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AND COMMUNITY DEVELOPMENT

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LIHTC Compliance Manual - Draft for Public Comment
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CHAPTER 1: INTRODUCTION

HISTORY

The Department of Housing and Community Development (DHCD) provides low-interest loans, grants, education, and assistance to help Maryland residents find, rent, buy, build, and maintain quality homes. One of DHCD's greatest resources is its ability to allocate Federal tax credits in support of the development of low-income housing. The Low-Income Housing Tax Credit (LIHTC) was passed into law pursuant to the provisions of the Tax Reform Act of 1986. LIHTC funds affordable housing by reducing taxes for owners who build housing for low-income households. The tax credits provided are based on how much is invested in the property by the owners and investors for the purpose of building and/or rehabilitating affordable rental housing. The LIHTC program is governed by Section 42 of the Internal Revenue Code (Section 42). The IRS uses HUD rules when calculating household income. Otherwise, the IRS rules should be consulted when establishing policies and procedures to achieve LIHTC compliance. This Compliance Manual supports DHCD's mission and its obligations under Treasury regulations by providing LIHTC property owners and their management agents (sometimes collectively referred to as owner/agents) with our policies and guidance on LIHTC compliance matters. Please note that the operational arm for LIHTC matters is DHCD's Community Development Administration (CDA). As such our owner/agents will most frequently interact on LIHTC matters with CDA.

The Internal Revenue Service (IRS) administers the program nationwide by partnering with state housing finance agencies (HFAs). Allocating tax credits to owners and regular monitoring for compliance with the LIHTC program are handled on behalf of the IRS by the HFAs. The Governor of the State of Maryland designated the Department of Housing and Community Development (DHCD) by law to enforce Section 42 and the Secretary of DHCD designated CDA to discharge all Section 42 requirements.

ONLINE RESOURCES

Section 42 requires that each HFA develop and implement a Qualified Allocation Plan (QAP) to determine how tax credits will be allocated. DHCD's QAP, along with many other useful program documents and notices, are available on its website. For your convenience, this link will take you to DHCD's Multifamily Housing Development Document Library (the Library):

https://dhcd.maryland.gov/housingdevelopment/pages/mflibrary.aspx

At the top of the landing page is an outline of the contents of the Library. Click on the menu items listed Low Income Housing Tax Credit Program Compliance Documents (LIHTC Compliance Documents) and Multifamily Notices (Notices). Throughout this Compliance Manual you will find suggestions of specific documents that may be found in the Library under LIHTC Compliance Documents that will be helpful. Many other resources can also be quickly accessed in the Library governing subjects that are related to allocation of tax credits and other important matters. The purpose of this Compliance Manual is to focus on compliance. If a form is provided in LIHTC Compliance Documents, we suggest that you use that form for its stated purposes. Otherwise, please note that forms published by Spectrum Enterprise online at this link will always be accepted by CDA:

https://spectrumlihtc.com/resources/

Notices are posted on our website for many purposes. For example, in 2020 and 2021 the IRS, in response to the COVID 19 pandemic, issued its own Notices providing various forms of relief from compliance matters. In each instance a Notice was posted on DHCD's website clarifying the underlying IRS notice or its application by CDA.
Of course, our owner/agents cannot be expected to be ever watchful for Notice postings. Whenever a Notice is posted, an email blast providing a copy of the Notice also goes out to all who are signed up for such emails. To subscribe to this service, go to the following link and click the button captioned "Subscribe – Multifamily Housing Updates" at the bottom of the landing page:

http://dhcd.maryland.gov/HousingDevelopment/Pages/About.aspx

Please get signed up for Notices

In addition to the QAP requirement imposed on HFAs under Section 42, HFAs must create policies and procedures for monitoring compliance with the LIHTC program. Provisions in this Compliance Manual reflect CDA's compliance with these obligations.

Section 42 is a simple concept with a vast number of rules that need to be followed most of which are designed to make sure that the American taxpayer gets their fair share of the bargain through partnership between our government and private businesses, while we safeguard our most vulnerable – ultimately, we LEAVE NO MAN BEHIND.

The Section 42 tax credits are competed for by investors because they provide equity for a building's initial construction or for the rehabilitation of an existing building. In exchange for the equity represented by the tax credits the investor accepts rent and other limitations that collectively foster the development of affordable housing.

