR is in effect. The next month, a comparable market unit becomes available. This unit is rented to an LIHTC 70% household. Since the applicable fraction has been restored and the designation moved to another unit, the over-income household may become a market unit as soon as the lease allows. In this case, that was in August.

Example

Available Unit Rule – The Average Income Test

with 2 over-income units at the same time

In a building in an AIT project, a 40% and an 80% unit are over-income because when they are recertified, they are over 140% of the 60% and 80% designations, respectively. The AUR is in effect and will determine what should be done with future units. Already designated LIHTC units will continue to be rented to households at their previously designated limits.

A market unit in the building becomes vacant. Before renting the unit, the owner assigns a 40% designation to that unit, records it in the project's books and records, and informs DCA/GHFA. This maintains the 60%-or-less average of the project. The owner did not replace the over-80% designation first, as it would have raised the average imputed designations to over 60%. Another market unit becomes vacant shortly later. Before renting either available market unit, the owner assigns an 80% designation to the newly vacant market unit, records it in the project's books and records, and again informs the Agency. This maintains the 60% average designations for the project. After that, the new 80% unit is rented, and later the new 40% unit. Was this a violation of the Available Unit Rule?

No
The vacant units can be rented in any order once vacant market units have been redesignated to maintain the average.

Examples

The AUR | All Units Are Comparable

March

LIHTC Over-Income	LIHTC	LIHTC	LIHTC	Market
LIHTC	LIHTC	LIHTC	LIHTC	Market

AUR Triggered (all units are the same size).

- In March, an LIHTC unit goes over-income at recertification
  - That is, they went over 140% of the minimum set-aside limit of 60% for this project.
- The Available Unit Rule becomes effective, but there are no comparable available units.
  - Vacant LIHTC units will continue to be rented as LIHTC.
- The applicable fraction is 80% (8/10).
  - As long as the AUR is followed, the over-income unit continues to be counted in the LIHTC units.

April

LIHTC Over-Income	LIHTC	LIHTC	LIHTC Vacant	Market Vacant
LIHTC	LIHTC	LIHTC	LIHTC	Market

AUR Triggered (all units are the same size).

- Comparable market and LIHTC units become vacant in April.
  - The vacant LIHTC unit must be rented to a LIHTC household to maintain its status as a qualified LIHTC unit.
  - The vacant market unit must be rented to an LIHTC household to satisfy the AUR.

OR

May

Market	LIHTC	LIHTC	LIHTC	LIHTC
LIHTC	LIHTC	LIHTC	LIHTC	Market

AUR Satisfied (all units are the same size).

- Both vacant units are occupied by LIHTC households.
- The applicable fraction is now again 80% (8/10) not counting the over-income units.
  - The over-income LIHTC unit can be converted to market.
- The AUR is satisfied until it is triggered again when another LIHTC household is over-income at recertification.

May

Market	LIHTC	LIHTC	LIHTC	Market
LIHTC	LIHTC	LIHTC	LIHTC	Market

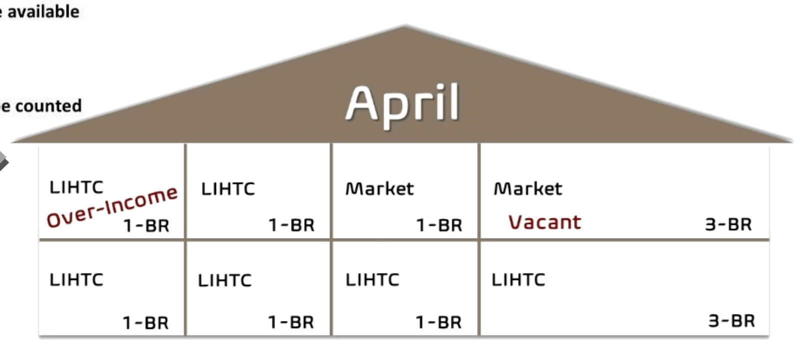
AUR Violated (all units are the same size).

- The vacant market unit is occupied by a market household.
  - This is a violation of the AUR.
  - The applicable fraction used to claim tax credits is now 70% (7/10).
  - The over-income LIHTC is no longer LIHTC and has been lost to the noncompliance with the AUR.

The AUR | Units Different Sizes

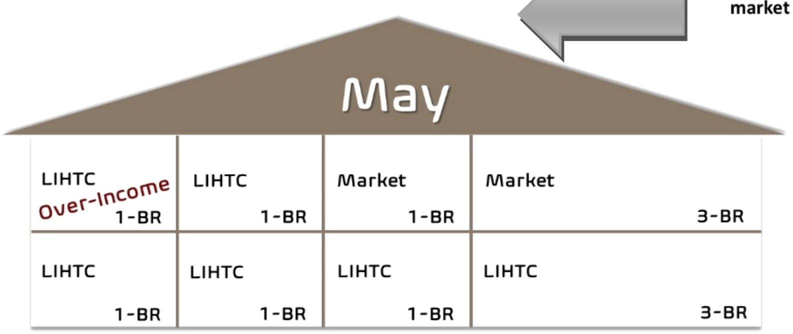
AUR Triggered (units are of different sizes)

- In March, a 1-bedroom LIHTC unit goes over-income at recertification
  - That is, they went over 140% of the minimum set-aside limit of 60% for this project.
- The Available Unit Rule becomes effective, but there are no comparable available units.
  - Vacant LIHTC units will continue to be rented as LIHTC.
- The applicable fraction is 60% (based on square footage).
  - As long as the AUR is followed, the over-income unit continues to be counted in the LIHTC units.



AUR Triggered (units are of different sizes).

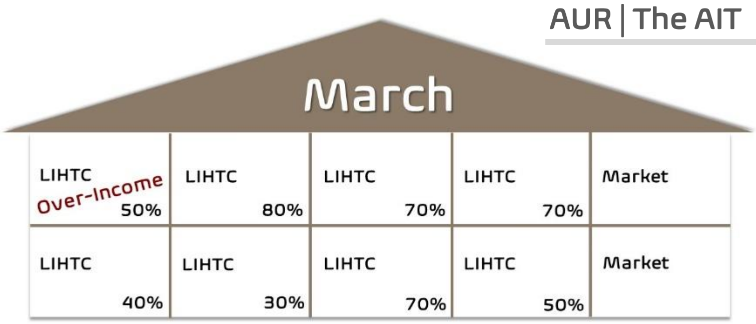
- A larger market unit becomes vacant in April.
  - The vacant market unit is not comparable or smaller and can be rented to a market household.



AUR Triggered (all units are of different sizes).

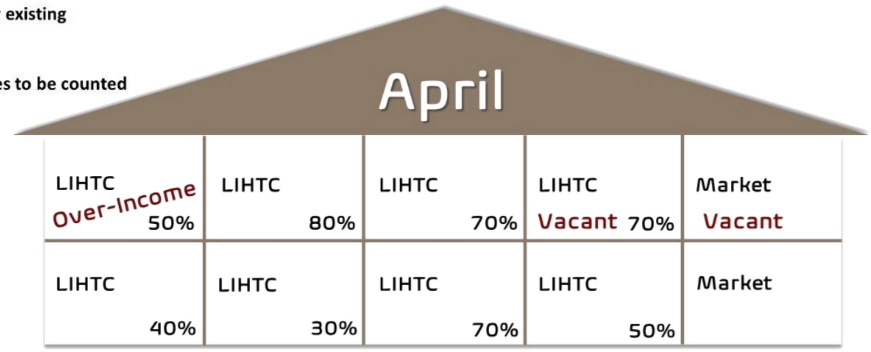
- The 3-bedroom unit is rented to a market household.
- The AUR continues in effect until a comparable/smaller market unit the over-income unit is available.
- The applicable fraction is 60% (based on square footage).
  - As long as the AUR is followed, the over-income unit continues to be counted in the LIHTC units.

AUR | The AIT



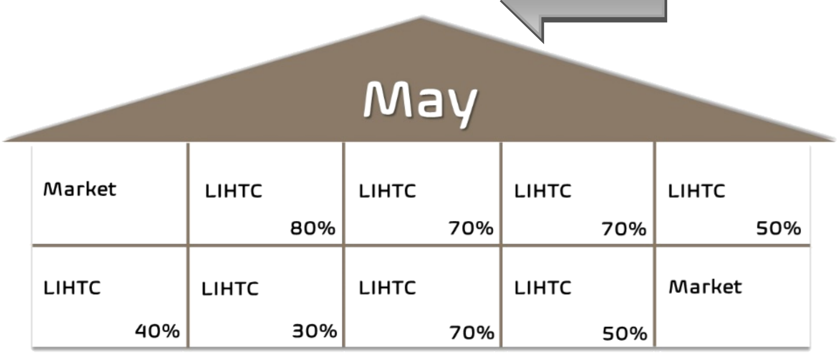
AUR Triggered (all units are the same size).

- In March, a 50% designated AIT LIHTC unit goes over-income at recertification
  - That is, they went over 140% of the 60% limt.
- The Available Unit Rule becomes effective, but there are no comparable available units.
  - Vacant LIHTC units will continue to be rented as LIHTC at their existing designations.
- The applicable fraction is 80% (8/10).
  - As long as the AUR is followed, the over-income unit continues to be counted in the LIHTC units.



AUR Triggered (all units are the same size).

- Comparable market and LIHTC units become vacant in April.
  - The vacant LIHTC unit must be rented to a LIHTC household at the 70% designation to maintain its status as a qualified LIHTC unit.
  - The vacant market unit must be rented to an LIHTC household to satisfy the AUR.
  - The owner redesignates the market unit as 50% AIT LIHTC, records this in her books and records and reports the change to the state.



AUR Satisfied (all units are the same size).

- Both vacant units are occupied by LIHTC households.
- The applicable fraction is now again 80% (8/10) not counting the over-income units.
  - The over-income LIHTC unit can be converted to market.
- The AUR is satisfied until it is triggered again when another LIHTC household is over-income at recertification.

AIT | The AIT with More than One Unit Over-Income

March

LIHTC Over-Income 50%	LIHTC Over-Income 80%	LIHTC 70%	LIHTC 70%	Market
LIHTC 40%	LIHTC 30%	LIHTC 70%	LIHTC 50%	Market

AUR Triggered (all units are the same size).

- In March, a 50% and an 80% designated AIT LIHTC unit goes over-income at recertification
  - That is, they went over 140% of the 60% and 80% limits, respectively.
- The Available Unit Rule becomes effective, but there are no comparable available units.
  - Vacant LIHTC units will continue to be rented as LIHTC at their existing designations.
- The applicable fraction is 80% (8/10).
  - As long as the AUR is followed, the over-income units continue to be counted in the LIHTC units.

April

LIHTC Over-Income 50%	LIHTC Over-Income 80%	LIHTC 70%	LIHTC Vacant 70%	Market Vacant 50%
LIHTC 40%	LIHTC 30%	LIHTC 70%	LIHTC 50%	Market

AUR Triggered (all units are the same size).

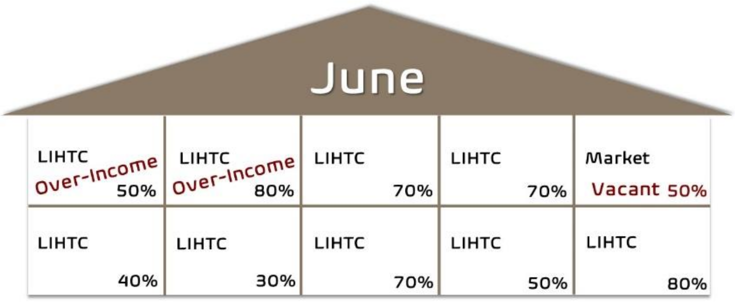
- Comparable market and LIHTC units become vacant in April.
- The vacant LIHTC unit must be rented to a LIHTC household at the 70% designation to maintain its status as a qualified LIHTC unit.
- The owner redesignates the market unit as 50% AIT LIHTC, records this in her books and records and reports the change to the state.
  - This maintains the average of designations at less than 60%. Replacing the 80% unit would not.
- The applicable fraction is 80% (8/10).
  - As long as the AUR is followed, the over-income units continue to be counted in the LIHTC units.

May

LIHTC Over-Income 50%	LIHTC Over-Income 80%	LIHTC 70%	LIHTC 70%	Market Vacant 50%
LIHTC 40%	LIHTC 30%	LIHTC 70%	LIHTC 50%	Market Vacant 80%

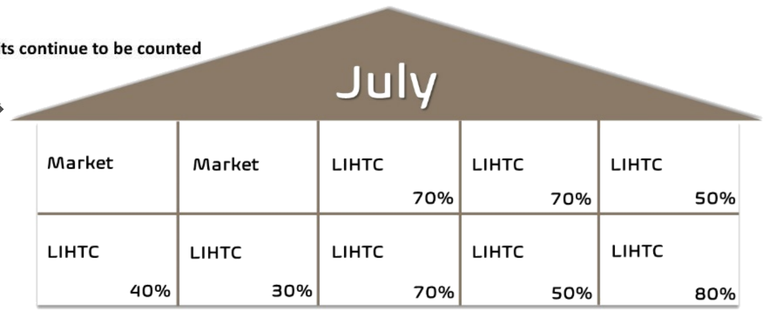
AUR Triggered (all units are the same size).

- The vacant 70% LIHTC unit is rented to an LIHTC household at the 70% designation.
- An additional comparable market unit becomes available in May before the other vacant unit is rented.
- The owner redesignates the newly vacant market unit as 80% AIT LIHTC, records this in her books and records and reports the change to the state.
  - This maintains the average at 60% or less.
- The applicable fraction is 80% (8/10).
  - As long as the AUR is followed, the over-income units continue to be counted in the LIHTC units.



AUR Triggered (all units are the same size).

- The 80% unit is rented.
  - As long as the market units had been redesignated in order to maintain the average, the order they are rented in does not matter. The higher designation happens to be the first filled in this case.
- The AUR continues in to be in effect until the redesignated 50% unit is occupied by a 50% LIHTC household.
- The applicable fraction is 80% (8/10).
  - As long as the AUR is followed, the over-income units continue to be counted in the LIHTC units.



AUR Satisfied (all units are the same size).

- The vacant 50% redesignated unit is rented.
- The applicable fraction is now again 80% (8/10) not counting the over-income units and the average does not exceed 60%.
  - The over-income LIHTC units can be converted to market.
- The AUR is satisfied until it is triggered again when another LIHTC household is over-income at recertification.

Increases of Income for HOME Units

Note that some HOME LURAs will further limit the definition of “over-income,” usually to 60%.

When a HOME unit is determined to be over-income at recertification, the unit is in temporary HOME noncompliance. Temporary noncompliance is acceptable if the owner/agent takes steps at the next available opportunity to restore the property’s unit mix. These steps vary, depending on if the property is fixed or floating HOME.

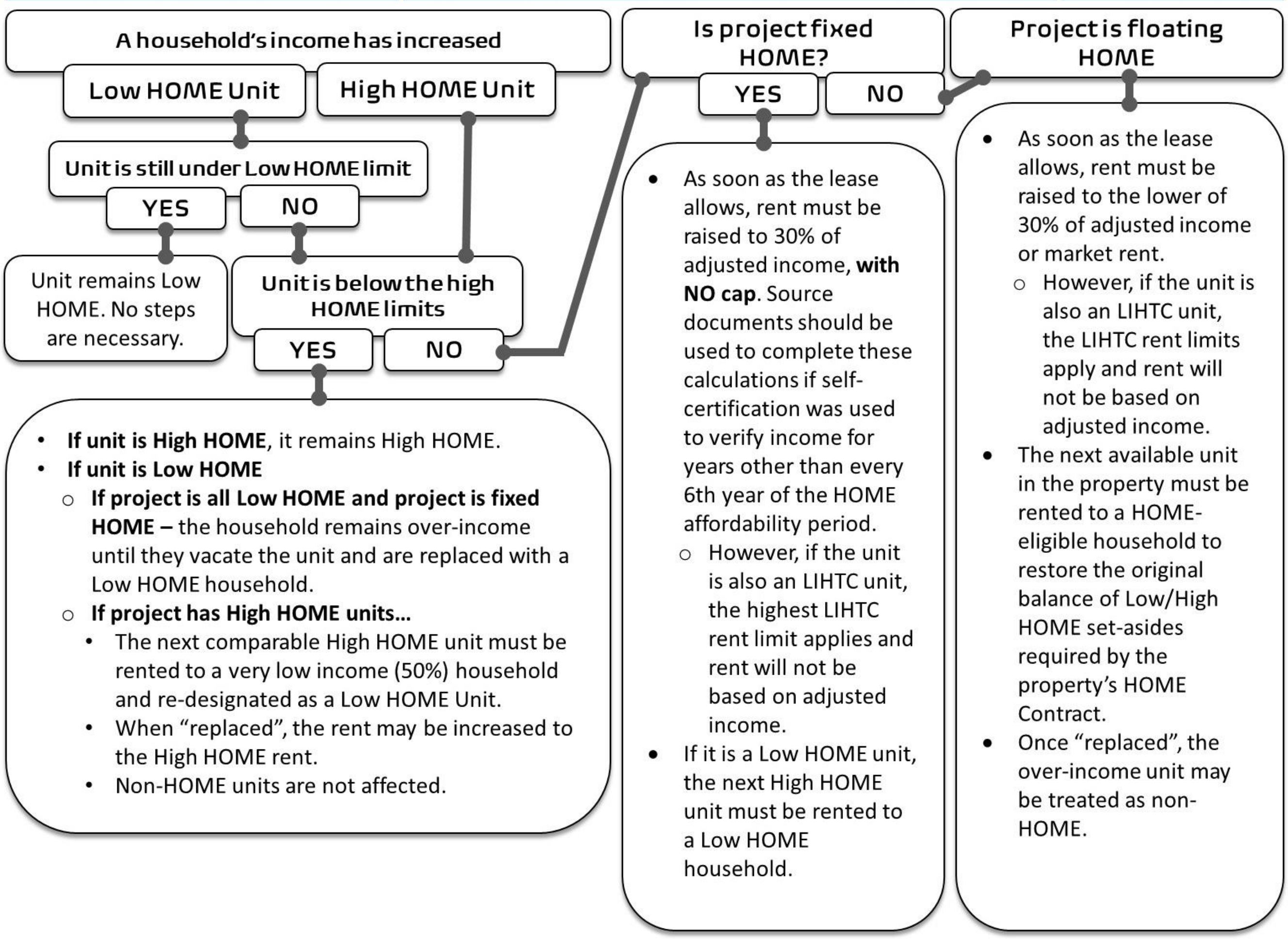
The owner/agent cannot terminate or fail to renew a lease because a household is over-income. However, the household’s rent may be adjusted according to HOME policy. Over–income households are protected by the terms of their leases. Rent changes can only be effective when the lease permits. DCA/GHFA requires that a copy of the rent increase letter to the resident and the adjusted rent worksheet be stored in the tenant file for audit purposes.

The following chart gives instructions on what to do when a HOME unit goes over income. There are different procedures for fixed and floating HOME units that go over the HUD low (80%) limit.

Fast Facts
Definitions of HOME "Over-Income"

For a Low-HOME unit	A household's income is above the current very-low (50% AMI) income limit.
For a High-HOME unit	A household's income increases over the current HOME Low income (80%) income limit.

Flow Chart | Increases of Income | HOME



Adjusted Income-Based Rent for Non-LIHTC HOME Properties

Fast Facts

Rent for Over-Income HOME Units

Not applicable to any HOME unit that is also LIHTC

Gross Income – Deductions = Adjusted Annual Income ÷ 12 X 30 %

A household may indicate that they are now over the 80% income limit during one of the years that self-certification is allowed at recert. If this is true and rent based on adjusted income must be calculated, the owner should switch to source documents to verify income and ensure accurate calculations. A household receiving assistance from a Housing Choice Voucher will already be paying rent based on 30% of adjusted income and no additional calculation by the owner/agent will be necessary.

Once the gross household income is calculated, five possible adjustments may be made before rent is determined.

Adjustment 1 | Dependent Deduction

This is ***an amount per dependent*** that is adjusted annually. A dependent is:

- Under 18 years of age
- A person with disabilities
- A full-time student of any age

A dependent can never be the head of the household, a spouse of the head, or a co-head. Foster children, unborn children, those who have not yet joined the household, or a live-in aide are also not eligible to be dependents for purposes of this deduction.

Documentation must be gathered to prove that an adult is a qualified full-time student if they are to be considered a dependent.

Adjustment 2 | Childcare Expenses

Anticipated unreimbursed expenses for the care of children (including foster children) ***under age 13*** may be deducted if:

- The expenses enable a household member to work or go to school (part or full-time).
- No adult household member is available to provide care.
- The amount that allows the adult to work must not exceed the income received from the work. Expenses that allow schooling have no limit.

The money cannot be paid to a household member living in the unit and the expenses must reflect reasonable charges. There is no limit to reasonable costs that allow an adult to look for work or attend school. Only the amount of the dependent deduction, as adjusted, will be allowed annually to enable a qualified adult FT Student (who is not the head, spouse, or co-head) to attend school because the amount of the dependent deduction is the amount counted as income. These expenses must be for a child living in the unit.

Adjustment 3 | Disability Assistance Expense

Reasonable expenses for auxiliary apparatus or the care of an individual with disabilities above three percent of annual income may be deducted from annual income if the expenses:

- Enable the individual with disabilities or another household member to work;
- Are not reimbursable from insurance or any other source; and
- Do not exceed the amount of income earned by the person who can work because of the expenses.

Along with other forms of documentation, to qualify for this deduction the household must identify the individual with a disability on the application.

Adjustment 4 | Elderly Household Deduction

This ***single amount (one per household)*** deduction is made from annual income ***for any "elderly household"***. The deduction is adjusted annually. To be considered an elderly household, the head of household, co-head, or spouse who is a party to the lease must be 62 years of age or older or an individual with a disability.

Adjustment 5 | Health and Medical Expenses

To qualify for this allowance, ***the head, spouse, or co-head must be at least 62 or disabled***. Allowable health and medical expenses include unreimbursed health and medical expenses of all household members. It includes all anticipated expenses during the 12 months following the recertification that are not reimbursed by an outside source (such as insurance).

The owner may use the ongoing expenses the household paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.

Once the annual adjusted income is determined, dividing it by 12 establishes the monthly adjusted income. The monthly adjusted income is then multiplied by 30% to determine rent based on adjusted income.

The below worksheet provides a useful tool for determining adjusted income. An owner/agent may develop their own tools.

Sample Format for Calculating Adjusted Income-Based Rent

Household Member Name	Position in Household	Age	Total Income	Total Expenses

1. Enter Annual Gross Income.		1.
2. Enter the number of household members (excluding head or spouse) under 18, disabled, and adult dependent full-time students.	2.	
3. Multiply line 2 by the current dependent deduction.		3.
4. If a household member is enabled to work or further their education as a result of childcare expenses, enter the <u>unreimbursed</u> annual childcare expenses (reasonable childcare expenses for children under age 13).	4.	
5. If the household member was enabled to <u>work</u> as a result of the childcare expenses, enter that household member's annual <u>employment income</u>.	5.	
6. If an amount is reported on Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.		6.
7. If the household qualifies as an elderly and/or disabled household, enter the current elderly household deduction.		7.
8. Add Lines 3, 6, and 7.	8.	
9. If this household has no unreimbursed disability assistance or health and medical expenses, subtract Line 8 from Line 1. This is the Adjusted Income for this household *without* these expenses.		9.
10. If Line 9 is applicable, divide Line 9 by twelve and multiply by 30%. This is rent based on adjusted income.		10.

******FILL IN LINES 11 THROUGH 20 IF THE HOUSEHOLD HAS*****
UNREIMBURSED DISABILITY ASSISTANCE OR HEALTH AND MEDICAL EXPENSES

11. Enter unreimbursed annual disability assistance expenses.	11.	

12. Enter the annual earned income of the household member enabled to work as a result of unreimbursed disability assistance expenses.	12.	
13. Enter the lesser of Lines 11 or 12.	13.	
14. Enter unreimbursed annual health and medical expenses.	14.	
15. Add Lines 13 and 14.	15.	
16. Multiply Line 1 by 10%.	16.	
17. Subtract Line 16 from Line 13. If negative, enter 0.		17.
18. Subtract Line 16 from Line 14. If negative, enter 0.		18.
19. Subtract Line 16 from Line 15. If negative, enter 0.		19.
20. a. If the household reported only unreimbursed disability expenses but no unreimbursed health and medical expenses, add Lines 8 and 17. b. If the household reported only unreimbursed health and medical expenses but no unreimbursed disability expenses, add Lines 8 and 18. c. If the household reported both unreimbursed disability expenses and unreimbursed health and medical expenses, add Lines 8 and 19.	20. a. b. c.	
21. Subtract either Line 20a, 20b, or 20c from Line 1. This is the Adjusted Income for this household *with* these expenses.		21.
22. If Line 21 is applicable, divide Line 21 by twelve and multiply by 30%. This is rent based on adjusted income.		22.

LURC **LIHTC**	LURC LURA **LIHTC & HOME**	LURA **HOME**
Recertifications | 100% LIHTC Income recertification is not required. Student status must be verified annually.	**100% LIHTC** | Full source document verification is required every 6th year of the affordability period. Self-certification from the household is required for other years. Student Status must be verified annually.	**Full source document verification** | is required every 6th year of the affordability period. Self-certification from the household is required for other years. Student status | must be verified annually.
Mixed-use | Full income and student status verification is required each year.	**Mixed-use** | Full income and student status verification is required each year.	
Income Increases | Households are "over-income" when they exceed 140% of the current income limits. The "Available Unit Rule" must be followed to restore the applicable fraction in the building.	**Increases of income** | Households are "over-income" for HOME when they exceed the 80% "low-income" limit. Rent is NOT calculated based on the household's adjusted income, and High HOME rents continue to apply. Further actions are taken depending on whether the unit is fixed or floating HOME to restore the mix of HOME units required. Households are not "over-income" for mixed-income LIHTC projects until they exceed 140% of the current income limits. The "Available Unit Rule" must be followed to restore the applicable fraction in the building.	**Income Increases** | Households are "over-income" when they exceed the 80% "low-income" limit. Rent is calculated based on the household's adjusted income and further actions are taken depending on if the unit is fixed or floating HOME to restore the mix of HOME units in the project required in the HOME Contract.

Chapter 8 | Tax Credit Acquisition/Rehab/Resyndication Rules

Acquisition/Rehab Overview

The cost to rehabilitate a property can be a basis for claiming tax credits. Also, if an owner plans to rehabilitate a property, they can also receive tax credits based on the cost of purchasing the building or buildings ("acquisition" credits). These combined credits are referred to as acquisition/rehab credits.

Rehab Only Credits. Based on a variety of factors determined during the allocation process, an owner may elect to take rehabilitation credits only. The property is generally still acquired or purchased by a new ownership entity for IRC section 179 (d)(2) depreciation purposes and the date of acquisition will still play the same part in the compliance process.

The day-to-day compliance operation of acquisition/rehab and rehab-only properties are, generally, the same as new construction. However, there are some significant differences. This chapter discusses the key differences between new construction and acquisition/rehab tax credits. Additionally, these projects can be complex and DCA/GHFA highly recommends that competent consultation is sought to ensure that the requirements are applied effectively.

Placed In Service Dates

A building is placed in service for LIHTC purposes when it is ready for its intended purpose. For new construction or when existing buildings are being used for housing for the first time, this is generally the date when the first unit in a building can legally be occupied. Generally, this happens when a building receives a certificate of occupancy (CO) or similar. This is usually the initial temporary CO. However, with acquisition/rehab projects, these rules are a little less obvious.

Acquisition. For buildings that are acquired with households already living there, the building is ready for its intended purpose upon acquisition. Therefore, the date of acquisition by purchase (as defined by section 179 (d)(2) depreciation rules) becomes the placed in service date for LIHTC purposes.

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

Rehabilitation. Unlike new construction and acquisition placed in-service dates, the rehabilitation placed in service date does not directly relate to occupancy. Rather it is determined based on an expenditure test to establish when the eligible basis that can support the planned credits is met. Technically speaking, rehab credits can be placed in service at the close of any 24 months over which the rehab expenditures are made. The greater of 20% of the adjusted basis of the project or a minimum amount per unit set by the IRS must be spent. DCA/GHFA will often require a higher minimum amount to spend.

Rent Increases

Properties that have implemented a rent increase for in-place tenants in an LIHTC acquisition/rehab or rehab deal are not subject to the usual 5% rent cap for the new rents as part of the acquisition/rehab restructure. Any rent increases imposed on renewal agreements following the new rents in an acquisition/rehab deal will be subject to the rent cap (see Chapter 3 for more on rent increases and the rent cap).

Examples

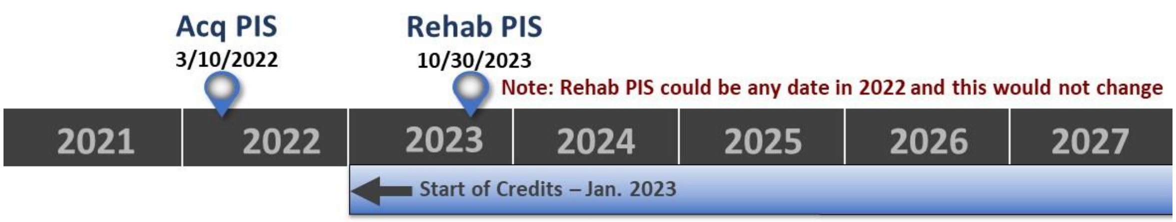
Acquisition & Rehab the Same Year

A building was acquired 2/1/2022 and the rehab was PIS 11/30/2022

When is the earliest that credits can begin? 2/1/2022
As the rehab was placed in service the same year as the acquisition, both sets of credits can begin at acquisition.

Acquisition & Rehab in Different Years

A building was acquired 3/10/2022 and the rehab was PIS 10/30/2023



When is the earliest that credits can begin? 1/1/2023.
They can begin at the start of the year the rehab is placed in service.

Claiming Credits: Comparison with New Construction Rules

Tax credits based on both the acquisition and rehab costs can be claimed as early as the acquisition date, but if the rehab is not placed in service that year, the credits can begin at the start of the year the building rehabilitation is placed in service. If not claimed that year, credits may be deferred one year based on the year the rehab is placed in service.

Comparison of Compliance Rules by Credit Types

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

Qualification Rules

With new construction, certifications are completed before a household moves in, which is the effective date, and credits generally start at that point. There are some deviations from this pattern for acquisition/rehabs because of the unique nature of these projects.

Acq/Rehabs

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

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

In some cases, tax credits will be claimed going back to the acquisition. This can be true for units with households that were in place at acquisition and that are certified by the 120-day deadline. Even if credits are not going to be claimed for the year of acquisition, completing the certifications at acquisition is still generally recommended for the below reasons.

- Households that are qualified at acquisition are protected against disqualification if their income increases in the future. Once a household is qualified at the acquisition, they are considered a qualified LIHTC household and will not have to move out if the household's income increases in the future. If an owner/agent waits until later to certify the household, their income may have increased over the limits, and they will not be considered a qualified household. There is a significant cost to both the household and owner to unnecessarily disqualify them this way.
- Doing a certification as early as possible gives households that will not qualify to stay more time to make plans to relocate when their lease term expires.

Example

Certification of Residents In-place at Acquisition

Annual recertifications for residents in place at acquisition will be due on the anniversary of the initial certification. DCA/GHFA does allow owners of HUD properties rehabbed with LIHTCs the option to do one LIHTC self-certification on the HUD effective date following the initial acquisition certification and allow that to be the annual effective date from then on. This helps minimize the disruption to households with multiple annual certifications.

Example

Adjusted LIHTC Certification Date at HUD Property

A Section 8 property is acquired and rehabbed with LIHTCs. The owner certifies each existing household effective at acquisition on January 27, 2022. HUD Households are subject to annual HUD certification on the first of the anniversary month that they originally moved into the property. One of these initial household's HUD anniversary comes due on June 1, 2022. The owner/agent completes the HUD recertification and does the extra LIHTC paperwork. From then on, both certs can be completed by June 1 of each year. Future new move-ins after acquisition will share LIHTC and HUD move-in dates, so this provision only applies to the residents in place at acquisition.

Note: doing the extra LIHTC cert in 2022 is important. It would not be acceptable to skip the LIHTC January 2023 certification in favor of the June HUD cert, unless the intervening June 2022 LIHTC cert was in place. From January 2022 to June 2023 is more than a year and the June certification would be noncompliant. In this special exception, doing the cert that would normally be done in January 2023 early in June of 2022 preserves the annual LIHTC recert requirement and allows the benefits to owner/agent and tenant of merging the LIHTC and HUD certifications.

First-Year Safe Harbor Provision

Projects that are less than 100% LIHTC may have to "test" the income of households who are qualified more than 120 days before the year credits will start (see Chapter 2 for more information on the first-year safe harbor provision). The safe harbor applies to new construction, acquisition/rehab, and resyndicated properties.

Resyndication

When an LIHTC property finishes its 15-year compliance period, the owner may apply for a new allocation of credits to fund the rehabilitation of the property. Since the relationship between the general partner and investors is established through syndicators, this process is often referred to as "resyndication." The IRS usually refers to resyndication as a "subsequent allocation of credits."

Resyndication | with Overlapping Extended Use Agreements

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

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

The 8823 Guide goes on to illustrate:

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

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

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

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

Thus, people who income-qualify for LIHTC units for the first set of credits and are in place at the start of the second set of credits automatically continue as LIHTC-qualified for the second set, without regard to their income at the time of the start of new credits. This is often referred to as "grandfathering" those residents into the new credits. Unless the IRS publishes further contrary guidance, DCA/GHFA will allow this grandfathering to continue to apply if these households must transfer between buildings in a project during a rehab before and during the first year of the compliance period. Thus, they continue to be treated as income-qualified for transfers, even when transferring between buildings, regardless of current income. After the first year of the credit period, these households will be subject to the usual restriction on transfers between buildings based on the most current income and the Available Unit Rule.

In the 8823 Guide, the IRS does not specify what paperwork is required to prove that an in-place household qualified in the past. Below are two methods in order of DCA/GHFA preference.

- **The original tenant income certification (TIC) and backup documentation** proving that the household qualified at move-in should be retained with the new file that establishes the second set of credits. The owner/agent must review the original certification documents to ensure that there is sufficient evidence of income qualification. If these documents are not available, principles for compliance established in the 8823 Guide indicate that a subsequent recertification file demonstrating that the household qualified under limits in effect at the time of any recertification establishes a point that the household qualified, even if that time was after move-in. Alternatively, a certification created retroactively to the move-in date can accomplish the same thing. Either approach in cases where the original file is missing or insufficient should establish that they qualified at some point during the first extended use period and continue to qualify for the second set of credits.
- An owner may discover that older files at a resyndicated property do not well establish household eligibility, as verification requirements have become more clearly understood over time. To ensure a clean file that meets modern verification standards and bolsters some investors' confidence, an owner may decide to complete initial recertifications on in-place households. If the household qualifies under current income limits for the new credits, no further work is necessary. If the household is over the current income limits, then the above paperwork will need to be sought anyway.

In DCA/GHFA's observation, applying the first option above and only moving on to the second if needed is most efficient for the owner/agent and considerably less disruptive to in-place households.

Resyndication | without Overlapping Extended Use Agreements

Based on the 8823 Guide instructions on resyndication (above) it appears that the ability to grandfather households may be based on the fact that the extended use agreements overlap. This is not explicitly stated, however. It is possible that if a new set of credits begins AFTER the original extended use period ends, existing LIHTC households are not eligible for the grandfathering provision. Competent legal advice should be sought, and documentation of the advice retained if grandfathering provisions are applied when there are no overlapping extended use periods. Absent this legal counsel, an owner may choose to treat a resyndication where the original extended use period has expired as a traditional acquisition/rehab property and re-qualify all households.

Income and Rent Limits

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

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

Example

Resyndication and Income Limits

An owner acquires an existing LIHTC property with existing LIHTC residents on 2/27/2022. The three existing LIHTC buildings are rehabbed and funded by resyndicated credits. Additionally, the owner builds two new buildings. All buildings will be part of the same LIHTC project. Existing residents are grandfathered in.

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

a) Those in effect as of 2/27/2022
b) Those in effect as of 2/27/2022

Held Harmless and HERA Special Limits. Once a project is placed in service, income limits are held harmless. The acquisition that is part of resyndication comes with a new placed in service date, the acquisition date. Thus, the former placed in service date from the original tax credits no longer applies. Any previous income limits that were held harmless cannot be used and the currently published income limits in effect as of acquisition would replace the old limits. Similarly, projects that were in service in 2008 or earlier have the HERA Special limits option. Since the new credits establish a new placed in service date, HERA special limits and rents are no longer an option.

Example

Resyndication and Existing Households

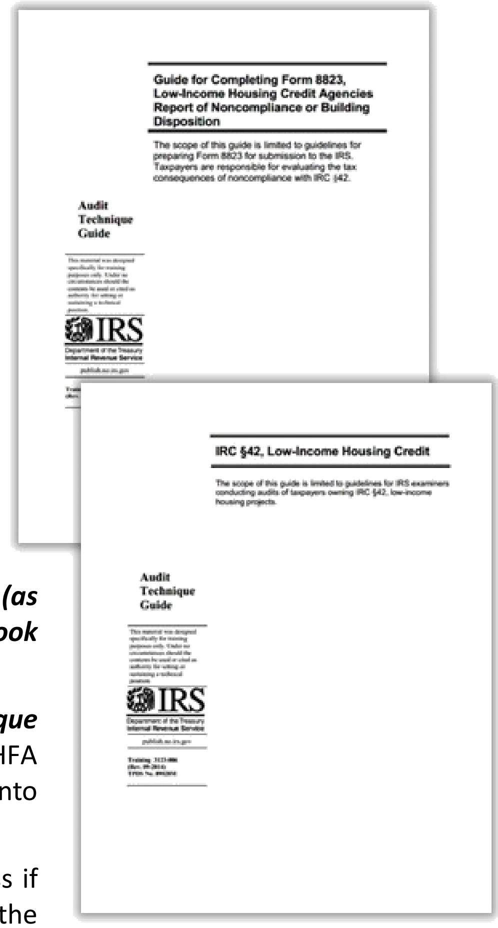
The Parker household moved into an LIHTC unit in 2015. The property was constructed in 2006. It was also still in its first extended use period when it was awarded new acquisition/rehab credits in 2022. At that time, income and rent limits had been decreasing for several years and were being held harmless to 2018 income and rent limits.

Even though the Parker household may not be income-eligible for income limits in effect at the 2022 acquisition date, the owner has the original 2015 Parker move-in paperwork. Per the IRS, the household remains a qualified household. However, the 2022 MTSP rents are lower than the held harmless rents that were being used before resyndication. The owner will be required to lower the property's rent before the new credits start for the property.

Resyndication and Students.

Households who qualified in the past are income-eligible at resyndication, but the IRS does not indicate that they are grandfathered for student status purposes. This is consistent with the fact that households do not lose tax credit eligibility regardless of income increases after they are initially qualified, but they always may lose their LIHTC-qualified status if they become ineligible students at any time. Student status must be verified at acquisition to establish if households that are grandfathered in for income reasons are also student-eligible.

Chapter 9 | Correction and Consequences of Non-Compliance



Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

The scope of this guide is limited to guidelines for preparing Form 8823 for submission to the IRS. Taxpayers are responsible for evaluating the tax consequences of noncompliance with IRC §42.

Audit Technique Guide

IRS
Department of the Treasury
Internal Revenue Service

IRC §42, Low-Income Housing Credit

The scope of this guide is limited to guidelines for IRS examiners conducting audits of taxpayers owning IRC §42, low-income housing projects.

Audit Technique Guide

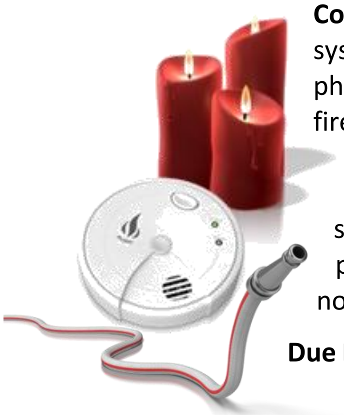
IRS
Department of the Treasury
Internal Revenue Service

Proactive Due Diligence

Helpful Guides. To assist state agencies such as DCA/GHFA in assessing noncompliance they observe, the IRS issued its ***Guide for Completing Form 8823***, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (8823 Guide). The 8823 Guide provides instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are to be reported.

Owners and property managers are encouraged to read the guide and refer to it when questions arise as to how noncompliance should be corrected. Generally, DCA/GHFA applies the standards stated in the manual, and ***this manual will not restate what is in the 8823 Guide. Note: Chapter 4 of the Guide has been substantially made obsolete by the HUD HOTMA regulation change. Besides the regulations at 24 CFR, HUD, Notice H 2023-10 (as amended in February 2024) provides updates to the HUD Handbook 4350.3.***

A sister document to the 8823 Guide is the ***Section 42 Audit Technique Guide***. While the 8823 Guide provides insight into the state HFA process to review properties, the IRS Audit Technique gives insight into how an IRS agent is instructed to review a property in an IRS audit.



Compliance "Systems." Interested partners assess if systems are in place to proactively preserve the physical state of a property. Such systems can include policies and procedures to avoid fire hazards and keep fire equipment in good repair. In case of unforeseen problems, fire alarms and suppression systems should be in place. Loss of tax credits is also a serious risk to an LIHTC property. All interested parties seek to ensure that effective systems are in place to protect the tax credits generated by a property and that problems are addressed. These should be thought of in terms of "systems" and should not depend on specific people to be successful.

Due Diligence. According to the IRS, due diligence protects tax credits and effectively deals with problems that arise. Per the 8823 Guide 4-15, "due diligence is defined (Black's Law Dictionary [6th ed.1990]) 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 any absolute standard, but depending upon the relative facts of the special case." In short, the due diligence standard is a judicially created test to determine the adequacy of the efforts exerted throughout all phases of any activity."

Good compliance systems should therefore be carefully thought out (demonstrate "prudence" in "all phases"), demonstrate substantial effort ("activity" and "efforts exerted"), and intentional consistency ("assiduity").

The Guide goes on to define steps that are considered to meet LIHTC due diligence requirements. "Compliant behavior can be demonstrated when a LIHTC property owner exercises ordinary business care and prudence in fulfilling its obligations. Due diligence can be demonstrated in many ways, including (but not limited to) establishing strong internal controls (policies and procedures) to identify, measure, and safeguard business operations and avoid material misstatements of LIHTC property compliance or financial information. Internal controls include:

1. Separation of duties.
2. Adequate supervision of employees.
3. Management oversight and review (internal audits).
4. Third-party verifications of tenant income.
5. Independent audits.
6. Timely recordkeeping."

When such factors are in place, mistakes may still be made, but the chance of catching them is significantly higher.

The Benefit of Corrections Before Notification of Inspection. The IRS takes such systems seriously. They tell us in the 8823 Guide 3-2 & 4 that "noncompliance issues identified and corrected by the owner before notification of an upcoming compliance review or inspection by the state agency need not be reported, i.e., the owner is in compliance at the time of the state agency's inspection and/or tenant file review." This is a huge benefit to showing due diligence and interested parties will want to see signs of due diligence in the form of protective systems.

Options to Fix File Issues. The IRS also realizes that paperwork may be missing or in other ways insufficient. In these cases, the 8823 Guide 4-35 says, "In the event that income eligibility was not properly documented, and the state agency cannot reasonably determine that the household is eligible, the noncompliance can be corrected in either of two ways:

1. A new certification can be performed using current income and asset sources and current income limits. Assuming the household is eligible, the unit would be out of compliance on the date of move-in and back in compliance on the date the new certification is signed (Form 8823 should be filed); or
2. A retroactive certification can be performed that completely and clearly documents the sources of income and assets that were in place at the time the initial certification should have been effective and applies income limits that were in effect on that date.

Assuming the owner can document that the household was income-eligible at the time of move-in, the unit should not be considered out of compliance. The owner has clarified the noncompliance; Form 8823 should not be filed."

Fraud. With compliance systems, like fire systems, even with the best prevention efforts, issues arise. One concern relating to noncompliance is if household fraud results in a household in an LIHTC unit that does not qualify. The IRS puts diligent owners at ease in the 8823 Guide 25-2, "as a general rule, the Internal Revenue Service does not want to disturb the credit when the owner has demonstrated due diligence to avoid fraudulent tenants, timely removes fraudulent tenants when identified, and timely notifies the state agency of their actions."

Non-Federal Issues. In addition to the federal requirements, as part of the LIHTC allocation and/or HOME commitment process, owners may adopt additional requirements for competitive points in the application process or because a year's QAP required it. Some examples of these items are:

- Deeper targeting through rent restrictions or new PBRA contracts.
- Including market-rate units.

- Forgoing the qualified contract option completely.
- Forgoing the qualified contract option for 5 or 10 years.
- Services such as
    - Operating a community garden.
    - Providing low-cost or free health services on-site.
    - Providing low-cost or free educational services on-site.

Although these LIHTC QAP items do not jeopardize the tax credits, they must be in place to maintain a project in good standing with DCA/GHFA. An Owner's failure to maintain additional requirements may result in point penalties on applications in future DCA/GHFA funding rounds.

Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered with correction fluid or "white-out" will not be accepted by DCA/GHFA, as it is difficult or impossible to determine what was changed and who made the change. When a change is needed on a document (including the Tenant Income Certification and other forms signed by a household and/or the owner/agent), the owner/agent is not required to redo the form if the information on the form is clear and legible. The person making the correction should draw a line through the information that needs to be adjusted and write or type the correct information over the adjustment. All parties should then initial and date the change.

Notice to Owner

DCA/GHFA is required to provide prompt written notice to the owner of a project if DCA/GHFA does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records. The Agency must also report if it discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42, the HOME program, or an applicable LURA or LURC. They will give the owner a correction period to cure issues discovered before reporting federal LIHTC noncompliance to the IRS.

Correction Period

The correction period will be established by DCA/GHFA and outlined in the notice of non-compliance and will be for a period of up to 45 days from the date of the notice to the owner of the results of a compliance review. DCA/GHFA is permitted to extend the correction period for up to six total months, but only if the Agency determines there is good cause for granting the extension. Requests for an extension must be in writing, must be received by DCA/GHFA before the last day of the correction period identified on the Report of Noncompliance, and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

DCA/GHFA will review the owner's response and supporting documentation, if any, to determine whether the noncompliance has been clarified or corrected.

Checklist | File Issues Often Observed by DCA/GHFA

...with helpful hints to avoid each of them

Application Process Paperwork

- ❑ The Application does not represent the household income from all sources or has blanks or other missing information.

  Conduct effective household applicant and recertification interviews of all adults.

  Ensure that applicants thoroughly complete compliance-related questionnaires and make adjustments if more information comes to light during the interview and certification process.

- ❑ VAWA Notice of Occupancy Rights (or a signed acknowledgment of receipt of the Notice) and Lease Addendum are not present and signed by all adult household members.

  Ensure that the VAWA paperwork (lease addendum and the receipt of Notice of Rights and Victim Cert) is present with the move-in and recertification files.

- ❑ Student status certifications are missing at move-in or any year after.

  Ensure that initial and annual student certifications are in the file for both LIHTC and HOME programs, as applicable.

  For 100% LIHTC projects, the student status must be certified annually.

The Lease

- ❑ The lease was not present, dated, or signed by all the household members and management on or before the move-in date.

  Ensure a fully executed and accurate lease is in each file.

- ❑ The lease rent does not match TIC rent.

  Ensure that both the lease and TIC are correct and agree.

The TIC

- ❑ A child on the student form is not on the TIC.

  Add to the TIC and increase the income limit, as needed.

- ❑ Answers missing on the student question, Part VII of TIC.

  Ensure that the TIC is accurate and complete.

Verification

- ❑ Documents that verify income and assets are missing, incomplete, or otherwise insufficient to the facts of the file, federal, or state standards.

  Review and know the DCA/GHFA documentation standards listed in this manual.

  Review each document used for sufficiency to the needs of the file and DCA/GHFA standard and seek further documentation if fully or partially incomplete.

- ❑ SS letters do not indicate if the amounts listed reflect gross benefits.

  Ensure that letters or other verification shows the gross awards. If they do not, secure additional documentation.

Recertification

- ❑ A tenant recertification questionnaire is not present in the file for HOME units and for all LIHTC units at a property that is less than 100% LIHTC.

  Ensure that questionnaires for all years after move-in are in the files, as appropriate.

Noncompliance and the Average Income Test. Federal noncompliance shall be reported on Form 8823 and submitted to the IRS in accordance with Section 42. If a housing unit no longer qualifies as a Tax Credit unit and the property fails the Average Income Test, DCA/GHFA shall submit Form 8823 to the IRS with box 11e selected.

If one or more units lose their low-income status or if there is a change in the designation of a unit and if either event would cause the average for the project to exceed 60%, then the owner/agent may designate a market rate unit or may reduce the existing designation of one or more other units in the project in order to restore compliance with the average income requirement. This can be applied to market-rate, vacant, or occupied units. In the case of occupied units, the current tenants must qualify under the new, lower designation and rent must also be changed to be appropriate to the new designation, if necessary.

Several types of errors in designation, redesignation, or the average as it relates to the minimum set-aside or applicable fraction(s) if discovered in the future might be correctable through the redesignation of units. If so, the correction must be within 180 days of the owner/agent or DCA/GHFA's discovery of the issue. Redesignation may not prevent the loss of tax credits, especially when implemented retroactively. An owner should consult with legal and tax professionals when addressing AIT noncompliance using the redesignation of units. DCA/GHFA will take into consideration an owner's timely reasonable efforts to correct such noncompliance when evaluating noncompliance with the Average Income Test.

All State and Federal noncompliance shall impact the property owner's future Qualified Application Plan (QAP) application scoring for compliance monitoring, the management company's status on the approved management company list, and the overall rating of the property's performance.

LIHTC Form 8823

To report any LIHTC noncompliance that DCA/GHFA identifies, the Agency is required to file Form 8823, *Low-Income Housing Credit Agencies Report of Non-Compliance or Building Disposition*, with the IRS no later than 45 days after the end of the correction period (including permitted extensions).

DCA/GHFA must check the appropriate box on Form 8823 indicating the nature of the non-compliance and indicate whether the owner has corrected the noncompliance. If the noncompliance is corrected, DCA/GHFA will provide a date on which the noncompliance was corrected. If DCA/GHFA cannot determine that an owner's actions have corrected all noncompliance, no correction date will be provided. However, an attachment to the 8823 will be provided which explains the situation. Any change in either the LIHTC applicable fraction or the eligible basis of a building that results in a decrease in the qualified basis of the building is noncompliance and must be reported to the IRS. DCA/GHFA will send the owner a copy of Form 8823 at the time it is filed with the IRS.

If uncorrected noncompliance is reported to the IRS, a corrected 8823 cannot be filed until all instances of noncompliance are corrected for that building.

If the noncompliance is corrected within three years after the end of the correction period and the corrections are reported to DCA/GHFA, a Form 8823 will be submitted to the IRS to report the correction of the previously reported noncompliance.