DISCLAIMER

While setting out CDA's requirements of owner/agents under the LIHTC program, this manual was not intended and must not be taken as legal or accounting advice. These materials are for informational purposes only and may not reflect the most current legal developments. This Manual has not been reviewed by the IRS. With respect to federal rules, this manual is to be used only as a supplement to the statutes, regulations and other guidance from the IRS and HUD. Complete coverage of all aspects of compliance with the LIHTC program is beyond the scope of this manual. CDA's obligation to monitor for program compliance and willingness to provide assistance does not make CDA liable for an owner's noncompliance.

The responsibility for maintaining compliance with the LIHTC program lies with the owner of the building who has used the funding and accepted the obligations attached. Because of the complexity of the LIHTC program and the need to consider how provisions apply to specific factual circumstances, the informational materials are not intended, and should not be taken, as legal advice on any particular set of facts or circumstances. Owners must seek competent professional legal and accounting advice regarding compliance for their properties.

MODIFICATIONS OF THE COMPLIANCE MANUAL

As we "go to press" with this update of our Compliance Manual, our timing is imperfect. In 2024 we will be providing even further upgrades to this Manual. Those upgrades, initially, will be delivered by Notices. On the date of each such Notice, conflicting provisions in the Manual will be modified in favor of the provisions in the Notice. See above under ONLINE RESOURCES. Here are the subject matters of Notices anticipated during 2024:

A. **HOTMA for LIHTC. See Notice 24-01 in which CDA provides the option for HOTMA to be governed by properties during 2024 while acknowledging all properties will be governed by HOTMA effective January 1, 2025. NOTE: The Compliance Manual reflects pre-HOTMA governance.**
B. **NSPIRE, effective on October 1, 2024.**
C. **Software Upgrades for LIHTC Compliance.**
D. **Clarifications on Income Averaging**
E. **Compliance specific to Extended Term properties.**

This Compliance Manual will be edited in 2025 to integrate the materials provided by the 2024, above-referenced Notices.

CHAPTER 2: KEY PLAYER ROLES

THE OWNER

The owner chooses to utilize the LIHTC program to take advantage of the tax and other benefits provided. In exchange for these benefits, the owner must adhere to certain requirements and accept certain responsibilities. These responsibilities include, but are not limited to the following:

A. Commitment and Allocation Requirements

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

B. Project Knowledge

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

1. The date of allocation [see Chapter 8].
2. The placed-in-service date for each building [Chapter 8].
3. For a LIHTC acquisition/rehabilitation project [Chapter 11]:
   a) The date of acquisition.
   b) Whether any in-place residents were required to move out (temporarily or permanently) and if the building(s) was occupied during the rehabilitation.
   c) Whether in-place residents are LIHTC qualified and when each was initially qualified.
   d) If residents were relocated during the rehabilitation process, detailed records of transfers sufficient to support the accuracy of credits claimed.
4. The Building Identification Number (BIN) for each building. [Chapter 7].
5. If a project includes more than one building, the number of buildings in the project.
6. The minimum set-aside elected: 20-50, 40-60, 15-40 or Income Averaging. [Chapter 7].
7. The Applicable Fraction for each building. [Chapter 7].
8. The year that the tax credit was first claimed for each building (BIN). [Chapter 8].
9. The start and end years of the Credit, Compliance and Extended Use Periods. Note: The Credit and Compliance Periods, collectively, are referred to as the Initial Term. [Chapter 8].
10. The terms under which the tax credit reservation was made [Chapter 8].
11. The terms and conditions stated in the *Low-Income Housing Tax Credit Covenant* (the Covenant) [Chapter 8].

C. Proper Administration and Record Keeping

The owner is responsible for the proper administration of the project. Resident income and rent records must be generated and retained for each building in the project for the duration of the Compliance and Extended Use Periods. Owners must maintain records necessary for CDA to conduct compliance monitoring reviews and for the IRS to conduct any necessary audits. Records for the first year of the Credit Period must be retained for a minimum period established by federal law [Chapter 9].