Recapture of Tax Credits

If tax credits were not accelerated, an owner would have to claim all credits over the full 15-year compliance period. However, they are accelerated so that the owner can claim the credits in the 10-year credit period. This means that for each year of the credit period, the owner claims a third of the credits in advance. These credits claimed in advance are allowed with the requirement that they will be repaid if the property does not maintain compliance through the entire compliance period.

Fast Facts
Consequences of LIHTC Noncompliance

Disallowance | An owner cannot claim credits for the year(s) the property is out of compliance. If already claimed, these must be repaid in full.

Recapture | The owner must repay accelerated credits already claimed (usually 1/3 of all previously claimed credits going back before the period of noncompliance).

Generally, during the compliance period, a building or project is out of compliance, and recapture applies if:

- There is a decrease in the qualified basis of the building from one year to the next; or
- The project no longer meets the minimum set-aside requirements, the gross rent requirements, or the other requirements for the LIHTC units.

Vacant units that were previously occupied by LIHTC tenants can continue to be counted as LIHTC if the owner/agent makes continual reasonable attempts, as applicable to the property and area, to rent the unit to an eligible household (see the Vacant Unit Rule in Chapter 3).

For most noncompliance during the compliance period, recapture is applied. An owner will complete IRS Form 8611 to recapture the credits. If the non-compliance is due to a reduction in qualified basis, as long as the project remains in compliance with its minimum set-aside, recapture and disallowance of credit will apply only to noncompliant units. If the minimum set-aside is not met, then all previously claimed accelerated credits will be recaptured.

Casualty Loss

In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period. DCA/GHFA must be informed using a Casualty Loss Notification form available on the Agency website. Notification must be made within 72 hours of the loss. The reasonable period to restore will be set by DCA/GHFA but cannot exceed federally set limits. In the case of a casualty loss that relates to a presidentially declared disaster, disallowance of credits is also avoided if restoration happens within the reasonable period. This does not apply to other losses that do not relate to a declared disaster.

Fast Facts
Max Time to Restore a Casualty Loss

For a presidentially declared disaster | 25 months after the month the disaster is declared.

If not related to a declared disaster | 24 months after the end of the year that the casualty loss occurred.

Example

Reasonable Period | Declared Disaster

Hurricane Skitch destroys much of a building in March of 2022 and the president declares the hurricane to be a federal disaster that month. The state HFA allows the whole time allowable under federal standards for the reasonable period to restore. When is the latest that the casualty loss must be restored?

April of 2024
The month of the declaration, plus 25 months.
- If this is done, disallowance and recapture can be avoided.
- If not restored on time, all credits will be disallowed and recaptured back to the year of the disaster.

Example

Reasonable period |Not a Declared Disaster

A fire destroys much of a building in March of 2022. The state HFA allows the whole time allowable under federal standards for the reasonable period to restore. When is the latest that the casualty loss must be restored?

December of 2024
The year of the loss, plus 24 months.
- If this is done, recapture can be avoided, but disallowance still applies during the restoration period.
- If not restored on time, all credits will be disallowed and recaptured back to the year of the disaster.

The above information has been provided for informational purposes to give a general understanding of recapture procedures. Owners and the IRS bear the responsibility for determining whether the correct amount of credit has been claimed each year and whether a building owner is subject to disallowance or recapture. DCA/GHFA is not responsible for determining whether a specific event of noncompliance is a disallowance/recapture event or ensuring that credits are correctly adjusted thereafter.

HOME Penalties

Under HOME requirements, after a monitoring visit, a HOME PJ provides a description of what they found in the review, listing any findings, concerns, and observations.

Findings are areas of statutory or regulatory noncompliance that must be addressed immediately. For example, it is a finding if a PJ invests more HOME funds than the maximum per-unit subsidy limit allows, or if a household is charged a rent that is greater than the permitted HOME rent.

Findings always require corrective actions.

Concerns are issues that are not instances of statutory or regulatory noncompliance but may result in noncompliance if they are not addressed. For example:

- Procedures to operate its HOME units are not in place
- Staff are unsure of the steps involved in selecting and approving applicants
- The properties files are in disarray

Even if DCA/GHFA does not find any instances of noncompliance, if these conditions continue, it is unlikely that the property will be able to continue to operate in compliance with HOME requirements.

DCA/GHFA retains the option to require concerns to be addressed, as indicated in the monitoring report/letter.

Observations are comments about areas where the property can improve performance. For example, DCA/GHFA might observe high staff turnover, which is not a violation in terms of compliance, but it has the potential to affect program performance.

HOME noncompliance findings can result in a variety of corrective actions imposed by a PJ. The type of corrective action needed will depend on the severity of the noncompliance. Examples of some corrections are:

Correcting deficiencies. Such as making improvements to bring properties into compliance with applicable property standards or repaying residents for overcharged rents.

Management changes. Such as imposed management staff or company changes or requiring adjusted management plans.

Repaying HOME funds. Repayment can be entire or in part (see Possible Consequences of HOME Noncompliance chart below). Other financial penalties may be imposed.

At any point during the entire affordability period, HUD CPD may require that DCA/GHFA repay the HOME funds when a property is noncompliant. DCA/GHFA will then require repayment from the owner. How this is accomplished varies depending on the nature of the HOME commitment, as per below.

Fast Facts

Consequences of HOME Noncompliance

Type of HOME commitment | Possible consequence

Grant or deferred payment loans | Pay back the entire amount of HOME Fund assistance provided.

Loans | Pay the outstanding principal balance of the loan with a fine or other financial penalties.

Addressing Noncompliance with Federal Requirements

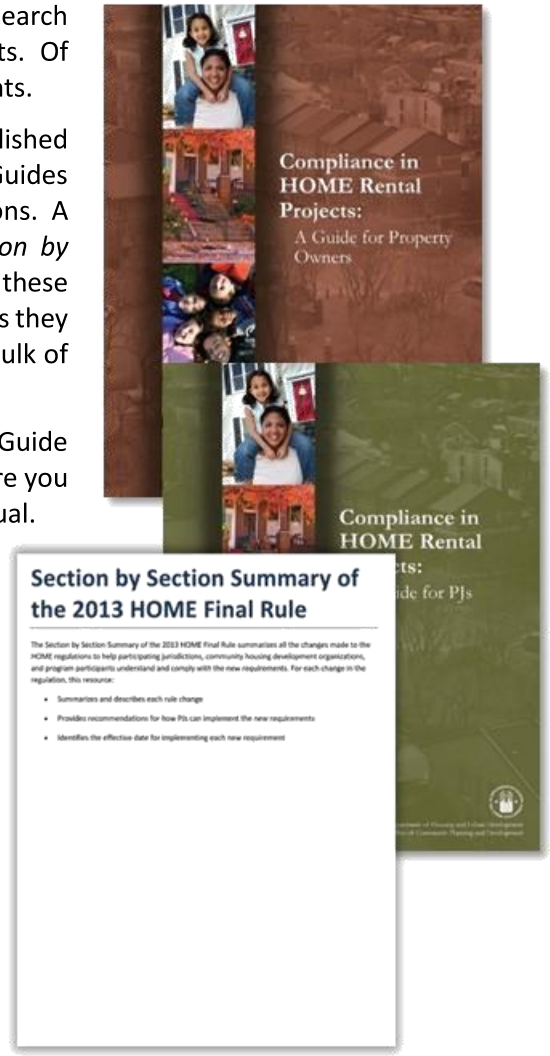
LIHTC Noncompliance

See the introduction to this chapter for information on the 8823 Guide, the primary instruction set that DCA/GHFA uses to determine how to identify and address noncompliance.

HOME Noncompliance

HUD-CPD has published two Guides to HOME compliance, one for owners/agents' benefit and one for Participating Jurisdictions like DCA/GHFA. They are entitled:

- Compliance in HOME Rental Projects | Guide for Property Owners
- Compliance in HOME Rental Projects | Guide for PJs



These are available to the public on the HUD website. A keyword search for the titles should help owners/agents locate the documents. Of course, the first one is a particularly powerful help to owners/agents.

2013 Updates to the HOME Guides. As the above Guides were published in 2009, it is important to realize that a few matters from the Guides should be adjusted to reflect the newer 2013 HOME regulations. A document is also available on the HUD website entitled *"Section by Section Summary of the 2013 HOME Final Rule"* that can provide these helpful updates. It is noted, however, that the changes from 2013 as they relate to the daily operation of HOME properties are minor. The bulk of the information available in the HOME Guides is still current.

Below is a quick review of changes that are not reflected in the Guide that affect the daily operation of HOME properties, as well as where you can find up-to-date information on these new matters in this manual.

- The HOME student rules took effect (see Chapter 4).
- The requirement that HOME files have documentation of two months of wage history was introduced. It was made a regulatory requirement but reduced from the three months previously required in HOME guidance (see Chapter 4).
- Annual PJ approval of HOME rents was implemented (see Chapter 3).
- HUSM or other actual utility methods must be used for utility allowance calculations for HOME projects that were committed HOME funds after the effective date of the new regulations in 2013 (see Chapter 3).
- Physical inspection frequency (annually or every 3 years) and protocols used by the PJ (NSPIRE) may have been adjusted by the PJ since 2013.

In 2024 HOTMA adjusted how income is determined for HOME when Section 8 rules are used, as required by DCA/GHFA. HOTMA also requires the use of the determination of income conducted by project- and tenant-based rental assistance programs. It also allows for the use of determinations of other means-tested programs.

Step One | Understand DCA/GHFA HOME Compliance Responsibilities

To meet federal and local HOME requirements, an owner/agent must be informed of these by the participating jurisdiction (PJ) for a property. Below is a list of required HOME compliance provisions that participating jurisdictions are required to provide to owners/agents [where to find DCA/GHFA guidance is indicated like this].

Affordability Period [the HOME LURA for the property]

- Determine the length of the affordability period.
- Inform owners of the length of the affordability period.

Deed Restrictions [part of the HOME LURA for the property]

- Execute and record a copy of the deed restriction or covenant and provide a copy to the owner.

Written Agreements [HOME LURA for the property and other DCA/GHFA documentation]

- Include all required HOME provisions in the written agreement.
- Provide owners with a copy of the written agreement.

HOME Assisted Rental Units [listed in the HOME LURA for the property]

- Determine the total number of HOME-assisted units, by bedroom size, in a property.
- Inform owners about the total number of HOME-assisted units and identify which units are HOME-assisted.

High HOME Rent Units and Low HOME Rent Units [listed in the HOME LURA for the property]

- Identify the total number and type of High and Low HOME Rent units before property lease-up.
- Explain to the owner how to use the HOME income limits and the HOME rent limits [see also Chapters 1 & 3].
- Provide the owner the HOME income limits and rent limits before property lease-up, and annually during the affordability period [DCA/GHFA and HUD-CPD websites].

HOME Unit Mix [listed in the HOME LURA for the property]

- Explain to the owner how to maintain the required unit mix of High HOME Rent units and Low HOME Rent units by bedroom size [Chapters 1 & 3].
- Monitor the property to ensure that the required unit mix is maintained during the affordability period [Chapter 2]

Fixed and Floating HOME Units [listed in the HOME LURA for the property]

- Inform the owner about whether the property has fixed or floating HOME-assisted units [Chapter 1].

HOME Income Limits [DCA/GHFA and HUD-CPD websites and Chapter 3]

- Provide owner with:
    1. The HOME income limits that apply before lease-up.
    2. Updated HOME income limits on an annual basis until the end of the property's affordability period.
    3. Definition of income that can be used for determining tenant income-eligibility [Chapter 4].
    4. Guidance on how to determine income eligibility [Chapters 4-6].

HOME Rent Limits [DCA/GHFA and HUD-CPD websites and Chapter 3]

- Provide owners with the HOME rent limits that apply before lease-up.
- Determine which Low HOME Rent limits apply to the property.
- Provide owners with the updated HOME rent limits on an annual basis until the end of the property's affordability period.
- Approve the property's rent schedule and subsequent rent increases.

Property Standards [Chapter 3]

- Tell the owners what property standards apply, including lead-based paint hazard elimination requirements and the National Standards for the Physical Inspection of Real Estate [NSPIRE].
- Provide owners copies of all applicable codes and standards [references in Chapter 3].
- Notify owners of any changes to the codes and standards during the affordability period.
- Conduct periodic on-site inspections to ensure that properties continue to meet applicable standards [Chapter 2].

Accessible Units [Chapter 3]

- Provide a copy of the UFAS standard to the owner and inform the owner about the applicable accessibility standards [References in Chapter 3 and HUD website].

- Inform the owner about the requirements related to marketing accessible units to persons with disabilities first.

Affirmative Marketing and Tenant Selection [Chapter 3]

- Inform the owner about the affirmative marketing requirements that apply.
- Evaluate the success of the affirmative marketing procedures.
- Provide guidance to owners about how to develop tenant selection procedures.

Prohibited Lease Terms and Tenant Protections [Chapter 3]

- Review and approve leases in use by owners.
- Inform owners about the prohibited lease terms and required tenant protections that apply to their rental properties.

Conflict of Interest [Chapter 3]

- Inform owners about the conflict-of-interest prohibitions against certain people occupying HOME units.

Reports [DCA/GHFA website, current notices, and Chapter 2]

- Inform the owner about the reports that must be submitted.
- Establish specific record-keeping, reporting, and tracking procedures for HOME-assisted units and properties.

Records [Chapter 2]

- Inform owners about:
  1. The records that must be maintained, and
  2. how long the records must be retained.

Terms of Enforcement [Chapters 2 and 9]

- Inform owners about the corrective actions or remedies that will be imposed if owners breach the terms of their written agreement with the PJ.
- Monitor the owner to ensure that properties are managed in a manner that complies with HOME requirements.

After reading and thoroughly understanding the above, the owner/agent is ready to…

Step Two | Meet Owner/Agent HOME Compliance Responsibilities

Affordability Period

- Contact the PJ to find out the affordability period that applies to its rental property, if not known.

Deed Restrictions

- Contact the PJ for a copy of the deed restriction or covenant, if needed.

Written Agreements

- Contact the PJ to obtain a copy of the written agreement for clarification of terms, if needed.
- Understand the terms of the agreement with the PJ.

HOME Assisted Rental Units

- Contact the PJ for guidance to find out which units are HOME-assisted, if not known.
- Manage property in compliance with the HOME rules.

High HOME Rent Units and Low HOME Rent Units

- Understand how to apply the HOME income and rent limits.

- Contact the PJ to find out which units are High HOME Rent units and which units are Low HOME Rent units, if not known.
- Contact the PJ for updated HOME rent limits, if needed.

HOME Unit Mix

- Manage the property so that it maintains the appropriate HOME unit mix.
- Contact the PJ for information on what the unit mix is for the property, or for more information about how to manage the unit mix if needed.

Fixed and Floating HOME Units

- Contact the PJ to find out if the property has fixed or floating HOME units, if not known.
- Manage the property for its unit type (fixed or floating units).

HOME Income Limits

- Know what the correct annual published income limits are and how to apply them.
- Collect and verify income information provided by applicants upon initial occupancy to determine income eligibility.
- Recertify income eligibility for existing tenants on an annual basis.
- Contact the PJ for initial and updated income limits, a definition of income, and/or guidance on how to determine income eligibility, if needed.

HOME Rent Limits

- Determine the rents that can be charged for HOME-assisted units and ensure that rents do not exceed the Low HOME rent limit for units that are designated to be occupied by very low-income tenants and the High HOME rent limit for the remaining units.
- Submit rents and rent increases to the PJ for approval before charging tenants.
- Contact the PJ for the updated HOME rent limits, if not provided.
- Contact the PJ for guidance if the latest PJ rent limits exceed the most recent HUD-published HOME rent limits.
- Correctly calculate annual utility allowances for HOME units, including not using PHA estimates for properties committed HOME funds after August 23, 2013.

Property Standards

- Conduct periodic on-site inspections to ensure that properties continue to meet applicable standards.
- Maintain properties in accordance with all applicable codes and standards.
- For pre-1978 buildings, provide required tenant/applicant disclosures, and monitor to ensure that regular maintenance and evaluation of lead-based paint hazards are undertaken [Chapter 3 and EPA website].
- Contact the PJ to find out which property standards and lead-based paint hazard elimination requirements apply, if not known.

Accessible Units

- Understand the accessibility standards and requirements.
- Contact the PJ for information on the applicable accessibility requirements, if needed.

Affirmative Marketing and Tenant Selection

- Develop tenant selection policies and criteria that are fair and objective.
- Carry out affirmative marketing per the PJ’s procedures.
- Report to the PJ on affirmative marketing, as required by the PJ.

- Contact the PJ for information on the affirmative marketing requirements, or guidance about the required tenant selection procedures.

Prohibited Lease Terms and Tenant Protections

- Ensure that no lease with any tenant of a HOME-assisted unit includes any prohibited lease terms.
- Secure PJ approval for leases.
- Execute a lease for at least one year with each tenant of HOME-assisted units, unless otherwise permitted by PJ.
- Contact the PJ for guidance for information on the prohibited lease terms and required tenant protections, if needed.

Conflict of Interest

- Understand applicable conflict of interest prohibitions.
- Contact the PJ for more guidance, if needed.

Reports

- Check the accuracy of reports that are prepared by staff or third parties.
- Submit required reports to the PJ on time. At a minimum, submit annual rent and occupancy data for HOME-assisted units.
- Contact the PJ to find out the reporting requirements, if not known.

Records

- Maintain required records, including tenant income verifications, rents, affirmative marketing, and property standards.
- Contact the PJ to find out the records retention requirements, if not known.

Terms of Enforcement

- Implement corrective actions when the property is out of compliance, as appropriate.
- Manage the property in a manner that complies with HOME requirements.
- Notify the PJ with questions or concerns about compliance.
- Understand the consequences of noncompliance.
- Contact the PJ to find out the enforcement terms, if not known.
- Monitor the work of others to ensure that management procedures are followed, and records are retained to verify HOME compliance.

Monitoring of HOME Performance Indicators

Owners/agents and HOME participating jurisdictions are expected by HUD to watch performance indicators to meet certain standards. When these drop below the expected standards, a plan should be formulated to address the problem while it is manageable. Early warning indicators should not be ignored. All interested parties should take the creation and monitoring of performance indicators seriously. The following charts are based on HUD-CPD and IRS guidance.

Addressing HOME Noncompliance

	Examples of Violations	Steps DCA/GHFA May Take
Level 1 A one-time instance of noncompliance	• A single instance of property maintenance issues, such as broken windows. • A single instance of an incorrect rent calculation. • A single instance of failure to raise the rent of an over-income tenant. • Untimely reports.	• Document the violation(s) in a letter to the owner with a schedule to correct the violation(s). Specify consequences if the owner fails to correct them. • Follow up and verify that the problem is corrected. • Monitor more frequently to ensure that the problem does not recur.
Level 2 Serious and recurring instances of noncompliance	• Incorrect, or absence of, income-eligibility determinations for tenant applicants. • Incorrect, or absence of, annual tenant income-eligibility recertifications. • Failure to adopt or follow tenant selection procedures. • Failure to charge correct rents.	• Convene a meeting and direct the owner to correct the deficiency, within a specified timeframe. • Document the meeting and directives with a follow-up letter. • Follow up to verify violations have been corrected. • Optional steps: Monitor the property more frequently; provide technical assistance if staff lacks knowledge about HOME requirements. • Impose a one-time or short-term financial penalty, to reinforce the serious nature of the violations.
Level 3 Instances of gross negligence, fraud, discrimination, or conditions that impose an imminent threat to tenants' health or safety	• Failure to address major systems repairs (such as heating systems). • Chronic misrepresentation of availability of units to qualified applicants to show favoritism to relatives. • Purposefully overcharging rents and "skimming" the difference.	• Convene a meeting with the owner to identify the violation(s) and establish a timeframe to correct it/them. • Execute a written agreement to specify terms and conditions to address the violation. • Impose a permanent or long-term financial penalty on the owner. • Direct the owner to replace the staff or management entity involved. • Take legal action. • Follow up closely to determine that violations are corrected. • Monitor the property more frequently. • Increase the frequency of reporting by the owner.

Watch for Emerging Issues | HUD's Suggestions to HOME PJs

Performance Indicator	Performance Standard (Typical – individual property standards may vary)	Early Warning Signs
Tenant receivables	Owners should collect 95 % of the property's gross potential rent.	Tenant receivables above 5% suggest that the property is not receiving all available income and may quickly make it difficult for property managers to pay bills on time or make required reserve deposits. *Possible causes: Lax management/rent collection efforts; or tenants' inability to pay due to unemployment/ problems in the local economy.*
Unit turnaround	Vacant units should be re-rented in three to fourteen days.	Slow unit turnaround results in a loss of income for the property. *Possible causes: Management issues (such as poor communication between maintenance and office management) or marketing difficulties in finding qualified tenants).*
Vacancy rate	Properties should be 95 % occupied, as indicated on occupancy reports and rent rolls.	Higher vacancy rates result in a loss of income for the property. *Possible causes: Management problems, marketing issues, neighborhood decline.*
Accounts payable	The majority of accounts are paid on time; 30-day or more delinquent accounts are pursued by management promptly.	Increasing or high accounts payable and numerous past due accounts because the property is not paying its bills on time. *Possible causes: The property manager is not collecting all available sources of revenue or rents do not adequately cover the property's expenses.*
Capital needs expenditures	Capital needs are addressed on time and based on a capital needs assessment /useful life analysis and schedule.	Increasing or unexpected capital needs, or capital needs that are out of line with the budget and/or the planned timing of capital improvements. *Possible causes: Poor initial planning; routine maintenance is not being performed.* *Note: the former will impact cash flow; the latter will result in premature systems and equipment failures.*
Cash balance	The cash balance should be sufficient to cover anticipated monthly operating expenses.	Decreasing or low cash balances mean that a property will have difficulty covering expenses in the near future. *Possible causes: Either decreasing income to the property or increasing expenses. The cause(s) should be evident from the property's monthly financial statement.*
Property conditions	The property should receive routine maintenance and remain in standard condition.	Deteriorating property condition or increase in code violations. *Possible causes: The property does not have enough cash reserves to pay for needed maintenance or repairs, or poor management (i.e., the property manager is not*

	addressing the property's maintenance needs). The poor physical condition of the property may result in violations of relevant local codes, which in turn violates HOME property standard requirements and may cause health and safety concerns for tenants. Ongoing neglect of the property's physical maintenance will lead to difficulties in marketing the property to tenants.
Local economy and crime	A decline in the local economy that results in higher numbers of unemployed tenants and impacts rent collection; or an increase in neighborhood crime that impacts the property's ability to attract good tenants, and also leads to problems collecting sufficient rent to cover expenses. *Note: while the decline of the neighborhood can contribute to the decline of the property, so too can the decline of the property contribute to the stress or decline of a neighborhood.*
Property management staff turnover	High or frequent staff turnover. *Possible causes: Difficulties with managing the property.*

Noncompliance | Federal v. DCA/GHFA Policies

LIHTC

Federal noncompliance items	State noncompliance items
The household is above the income limit upon move-in (based on the minimum set-aside income limit(s)). **8823 Guide Chapter 4**	The household is above the state set-aside income limit upon move-in (but below the minimum set-aside income limit. State set-asides are established in the LURC.
Late or not-completed annual recertification (at properties less than 100% LIHTC). **8823 Guide Chapter 5**	
Violations of NSPIRE standards. **8823 Guide Chapter 6**	Physical deficiencies not covered by NSPIRE, but that DCA/GHFA may require to be cured.
Failure to submit complete annual owner's certification. **8823 Guide Chapter 7**	Failure to submit additional state-required reporting.
Changes in eligible basis (for instance charging inappropriate fees or removing amenities). **8823 Guide Chapter 8**	
Failure to keep the number of units in compliance as required by the minimum set-aside. **8823 Guide Chapter 10**	
Rents are charged over the limit(s) based on the minimum set-aside. **8823 Guide Chapter 11**	Rents charged are over state set-aside rents (but below the minimum set-aside). State set-asides are established in the LURC. Gross Rent increases greater than 5% without proper 120-day notice to tenants.
The project is not available to the general public. **8823 Guide Chapters 12 &13**	
Violations of the Available Unit Rule. **8823 Guide Chapter 14**	
Violations of the Vacant Unit Rule. **8823 Guide Chapter 15**	
Failure to execute the LURA by the time credits are claimed. **8823 Guide Chapter 16**	
Units are occupied by nonqualified student households. **8823 Guide Chapter 17**	
The utility allowance was calculated incorrectly. **8823 Guide Chapter 18**	
The owner fails to respond to agency notifications of inspection. **8823 Guide Chapter 19**	
LIHTC units are used on a transient basis (initial leases are less than 6 months). **8823 Guide Chapter 20**	
Building no longer participates in the LIHTC program. **8823 Guide Chapter 21**	Noncompliance with non-federal requirements listed in the LURC.

HOME

Federal noncompliance items	State noncompliance items
The mix of High and Low HOME units is not maintained.	**Note: noncompliance with the HOME Contract for a project puts the federal HOME funding at risk. Unlike the LIHTC program, the HOME program does not make a distinction between noncompliance with federal and additional PJ requirements.**
Lease for HOME units fails to meet HOME provisions.	
Households over HOME limits at move-in.	
Rents charged are above the HOME limits (including subsidy, except for project-based subsidy in Low HOME units).	
Leasing of next units is incorrect after income increase or ineligible student status makes a household “over-income” for their HOME unit.	
Rents were calculated incorrectly for households over the 80% income limit (for HOME properties without LIHTC(s).	
Noncompliance with non-federal HOME Contract provisions.	
A HOME unit contains an ineligible student household.	

Chapter 10 | Sale, Transfer, or Disposition of a Project After the Placed In Service Date

DCA/GHFA is required to notify the IRS via form 8823 in the event of a sale (including a change in ownership or ownership interest), foreclosure, abandonment, casualty loss, and/or destruction of a property. Owners must timely notify the Agency of such events. Notification should occur a minimum of 30 days in advance of a transfer so that the appropriate documentation is obtained.

When a sale or transfer is planned after the placed-in-service date, the owner must submit a Project Concept Change Request Form advising and requesting DCA/GHFA's approval in advance of the transfer of ownership. The Agency must be notified of all changes in ownership interest or project participant structure. Current and potential owners are reminded that the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits will be enforced by DCA/GHFA. The extended use agreement will not be removed until the agreement has expired. The IRS will be notified of any changes of ownership, transfers, or building disposition (please see Chapter 9 for more information on recapture due to building disposition/casualty loss or similar situations). Owners are encouraged to contact their tax consultant before the sale of any LIHTC property. If a transfer is approved, the previous owner must provide a completed Property Information Form to DCA/GHFA before the disposition of the property or as otherwise instructed by the Agency in writing.

DCA/GHFA will recognize a new owner or ownership entity only after all required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the owner of record and any compliance violations will be reported to the IRS under the name of the owner of record.

The IRS has also suggested that, if a building is sold or otherwise transferred by the owner, the transferee must obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed. New Owners must ensure that they complete a full assessment of the items required to comply with each program and that all tenant files and administrative documentation are up to date.

There is no recapture on dispositions as long as it is reasonably expected the building will continue to be operated as a qualified LIHTC building and the original owner elects to be subject to a new longer statute of limitations for noncompliance findings.

FDIC-Funded properties – Sale/Transfer Advance Notification Requirements

DCA/GHFA must be notified in advance of the transfer of an FDIC property. The seller/outgoing owner must provide contact information for the incoming owner/purchaser and the incoming management company. Immediately after the transfer/sale occurs, DCA/GHFA must be provided a copy of the closing statement and/or Warranty Deed by the purchaser/incoming owner. Send advance notice to DCA/GHFA as instructed on the Agency website.

Management Company Change/Approval Process

DCA/GHFA has minimum requirements necessary to gain the Agency's approval to manage a property that currently has or is applying for affordable housing programs monitored by DCA/GHFA. The Agency will perform a comprehensive review to determine whether a proposed management company meets minimum qualification requirements related to affordable housing experience, training, technical skills, and performance history to successfully manage an affordable housing property community or portfolio in the state of Georgia. DCA/GHFA reserves the right to modify their policy at any time or to waive any of the requirements listed below on a case-by-case basis.

DCA/GHFA must comply with statutory requirements to consider project team qualifications to own and operate a DCA/GHFA-funded property. This extends to the management company's ability to manage an affordable property. Experience and training are required to manage all DCA/GHFA affordable properties, regardless of the funding program. Further, all project teams must include a management company that agrees to operate properties per compliance requirements set forth by DCA/GHFA, LIHTC, and HOME regulations, and/or other funding program rules.

Properties in the FDIC Program should contact the DCA/GHFA Compliance Department for FDIC-specific regulations, requirements, and ownership and management change requests.

Management companies may seek general approval from DCA/GHFA in advance of, or without having a management agreement with a developer/owner for a specific DCA/GHFA-funded or monitored property.

Owners are required to submit all management company approval requests to the Agency no less than 30 days in advance of the effective date of the proposed management or change of management. Failure to provide such advance notice is considered a major finding of non-compliance and can result in point penalty deductions assessed on LIHTC applications as stated in the applicable QAP and may affect the good-standing status of both the management company and owner with DCA.

Reasons for Denial

DCA/GHFA will not approve management companies seeking approval to manage affordable properties funded and/or monitored by the Agency if the following conditions exist:

1) The management company is currently barred or suspended or has been barred or suspended by any state Housing Financing Agency ("HFA") or equivalent agency within the past two years from the date that approval is sought. Evidence of reinstatement by the governing agency must be provided to be considered for DCA/GHFA's approval.
2) The management company has, in the five years before the submission of an approval request, received a final decision that a discriminatory housing practice has occurred as determined by a court, the U.S. Department of Housing and Urban Development ("HUD"), or has been found guilty of discrimination by any government agency on any affordable housing property. Management companies under a compliance agreement are eligible for DCA/GHFA approval, contingent upon adherence to HUD's compliance agreement requirements.
3) The management company is performing third-party management without a licensed brokerage in Georgia. Georgia Law requires that all third-party property management companies be licensed brokerages in Georgia or perform all leasing activity under a licensed Georgia real estate broker. This license must be current and valid. There are no exceptions to this requirement. To comply with state law, existing management companies should forward evidence of the brokerage license. If DCA/GHFA discovers management companies providing fee management that are not licensed in Georgia, the Agency will notify the Georgia Real Estate Commission and the owner, and the management company's DCA/GHFA approval status will be revoked. The Agency may reinstate approval upon receiving evidence of the management company obtaining a brokerage license.

Discovery of any of the items above, after DCA/GHFA approval, will cause the management company's approval status to be revoked.

Qualification Requirements

Management companies seeking first-time approval to manage DCA/GHFA properties that are subject to the rules and regulations of the Agency's various affordable multifamily housing programs must meet and evidence the following minimum qualification requirements:

a) Two or more years managing a minimum of three qualifying affordable properties in any state. The qualifying affordable properties must be funded by LIHTC, HOME, or USDA's Rural Development program. These qualifying properties must be under a management contract at the time of request submission.
b) Each management company must always have at least one compliance specialist or responsible manager with at least one of the following nationally recognized credentials: HCCP, SCHM, NPCC, C3P, or higher. These credentials/certifications must be current and valid.
c) Good standing status with all applicable state HFAs and/or their equivalents must be provided to DCA/GHFA in the form of a Letter of Good Standing or equivalent proof of general compliance provided by each HFA or their equivalent. DCA/GHFA will also take into consideration any management companies that may be flagged for poor performance by HUD, or by any other agency. Should DCA/GHFA become aware of a change in the good standing status after the Agency has provided approval, DCA/GHFA reserves the right to reconsider the approval status of the management company, at the Agency's sole discretion.
d) Completion of the Management Change/Approval Request form available on the DCA/GHFA website.

Management companies, including Public Housing Authorities ("PHAs"), that do not meet DCA's minimum experience requirements may have the experience and credentials of individual management principals and/or officers evaluated to achieve one of the approval statuses listed under the Approval Levels header below. Resumes of all management company or PHA officers are required if minimum qualification requirements have not been met as noted in this policy. As outlined above, DCA/GHFA may impose limitations on the number of Georgia DCA/GHFA properties that can be managed. Additionally, the Agency may require the management company to contract with a third-party compliance consultant or professional. These exceptions are designed to help a management company obtain affordable housing experience in Georgia in manageable increments.

Documentation Requirements for Management Companies New to DCA/GHFA

Management companies seeking, for the first time, to manage Georgia DCA/GHFA properties that are subject to the rules and regulations of the Agency's various affordable multifamily housing programs must submit a formal request to DCA/GHFA via the Management Change/Approval Request online form, available on the DCA/GHFA website. Online submission requests must include the following items and/or documentation:

- Applicable Management Company Approval Fee.
- All documentation evidencing the Qualification Requirements required above.
- Copy of the lease template package, which should include the lease application, lease addenda, and other forms, currently in use or proposed for use for low-income units (if applicable).

Documentation Requirements for Management Companies Managing DCA/GHFA Properties

Owners of DCA/GHFA properties that are subject to the rules and regulations of the Agency's various affordable multifamily housing programs requesting a change in management company to a management company that already has experience managing Georgia DCA/GHFA properties must also submit a formal request via the Management Change/Approval Request on-line form, available on the Agency website. Online submission requests must include the following items and/or documentation:

- Applicable Management Company Approval Fee.
- Copy of the lease template package, which should include the lease application, lease addenda, and other forms, currently in use or proposed for use for low-income units (if applicable).

Multiple Property Requests

Owners and/or Management Companies seeking approval for more than one property may submit one online form requesting approval to manage multiple properties. However, the properties must all be owned by the same ownership team. A detailed list of those properties must be uploaded and attached as part of the online submission and must include the property name, Georgia DCA property ID number, and the full property address.

DCA/GHFA reserves the right to limit the number of properties any management company may receive approval to manage.

Management Company Approval/Change Request Fees

Fees for management company approval requests are published on the DCA/GHFA website. These must be paid with the submission of the request.

Non-Compliance Penalty

All Management Company change approval requests provided less than 30 days in advance will be issued a finding of noncompliance which can result in the following:

- Point penalties imposed on an LIHTC application score as indicated in the applicable QAP Scoring Compliance Performance section.
- A penalty fee (per instance) for noncompliance/failure to provide 30 days' notice and receive DCA/GHFA's approval in advance of the management company change. The current fee is listed on the Agency's website.

All fees and penalties referenced in this policy are nonrefundable and are due at the time of the Management Change/Approval Request online form completion. DCA/GHFA will not process any Management Change/Approval requests without the appropriate fees.

Approval Levels

Based upon the review of submission documents, approval levels will be assigned as outlined below. DCA/GHFA will publish a list of management companies and their corresponding approval status on the Agency's website no less than twice per year.

DCA Approved – All experience, credentials, and documentation meet DCA/GHFA requirements.

Conditionally Approved with Limitations – Any of the Qualification Requirements section above have not been met. Accordingly, a third-party tax credit and/or HOME compliance consultant will be required for a period to be determined by DCA/GHFA, not to exceed three (3) years. DCA/GHFA will limit the number of properties that can be managed to no more than five (5) properties. Management companies with a status of Conditionally Approved with Limitations will be required to submit to DCA/GHFA for approval, evidence of the contract with the third-party consultant, and evidence that the consultant meets the first two criteria of the Qualification Requirements above. Conditionally Approved with Limitations status may be reviewed after three (3) years or the first compliance review under the new management takes place, whichever is sooner. After review, DCA/GHFA may choose to change the status to DCA Approved, Probationary Approval, or Not Approved/Approval Revoked.

Probationary Approval – Management companies previously receiving a *DCA/GHFA Approved,* or *Conditionally Approved with Limitations* status may be downgraded to *Probationary Approval*. DCA/GHFA reserves the right to downgrade approval status if it becomes aware of evidence of systemic noncompliance or operational issues, at the Agency's sole discretion. These include but are not limited to poor property condition, poor file maintenance, resident complaints, poor financial performance, and/or low occupancy. Accordingly, a third-party tax credit and/or HOME compliance consultant will be required for a period to be determined by DCA/GHFA, at the Agency's sole discretion. Management companies with a status of *Probationary Approval* will be required to submit to DCA/GHFA for approval, evidence of the contract with the third-party consultant, and evidence that the consultant meets the first two criteria of the Qualification Requirements section above. Management companies with a *Probationary Approval* status will not be allowed to manage any additional properties until they achieve a DCA Approved status.

Not Approved/Approval Revoked – One or more of DCA/GHFA's requirements have not been met. The Agency reserves the right to deny approval or revoke approval to a management company for any reason, at DCA/GHFA's sole discretion.

Management companies shall have an opportunity to appeal a denial by DCA/GHFA. All appeals shall be submitted in writing to the Agency no later than fourteen (14) business days following a denial and all appeals decisions shall be final.

Submitting Funding Applications to DCA/GHFA

Applicants for DCA/GHFA funding must ensure the management company included in all applications is categorized as *DCA/GHFA Approved* or *Conditionally Approved with Limitations* by the deadline specified in the applicable QAP. If the management company does not achieve one of these statuses by the deadline, the applicant will be required to replace the management company in the application with a management company that is categorized as one of the approval statuses listed in this section.

Georgia Housing Search. As a reminder, within 30 days from the beginning of lease up and no later than 45 days after assuming management responsibilities, owners/agents must ensure that all DCA/GHFA projects they manage are listed on the Georgia Housing Search website and updated quarterly along with including vacancies (see Chapter 3 for more information on the Georgia Housing Search website).

Project Concept Changes

Pursuant to the State of Georgia's Qualified Allocation Plans, owners of affordable properties are required to submit a Request for Post Award Project Concept Change ("PCC") to the Office of Portfolio Management (OPM) at least 30 days before a change to a property. The OPM processes PCC requests for properties that have already been placed in service.

Many major changes to a property require a PCC to be submitted to OPM. This requirement is independent of any documentation submitted to DCA/GHFA's Office of Housing Finance as part of an application for funding from the Agency.

The DCA/GHFA website contains additional policies and procedures relating to PCCs. Please note that DCA/GHFA charges a substantial fee for all PCC requests. Current fees can be found on the Agency website.

Changes Requiring a PCC Request

The following is a non-exhaustive list of the types of changes that require a PCC:

1. Sale of the applicable property.
2. Transfer of general partner interest.
3. Any modification required in the applicable property's Land Use Restrictive Covenant ("LURC") and/or Land Use Restrictive Agreement ("LURA")
4. Any change to any term or any document related to a DCA/GHFA-issued loan.
5. Any change from what was committed to in the original funding application.

Please note that if a management company change is the only applicable change to a property, then no PCC is required (see the section on Management Company Change/Approval above). The online change in management request form can be accessed on the DCA/GHFA website.

Qualified Contracts

Generally, an owner is responsible for maintaining LIHTC compliance for the entire extended use period. However, the tax code does make provision for release from the extended use agreement through a qualified contract procedure after the end of the first 15-year compliance period. Release from extended use agreement requirements may be possible after the HFA makes efforts to identify a new owner who will maintain the LIHTC requirements.

The qualified contract is defined in the tax code as a bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than an amount calculated based on a specific formula, the qualified contract price (QCP). The qualified contract rule provides that the extended use period shall terminate if an LIHTC agency is unable to present a qualified contract to a taxpayer who has requested such a contract. The qualified contract request may not be initiated until year 15 of the compliance period. The request for the presentation of a qualified contract is a request that the LIHTC agency find a buyer who will continue to operate the property as a qualified LIHTC property and to purchase the property for the QCP. If the housing credit agency is unable to find a buyer within one year, the extended use period is terminated. Please review the DCA/GHFA website for the current Agency qualified contract policy.

Decontrol Period

During the three years following the termination of a LURC by qualified contract, foreclosure, or by an instrument in lieu of foreclosure, the Owner cannot:

1. Evict or terminate the tenancy of any existing LIHTC tenant without good cause, or
2. Increase gross rent in a manner or amount not otherwise permitted by Section 42. DCA/GHFA defines a lease non-renewal as a termination.

See Chapter 11 for more information about the DCA/GHFA requirements for the decontrol period.

Chapter 11 | Tax Credit Compliance/Monitoring After Year 15

Background – Review of Credit, Compliance, and Extended Use Periods

After the 15-year compliance period has expired there is no tax impact in the event of noncompliance. Therefore, filing form 8823 to report noncompliance to the IRS is no longer required. However, noncompliance with QAP requirements after year 15 may affect future funding due to scoring requirements per the QAP. IRC regulations dictate agency rules for monitoring during the compliance period, however, they do not require agencies to monitor according to these regulations for the rest of the extended use period. Agencies do not report to the IRS noncompliance that occurs after the compliance period is over. Therefore, DCA/GHFA must establish a policy regarding how properties are to be monitored and the consequences for noncompliance after year 15. By creating reasonable and modified physical inspection and file review criteria, and by redefining some of the reporting and eligibility criteria as identified below, DCA/GHFA hopes that it will be administratively easier and less costly for owners and managers to operate LIHTC properties and maintain compliance with the LURC. After year 15, compliance can be maintained more easily, but the spirit of the program is not compromised, and the housing will continue to serve the people for whom the program was intended.

Based on the requirements of the extended use period (EUP) specified in IRS regulations and the Declaration of Land Use Restrictive Covenants, DCA/GHFA has the authority to establish different criteria for eligible/ineligible student households, available unit rule, unit transfers, and the process for performing annual recertification's for the remainder of the extended use period after year 15, as long as the basic EUP requirements are met (see the EUP Requirements header below).

Should an owner wish to apply for a subsequent allocation of credits on a property, households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period may be concurrently income-qualified households for purposes of the extended use period as long as all §42 requirements are met in the extended use period, including annually certifying student status and not renting to ineligible full-time student households, verifying income and assets for annual recertification for mixed-income properties, following rules regarding unit transfers between buildings that are not part of the same project as defined by section 42, etc. Management companies should consult with their owners before implementing any changes noted in this chapter.

Review of Key LIHTC Periods

An owner/agent must understand where an LIHTC building is in its LIHTC lifespan. There are three periods of time that run consecutively for an LIHTC building. The extended use period is the entire time that a property must meet state compliance requirements, as spelled out in the extended use agreement, also known as the Declaration of Land Use Restrictive Covenants (LURC). The tax code establishes that buildings are eligible for tax credits only if there is a LURC recorded. The LURC is recorded with the respective County Recorder and/or Registrar of Titles and "runs with the land" regardless of subsequent changes in ownership. The extended use period is at least 30 years but is often longer.

The first 10 years of the extended use period is called the credit period, which is the time most tax credits are claimed for a building. The first 15 years of the extended use period is referred to as the compliance period. The compliance period is the full time that the IRS is involved in monitoring a property and during which noncompliance can affect tax credits claimed (see Chapter 2 for more on the LIHTC lifespan).

An extended use period for any building that is part of the project may terminate as a result of certain specific events.

- On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless DCA/GHFA determines that such acquisition is part of an arrangement with the owner just to terminate the extended use obligations.
- On the date after the end of the one-year period involved in a qualified contract request when DCA/GHFA does not locate a new owner (see Chapter 10 for more information on qualified contract requests).

Decontrol Period When EUP is Terminated Early

If an extended use period is terminated early, as explained above, the project is subject to a three-year decontrol period to prevent:

1. The eviction or the termination of tenancy (other than for good cause) of an existing household in any low-income unit, and
2. Any increase in the gross rent above the applicable LIHTC limit.

Waiver or deferral of right to opt-out. As part of the DCA/GHFA LIHTC QAP process, some projects have elected to waive completely or defer their right to request a qualified contract for a certain number of years. Owners should review their applications and recorded LURCs to determine whether there has been such a waiver for the project.

EUP Requirements

Under the DCA/GHFA Declaration of Land Use Restrictive Covenants for Housing Tax Credits, the owner agrees to comply with the following for the term of the agreement:

- The owner will maintain the applicable fraction by leasing units to individuals or families whose income meets the minimum set-aside requirements, as irrevocably elected by the owner at the time of the first year of the credit period.
- The owner will maintain Section 42 rent and income restrictions.
- All LIHTC units shall be leased and rented or made available to members of the general public who qualify.
- The owner agrees to comply fully with the requirements of the Fair Housing Act.
- The owner will not refuse to lease a unit to the holder of a Section 8 Housing Choice Voucher because they hold a Voucher.
- Each LIHTC unit will remain suitable for occupancy.
- A determination of whether a household meets the LIHTC requirements shall be made by the owner/agent at least annually based on the current circumstances of the household.
- Other restrictions as required under the specific year's QAP and related points the owner received to obtain a credit allocation. These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the entire extended use period or as otherwise stipulated in the LURC.
- The owner must provide written notice in the manner required by DCA/GHFA to all LIHTC tenants See the Agency website for specific notice requirements.

Chapter 11 | Tax Credit Compliance/Monitoring After Year 15

Background – Review of Credit, Compliance, and Extended Use Periods

After the 15-year compliance period has expired there is no tax impact in the event of noncompliance. Therefore, filing form 8823 to report noncompliance to the IRS is no longer required. However, noncompliance with QAP requirements after year 15 may affect future funding due to scoring requirements per the QAP. IRC regulations dictate agency rules for monitoring during the compliance period, however, they do not require agencies to monitor according to these regulations for the rest of the extended use period. Agencies do not report to the IRS noncompliance that occurs after the compliance period is over. Therefore, DCA/GHFA must establish a policy regarding how properties are to be monitored and the consequences for noncompliance after year 15. By creating reasonable and modified physical inspection and file review criteria, and by redefining some of the reporting and eligibility criteria as identified below, DCA/GHFA hopes that it will be administratively easier and less costly for owners and managers to operate LIHTC properties and maintain compliance with the LURC. After year 15, compliance can be maintained more easily, but the spirit of the program is not compromised, and the housing will continue to serve the people for whom the program was intended.

Based on the requirements of the extended use period (EUP) specified in IRS regulations and the Declaration of Land Use Restrictive Covenants, DCA/GHFA has the authority to establish different criteria for eligible/ineligible student households, available unit rule, unit transfers, and the process for performing annual recertification's for the remainder of the extended use period after year 15, as long as the basic EUP requirements are met (see the EUP Requirements header below).

Should an owner wish to apply for a subsequent allocation of credits on a property, households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period may be concurrently income-qualified households for purposes of the extended use period as long as all §42 requirements are met in the extended use period, including annually certifying student status and not renting to ineligible full-time student households, verifying income and assets for annual recertification for mixed-income properties, following rules regarding unit transfers between buildings that are not part of the same project as defined by section 42, etc. Management companies should consult with their owners before implementing any changes noted in this chapter.

Review of Key LIHTC Periods

An owner/agent must understand where an LIHTC building is in its LIHTC lifespan. There are three periods of time that run consecutively for an LIHTC building. The extended use period is the entire time that a property must meet state compliance requirements, as spelled out in the extended use agreement, also known as the Declaration of Land Use Restrictive Covenants (LURC). The tax code establishes that buildings are eligible for tax credits only if there is a LURC recorded. The LURC is recorded with the respective County Recorder and/or Registrar of Titles and "runs with the land" regardless of subsequent changes in ownership. The extended use period is at least 30 years but is often longer.

The first 10 years of the extended use period is called the credit period, which is the time most tax credits are claimed for a building. The first 15 years of the extended use period is referred to as the compliance period. The compliance period is the full time that the IRS is involved in monitoring a property and during which noncompliance can affect tax credits claimed (see Chapter 2 for more on the LIHTC lifespan).

An extended use period for any building that is part of the project may terminate as a result of certain specific events.

- On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless DCA/GHFA determines that such acquisition is part of an arrangement with the owner just to terminate the extended use obligations.
- On the date after the end of the one-year period involved in a qualified contract request when DCA/GHFA does not locate a new owner (see Chapter 10 for more information on qualified contract requests).

Decontrol Period When EUP is Terminated Early

If an extended use period is terminated early, as explained above, the project is subject to a three-year decontrol period to prevent:

1. The eviction or the termination of tenancy (other than for good cause) of an existing household in any low-income unit, and
2. Any increase in the gross rent above the applicable LIHTC limit.

Waiver or deferral of right to opt-out. As part of the DCA/GHFA LIHTC QAP process, some projects have elected to waive completely or defer their right to request a qualified contract for a certain number of years. Owners should review their applications and recorded LURCs to determine whether there has been such a waiver for the project.

EUP Requirements

Under the DCA/GHFA Declaration of Land Use Restrictive Covenants for Housing Tax Credits, the owner agrees to comply with the following for the term of the agreement:

- The owner will maintain the applicable fraction by leasing units to individuals or families whose income meets the minimum set-aside requirements, as irrevocably elected by the owner at the time of the first year of the credit period.
- The owner will maintain Section 42 rent and income restrictions.
- All LIHTC units shall be leased and rented or made available to members of the general public who qualify.
- The owner agrees to comply fully with the requirements of the Fair Housing Act.
- The owner will not refuse to lease a unit to the holder of a Section 8 Housing Choice Voucher because they hold a Voucher.
- Each LIHTC unit will remain suitable for occupancy.
- A determination of whether a household meets the LIHTC requirements shall be made by the owner/agent at least annually based on the current circumstances of the household.
- Other restrictions as required under the specific year's QAP and related points the owner received to obtain a credit allocation. These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the entire extended use period or as otherwise stipulated in the LURC.
- The owner must provide written notice in the manner required by DCA/GHFA to all LIHTC tenants See the Agency website for specific notice requirements.

Note that the LURCs have changed from year to year according to the respective QAPs. However, the basic language pertaining to the extended use period required by the tax code has not materially changed.

Requirements After Year 15

The following requirements apply after the end of the compliance period for the remainder of the extended use period.

Tenant Eligibility

After year 15, DCA/GHFA requires tenant eligibility and certification of income, as follows:

- **Tenant Eligibility and Certification.** At initial occupancy, all tenants must complete an application, and all tenant household income must be verified. A Tenant Income Certification (TIC) must be completed. Tenant income and rent must remain under the maximum as stated in the Land Use Restrictive Covenant (LURC). Each year after the initial certification the tenant household may use the DCA/GHFA Self Certification Form if the property is 100% tax credit. Mixed-income properties must continue to annually certify tenant household income.
- **Applicable Fraction.** Only the unit fraction will be examined to determine a building's applicable fraction.
- **Rent Limits.** Rent limits as elected by the owner at the time of allocation continue to be in force during the entire extended use period. Owners of properties that were awarded selection points for additional rent restrictions should refer to the respective Qualified Allocation Plan or Declaration to determine whether those additional rent restrictions are time-limited or if they are in effect for the full term of the extended use period.
- **Utility Allowances.** Utility Allowances must continue to be updated annually. Revised PHA utility allowances must be implemented within 90 days of their published effective date.

DCA/GHFA will continue to update the LIHTC program income and rent limits published by HUD annually.

DCA/GHFA Set-Asides

Individual projects may be assigned set-asides beyond the federal requirements on the LIHTC LURC or HOME LURA. Generally, deeper rent restrictions run for the compliance period but not the entire extended use period. However, the rent increase policy does apply for the entire extended use period (see Chapter 3).

Compliance Monitoring

The following is the monitoring procedure DCA/GHFA will follow during the extended use period:

- **Annual Certification.** DCA/GHFA requires all owners to submit an Annual Certification of Compliance (AOC) by the stated deadline.
- **Tenant Data Reporting.** Owners will be required to enter the tenant transaction reporting for properties for the entire extended use period.
- **Inspections.** At least every three to five years, or more frequently at the Agency's sole discretion, DCA/GHFA will conduct an "extended use period inspection" of the property. These may be reduced to building exteriors, building systems, and common areas. These are called "windshield inspections." File audits may be conducted at DCA/GHFA's discretion. The Agency reserves the right to conduct a complete tenant file review and National Standards for the Physical Inspection of Real Estate (NSPIRE) inspection of the property and units for any reason.
- **Early Termination of Extended Use Period:** During the 3 years after the LURC has been terminated early by qualified contract, foreclosure, or by an instrument in lieu of foreclosure, owners are required to annually update the DCA/GHFA online reporting system transactions on all low-income households that occupied a unit at the end of the term, including the respective tenant-paid rent, utility allowance, and move- out date, if applicable, along with an annual certification that no LIHTC residents have been evicted or displaced for other than good cause. The owner will also be required to provide advance notification to all LIHTC residents of the expiration of the 3 years. Please see the Agency website for further information.
- **End of the Extended Use Period.** Please see DCA/GHFA's website for further guidance.

The LURC allows for an amendment by written agreement between DCA/GHFA and the owner. An amendment to the Declaration may be negotiated in the event a property suffers from a decline in market conditions that are not expected to improve, and subsequent vacancies compromise the economic viability of the property. The owner must demonstrate that reasonable efforts have been made to meet all compliance requirements. A change in applicable fraction, rent limits, or other terms may be negotiated with DCA/GHFA to preserve as many low-income units as possible while still protecting the economic viability of a property.

Consequences of Noncompliance

The following are the procedures for and consequence(s) of noncompliance after the end of the compliance period while the extended use period is still in effect.

If an owner fails to comply with the monitoring requirements and/or terms of the LURC, DCA/GHFA will classify the property as having open noncompliance similar to what is issued during the compliance period. All owners will be given a cure period, not to exceed 90 days, in which to clarify or correct noncompliance and report to the Agency that all corrections have been made. Generally, the time allowed by DCA/GHFA for most issues is 45 days. An extension of up to 45 days may be granted with good cause. If the violation(s) cannot be corrected within the 45-day correction period (or within the 45-day extension, if granted) DCA/GHFA may request that the owner and/or management agent formulate a plan and reasonable timeline to bring the violation(s) back into compliance and advise the Agency in writing of such a plan.

The owner and management company will not be considered in compliance with program and state requirements if they are involved in the below-listed behavior. This will affect their ability to receive future funding from DCA/GHFA and/or manage Agency-funded properties.

- Repeated delays or ignoring requests for monitoring reviews.
- Failure to submit annual certifications, reports, and compliance monitoring fees. See the Agency website for the schedule of current fees.
- Failure to correct violations timely or according to the agreed-upon plan, where applicable.
- Otherwise ignoring the compliance and monitoring requirements.

Owners/agents must keep careful track of when a development and each building within the development transitions from the compliance period into the remainder of the extended use period. Premature implementation of post-year-15 compliance guidelines may result in noncompliance with federal LIHTC compliance, the filing by DCA/GHFA of Form 8823, and loss of tax credits.

Note that the LURCs have changed from year to year according to the respective QAPs. However, the basic language pertaining to the extended use period required by the tax code has not materially changed.

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- **Applicable Fraction.** Only the unit fraction will be examined to determine a building's applicable fraction.
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- **End of the Extended Use Period**. Please see DCA/GHFA's website for further guidance.

The LURC allows for an amendment by written agreement between DCA/GHFA and the owner. An amendment to the Declaration may be negotiated in the event a property suffers from a decline in market conditions that are not expected to improve, and subsequent vacancies compromise the economic viability of the property. The owner must demonstrate that reasonable efforts have been made to meet all compliance requirements. A change in rent limits, or other terms may be negotiated with DCA/GHFA to preserve as many low-income units as possible while still protecting economic viability of the property.

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Owners/agents must keep careful track of when a development and each building within the development transitions from the compliance period into the remainder of the extended use period. Premature implementation of post-year-15 compliance guidelines may result in noncompliance with federal LIHTC compliance, the filing by DCA/GHFA of Form 8823, and loss of tax credits.

Chapter 12 | Combining Multiple Programs

Overview of Combining Programs

Throughout this manual, comments have been made on issues that an owner/agent will meet when combining LIHTC with HOME funds. However, properties in Georgia commonly have additional programs or funding sources. This can include HUD Section 8, HUD Section 811, Rural Development, or many other possibilities. When there are two or more programs combined, ensuring that the programs effectively work together can be much like a puzzle. It is important to understand all the rules for each program at a property to start seeing the patterns and different shapes to complete the puzzle.

How Programs Interact

There are several common ways that rules from different programs will interact at a property. These include:

1. When There is No Corresponding Rule.

What to do? Apply the rule.

Example

One program has a rule that the other does not

HUD Section 8 has citizenship requirements. The LIHTC and HOME programs do not have explicit citizenship requirements and do not object to the application of citizenship standards. Applying the Section 8 rules will satisfy HUD and LIHTC/HOME does not object.

2. When the Programs Adjust by Design.

What to do? Use the rules as adjusted.

Example

One program has a rule that adjusts to another program's rule

The LIHTC rules require that LIHTC properties with RD or HUD funding use the RD or HUD utility allowances for LIHTC purposes (see Chapter 3).

3. When There are Similar Rules and…

a. …One Program's Rule is More Restrictive Than the Other.

What to do? The more restrictive rule is applied.

Examples

One program has a more restrictive rule

Program income and rent limits differ (see Chapter 3).

- A household that moves in under the 50% AMI income limit imposed by Rural Development is also below the 60% MTSP limit that applies to an LIHTC unit, so the 50% AMI is applied.
- Use of HUD 30% Income and Rent limits – HUD Section 8, Section 811, and National Housing Trust Fund (NHTF)
- Although HUD publishes both 30% and 80% (low-income) AMI limits, these are rounded in a way that is inconsistent with LIHTC use. HUD's extremely low-income limit (ELI) may be referred to as the 30% limit and can be as low as the 30% AMI but could be higher based on adjustments for the poverty level in the area. There is a cap at 50% AMI (also known as very low-income) for Section 8 programs. HUD Section 8 also has income targeting requirements that require 40% of all anticipated new move-ins each year to be at ELI limits. The NHTF and Section 811 limits are also ELI. As these limits are flexible but capped at 50%, they should only be assigned as 50% MTSP designated LIHTC limits for a property with the Average Income Test minimum set-aside and not 30% or 40%.
- Additionally, the Rural Development (RD) program uses the 80% low-income HUD limits as well as "moderate income" (the 80% AMI plus $5,500). Care should be taken when combining RD with an Average Income Test LIHTC project because using the 80% AMI or moderate income RD designations in an LIHTC 80% unit would trigger LIHTC noncompliance.

b. …The Programs' Rules are Different.

What to do? Each rule is applied independently for households that want to move into a project with tax credits and any of these other funding sources.

Examples

Both programs have different, but not conflicting, rules

- HUD, Rural Development, and HOME all have student rules that are completely different from the LIHTC student rules (see Chapter 4). A household must qualify under EACH student rule independently to qualify.
- Tax-exempt bonds have the same minimum set-aside options as the LIHTC program (except the Average Income Test), 20-50 and 40-60. Unlike the LIHTC minimum set-aside election (which interacts with the applicable fraction to determine the level of credits that can be claimed) bond properties only are required to house the required percentage of units with qualified households (20% or 40%) to retain their tax-exempt status.
- Because bond projects do not have the Average Income Test minimum set-aside option the bond minimum set-aside may not coincide with the tax credit minimum set-aside. If a bond project selects the Average Income option on Form 8609, the owner/agent will have to watch carefully to ensure that, at a minimum, at least the minimum percentage of units will be below the 60% MTSP limits.

Peach Villa is a tax-exempt bond and LIHTC project. The owner elected the 40-60 minimum set-aside for the bonds and determined that she would elect the Average Income Test at the property. The project consists of 20 units in one building.

To meet their bond obligation, at least 8 of the 20 units must be rented to households at 60% or less to meet their 40-60 minimum set-aside.
If the project designates 4 units at 80%, 2 units at 70%, 4 units at 60%, 2 units at 40%, and 2 units at 30%, and the remaining 6 units at market rate, 14 of the 200 units are designated as LIHTC and their Average Income percentage is 60% and satisfies both the bond and the LIHTC requirements.

c. …The Rules Conflict.

What to do? In a situation where the rules conflict, it is imperative to talk to all the important players (the owner, investors, DCA/GHFA, and other regulators) to establish if an approach can satisfy all parties. Ultimately, it is the owner who opted to accept the funding from the different programs. They will have to decide which program violation represents the greatest risk and/or costs and which action to take based on this analysis.

It is beyond the scope of this guide to extensively discuss programs other than LIHTC and HOME. However, to assist in putting the pieces together for owners/agents with other programs, this manual includes a

"Multiple Programs Chart" research tool in Supplement 3. This provides a summary of important rules that apply to HUD Multifamily, Rural Development, tax exempt-bond, NHTF, LIHTC, and HOME programs. It also provides references to federal guidance for a full explanation of each rule. This will assist owners/agents in deciding how the rules of the program should interact.

Special LIHTC Programs – TCAP and Exchange Program

Overview of ARRA Programs

Due to the consequences of the recession that began in 2008, the American Recovery and Reinvestment Act (ARRA) of 2009 established two temporary programs providing state allocating agencies with tools to help certain LIHTC-financed projects to close financing gaps created by reduced credit pricing and lack of syndicator equity. The two programs are the Tax Credit Assistance Program (TCAP) and the Section 1602 Tax Credit Exchange program.

1. Tax Credit Assistance Program

TCAP was administered by HUD. TCAP funds were only awarded to projects where there was also an allocation of LIHTCs. Although the TCAP program was administered by HUD and funded with HOME funds, the HOME program requirements do not apply to TCAP-funded properties.

2. Tax Credit Exchange Program

The Tax Credit Exchange Program (also known as the Section 1602 program) was a program authorizing state allocating agencies to exchange Housing Credits for cash. It was administered by the Department of the Treasury. Section 1602 Exchange funds were awarded to projects with or without a regular LIHTC allocation.

ARRA Compliance and Asset Management

Properties funded with TCAP and/or Section 1602 Exchange Program funds must comply with requirements in the loan documents and with LIHTC rules for the full term of the compliance and extended use periods, as evidenced by a Declaration of Land Use Restrictive Covenants and/or Land Use Restriction Agreements. Additionally, during the entire extended use period, all programs are subject to asset management oversight by DCA/GHFA. Asset management includes but is not limited to lease-up compliance monitoring, operational and financial reporting, and other monitoring under a regulatory agreement with DCA/GHFA.

ARRA Monitoring and Reporting

DCA/GHFA monitors compliance with TCAP and the Section 1602 Exchange Program in the same manner as the LIHTC program as described in this manual. However, the Section 1602 Exchange program requires reporting violations to Treasury in a form and manner required by Treasury and not to the IRS on form 8823. If credits are also allocated, however, noncompliance is also reported on form 8823.

The owner is reminded that properties layered with differing sources of financing are subject to the most restrictive of any of those programs' restrictions.

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For up-to-date information regarding our program (such as training, fees, deadlines, policies, etc.) please make sure to visit the DCA/GHFA website.

Supplement 1 | Glossary - Tax Credit & HOME Terms

Term	Definition
100% tax credit project	A project in which all of the units are LIHTC. These projects are federally exempt from annual income recertification.
140% rule	See the Available Unit Rule.
1602 Exchange Program	The ARRA program designed to supplement or replace tax credit investment during the Great Recession.
2013 final rule	A major revision of the HOME regulations.
811	The HUD Section 811 Project Rental Assistance (PRA) program.
Acquisition date	The date a LIHTC property is acquired by purchase for IRC section 179 depreciation purposes. Also called the date of acquisition.
Affirmative Fair Housing Marketing Plan (AFHMP)	A plan that an owner/agent implements to market to people least likely to apply because of their Fair Housing protected class. This is required for federally funded programs such as HUD, RD, and HOME and is often required by state agencies for LIHTC properties. HUD Form 935-2A is the most commonly used AFHMP.
Affordability period	The period an owner must follow HOME rules or risk the HOME funding. Most often at least 20 years.
Applicable credit percentage	A rate that determines the dollar amount of tax credits the owners of an LIHTC property will claim. Projects will be at least 9% non-allocated tax-exempt bond properties and acquisition credits are at least 4%.
Applicable Fraction	The percentage of a building that is LIHTC, based on the number of units or the square footage of those units. As a fraction, the numerator is the LIHTC units in the building and the denominator is the total units in the building.
Area median income	The HUD calculated median income for an area. Used to determine income limits.
ARRA	The American Reinvestment Recovery Act. This 2009 law created two programs to supplement or replace tax credit investment during the Great Recession. These include the 1602 tax credit exchange and TCAP (tax credit assistance programs).
ARRA Programs	The 1602 tax credit exchange program and TCAP (tax credit assistance program).
Assistance Animals	As allowed under Fair Housing, an animal that assists a person with issues related to a disability. Assistance provided may include physical help (such as a seeing-eye dog) or emotional (often referred to as an emotional support animal (ESA).

Term	Definition
Available Unit	A unit that is vacant and not legally reserved for a specific future tenant.
Available Unit Rule (AUR)	A rule that addresses how to deal with increases of income at LIHTC project. **For projects with market units**, the AUR dictates that when a household is determined to be over-income at recertification (over 140% of the income limit for a project) the next available market unit of the same size or smaller than the over-income unit must be rented to an LIHTC household until the applicable fraction is restored. **For 100% LIHTC projects** the AUR requires that all units be rented to LIHTC-eligible households. If a mistake is made and a nonqualified household is moved in the owner will need to demonstrate that due diligence was in place, and the mistake wasn't because of a lack of effort to avoid noncompliance. Proving due diligence avoids a violation of the AUR at a 100% project when there is noncompliance.
Average Income Test (AIT)	A minimum set-aside option where owners designate at least 40% of the units in a project at income and rent limitations in even 10% increments from 20% to 80%. These must average 60%.
Bifurcation (of lease)	Under VAWA, when a perpetrator of violence in a household is evicted and the victim(s) of violence is allowed to remain.
Cash value of assets	The market value of assets less costs to convert to cash.
Casualty loss	The damage, destruction, or loss of property from any sudden, unexpected, or unusual event such as a flood, hurricane, tornado, fire, earthquake, or volcanic eruption that is beyond an owner's control. A casualty event doesn't include normal wear and tear or progressive deterioration.
COLA (Social Security)	An annual Cost Of Living Adjustment applied to social security. A COLA may also apply to other fixed payment benefits, like those from the Veteran's Administration (VA).
Comparable unit	A unit of similar size and amenities compared to another unit.
Compliance period	The period that begins the first year of the LIHTC credit period and extends to a total of 15 years. Any noncompliance during this period may result in the disallowance or recapture of previously claimed tax credits.
Correction period	A period allowed by an Agency to correct noncompliance. For LIHTC noncompliance, this allows the owner to correct the issue before the state agency reports to the IRS through Form 8823.
Credit period	The period that begins the first year of the LIHTC credit period and extends to a total of 10 years. Generally, the majority of tax credits are claimed during this period.

Term	Definition
Anticipated income	HUD’s method of calculating annual income
Date of acquisition	The date a LIHTC property is acquired by purchase for IRC Section 179 depreciation purposes. Also called the acquisition date.
Day Laborer	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. Although often sporadic, this income is not nonrecurring and is counted in household income.
Decontrol period	If an LIHTC project ceases to be LIHTC through qualified contract, foreclosure, or another arrangement in lieu of foreclosure, the owner must allow three years during which existing LIHTC households must not be evicted for other than good cause, and the rent must remain at or below the LIHTC limits.
Designation	For the LIHTC Average Income Test minimum set-aside, income, and rent limits applied to units by an owner at 20-80% in even increments of 10%.
Developer	A person or company that develops real estate for multifamily housing. Often the general partner in an LIHTC deal.
Development	All buildings that are part of a property development. Distinct from a “project,” where an owner may group one or more buildings in the development into separate “projects” for compliance reasons.
Disability	Disparate impact occurs when policies, practices, rules, or other systems that appear to be neutral result in a disproportionate impact on a Fair Housing protected group when consistently applied to all.
Disparate impact	This Fair Housing principle establishes that treating people consistently can be discriminatory if the treatment results in a protected class being more impacted than others.
Disposed of asset	An asset that is given away for less than fair market value. The cash value less any amount received in the transaction is counted for 24 months after the disposal.
Down unit	A unit that is not habitable.
Due diligence	Reasonable steps and considerable effort taken by an owner to avoid noncompliance and protect against error.
Earned income	Income that is earned. It includes employment, self-employment, and military pay.
Educational institute	A school. Includes elementary to high schools, vocational schools, and institutes of higher learning.
Effective date of tenant income certification	A certification for a new move-in is effective on the date of move-in.

Term	Definition
	For a certification for an existing resident at the time of acquisition where the certification is conducted and signed within 120 days of acquisition, the certification is effective as the date of acquisition.
Effective term of verification	**For LIHTC** properties, verification documents are good if they are not older than 120 days at the time of receipt by the owner agent and then must be used for a certification with an effective date no later than 120 days after receipt of the document. **For LIHTC/HOME** properties, the above applies but additionally must be no older than 6 months old at the effective date of the certification the verifications are attached to. **For HOME-only** properties, verifications are good until they are more than 6 months old.
ELI income limits	HUD's extremely low-income limits. See also extremely low-income.
Eligible basis	The total costs that went to build all units and common areas in a building. The starting basis to determine the annual tax credits that a building will generate.
Elderly	A person who exceeds age 62 or 55, depending on the definition of elderly applicable to a property. Some properties may also include persons with disabilities as elderly. See also Housing for Older Persons (HFOP).
Emergency transfer	Under VAWA, a victim of VAWA violence has a right to transfer out of a housing unit to a location where they will be safe from further violence. An owner must have an emergency transfer policy laying out emergency transfer procedures.
Emphasys	The online software system used by DCA/GHFA to collect occupancy and other reporting for Agency purposes.
Empty unit	A unit that has never been occupied, most often at a new property. This is in contrast to a vacant unit, which has been occupied but is not occupied for a time between households.
Exempt employee unit	A unit that is not counted for purposes of an LIHTC building's applicable fraction because it is occupied by a person who is employed full-time based on the needs of the project
Extended use agreement	A document that legally binds the LIHTC to a project. Per the tax code, it must carry a term of at least 30 years.
Extended use period	The period that is 30 years or more starting with the first year of the LIHTC credit period for a building. The actual length of the period is enshrined in the extended use agreement for the project.

Term	Definition
Extremely low-income	HUD-published "ELI" limits that start at 30% of area median income. They are then adjusted upward by area poverty levels. For Section 8, these are capped at the 50% very-low income limits. For the NHTF, they are not capped.
FDIC	The Federal Deposit Insurance Corporation. The FDIC determines the average passbook savings rate that HUD uses for the imputed asset income rule. The FDIC also manages an affordable housing program established by the former Resolution Trust Corporation under the Financial Institution Reform, Recovery, and Enforcement Act of 1989. FDIC, through a network of state housing agencies and non-profit entities, including DCA/GHFA, monitors and ensures compliance with the rules that govern the use of single and multi-family properties in the program.
First year of the credit period	The year an owner starts claiming tax credits for a building. The credit, compliance, and extended use periods all begin this year.
Fixed HOME	A project designation where HOME units at a project never change to non-HOME and non-HOME units never change to HOME.
Floating HOME	A project designation where HOME units at a project are required to change to non-HOME and non-HOME units are changed to HOME units, based on circumstances such as increases in household income.
Floor space applicable fraction	When the applicable fraction is based on the square footage of a building, the square footage of the LIHTC units in the building is the numerator of the fraction and the total square footage of all units is the denominator. Used when this results in a lesser percentage than the same calculation done based on the number of units.
Foster adult	As defined by state law, an adult, generally with developmental or other disabilities, who is placed by a welfare agency into a home where they are taken care of by caregivers. Although assigned bedrooms for occupancy purposes, foster adults are not counted for income limit or student status purposes.
Foster child	As defined by state law, a child who is placed by a welfare agency into a home where they are taken care of by caregivers. Although assigned bedrooms for occupancy purposes, foster children are not counted for income limit or student status purposes.
Full-time student	Under LIHTC rules, a student who is considered full-time by the school they attend. Students who are full-time students for any parts of 5 months of a calendar year are considered students for the entire calendar year, even when not attending school at a particular time during that year.
Full-time student household	A household in which all residents are full-time students.

Term	Definition
General Partner	The general partner and the limited partners form the ownership partnership for an LIHTC project. The general partner is the person or company that is primarily liable for compliance at an LIHTC project. General partners are most often developers of real estate for multifamily housing. Referred to as the "managing member" in a partnership structured as a limited liability corporation (LLC).
Gross rent	The total of tenant-paid rent, an allowance for any utilities that the tenant has to pay for rent, and any other nonoptional charges.
Gross rent floor	The lowest rent that will ever apply to a property. For the LIHTC, the owner may elect the rent in effect as of the date of allocation or the placed in service date for the gross rent floor. For HOME, the original approved rents work as a floor for HOME rents.
Gross rent floor election date	For the LIHTC, the owner may elect the rent in effect as of the date of allocation or the placed in service date for the gross rent floor.
Guest	A person who is temporarily present in a unit for a short time at the permission of the household who is not a resident and is not counted as a household member for affordable housing purposes.
High HOME	A HOME unit housing a household at or below the 80% AMI limit that is charged no more than the applicable High HOME rent.
HOME	The HOME Investment Partnerships Program under the Cranston Gonzales Act of 1990. HOME provides formula grants to states and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent. HOME is the largest federal block grant to state and local governments designed exclusively to create affordable housing for low-income households. HOME funds are awarded annually as formula grants to participating jurisdictions (PJs). The program's flexibility allows states and local governments to use HOME funds for grants, direct loans, loan guarantees, or other forms of credit enhancements.
HOTMA	Housing Opportunities Through Modernization Act. A law passed in 2016 that provided a major overhaul of HUD programs. Parts of the law related to income eligibility and other factors relevant to LIHTC and HOME programs were regulated effective 1/1/2024.
Household	A group of people that choose to live together in a unit. There is no requirement that these be related by blood or marriage, although they may be.
Housing for Older Persons (HFOP)	The Fair Housing Act offers a limited exclusion to familial status discrimination prohibition for properties designed to house elderly persons. This means that a project may exclude children for housing that is 1) provided under any state or federal program that the Secretary of HUD has determined to be specifically designed and

Term	Definition
	operated to assist elderly persons (as defined in the state or federal program), or 2) intended for, and solely occupied by persons 62 years of age or older; or 3) intended and operated for occupancy by persons 55 years of age or older. Not all of these exclude children completely, and the first definition may include disabled persons as elderly. it is important for an owner/agent to understand the exception that applies to a specific elderly property.
Housing Choice Voucher (HCV)	Tenant-based rental subsidy funded under Section 8.
Imputed asset income	A minimum amount of asset income calculated based on the HUD passbook savings rates for households that have assets with a total cash value that exceeds $5,000. The greater of this income or actual income received is used in determining total household income.
Income limits	Limits calculated by HUD for each county or metropolitan area. The limits actually used vary by affordable housing program.
Independent contractor	An individual who qualifies as an independent contractor instead of an employee per 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 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. Although often sporadic, this income is not nonrecurring and is counted in household income.
In-place household (at acquisition)	Households living at a property that is acquired for the purpose of an LIHTC rehab.
Lease	An agreement between the owner of a property and a tenant household to establish the rights and responsibilities of both parties.
Lease rent	The amount of rent enshrined in the lease for a unit.
LI income limit	HUD-published income limits. See also low-income.
LIHTC	Low-Income Housing Tax Credit housing funded under the authority of IRC Section 42 and regulated in Treas. Regs. 1.42
Limited partner	The limited partners and the general partner form the ownership partnership for an LIHTC project. The limited partner provides the money (equity) used to build the project and has assurances from the general partner that compliance will be maintained to support claiming the tax credits. Referred to as the "non-managing member" in a partnership structured as a limited liability corporation (LLC).
Live-in care attendant / live-in aide	A person who assists a disabled person(s) by living with them who is 1) is determined to be essential to the care and well-being of the

Term	Definition
	person(s), 2) is not obligated for the support of the person(s); and 3) would not be living in the unit except to provide the necessary supportive services.
Low HOME	A HOME unit housing a household at or below the 50% AMI limit that is charged no more than the applicable Low HOME rent.
Low-income	HUD-published (LI) income limits that are 80% area median income.
LURA	The abbreviation for the Georgia HOME Land Use Restrictive Agreement.
LURC	The abbreviation for the Georgia LIHTC Land Use Restrictive Covenants.
Managing member (LLC)	See General Partner.
Market rate unit	Units that are not LIHTC or HOME-funded.
Market value of assets	The full amount that someone would pay for an asset on the open market.
Maximum allowable rent	Rent limits set by housing programs. Applicable to affordable housing that does not calculate rent based on household income.
Means-Tested Programs	Programs that include eligibility standards based on household income. Several have been determined by HUD to provide income determinations that can be used for affordable housing income determinations.
Metropolitan Statistical Area	A HUD-designated set of counties that are associated with a metropolitan area that share a common set of income limits.
Minimum set-aside	An election for the LIHTC program that determines a minimum commitment to the tax credit program (a percentage of total units in the project) and the income limits federally applicable to the project. The minimum set-aside is irrevocably elected on IRS Form 8609 for each building in a project. Options are 20-50, 40-60, and the Average Income Test.
Mixed-income project	An LIHTC project that includes both LIHTC and market rate units.
Model unit	A unit reserved for marketing purposes to be viewed by applicants to demonstrate what furnished units may look like.
MSA	See Metropolitan Statistical Area.
MTSP limits	Multifamily Tax Subsidy Program income limits, published by HUD for the LIHTC and tax-exempt bond programs.
Multiple-building project	An LIHTC project that includes more than one building for compliance purposes.
Next Available Unit Rule	Another term used to describe the “Available Unit Rule” or “140% rule.”

Term	Definition
	See also Available Unit Rule.
Non-managing member (LLC)	See Limited Partner.
Non-optional fee	A fee that a person must pay to live at a property.
Nonrecurring income	Income that will not be repeated beyond the 12 months following the effective date of a certification, based on information provided by the family, is considered nonrecurring income and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker is not excluded from income, even if the source, date, or amount of the income varies.
NHTF	The National Housing Trust Fund.
NSP	Neighborhood stabilization program.
NSPIRE	National Standards for the Physical Inspection of Real Estate. The protocol used to review HUD REAC, LIHTC, and HOME projects. It indicates a deficiency and rates it “low,” “moderate,” “severe,” or “life-threatening” based on severity. Replaced UPCS in 2023.
NSPIRE windshield inspection	A drive-by review of project conditions based on what can be viewed on the exterior. Replaced UPCS windshield inspection in 2023.
Occupancy standards	The number of people allowed to occupy each unit size. These are set by the owners, taking into consideration Fair Housing and housing program guidelines.
Optional fee	A fee that a tenant may choose to pay but is not required to. There must also be a reasonable alternative to the fee for it to be optional.
Over-income unit	For a project that is not 100% LIHTC, a household is over-income when its income exceeds 140% of the current income limit at annual recertification. For HOME, a household that exceeds the applicable low or high HOME limit for a unit is over-income.
Participating Jurisdiction (PJ)	The local or state agency that commits HOME Funds to a property and monitors for compliance.
Passbook savings rate	The average passbook rate published by the FDIC that HUD uses in imputing asset income. See also Imputed asset income
Placed-in-service date	The date a building is ready for its intended purpose. For new construction, this is generally when a building receives its certificate of occupancy for the first unit in a building. For acquisition, this is when an occupied building is acquired by purchase for IRC section 179 depreciation purposes. The placed in service date for a rehab is determined by accountants based on an expenditure test and other factors.

Term	Definition
PBRA	See Project-based rental assistance (PBRA).
PHA	Public housing authority. A local Agency that may manage public housing and Housing Choice Vouchers.
PJ	Abbreviation for the HOME Participating Jurisdiction. See also Participating Jurisdiction
Project	All of the buildings included in a group at a housing development for compliance purposes, as indicated on each building's form 8609 line 8b. The default is that each building is a separate project unless the owner elects a multiple-building project.
Project-based rental assistance (PBRA)	Federal rental subsidy attached to a specific project. Most often project-based Section 8 or 811.
Protected class	Personal characteristics for which it is illegal to treat people differently under the Fair Housing Act. Starting in 1968 these included race, religion, color, and national origin. In 1974 sex was included. In 1988 disability and familial status were added.
Permanent supportive housing (PSH)	A HUD program that provides permanent housing in which housing assistance such as long-term leasing or rental assistance, and supportive services are provided to assist households with at least one member (adult or child) with a disability in achieving housing stability.
Qualified Allocation Plan (QAP)	The plan used by states to determine which proposed project will be allocated tax credits each year.
Qualified basis	The portion of a total building's costs that went to build LIHTC units and common areas.
Qualified contract	A process that allows an owner to exit the LIHTC program early after the state LIHTC Agency acts as a broker in an attempt to sell the property to a new owner.
Qualified low-income building	A building that meets the requirement of the LIHTC or HOME program and houses program-eligible households.
Qualified unit	A unit that 1) houses a program-eligible household, 2) has program-appropriate rents, and 3) is decent, safe, and sanitary.
Ratio Utility Billing System (RUBS)	When tenants pay utilities based on a ratio rather than their actual utility usage.
Reasonable accommodation	An adjustment to an owner/agent's policies or procedures to accommodate a disability. If reasonable, making such accommodation is required under Fair Housing law.
Reasonable modification	An adjustment to a unit or property's common areas to accommodate a disability. If reasonable, allowing such modifications is required under Fair Housing law.

Term	Definition
Recapture	A penalty for LIHTC noncompliance when an owner must pay back a portion of previously claimed tax credits on a unit.
Recertification	Reevaluation of a household's status for a housing program.
Rent limit	The highest rent that can be charged to LIHTC or HOME households. These are provided by unit size. Each program has a specific formula to calculate these limits.
Resyndication – subsequent allocation	When a property is allocated tax credits again for a rehab after the first 15-year compliance period for the property.
Seasonal worker	An individual who is: 1) hired into a short-term position (for example, for which the customary employment period for the job is six months or less); and 2) the employment begins about the same time each year (such as summer or winter). Examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver. Income earned as a seasonal worker is considered "earned" income and must be included in the determination of income unless specifically excluded by federal regulation.
Section 1602 Tax Credit Exchange	A temporary program authorized under the American Recovery and Reinvestment Act of 2009 (ARRA). Section 1602 of ARRA allowed state LIHTC agencies to exchange some of their tax credit allocation pool for cash to assist LIHTC projects. This assistance supplemented or replaced tax credit investor equity during the Great Recession.
Section 8	Housing funded under Section 8 of the Housing Act of 1937. Section 8 funds project-based rental assistance (PBRA) and Housing Choice Vouchers.
Section 811	Project Rental Assistance (PRA) through the HUD Section 811 program.
Self-certification	An affidavit signed by a person.
Service animal	Under the Americans with Disabilities Act (ADA), a service animal is a dog that provides disability-related physical assistance to a person. At times, small horses may also qualify. This relates to animals that can be brought into public accommodations and not what animals a person can keep in their rental home, where the Fair Housing Act applies. See Assistance animals (for animals allowed under the Fair Housing Act).
Set-aside	When a unit is assigned a specific income or rent limitation.
Source document verification	How HOME regulations describe documents prepared by a third party used to verify factors related to household eligibility. Examples include

Term	Definition
	verification of employment and pay stubs. Also generally referred to as third-party verification.
Student	A person attending an institute of education.
Student financial assistance [Section 8 recipients]	Financial assistance includes any assistance in excess of tuition that a student receives: **(1)** Under the Higher Education Act of 1965. This includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs. **(2)** Assistance from private sources. Non-governmental sources of assistance, including assistance that may be provided to a student from a parent(s), guardian, or other family member and other persons not residing in the unit. **(3)** From an institution of higher education requires reference to a particular institution and the institution's listing of financial assistance. HUD has interpreted the term "financial assistance" to not include loan proceeds for the purpose of determining income. Therefore, Perkins loans, Stafford loans, and Plus loans under the Higher Education Act of 1965 are not considered as student financial assistance.
Student financial assistance [Non-Section 8 recipients]	Scholarship or grants received from non-profit or for-profit businesses, governmental sources, or schools to cover educational expenses. Higher Education Act assistance (such as Pell Grants) and amounts from private sources (such as from family) are never counted as student assistance income. HEA assistance is not income and money from private sources is gift income. The scholarships/grants are income to the extent that any Higher Education Act assistance, then scholarship or grants are applied to student expenses and any part of the scholarships/grants exceed the student expenses.
Sub-metering	Utility sub-metering is a system that allows a property owner to bill tenants for individual measured utility usage. The approach makes use of individual meters for units. Utilities paid to an owner are permissible to include in a utility allowance for a property, even though paid to the owner and not a utility company directly.
Subsidy	Money paid by a government agency to assist a household or property. Depending on the context, this can be in the form of rental assistance or financing assistance to a property.
Subsequent allocation – resyndication	See Resyndication – subsequent allocation.
Syndicator	An entity that identifies investors and developers and facilities pairing these in a limited partnership. The syndicator is often thought of as the investor, but it actually represents the investors and manages the relationship between the investors and the general partner.

Term	Definition
Tax credits	A reduction in tax liability. Benefits an owner of a property claims under the low-income housing tax credit program.
TCAP	The Tax Credit Assistance Program, a temporary program funded under the American Recovery and Reinvestment Act of 2009. Designed to supplement tax credit equity from investors. TCAP funds were HOME funds redesignated for LIHTC purposes during the Great Recession.
Temporary noncompliance	When a tenant is over-income for the HOME unit in which they reside.
Tenant	A legal resident of a rental property.
Tenant-paid rent	The amount that the tenant pays in rent monthly. An estimate of any utilities paid and fees that are nonoptional are added to tenant-paid rent to determine gross rent for an LIHTC unit, and any subsidy is added to determine gross HOME rent (with an exception for Low HOME units).
Tenant/unit file	The application for occupancy and supporting verification paperwork establishing household eligibility for an affordable housing unit.
Third-party verification	Documents prepared by a third party. Examples include verification of employment and pay stubs. Also referred to as source documents in the HOME regulation.
Transfer payments	Benefit payments made to a household where no goods or services are changing hands. This is part of the definition of “unearned income.”
Transient use	When a household and owner/agent intend to reside in a unit for less than 6 months they are “transient” and not eligible for an LIHTC unit. A lease of at least 6 months demonstrates nontransience.
Unearned income	Benefit “transfer payments” and other income that is not earned through current performance (employment, self-employment, or military pay.
Unit applicable fraction	When the applicable fraction is based on units for a building, the number of LIHTC units in the building is the numerator of the fraction and the number of all units is the denominator. Used when all units are the same size, and for buildings in which all units are LIHTC.
UPCS	Uniform Physical Conditions Standards. The protocol used to review HUD REAC, LIHTC, and HOME projects. It indicates a deficiency and rates it 1-3 based on severity. Replaced by NSPIRE in 2023.
UPCS windshield inspection	A drive-by review of project conditions based on what can be viewed on the exterior. Replaced by NSPIRE windshield inspection in 2023.
Utility allowance	An estimate of utility costs resent

Term	Definition
Vacant unit	A unit that was previously occupied by a household. Often contrasted with an empty unit, which is a unit in a new project that has never been occupied.
Vacant Unit Rule	When a unit is vacant, an owner can continue to claim tax credits as long as marketing efforts are continuously made to fill the unit and it is ready for occupancy in a reasonable time.
Very low-income	HUD-published "VLI" limits that are 50% of the area median income.
VAWA	The Violence Against Women Act.
Verification	Documentation gathered to verify eligibility factors.
VLI income limits	HUD's very low-income limits. See also Very low-income.
Windshield inspection	See NSPIRE windshield inspection.

Costello UNIVERSITY 2024

MULTIPLE PROGRAMS GUIDE

A SIDE-BY-SIDE SUMMARY OF SPECIFIC HOUSING PROVISIONS

Tax Credits | HUD | Rural Development | HOME | Tax Exempt Bonds

NOW INCLUDES UPDATED National Housing Trust Fund PROVISIONS

Note: This Guide summarizes federal requirements.

DCA/GHFA LIHTC and HOME Specifics are listed throughout the body of this Manual.

Multi-Program Interaction Summary

Result of Rule Comparison	Action to Take	Examples
A. One program has a requirement that the other does not.	**Apply the requirement.**	**HUD –** Citizenship, criminal background, and numerous specific forms. **RD –** Complex waitlist requirements. **HUD, RD, or HOME –** Conduct an affirmative marketing plan.
B. Both programs have similar requirements, and:		
a. The rules have built-in reconciliation provisions.	**Apply the reconciled rule.**	**LIHTC with HUD or RD** – Use HUD or RD utility allowances. **LIHTC with HOME** – Do not use income-based rent for over-income households.
b. One requirement is more restrictive.	**Apply the more restrictive rule.**	**LIHTC with HUD, RD, or HOME** – Use the lowest applicable Income limits. **LIHTC with HUD or RD –** Conduct annual income certifications at 100% LIHTC properties. **LIHTC with HUD or RD** – Apply the minimum 1-year lease term. **LIHTC with HUD** – Do not charge application fees.
c. The requirements are different and don't reconcile.	**Apply both rules.**	**LIHTC with HUD, RD, or HOME** – Apply both student rules.
d. The requirements conflict.	Contact key people to discuss risks and decide on an approach. • Owners • Investors • State HFA & other agencies.	**LIHTC with RD or HUD** – Displacing over-income households per RD rules or LIHTC rules for existing households at a HUD acquisition/rehab. **HUD or RD with LIHTC** – Use of conservative calculations to determine eligibility (highest-in-range or year-to-date, for example).

Note on the National Housing Trust Fund (NHTF):

NHTF provisions are inserted below similar HOME provisions

Many states have state Housing Trust Funds, which have their own rules and are beyond the scope of this Guide. Often these programs pre-date the National HTF and follow HOME rules.

Multiple-Program Chart Table of Contents

Student Eligibility

LIHTC	HUD	RD	HOME (NHTF)	Bond
In general, households made up of full-time students of any age do not qualify. There are five exceptions to this general rule. They are for students who are: 1) Married and entitled to file a joint tax return* 2) Single parents with dependent child(ren) 3) Title IV welfare recipients (TANF or similar program) 4) Former foster care recipients 5) Participants in a Job Training Partnership Act (JTPA) or similar program** * Same-sex couples qualify for "married and entitled to file" if legally married under any state law. **The "Workforce Investment Act" has replaced JTPA.	HUD Section 8 Rule: Any individual who attends an institute of higher learning (full OR part-time) must be one of the following: 1) A dependent of the household living with a parent 2) Over age 23 3) A veteran 4) Married 5) A parent with a dependent child in the unit 6) A disabled individual who was receiving assistance before 11/30/2005 or 7) Be independent from parents or have income-eligible parents. 8) Certain vulnerable youths also count as independent under HUD and DOE rules. Non-Section 8 programs: Each student at an institute of higher learning must meet ALL of the following requirements 1) Be of legal contract age under state law 2) Have established a separate household from parents for at least a year OR meet the U.S. Dept. of Education definition of an independent student 3) Not be claimed on a parent's tax return 4) Must disclose if they get financial assistance from their parents.	Same as HUD Section 8 Rule	Same as the HUD Section 8 Rule (regardless of commitment date). The NHTF statute and regulation have no student restrictions.	**Same as LIHTC.** In general, households made up of full-time students of any age do not qualify. Before HERA, the only exception that qualified a full-time student household was 'married, entitled to file a joint tax return'. Per HERA, the same five student exceptions that apply for LIHTC apply to bond qualification.
§42 (i)(3)(D) & 8823 Guide 17-1 & 2 & Exhibit 17-1; 4350.3 Exhibit 5-1 Rev. Rul. 2013-17	**4350.3 3-13**	**Unnumbered letter dated 1/11/2007**	**HOME Reg §92.2 (2013)**	**§42 (i)(3)(D) §142 (d)(2)(C)**

Income Eligibility Determinations

LIHTC	HUD	RD	HOME (NHTF)	Bond
Income eligibility is determined using the Section 8 method for determining gross annual income found in the HUD Handbook 4350.3 Chapter 5, as revised extensively by HOTMA. No deductions to annual income apply to the tax credit program.	Follow the HUD Handbook 4350.3, as revised extensively by HOTMA. Allowances and Deductions apply.	Follow the RD HB-2-3560 chapter 6. These rules are based on HUD regulations, as revised extensively by HOTMA.	HUD allows PJs to choose from two methods for determining income, these will be stated in the HOME regulatory agreement and may include: • 1040 tax return definition • Section 8 method from the 4350.3 Chapter 5, as revised extensively by HOTMA * The 2013 regulation change eliminated the Census Long Form as an option. *The most widely used and the only option available to tax credit properties. NHTF allows for the same two options as post-2013 HOME.	Income eligibility is determined using the Section 8 method for determining annual income found in the HUD Handbook 4350.3 Chapter 5, as revised extensively by HOTMA. The LURA will determine what method is used to verify income (see verification).
IRS Notice 88-80, Treas. Reg. 1.42-5(b)(1)(vii), 8823 Guide Chapter 4, HOTMA Joint Implementation Notice 2023-10	**4350.3 chapter 5 and Exhibits 5-1 & 5-2, HOTMA Joint Implementation Notice 2023-10**	**HB-2-3560 Chapter 6, HOTMA Joint Implementation Notice 2023-10**	**HOME Guide 3.2 D Home Reg § 92.203(b)(2) (2013) | NHTF 24 CFR 93.151 (b), HOTMA Joint Implementation Notice 2023-10**	**§ 142 (d)(2)(B), HOTMA Joint Implementation Notice 2023-10**

Children – Adopted or Unborn

LIHTC	HUD	RD	HOME	Bond
Children in the process of adoption and unborn children are included when counting household members. Pregnancy is verified by self-affidavit by the mother.	Children in the process of adoption and unborn children are included when counting household members. Pregnancy is verified by self-affidavit by the mother.	Children in the process of adoption and unborn children are included when counting household members.	Older guidance indicated that children in the process of adoption and unborn children were not included when counting household members. This guidance is no longer available and appears to have been rescinded. It is HIGHLY recommended that the property's PJ be consulted to determine if they still employ this policy. Many PJs use the widely accepted policy for other HUD programs to include these children.	Children in the process of adoption and unborn children are included when counting household members.
8823 Guide 4-3 4350.3 Appendix 3, Page 20	**4350.3 Appendix 3, Page 20**	**HB-2-3560 Attachment 6-C, page 1**	**4350.3 Appendix 3, Page 20**	

Income Limits

LIHTC	HUD	RD	HOME (NHTF)	Bond
HUD-published Multifamily Tax Subsidy Program (MTSP) income limits are used. 20-80% MTSP limits apply, depending on the minimum set-aside selected for a project. Income limits are property-specific, and HERA designates a "hold harmless provision" for a specific property, a provision that allows the income limits to never go below the highest limit that has applied to the area since the project was placed in service. Households must qualify based on gross annual income.	Income limits based on area median income (AMI) are used and vary based on which HUD program and the county location or MSA. Limits may go up or down in any given year. Households must qualify based on gross annual income. For Section 8: the very low-income 50% AMI limits generally apply, but 40% of new move-ins must be at the extremely low-income (30% AMI) limits.	RD program income limits based on area median income (AMI) are used based on which RD program and the county location or MSA. Limits may go up or down in any given year. Applicants are given priority based on whether they are very low (50% AMI), low (80%), or moderate (low limit + $5,500) income. Households must qualify based on adjusted income.	HUD HOME income limits based on area median income (AMI) are used. HOME limits are county or MSA-specific and may go up or down any given year. The HUD very low (50% AMI) limits apply to Low HOME units. High HOME limits are the HUD low-income (80%) limits. NHTF income limits are HUD's extremely low-income limits, which are the higher of the 30% limits or the poverty level for an area. Unlike Section 8 ELI, the NHTF limits are NOT capped at the very low (50%) limits.	HUD-published Multifamily Tax Subsidy Program (MTSP) income limits are used. 50 or 60% MTSP limits apply, depending on the minimum set-aside selected for a project. Income limits are property-specific, and HERA designates a "hold harmless provision" for a specific property, a provision that allows the income limits to never go below the highest limit that has applied to the area since the project was placed in service. Households must qualify based on gross annual income.
Treas. Reg. 1.42-5(b)(1)(vii), 8823 Guide 4-2	**4350.3 3-6**	**HB-2-3560 6.2**	**HOME Guide 3.2 A | NHTF 24 CFR 93.302 (a)&(b)**	**§ 142 (d)(2)(B)**

Certification Form

LIHTC	HUD	RD	HOME	Bond
Tenant Income Certification or "TIC" is commonly used.	Form HUD-50059	Form RD-3560-8	No specific form is required. PJs commonly allow tax credit TICS.	Tenant Income Certification (TIC) or Certificate of Tenant Eligibility (CTE) forms are commonly required by bond monitors.
	4350.3 5-31 B	**HB-2-3560 6.11 A**		

Zero-Income Households / Unsecured Income

LIHTC	HUD	RD	HOME	Bond
HUD allows zero-income households but makes provisions for interim certifications when income changes. The tax credit certification must establish a household's income for the next 12-month period with no interim certifications. This difference in program regulations creates a "grey" area that is open to interpretation between the programs, state agencies, and project owners. Some agencies require that future, unsecured income be counted based on the household's income history. While some require that only imminent and verifiable income be counted. The 8823 Guide opts for using a 12-month history for zero or sporadic-income households and thus unknown and unverifiable income is not included on the certification. Check with your state HFA.	HUD allows zero-income households and unsecured income is not counted. Changes to this status must be reported immediately and an interim certification conducted.	RD does not consider zero-income households to qualify. Basic expenses that the household must meet are verified and counted as income. A Zero Income Checklist must be completed to determine cash and non-cash contributions to the household that will be used to meet the expenses.	HOME guidance allows zero-income households but does require that the past 12-month average income (if any) be included on the certification.	The bond regulations do not speak to this issue. Typically, it is handled per the tax credit program approach.
8823 Guide 4-33	**4350.3 5-5 A, Appendix 3, page 22**	**HB-2-3560 6.9 A 4, Attachment 6B**	**HOME GUIDE 6.2 E**	

Employment Income Verifications with a Range of Hours, Wages, etc.

LIHTC	HUD	RD	HOME	Bond
HUD uses "average hours" when determining employment income (for example, 35 hours for 30-40 hours listed on a verification). By regulation, we count tax credit income as does the Section 8 program. However, it has generally been accepted as best practice by some state HFAs that the tax credit program should use the more conservative approach of using the HIGHEST in a range (for example, 40 for the 36-40 hours). Some states apply the HUD method, however. The IRS has not addressed this issue.	HUD uses "average hours" when determining employment income (for example, 35 hours for 30-40 hours listed on a verification).	RD does not directly address this issue. Typically, the HUD approach is used (for example, 35 hours for 30-40 hours listed on a verification).	HOME uses the HUD method to calculate employment income (that is "average hours", for example, 38 hours for 36-40 hours listed on a verification).	Bond technically uses the HUD "average hours" calculation for employment income. Typically, the best practices accepted by many bond issuers implement the more conservative approach of using the HIGHEST amount listed as a range on the employment verification (for example, 40 hours used for 36-40 hours listed on a verification).
	4350.3 Appendix 6-C		**HOME Technical Guide page 6**	

Verification of Assets | Imputing Asset Income

LIHTC	HUD	RD	HOME (NHTF)	Bond
If the household's assets are $50,000 or less, assets may be verified via self-affidavit. Household assets that have a total cash value of more than $50,000, as adjusted, must be 3rd-party verified. Imputed income from assets using the Hud passbook rate is calculated on individual assets that cannot otherwise have income calculated if assets exceed $50,000.	If the household's assets are $50,000, as adjusted, or less, assets may be verified via self-affidavit at move-in and other years, as long as assets are 3rd-party verified at least once every third year thereafter. Imputed income from assets using the HUD passbook rate is calculated on individual assets that cannot otherwise have income calculated if assets exceed $50,000.	Assets are 3rd-party verified. Imputed income from assets using the HUD passbook rate is calculated.	If the household's assets are $50,000, as adjusted, or less, assets may be verified via self-affidavit at move-in and other years, as long as assets are "source document" verified at least every 6th year of the affordability period. Income self-certification or verification from a PHA voucher provider or for project-based rental assistance must be used for all years, if applicable. Imputed income from assets using the HUD passbook rate is calculated on individual assets that cannot otherwise have income calculated if assets exceed $50,000. NHTF allows the same verification methodology and cycle as HOME.	The bond regulations do not specifically address asset verification requirements. The project LURA may have specific requirements or allow self-affidavits to be used when household assets are $5,000 or less, or $50,000, as adjusted, or less. This is not specifically allowed on a federal level like it is for the tax credit program.
8823 Guide 4-7, 4350.3 5-18 B, Rev. Proc. 94-65	**4350.3 5-13, Appendix 3, 24 CFR § 5.659**	**HB-2-3560 6.11 A**	**HOME Guide 3.2 E 2 & 5, F3, Attachment 3-5 HOME Technical Guide 15 | NHTF 24 CFR 93.151 (d)**	

PHA or other Means Test Program Income Verification

LIHTC	HUD	RD	HOME (NHTF)	Bond
Check with state HFA. Some states allow a letter from a PHA voucher issuer stating that the household income is below the income limit. Other means-tested program determinations may also be allowed.	An owner/ agent may accept a letter from a PHA voucher issuer stating that the household income is below the income limit. Other means-tested program determinations are also allowed.	Not allowed until/if RD conforms to HOTMA verification rules.	Must be used for certifications for households receiving tenant or project-based rental assistance. Other means-tested program determinations are not allowed, except that PHA verifications are required. (see "recertifications"). NHTF allows the same verification methods and cycles as HOME.	Not specifically allowed. The LURA may allow for this type of verification.
IRS Reg 1.42-(b)(1)(vii)			**HOME Guide 3.2 D 3 & F 3 | NHTF 24 CFR 93.151 (d) and 93.302 (e)**	

Verification Methods (General)

LIHTC	HUD	RD	HOME (NHTF)	Bond
The regulation requires a review of income documentation, such as W-2s or tax returns. Further informal IRS guidance provides more detailed verification rules. The below HOTMA verification options are generally applied to tax credit properties, in the order of preference: 1) Work Number or other Upfront Income Verification database (UIV). 2) 3rd-party verification provided by the household. 3) 3rd-party verification provided by the 3rd party. 4) Household self-certification. Verifications are good for 120 days from receipt (or a state may apply HUD's 120 + 120-day standard). Income determinations from PHAs and other means-tested programs may be used.	There are 4 basic types of verification available for HUD in order of preference: 1) UIV – Upfront Income Verification with the mandatory use of EIV after move-in and optional use of UIV non-EIV verification, such as the Work Number 2) 3rd-party verification provided by the household. 3) 3rd-party verification provided by the 3rd party. 4) Household self-certification. Verifications are good for 120 days from receipt and must be no more than 120 days old at the time of receipt. Fixed income sources must be verified every 3 years with letters covering the benefit year (even if older than 120 days at the time of receipt). COLAs can be applied in other years. Income determinations from PHAs and other means-tested programs may be used.	The below verification options are generally applied to RD properties: 1) A 3rd-party verification form from the 3rd party. 2) Documentation provided by the household. 3) Household self-certification Verifications are good for 90 days from receipt and can be extended an additional 90 days with verbal clarification.	At move-in and every 6th year of the HOME affordability period, "source documents" must be used. These are written documents generated by a 3rd party, that verifies the income sources that the applicant reports. At least 2 months of history must be covered by the documentation. For other years, self-certification is acceptable. Verification from local PHAs or project-based rental assistance must be used for all years a household receives assistance. Income determinations from other means-tested programs may not be used. Verifications are good for 6 months. NHTF allows the same verification methods and cycles as HOME.	The bond regulations do not specifically address verification requirements. The project LURA may have specific requirements and verification lifespans.
8823 Guide 4-21, 4350.3 5-16 B	**4350.3 5-13 A, 5-16 B, Appendix 3, HUD MF Notice H-2016-09**	**HB-2-3560 6.8 & 11**	**HOME Guide 3.2 D 3 & E 3 & 5; 24 CFR 92.203 (2013) |NHTF 24 CFR 93.151 (d) and 93.302 (e)**	

Household File Record Retention

LIHTC	HUD	RD	HOME	Bond
Files for households that qualified units in the 1st year of the credit period are vitally important for the audit of any year's records. They must be retained for a total minimum of 21 years after the first-year credits are claimed. Files for households qualified in years 2-15 must be kept for a minimum of 6 years beyond the deadline for filing the tax returns for a year.	Applications must be kept for 3 years after denial. EIV reports and other forms and verifications that go into tenant files must be retained in the tenant file for the term of tenancy plus three years. EIV Master Binders keep 3 years of information.	Tenant certification forms and supporting documentation must be retained in the tenant file for the longer of 3 years or until the next Agency monitoring visit or compliance review.	Individual tenant income, rent, and inspection information must be kept for the most recent 5 years throughout the period of affordability, until 5 years after the end of the affordability period.	Records should generally be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds.
Treas. Reg. 1.42-5 (b)	**HUD 4350.3 4-22; 5-23; 9-14**	**RD HB-2-3560 6-11 B 5; Attachment 6-J**	**HOME Guide Exhibit 6-1, 6.2 C 7 & 24**	**1.148-5(d)(6)(iii)(E) of the arbitrage regulations**

Adding Household Members | Interim Income Increases

LIHTC	HUD	RD	HOME	Bond
No Interim Certifications are required. Individuals added to an existing household during a certification year are income-certified individually and their income is added to the most recent TIC. The total household income is then checked to determine eligibility. This may trigger the AUR rule. The household is considered the same household so long as one original member remains. Some HFAs do not allow additional household members to be added during the Initial Certification year. *See "Increase in Income and Determining Eligibility" for more information.	Adding household members triggers an interim certification. Increases of income do not require a household to move out.	Adding household members triggers a new certification. If this increases the household's income to more than the moderate-income limit, (low (80% AMI) limit + $5,500) the household may be required to move out.	No Interim Certifications are required. Increases of income do not require a household to move out. *See "Increase in Income and Determining Eligibility" for more information.	No Interim Certifications are required. The regulations do not discuss adding household members. The regulatory agreement may discuss this. Increases of income do not require a household to move out. *See "Increase in Income and Determining Eligibility" for more information.
8823 Guide 4-4	**4350.3 7-10**	**HB-2-3560 6.28 B, 6.30**	**HOME Guide 3.5 & 6**	

Deductions and Allowances

LIHTC	HUD	RD	HOME	Bond
Deductions and allowances are not used. Rent is not based on income.	HUD has 5 types of deductions and allowances used to determine adjusted income and rent. Open to all applicable households are: 1) Dependent deduction applicable to the year 2) Childcare expenses and 3) Disability assistance expenses Available to households where the head or co-head is elderly or disabled are: 4) Health and Medical expenses and 5) Elderly household deduction applicable to the year	RD uses the 5 HUD deductions and allowances.	HOME uses HUD's 5 deductions and allowances for those over-income households paying rent based on their income.	Deductions and allowances are not used. Rent is not based on income.
	4350.3 Chapter 5 section 2	**HB-2 3560 5.9 C**	**HOME Guide Attachment 3-4**	

Recertification

LIHTC	HUD	RD	HOME (NHTF)	Bond
Projects that are less than 100% tax credit must recertify each household's income and student status annually. 100% tax credit projects must recertify student status annually. Typically, recertifications are due on the original certification anniversary date. A few states require one full income recertification.	Recertifications are due on the certification anniversary date. Interim certifications must be conducted when household unearned income increases or decreases by 10% of adjusted income. Generally, increases in earned income are not adjusted until the next annual examination. Interim recertification is not required in the last 3 months of the certification year. It is only required that household composition or income items that have changed since the annual certification must be re-verified. Fixed-source income must be verified at least every 3 years.	Recertifications are due on the certification anniversary date. If certain income and household changes occur (including increases of $200 per month or decreases of $50), a new certification is done, and all items are 3rd-party verified. Recertification must then be completed no later than a year from the anniversary of the new certification.	HOME households must be certified at move-in and every 6th year of the affordability period, with some annual recertification requirements in years 2-5. The HOME program does not mandate dates for the annual cycle, allowing all recertifications to be conducted at once for a year. There are no provisions for interim certifications. Households with tenant- or project-based income will use the income determinations of the rental assistance program and its cycle. NHTF applies the same recertification standards as HOME.	Projects that are less than 100% bond must recertify each household's income and student status annually. Like the tax credit program, 100% projects need to recertify student status each year.
§142(d)(3)(A) (see §42(g)(4)), Treas. Reg. 1.42-(b)(1)(vi), 8823 Guide Chap 5	**4350.3 chapter 7, 7-11 A 4**	**HB-2-3560 6.28**	**HOME Guide 3.2 F 6 | NHTF 24 CFR 93.151 (d) and 93.302 (e)**	**§142(d)(3)(A)**

Minimum Required Period in the Program

LIHTC	HUD	RD	HOME (NHTF)	Bond
The tax credit period in the program is generally accelerated to 10 years with a 15-year compliance period. State Housing Finance Agencies (HFAs) also include an extended use period, which can vary, though it is a 30-year minimum total, including the compliance period.	Program type, financing, and other regulations establish the required period in the program.	Program type, financing, and other regulations establish the required period in the program.	The HOME agreement establishes the parameters of the program. The **affordability period** in the HOME program can vary depending on the type of HOME project and the average HOME unit investment. It is at least 20 years for most properties. NHTF has a minimum affordability period of 30 years. Grantees may impose a longer period.	The bond-qualified project period begins once 10% of the units in a property are occupied and ends the latest of a) 15 years after 50% of the units are occupied, b) the day no tax-exempt bond is outstanding, or c) the day Section 8 assistance, if any, terminates.
§42(i)(1), (f)(1), (h)(6)(D), 8823 Guide chapter 16			**HOME Guide 7.1 |NHTF 24 CFR 93.302 (d)(1)**	**§142(d)(2)(A)**

Effective Dates of Certifications

LIHTC	HUD	RD	HOME	Bond
The effective date for move-in is the actual date of move-in. The effective date for in-place residents at Acq/Rehab properties is the date of acquisition (for households certified within 120 days of the acquisition date). After 120 days, the effective date is the date of the last signature on the certification. The effective date of recertification is the anniversary of the effective date of the original tenant income certification (for less than 100% LIHTC projects where recertification is required).	The move-in date is the date of move-in. The effective date of the initial certification where an in-place resident gets rental assistance is the date that assistance is assigned to the tenant. Interim Certifications with a rent increase reported timely is the first of the month after the end of a 30-day notice. The effective date of interim certifications with rent decreases or when increases of income are not timely reported is the 1st of the month after the income is verified. The annual recertification effective date is the first of the month on the anniversary of the original move-in certification. HUD may approve alternative anniversary dates.	The effective date of all RD certifications will always be the 1st of the month. The effective date of a move-in cert is the 1st of the month. If the tenant did not move in on the 1st, the effective date is the 1st of the next month after move-in. The effective date of recertification is the anniversary date of the last certification.	Effective dates are not discussed. Initial income certification must be completed no more than 6 months before moving in. Annual recertification is necessary but does not have to be on the anniversary date of the last certification.	Effective dates are not discussed. Typically, the Tax credit rules are followed.
8823 Guide 4-22, 4-25, 5-1	**4350.3 7-5, 7-13, 7-5 C**	**HB-2-3560 6.28**	**HOME Guide 3.2 E 1, 6**	

Increases of Income and Determining Eligibility

LIHTC	HUD	RD	HOME (NHTF)	Bond
For less than 100% tax credit properties, household income that is over 140% of the current income limit at recertification is "over-income". Over-income households continue to qualify as Tax Credit households if the next available unit of the same or smaller size IN THE BUILDING is rented to a qualified tax credit household. This continues until the applicable fraction is restored not counting the over-income households. Once the applicable fraction is restored, the household may be raised to market rent, but cannot be required to vacate the unit. This is often called either: the AUR "Available Unit Rule," the NAUR "Next Available Unit Rule," or the "140% rule"	Rent increases up to the maximum rent. Households that are at the maximum rent and not receiving RA are NOT required to move out of the unit.	Rents increase up to the maximum rent. Households that exceed the moderate-income limits must vacate the unit. Overage (the amount of the tenant's rent that exceeds Basic Rent up to Note Rent) must be paid to RD.	Income and subsequent rent increases may result in re-classification from LOW to HIGH HOME rents. Rents switch to 30% of adjusted income once the household's income exceeds the 80% limit. LOW HOME households that exceed the HOME 50% limits and HIGH HOME households that exceed the HOME 80% limits are "over-income". Resulting actions are then determined by the program and depend on whether the project is "fixed" or "floating" HOME. Households at the maximum rent are not required to move out of the unit. For projects that have tax credit funding also, rent for over-income households is not based on adjusted income but may be raised to tax credit limits. NHTF units that exceed the NHTF limits are in temporary non-compliance and the next available comparable unit must be rented to an NHTF-eligible tenant for floating NHTF units. If fixed NHTF, the unit(s) will need to be re-occupied with an NHTF-eligible household once the over-income household chooses to vacate.	For less than 100% bond properties, household income that is over 140% of the current income limit at recertification is "over-income". Over-income households continue to qualify as bond households if the next available unit of the same or smaller size IN THE PROJECT is rented to a bond household. NOTE: For bond/tax credit projects, this rule becomes a BUILDING rule to conform to the tax credit regulations.
§42(g)(2)(D)(ii), Treas. Reg. §1.42-15, 8823 Guide Chapter 14	**4350.3 chapter 8**	**HB-2-3560 6.30**	**HOME Guide 3.5 & 6, Attachment 3-4 & Attachment 3-5 §92.25 3 (c) (2013) | NHTF 24 CFR 93.302 (f)**	**§142(d)(3)(B) & (C)**

Transferring Households

LIHTC	HUD	RD	HOME	Bond
For less than 100% tax credit properties, households with income above the 140% limit at recertification may only transfer to units in the same building. At 100% tax credit properties and for households with income below the 140% limit, transfers can take place between buildings in the project without the household qualifying under current income limits. See IRS form 8609 to determine which buildings are in a project. Transfers between units cause the units to switch status, especially for purposes of initial tax credit rent up.	Transfers are allowed between buildings within a project. Households that overcrowd or underoccupy a unit may be required to move to an appropriately sized unit (if that unit is available) or stay and pay contract rent. The effective date of the household's recertification after the transfer is the anniversary date of their original move-in date to the property.	Transfers are allowed between buildings in a project. Households that overcrowd or underoccupy a unit may be required to move to an appropriately sized unit (if that unit is available). If an appropriate unit is not available, the tenancy may be terminated. Recertification is completed at transfer, and the transfer date becomes the new anniversary date.	HUD guidance does not discuss unit transfers for HOME. Generally, households must re-qualify at transfer for the new unit. "Floating" HOME units can switch their designation. "Fixed" HOME units do not switch.	Bond rules do not discuss unit transfers.
Treas. Reg. 1.42-15(d), Rev. Rul. 2004-82, Q&A #8, 8825 Guide 4-24	**4350.3 chapter 7 section 3**	**HB-2-3560 6.21, 6.30 A**		

Subsidy and Rent Limits

LIHTC	HUD	RD	HOME (NHTF)	Bond
Section 8 RA and RA from similar programs are exempt when determining household income. Household rent may exceed the tax credit max rents for households receiving assistance and whose income has increased. Tenant rents may also exceed the tax credit limit for households receiving RD assistance for which RD "overage" is paid.	N/A	Rental assistance, if available at a property, pays rent up to basic rent. When tenant rent exceeds basic rent, overage is paid to RD equal to the difference between the tenant rent for a unit and the basic rent.	Include any subsidy when determining compliance with HOME rent requirements. There is an exception for project-based subsidy in LOW HOME units where tenants pay 30% of their income toward rent. For these units, the full subsidy program rents may be collected. For NHTF units with PROJECT-based federal or state subsidy, maximum rents are the rents allowable under the subsidy program.	The bond program does not impose rent requirements. The bond agreement may have some project-specific requirements.
§42(g)(2)(B)(i) & (iv), 8823 GuideError! Bookmark not defined. 11-5 & 6		**HB-2 7.4 C, 7.11 A-C**	**HOME Guide 3.3 C | NHTF CFR 24 93.302 (b)(ii)(2)**	

Rent Limits

LIHTC	HUD	RD	HOME (NHTF)	Bond
Rent limits are calculated based on income limits. There is a gross rent "floor," established at the date of allocation or placed in service date so that the rents do not have to fall below the "floor" for a project, even if the HUD published Income Limits go down from year to year. Rent limits are calculated imputing 1.5 persons per bedroom.	Market (or contract) rents are calculated for a specific property and will be spelled out in regulatory and HAP agreements.	Basic and market rents are calculated for a specific property and will be spelled out in regulatory and other agreements.	HUD publishes the HOME high and low rent limits. Rents do not decrease below the originally approved HOME rents. 2013 HOME regulation requires that PJs approve all rents annually at each HOME project that they monitor. For the NHTF the grantee must approve rents each year.	The bond program does not have rent limits. Specific bond agreements may impose limits.
§ 42 (g)(2)(C), Rev Proc 94-57, 8823 Guide 11-2 Example 1			**HOME Guide 3.3 §92.2 52(f)(2) (2013) |NHTF 24 CFR 93.302 (a) - (c)**	

Utility Allowances

LIHTC	HUD	RD	HOME (NHTF)	Bond
Projects with RD or HUD funding use the UA for those programs. There are 5 additional choices for other properties: 1) Local PHA-published UAs 2) Estimate from a Utility Company 3) Estimate from an HFA 4) HUD Utility Schedule Model (HUSM) 5) Engineer Model For non-RD/HUD-regulated buildings, the UA for voucher-holding households is the PHA-published UA that their rent calculation is based on. Note: many, but not all, states consider HOME to be a HUD-regulated program.	UA for a property is calculated based on actual consumption at a property every 3rd year and adjusted by a HUD-published rate the other years.	UA for a property is calculated based on RD policy. If there is more than a 15% rate increase, owners should collect a "significant sampling" of tenant data. If any increase is 15% or less, "a sampling" is required. Each state Agency may set further policies.	The PJ establishes a UA. Since the 2013 change in HOME regulations, UAs provided by Public Housing Authorities are no longer acceptable. UAs must now be: 1) Calculated based on actual project consumption; or 2) Use the HUD Utility Schedule Model (HUSM) **NOTE:** This is only applicable to HOME projects committed funds after 8/23/2013. The method for HUD projects is also acceptable. Tax credit options are also acceptable except for PHA estimates. For the NHTF, the grantee must establish UAs each year.	The bond program does not impose rent limits; thus, a UA is irrelevant. The bond agreement may impose further rent restrictions.
Treas. Reg. 1.42-10, 8823 Guide Chapter 18	**MF Notice H-2015-4**	**7 CFR 3560.202** **HB-2-3560 4.26/ 4-29; 7.3 / 7-3**	**HOME Guide 3.3 D; 24 CFR 92.252 (d) (2013) CPD HOME FAQ 11-13, Homefires Vol. 13 No. 2 |NHTF 24 CFR 93.302 (c)**	

Legal Authority and Program Guidance

LIHTC	HUD	RD	HOME (NHTF)	Bond
Legal Code: Internal Revenue Code §42, Treasury Regulation 1.42, Revenue Rulings, Revenue Procedures, and IRS Notices. Although not regulatory, "The Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" AKA "The 8823 Guide" and IRS Newsletters provide additional guidance. Private Letter Rulings indicate IRS thinking but cannot be cited as precedent for any, but the individual cases involved.	HUD Handbook 4350.3 "Occupancy Requirements of Subsidized Multifamily Housing Programs" as amended by HOTMA. Additional MF Housing Notices provide updates. HUD also has an RHIIP Listserv where guidance and announcements are often first published.	HB-2-3560 "Multi-Family Housing Asset Management Handbook," RD also provides updates through Administrative Notice (AN) and Unnumbered Letters (UL).	24 CFR Part 92 regulation, "Compliance in HOME Rental Projects: A Guide for Property Owners" AKA the "HOME Guide." A HOME Technical Guide and Online Calculator provide income calculation guidance. The NHTF regulations are at 24 CFR Part 93	Internal Revenue Code §142, Revenue Rulings, Revenue Procedures, and IRS Notices.
www.irs.gov	**www.hud.gov**	**www.rd.usda.gov**	**www.hudexchange. info**	**www.irs.gov**

Vacancies

LIHTC	HUD	RD	HOME	Bond
Vacant units are considered tax credit units if: A) the unit was previously occupied by a qualified household; B) the unit was ready to lease in a reasonable amount of time, and C) the owner/manager can prove that the unit was marketed before any non-tax credit units of the same or smaller size were leased. (Vacant Unit Rule, or VUR)	Vacant units do not impact program compliance unless vacant units are excessive in quantity or duration. Vacancy claims can be made to HUD to recoup lost rent.	Vacant units do not impact program compliance unless vacant units are excessive in quantity or duration. Rental Assistance that remains unused after 6 months due to vacancies may be removed from a property by RD.	A few short-term vacant units do not impact program compliance. NOTE: HOME units that are not leased within 6 months of project completion could become an issue. Within 18 months HOME funds must be paid back on those units that were not leased to HOME-qualified households.	Vacant units are considered bond units if the unit was previously occupied by a qualified household. When the next household leases the unit, qualification is determined for that household.
Treas. Reg. 1.42-5(c)(1)(ix), Rev. Rul. 2004-82, Q&A #9, 8823 Guide Chapter 15		**HB-2-3560 9.15/9-33**	**§92.525 (2013)**	**IRS Reg. 103.8 (b)(5)(ii)**

Minimum Set-Aside and Required Number of Units in The Program

LIHTC	HUD	RD	HOME	Bond
Historically, properties had a 20-50 or 40-60 minimum set-aside. The first number designates the minimum percentage of units at the property that must be designated “tax credit” units. The second number represents the MTSP income and rent limit for those units. Tax credits are claimed based on the actual percentage of tax credit units to all the units in a building; this is called the “applicable fraction.” Starting for new set-aside elections starting in 2018, the 40-60 set-aside option includes an “Average Income Test” (AIT) version where units may be designated at 20 to 80% MTSP (in whole 10% increments), as long as these average 60%. NOTE: New York City adds minimum set-aside options of 25-60 and 25-60 (AIT). State agencies can determine additional set-asides, but federal tax credits are not at-risk if these set-asides are noncompliant.	This is based on the HUD program type and the regulatory agreement in place for the property.	This is based on the RD program type and the regulatory agreement in place for the property.	The HOME units in a property are determined by the amount of HOME Funds given to the property in proportion to the cost to build. These are designated “low” and “high” HOME units. Typically, 20% of units must be “low” HOME units with a 50% income and rent limit. The remainder of the HOME units are “high” HOME with an 80% rent and income limit.	Typically, properties have a 20-50 or 40-60 minimum set-aside. The first number designates the minimum percentage of units at the property that must be designated “bond” units. The second number represents the MTSP income and rent limit for those units. The bond units must meet the minimum set-aside at the property but do not need to exceed the minimum. During lease-up, once a property reaches 10% occupancy the minimum set-aside must be maintained among the occupied units. This may cause a hold on leasing to non-bond households until the bond minimum set-aside is reached. NOTE: New York City projects have a fourth minimum set-aside option of 25-60 and a fourth AIT (25-60 average) option. State agencies can determine additional set-asides.
§42(g)(1), 8823 Guide chapter 10, IRS form 8609(s) line 10C shows the designation			**HOME Guide 1.8**	**§142(d)(1) Rev. Proc. 04-39**

Initial Lease and Lease Term

LIHTC	HUD	RD	HOME (NHTF)	Bond
Other than in SRO or transitional housing projects, households must not be "transient." This generally means that the initial lease term must be at least 6 months. Termination or non-renewal must be for good cause under state law.	The initial lease term must be 12 months. The HUD lease must be used. Termination or non-renewal must be for good cause.	The initial lease term must be 12 months or the end of the HAP contract, if sooner. The lease is developed by the owner and must be certified by the owner's attorney and approved by RD. Termination or non-renewal must be for good cause.	The initial lease term is typically 12 months unless a lesser term is agreed upon, which can't be less than 30 days, except in cases of threat to the tenants, employees, or property. The lease is developed by the owner avoiding 9 prohibited clauses. The lease must be approved by the PJ. Termination or non-renewal must be for good cause. NHTF has the same initial term and prohibited lease terms as apply to HOME. Termination of tenancy must be for cause and in a timeframe dictated by local law.	The bond program leaves the lease and initial lease term up to other program funding unless the bond agreement mandates some lease requirements. The minimum term is generally at least 31 days.
§ 42(i)(3)(B)(i) & "Blue Book" 8823 Guide chapter 20; § 42 (i)(3)(B)(iv)	**4350.3 chapter 6, Appendix 4 A-G**	**HB-2-3560 Attachment 6-E & 6-F**	**HOME Guide 4.3 B, Attachment 4-1 24, CFR 92.253 (b) (2013) | NHTF 24 CFR 93.303 (a) - (c)**	**Bond Agreement**

Application, Screening, and Monthly Fees

LIHTC	HUD	RD	HOME	Bond
Applicants can be charged a fee for the actual average out-of-pocket costs to run the checks. Non-optional monthly fees must be added when determining gross rent compliance.	Applicants must NOT be charged for the costs of screening. Monthly fees must be approved by HUD.	Fees to applicants are discouraged but allowed and limited to the actual cost of the screening. Monthly fees must be approved by RD.	Application, screening, and other fees must be approved by the Participating Jurisdiction (PJ). Any allowed monthly fees must be deducted from the HOME rent limit to determine the maximum rent charged for a unit. Fees that are not customary in rental housing are prohibited. Reasonable application fees may be charged or fees for services or meals, as long as the services are voluntary.	Application fees and costs to screen applicants are not addressed.
8823 Guide 11-2 to 11-3	**4350.3 4-7 A-C, E 2**	**HB-2-3560 6.18 B, 6.19**	**Home Guide 3.3 D 4 HOME Regs § 92.214(b) (2013) | NHTF: 24 CFR 93.204(b)**	

Criminal Background Checks

LIHTC	HUD	RD	HOME	Bond
Owners may screen for criminal backgrounds.	Owners are required to screen for criminal and drug-related criminal activity. Applicants must be screened for lifetime sex offender registration and those registered are prohibited entry.	Owners may screen for criminal backgrounds. Owners may deny admission for criminal activity. If rejected for occupancy, the letter must outline the reason.	Owners may screen for criminal backgrounds. Applicants rejected must receive a written explanation.	Criminal background checks are not addressed.
8823 Guide 11-2 to 11-3	**4350.3 4-7 A-C, E 2**	**HB-2-3560 6.18 B, 6.19**	**HOME Guide Exhibit 4-1**	

Release of Information Forms

LIHTC	HUD	RD	HOME	Bond
No specific form is required.	HUD uses forms 9887 and 9887-A. These are signed once by all adults.	The owner is required to develop a Release of Information form. No specific form is required.	No specific form is required.	No specific form is required.
	4350.3 3-11	**HB-2-3560 6.11 2**		

Citizenship Requirements

LIHTC	HUD	RD	HOME	Bond
The Internal Revenue Service (IRS) does not establish citizenship requirements. The HFA or the owner may establish non-citizen restrictions.	Only U.S. citizens or eligible non-citizens may receive assistance. Non-citizens must provide documentation that is verified through the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services' SAVE system. Households that consist of non-eligible and eligible members will have their assistance pro-rated.	Only U.S. citizens or eligible non-citizens may receive benefits. RD guidance on how to establish this is still pending.	The multi-family HOME program does not have established citizenship requirements.	The bond program does not have established citizenship requirements.
8823 Guide 13-2	**4350.3 3-5 F, 3-12, Exhibit 3-5**	**§3560.152 (a)(1)**		

Race / Ethnicity Reporting Requirements

LIHTC	HUD	RD	HOME (NHTF)	Bond
Race and ethnicity data collection and reporting procedures are established by the State Housing Finance Agency (HFA). The HFA is required to report this data to HUD.	Applicants have the option to report their race and ethnicity using the form HUD-27061-H, though this is NOT a required form. Management must NOT complete the form on the applicant's behalf. Race and ethnicity data is NOT placed on the waiting list.	Application forms and waiting lists must include race and ethnicity data. If the applicant will not supply the data, management is required to complete the race and ethnicity information based on observation.	The PJ must establish race and ethnicity data collection and reporting procedures. The PJ must review the data collected each year. As affirmative marketing rules apply, NHTF would require monitoring of race and ethnicity.	The bond program does not have race and ethnicity data collection or reporting procedures.
The Housing and Economic Recovery Act of 2008 (HERA) section 2835	**4350.3 2-11 A, 4-14 A 4, Exhibit 4- 3, 4-16 D 4**	**HB-2-3560 6.18 A, Exhibit 6-5**	**HOME Guide 4.2 B 5 |NHTF 24 CFR 93.350**	

Affirmative Fair Housing Marketing

LIHTC	HUD	RD	HOME (NHTF)	Bond
The Internal Revenue Service (IRS) does not address affirmative marketing.	HUD requires an Affirmative Fair Housing Marketing Plan (AFHMP) on HUD form 935.2A. This is updated by the owner/manager at least every 5 years and must be approved by HUD or the Contract Administrator (CA).	RD requires an Affirmative Fair Housing Marketing Plan (AFHMP) on HUD form 935.2A. This must be approved by RD and updated every 5 years.	The PJ must establish affirmative marketing procedures. The PJ is responsible for making sure that the established affirmative marketing plan is followed by the site. Grantees must establish and monitor affirmative marketing plans for NHTF properties.	The Internal Revenue Service (IRS) does not address affirmative marketing.
	HUD.gov Form 935.2A	**HB-2-3560 6.17, HUD.gov Form 935.2A**	**HOME 4. 2 B | NHTF 24 CFR 93.350**	

Online System Used by Program

LIHTC	HUD	RD	HOME	Bond
The Internal Revenue Service (IRS) does not have an online system. Individual State Housing Finance Agencies (HFAs) may have a unique online system.	HUD has Tenant Rental Assistance Certification (TRACS) and Enterprise Income Verification (EIV).	Management Agent Interactive Network (MINC).	The Participating Jurisdiction (PJ) uses the Integrated Disbursement and Information System (IDIS) to report to HUD.	The IRS does not have an online system.

Administering Agency

LIHTC	HUD	RD	HOME (NHTF)	Bond
The Internal Revenue Service (IRS) and State Housing Finance Agencies (HFAs). NOTE: Each state has an HFA; however, they are not all specifically called Housing Finance Agencies.	Housing and Urban Development (HUD) Multi-family Division and Contract Administrators (CAs) which are 'contracted' by HUD.	Rural Development (RD) / Rural Housing Services (RHS) under the United States Department of Agriculture (USDA).	Housing and Urban Development (HUD) under the Office of Community Planning and Development (CPD). CPD appoints Participating Jurisdictions (PJs) that commit the HOME funds to owners and monitor compliance. HUD CPD. CPD appoints state Grantees that commit the NHTF funds to owners and monitor compliance.	The Internal Revenue Service (IRS) and bond issuers.
IRS.gov and individual state HFA websites	**HUD.gov and individual CA websites**	**RurDev.USDA.gov**	**HUD.gov and individual PJ and Grantee websites | NHTF 24 CFR 93.100 and 92.404**	**IRS.gov**

Reporting Requirements

LIHTC	HUD	RD	HOME	Bond
IRS form 8609 must be filed with the IRS after the first year of the credit period. Form 8609A is filed in the other years of the compliance period. An annual owner certification of program compliance must be submitted to the state HFA.	Reporting and HAP processing are submitted monthly through TRACS.	Reporting and RA processing are submitted to RD monthly through MINC by the 10^{th} of the month.	Annual occupancy and other reports are submitted to the PJ.	Form 8703 must be filed with the IRA annually.

Inspections – File Review and Physical

LIHTC	HUD	RD	HOME (NHTF)	Bond
Inspections are done on a minimum 3-year cycle. At least one aspect of ALL buildings is inspected (such as the building exterior or HVAC). The number of files and units inspected is the lower of 20% or the number listed on a chart published in IRS regs (based on HUD REAC standards). NSPIRE (National Standards for the Physical Inspection of Real Estate) or local standards are used for the Physical Review. NOTE: Section 504 does not apply to tax credit funding where other federal funding is not involved. Fair Housing standards apply.	MORs (Management Occupancy Reviews) are performed on a risk-based cycle of 1-3 years. REAC Physical inspections use NSPIRE and are conducted on a 1 to 3-year schedule based on the previous REAC score: >89 = 3-year schedule 80-89 = 2-year schedule <80 = 1-year schedule NSPIRE (National Standards for the Physical Inspection of Real Estate) is the protocol used for the Physical Review. Section 504 and Fair Housing standards apply for a review of accessibility.	Annual Physical Inspections: 5% of occupied units (minimum of 2) and 5% of vacant units (minimum of 2). Tri-annual Supervisory Visits review units based on size: 1-5 units = all units inspected 6-30 units = 6 inspected 31-74 units = 10 inspected >74 units = 15 inspected Vacant units = 5% inspected (minimum of 2 units) RD 3560-11 is the form used for Physical reviews. Section 504 and Fair Housing standards apply for a review of accessibility.	Reviews are based on the total number of units in a property, NOT just the HOME units, with a 3-year inspection cycle. The inspector selects a "Reasonable Sample." The PJ must choose between local and state codes or NSPIRE* for the physical reviews. Section 504 and Fair Housing standards apply for a review of accessibility. *NSPIRE replaced UPCS and HQS in 2023. Further guidance is forthcoming. NHTF tri-annual inspections are based on a sample as set forth by HUD notice. For projects with 1-4 NHTF units, all of the NHTF units are inspected. NHTF properties must meet the HUD NSPIRE standard and Section 504.	No inspection schedule is required by the tax code. NOTE: Section 504 does not apply to bond funding. Fair Housing standards apply.
Treas. Reg. §1.42-5(c)(1)(vi) & (2) 8823 Guide 6-1 & Exhibit 6-1	**4350.1 chapter 5, see also www.hud.gov for further REAC and NSPIRE information. HUD Final Rule "Streamlining MORs for Sec. 8 Housing Assistance Programs" 6-26-22 - effective 9-26-2022.**	**HB-2-3560 9.9 F, 9.10 F, RD 3560-11**	**HOME Guide Exhibit 6-1, 6.2 C 7; HOME Guide Exhibit 5-1 24 CFR 92.504 (d) (2013) | NHTF 24 CFR 93.301 (e) and 404 (d)**	

Violence Against Women Act (VAWA)

LIHTC	HUD	RD	HOME (NHTF)	Bond
VAWA has applied to tax credit properties since 2013. The IRS is unlikely to issue guidance. HUD guidance may be used as a model and state HFAs often issue guidance based on the HUD model.	Applies since 2005 to Section 8 and since 2013 for most other HUD programs. HUD has issued a sample notice of rights (Form HUD-5380), victim cert. (5382), a model emergency transfer plan (5381), and a model emergency transfer request (5383). A lease addendum (91067) is required.	The VAWA statute covered RD in 2013. In 2017 RD adopted the HUD 2016 VAWA Rule. The 2023 VAWA reauthorization covered RD vouchers.	HUD 2016 guidance applies to HOME. The HUD 2016 guidance applies to NHTF. The VAWA statute explicitly includes NHTF starting with the 2022 VAWA reauthorization.	VAWA does not apply.
	Fed Reg Vol 81 No. 221 Wed Nov 16, 2016	**Admin Notice 4814 dated 1-18-17; Fed Reg Vol 81 No. 221 Wed Nov 16, 2016**	**Fed Reg Vol 81 No. 221 Wed Nov 16, 2016 | NHTF 24 CFR 93.356**	

Supplement 3 | HUD's NSPIRE Checklist

PHA:	Address of Unit:
Family Identifier:	Owner:
Any children under 6 reside or expected to reside in the unit? (Y/N):	Owner Contact Information:
Inspector:	Housing Type:
Date of Inspection:	Year Constructed:
Type of Inspection:	Number of Bedrooms:

Summary Decision on Unit (Pass/Fail):

Health & Safety Designation	Correction Timeframe (P/F)
LT	**Life-Threatening - 24 Hours (Fail)**
S	Severe - 30 Days (Fail)
M	Moderate - 30 Days (Fail)
L	Low - N/A (Pass)

*Affirmative Habitability Requirement per 24 CFR 5.703(d) and NSPIRE Final Rule

Mark all that apply:

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Address and Signage	Address, signage, or building identification codes are broken, illegible, or not visible.			M ☐	
Bathtub and Shower	Only 1 bathtub or shower is present and it is inoperable or does not drain.	S ☐	L ☐		
	A bathtub or shower is inoperable or does not drain and at least 1 bathtub or shower is present elsewhere that is operational.	M ☐	L ☐		
	Bathtub component or shower component is damaged, inoperable, or missing such that it may limit the resident's ability to maintain personal hygiene.	M ☐	L ☐		
	Bathtub component or shower component is damaged, inoperable, or missing and it does not limit the resident's ability to maintain personal hygiene.	L ☐			
	Bathtub or shower cannot be used in private.*	*M☐	M ☐		
Cabinet and Storage	Food storage space is not present.*	*M☐			
	Storage component is damaged, inoperable, or missing.	M ☐	L ☐		
Call-For-Aid System	**System is blocked, or pull cord is higher than 6 inches off the floor.**	**LT** ☐	**LT** ☐		
	System does not function properly.	**LT** ☐	**LT** ☐		
Carbon Monoxide	**Carbon monoxide alarm is missing, not installed, or not installed in a proper location.***	**LT** ☐			
	Carbon monoxide alarm is obstructed.	**LT** ☐	**LT** ☐		
	Carbon monoxide alarm does not produce an audio or visual alarm when tested.	**LT** ☐	**LT** ☐		
Ceiling	Ceiling has an unstable surface.	M ☐	M ☐		
	Ceiling has a hole.	M ☐	M ☐		
	Ceiling component(s) is not functionally adequate.	S ☐	S ☐		
Chimney	**A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.**	**LT** ☐	**LT** ☐	**LT** ☐	
	Chimney exhibits signs of structural failure.			**LT** ☐	

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Clothes Dryer Exhaust Ventilation	**Electric dryer transition duct is detached or missing.**	LT ☐	LT ☐		
	Gas dryer transition duct is detached or missing.	LT ☐	LT ☐		
	Electric dryer exhaust ventilation system has restricted airflow.	LT ☐	LT ☐	LT ☐	
	Dryer transition duct is constructed of unsuitable material.	LT ☐	LT ☐		
	Gas dryer exhaust ventilation system has restricted airflow.	LT ☐	LT ☐	LT ☐	
	Exterior dryer vent cover, cap, or a component thereof is missing.			L ☐	
Cooking Appliance	Cooking range, cooktop, or oven does not ignite or produce heat.	S ☐	L ☐		
	Cooking range, cooktop, or oven component is damaged or missing such that the device is unsafe for use.	M ☐	M ☐		
	Primary cooking appliance is missing.*	*M ☐			
	A microwave is the primary cooking appliance and it is damaged.	S ☐			
	A burner does not produce heat, but at least 1 other burner is present on the cooking range or cooktop and does produce heat.	M ☐	M ☐		
Door - Entry	Entry door will not open.	M ☐	M ☐		
	Entry door will not close.	S ☐	M ☐		
	Entry door self-closing mechanism is damaged, inoperable, or missing.	S ☐	M ☐		
	Hole, split, or crack that penetrates completely through entry door.	M ☐	M ☐		
	Entry door is missing.	LT ☐	S ☐		
	Entry door surface is delaminated or separated.	M ☐	M ☐		
	Entry door frame, threshold, or trim is damaged or missing.	M ☐	M ☐		
	Entry door seal, gasket, or stripping is damaged, inoperable, or missing.	M ☐	M ☐		
	Entry door component is damaged, inoperable, or missing and it does not limit the door's ability to provide privacy or protection from weather or infestation.	L ☐	L ☐		
	Entry door cannot be secured.	S ☐	M ☐		
Door - Fire	Fire labeled door does not open.	S ☐	S ☐		
	Fire labeled door does not close and latch or the self-closing hardware is damaged or missing such that the door does not self-close and latch.	S ☐	S ☐		
	Fire labeled door assembly has a hole of any size or is damaged such that its integrity may be compromised.	S ☐	S ☐		
	Fire labeled door seal or gasket is damaged or missing.	S ☐	S ☐		
	An object is present that may prevent the fire labeled door from closing and latching or self-closing and latching.	S ☐	S ☐		
	Fire labeled door cannot be secured.	S ☐	M ☐		
	Fire labeled door is missing.	LT ☐	LT ☐		
Door - General	A passage door does not open.	M ☐	M ☐		
	A passage door component is damaged, inoperable, or missing and the door is not functionally adequate.	L ☐	L ☐		
	A door that is not intended to permit access between rooms has a damaged, inoperable, or missing	L ☐			
	An exterior door component is damaged, inoperable, or missing.			M ☐	

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Drain	Drain is fully blocked.	M☐	M☐	M☐	
Egress	**Obstructed means of egress.**	LT☐	LT☐	LT☐	
	Sleeping room is located on the 3rd floor or below and has an obstructed rescue opening.	LT☐			
	Fire escape access is obstructed.	LT☐			
Electrical - Conductor, Outlet, and Switch	**Outlet or switch is damaged.**	LT☐	LT☐	LT☐	
	Testing indicates a three-pronged outlet is not properly wired or grounded.	S ☐	S ☐	S ☐	
	Outlet does not have visible damage and testing indicates it is not energized.	S ☐	S ☐	S ☐	
	Exposed electrical conductor.	LT☐	LT☐	LT☐	
	Water is currently in contact with an electrical conductor.	LT☐	LT☐		
Electrical - GFCI/AFCI	GFCI outlet or GFCI breaker is not visibly damaged and the test or reset button is inoperable.	S ☐	S ☐	S ☐	
	AFCI outlet or AFCI breaker is not visibly damaged and the test or reset button is inoperable.	S ☐	S ☐	S ☐	
	An unprotected outlet is present within six feet of a water source.*	*S☐	*S☐	*S☐	
Electrical - Service Panel	Electrical service panel is not readily accessible.	M☐	M☐	M☐	
	The overcurrent protection device is damaged.	LT☐	LT☐	LT☐	
	The overcurrent protection device is contaminated.	S ☐	S ☐	S ☐	
Elevator	Elevator is inoperable.		M☐		
	Elevator door does not fully open and close.		M☐		
	Elevator cab is not level with the floor.		M☐		
	Safety edge device has malfunctioned or is inoperable.		M☐		
Exit Sign	**Exit sign is damaged, missing, obstructed, or not adequately illuminated.**		LT☐	LT☐	
Fence and Gate	Fence component is missing.			M☐	
	Gate does not open, close, latch, or lock.			M☐	
	Fence demonstrates signs of collapse.			M☐	
Fire Escape	**Fire escape component is damaged or missing.**			LT☐	
Fire Extinguisher	**Fire extinguisher pressure gauge reads over or under-charged.**	LT☐	LT☐	LT☐	
	Fire extinguisher service tag is missing, illegible, or expired.	LT☐	LT☐	LT☐	
	Fire extinguisher is damaged or missing.	LT☐	LT☐	LT☐	
Flammable and Combustible Item	**Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater.** **OR** **Improperly stored chemicals.**	LT☐	LT☐	LT☐	
Floor	Floor substrate is exposed.	M☐	M☐		
	Floor component(s) is not functionally adequate.	M☐	M☐		
Food Preparation	Food preparation area is not present.*	*M☐			
	Food preparation area is damaged or is not functionally adequate.	M☐	M☐		

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Foundation	Foundation is cracked.	M ☐	M ☐	M ☐	
	Foundation has exposed rebar or foundation is spalling, flaking, or chipping.	M ☐	M ☐	M ☐	
	Foundation is infiltrated by water.	M ☐	M ☐		
	Foundation support post, column, beam, or girder is damaged.	M ☐	M ☐	M ☐	
	Foundation vent cover is missing or damaged.			M ☐	
Garage Door	Garage door has a hole.	M ☐	M ☐	M ☐	
	Garage door does not open, close, or remain open or closed.	M ☐	M ☐	M ☐	
Guardrail	Grab bar is not secure.	M ☐	M ☐		
	Guardrail is missing or not installed.*	*LT☐	*LT☐	*LT☐	
	Guardrail is not functionally adequate.	LT ☐	LT ☐	LT ☐	
Handrail	Handrail is missing.	M ☐	M ☐	M ☐	
	Handrail is not secure.	M ☐	M ☐	M ☐	
	Handrail is not functionally adequate.	M ☐	M ☐	M ☐	
	Handrail is not installed where required.		L ☐	L ☐	
HVAC	**The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.***	*LT☐			
	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is working and the interior temperature is 64 to 67.9 degrees Fahrenheit.*	*S☐			
	Air conditioning system or device is not operational.	M ☐	L ☐		
	Unvented space heater that burns gas, oil, or kerosene is present.*	*LT☐	*LT☐		
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.	LT ☐	LT ☐		
	Heating system or device safety shield is damaged or missing.	S ☐	S ☐		
	The inspection date is on or between April 1 and September 30 and a permanently installed heating source is damaged, inoperable, missing, or not installed.*	*M☐	*M☐		
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.	LT ☐	LT ☐	LT ☐	
	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is inoperable.		M ☐		
Infestation	Evidence of cockroaches.	M ☐	M ☐		
	Extensive cockroach infestation.	S ☐	M ☐		
	Evidence of bedbugs.	M ☐	M ☐		
	Extensive bedbug infestation.	S ☐	M ☐		
	Evidence of mice.	M ☐	M ☐		
	Extensive mouse infestation.	S ☐	M ☐		
	Evidence of rats.	M ☐	M ☐	M ☐	
	Extensive rat infestation.	S ☐	S ☐		
	Evidence of other pests.	M ☐	M ☐		

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Leak - Gas/Oil	**Natural gas, propane, or oil leak.**	**LT** ☐	**LT** ☐	**LT** ☐	
Leak - Sewage	Blocked sewage system.	S ☐	S ☐	S ☐	
	Leak in sewage system.	S ☐	S ☐	S ☐	
	Cap to the cleanout or pump cover is detached or missing.	M ☐	M ☐	M ☐	
	Cleanout cap or riser is damaged.	M ☐	M ☐	M ☐	
Leak - Water	Environmental water intrusion.	M ☐	M ☐		
	Plumbing leak.	M ☐	M ☐	L ☐	
	Fluid is leaking from the sprinkler assembly.	M ☐	M ☐	L ☐	
Lighting - Auxiliary	Auxiliary lighting is damaged, missing, or fails to illuminate when tested.		S ☐	S ☐	
Lighting - Exterior	A permanently installed light fixture is damaged, inoperable, missing, or not secure.			M ☐	
Lighting - Interior	A permanently installed light fixture is inoperable.	M ☐	M ☐		
	A permanently installed light fixture is not secure.	M ☐	M ☐		
	At least one (1) permanently installed light fixture is not present in the kitchen and bathroom.*	*M☐	*M☐		
Litter	Litter is accumulated in an undesignated area.		M ☐	L ☐	
Minimum Electrical and Lighting	At least two (2) working outlets are not present within each habitable room. OR At least one (1) working outlet and one (1) permanently installed light fixture is not present within each habitable room.*	*M☐			
Mold-Like Substance	Presence of mold-like substance at moderate levels is observed visually.	M ☐	L ☐		
	Presence of mold-like substance at high levels is observed visually.	S ☐	M ☐		
	Presence of mold-like substance at extremely high levels is observed visually.	**LT** ☐	S ☐		
	Elevated moisture level.	M ☐	L ☐		
Parking Lot	Parking lot has any one pothole that is 4 inches deep and 1 square foot or greater.			M ☐	
	Parking lot has ponding.			M ☐	
Potential Lead-Based Paint Hazards - Visual Assessment	Paint in a Unit or Inside the target property is deteriorated – below the level required for lead-safe work practices by a lead-certified firm or for passing clearance.	M ☐	M ☐		
	Paint in a Unit or Inside the target property is deteriorated – above the level required for lead-safe work practices by a lead-certified firm and passing clearance.	S ☐	S ☐		
	Paint Outside on a target property is deteriorated – below the level required for lead-safe work practices by a lead-certified firm or for passing clearance.			M ☐	
	Paint Outside on a target property is deteriorated – above the level required for lead-safe work practices by a lead-certified firm and passing clearance.			S ☐	
Private Roads and Driveways	Road or driveway access to the property is blocked or impassable for vehicles.			S ☐	
	Road or driveway has any one pothole that is 4 inches deep and 1 square foot or greater.			M ☐	
Refrigerator	Refrigerator is inoperable such that it may be unable to safely and adequately store food.	M ☐	M ☐		
	Refrigerator component is damaged such that it impacts functionality.	M ☐	M ☐		
	Refrigerator is missing.*	*M☐			

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Retaining Wall	Retaining wall is leaning away from the fill side.			M ☐	
	Retaining wall is partially or completely collapsed.			M ☐	
Roof Assembly	Restricted flow of water from a roof drain, gutter, or downspout.			M ☐	
	Gutter component is damaged, missing, or unfixed.			M ☐	
	Roof surface has standing water.			M ☐	
	Substrate is exposed.			M ☐	
	Roof assembly has a hole.			M ☐	
	Roof assembly is damaged.			M ☐	
Sharp Edges	A sharp edge that can result in a cut or puncture hazard is present.	S ☐	S ☐	S ☐	
Sidewalk, Walkway, Ramp	Sidewalk, walkway, or ramp is blocked or impassable.			M ☐	
	Sidewalk, walkway, or ramp is not functionally adequate.			M ☐	
Sink	Sink or sink component is damaged or missing and the sink is not functionally adequate.	M ☐	L ☐		
	Water is directed outside of the basin.	L ☐	L ☐		
	Sink is not draining.	M ☐	M ☐		
	Sink is improperly installed, pulling away from the wall, leaning, or there are gaps between the sink and wall.	M ☐	M ☐		
	Sink component is damaged or missing and the sink is functionally adequate.	L ☐	L ☐		
	Cannot activate or deactivate hot and cold water.*	*M☐	M ☐		
	Sink is missing or not installed within the primary kitchen.*	*M☐			
Site Drainage	Water runoff is unable to flow through the site drainage system.			L ☐	
	Erosion is present.			L ☐	
	Grate is not secure or does not cover the site drainage system's collection point.			M ☐	
Smoke Alarm	**Smoke alarm is not installed where required.***	*LT☐	*LT☐		
	Smoke alarm is obstructed.	LT☐	LT☐		
	Smoke alarm does not produce an audio or visual alarm when tested.	LT☐	LT☐		
Sprinkler Assembly	**Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.**	LT☐	LT☐	LT☐	
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.	LT☐	LT☐		
	Sprinkler assembly has evidence of corrosion.	LT☐	LT☐	LT☐	
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.	LT☐	LT☐	LT☐	
Stairs	Tread is missing or damaged.	M ☐	M ☐	M ☐	
	Stringer is damaged.	M ☐	M ☐	M ☐	
Steps and Stairs	Step or stair is not functionally adequate.			M ☐	
Structure	**Structural system exhibits signs of serious failure.**	LT☐	LT☐	LT☐	

Area	Deficiency Description	Unit	Inside	Outside	Inspector Comments
Toilet	**Only 1 toilet was installed, and it is missing.**	**LT** ☐	M☐		
	A toilet is missing and at least 1 toilet is installed elsewhere that is operational.	M☐	M☐		
	Only 1 toilet was installed, and it is damaged or inoperable.	S ☐	M☐		
	A toilet is damaged or inoperable and at least 1 toilet is installed elsewhere that is operational.	M☐	M☐		
	Toilet component is damaged, inoperable, or missing such that it may limit the resident's ability to safely discharge human waste.	M☐	M☐		
	Toilet is not secured at the base.	M☐	M☐		
	Toilet component is damaged, inoperable, or missing and it does not limit the resident's ability to discharge human waste.	L ☐	L ☐		
	Toilet cannot be used in private.*	*M☐	M☐		
Trash Chute	Chute door does not open or self-close and latch.		M☐		
	Chute is clogged.		M☐		
Trip Hazard	Trip hazard on walking surface.	M☐	M☐	M☐	
Ventilation	Exhaust system does not respond to the control switch.	M☐	M☐		
	Exhaust system has restricted airflow.	M☐	M☐		
	Exhaust system component is damaged or missing.	M☐	M☐		
	Bathroom does not have proper ventilation or dehumidification.	M☐	M☐		
Wall - Exterior	Exterior wall covering has missing sections of at least 1 square foot per wall.			M☐	
	Exterior wall has peeling paint of 10 square feet or more.			M☐	
	Exterior wall component(s) is not functionally adequate.			M☐	
Wall - Interior	Interior wall has a loose or detached surface covering.	M☐	M☐		
	Interior wall component(s) is not functionally adequate.	M☐	M☐		
	Interior wall has a hole that is greater than 2 inches in diameter or there is an accumulation of holes that are cumulatively greater than 6 inches by 6 inches.	M☐	M☐		
Water Heater	Temperature pressure relief (TPR) valve has an active leak or is obstructed or relief valve discharge piping is damaged, capped, has an upward slope, or is constructed of unsuitable material.	S ☐	S ☐	S ☐	
	No hot water.	S ☐	L ☐		
	The relief valve discharge piping is missing or terminates greater than 6 inches or less than 2 inches from waste receptor flood-level.	M☐	M☐	M☐	
	Chimney or flue piping is blocked, misaligned, or missing.	**LT**☐	**LT**☐	**LT**☐	
	Gas shutoff valve is damaged, missing, or not installed.	**LT**☐	**LT**☐	**LT**☐	
Window	Window will not open or stay open.	M☐	L ☐		
	Window cannot be secured.	M☐	L ☐		
	Window will not close.	S ☐	M☐		
	Window component is damaged or missing and the window is not functionally adequate.	M☐	M☐		