The records must include the following:

1. The total number of all residential rental units (both LIHTC and non-LIHTC) in the building, including the number of bedrooms and the size in square feet of each residential rental unit.
2. The percentage of residential rental units in the buildings that are low-income units.
3. Set-asides used for each unit
4. The rent charged for each residential rental unit in the building.
5. The applicable utility allowance for each unit and current supporting documentation for each such unit.
6. The number of occupants in each LIHTC unit.
7. Unit vacancies for each building.
8. Where applicable, documentation of when and to whom next available units were rented (including the unit number, resident name, move-in dates, and move-out dates for all LIHTC and non-LIHTC residents) where the Next Available Unit Rule has been triggered.
9. The annual income certification of each eligible resident.
10. Documentation to support each eligible resident's income certification.
11. The eligible basis and qualified basis of each building at the end of the first year of the Credit Period.
12. The nature of the nonresidential portion of any building included in the project's eligible basis under Section 42(d) of the code. Typically, resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities.
13. Details respecting any unit in any building that is occupied by full-time management or maintenance personnel, or certain security personnel.

D. Maintain a Project File

Owners must maintain a project file on site (or at the location that files for the project are typically kept) that contains all pertinent documents for the project and are organized for easy access in accordance with the list that follows.

CDA retains the right to inspect the documentation in the project files at any time. The project file must contain:

1. A copy of the recorded Covenant.
2. A copy of the Management Plan.
3. A copy of the Tenant Selection Plan
4. A copy of the Management Agreement.

5. Forms IRS 8609, 8609 - Schedule A, and 8586, as applicable, for each building for each year tax credits are claimed or to be claimed with Part II completed in each case.
6. Form 8703, as applicable to tax-exempt bond-financed projects.
7. All applicable regulatory documents relating to any other programs used to finance the property, such as HUD Section 8, HOME, etc.
8. Documentation for each utility allowance review, which must occur at least once per calendar year [Chapter 3].

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

Files may be paper or electronic, as discussed in Chapter 9, subject to Section 42 and IRS guidance. All required signatures may be executed electronically; provided, however, that the documentation of the enforceability of such electronic signatures meets or exceeds all of the legal requirements in the State of Maryland for electronic signatures to be binding on the parties.

F. Reporting and Certification Requirements

1. Owners must promptly submit a copy of fully executed Form(s) IRS 8609 to CDA, once Part II is signed and dated.
2. Owners must submit and retain copies of all OCCPC's and related documents for each year of the Compliance Period. The OCCPC's must be submitted by the deadline published annually in CDA Notices or disseminated to the owner/agents by email.

G. Train On-Site Personnel

It is the owner's responsibility to ensure that the on-site management staff are sufficiently educated in and compliant with all LIHTC provisions applicable to the project.

H. Ensure Proper Maintenance

The owner is responsible to maintain the property in a decent, safe, and sanitary condition, suitable for occupancy, and in good repair. Failure to do so may result in reportable noncompliance. Any notices or other communications for other state or local authorities addressing concerns about the maintenance of the property must be kept in the Project file on the site and available upon request to CDA inspection personnel.

I. Administration and Notification

The owner must notify CDA immediately in writing of any anticipated changes in the ownership composition including changes in any general partner or managing member interest, any controlling interest of any general partnership/managing member interest, more than 25% limited partnership /non-managing member interest and changes in management agent. These changes must be approved by CDA for projects which have tax credits only and for projects which have tax credits and local tax exempt bond financing. Changes for all other projects must be approved by DCA. For changes which must be approved by CDA, the owner will be required to provide documentation in support of such changes. In such cases, changes shall be recognized by CDA when such cooperation and related submissions are reviewed and approved by CDA.

Changes in owner's authorized agents, names, email addresses, telephone numbers and federal identification numbers must also be reported.

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

J. Low-Income Housing Tax Credit Covenant (the Covenants)

CDA approved Covenants must be recorded and in effect as of the end of the first taxable year in which credits are claimed.

THE PROPERTY MANAGER

A. General

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

B. Non-compliance

If the management company determines that the project is not in compliance with the LIHTC program requirements, the management company should correct the non-compliance upon discovery whenever possible. Correction of LIHTC non-compliance matters prior to receiving notification from CDA of a pending scheduled file and/or physical review demonstrates proper due diligence, and the non-compliance will not be reported to the IRS by CDA on form 8823. To that point, notice from CDA that a project is subject to a Site Visit sometime during a given calendar year is NOT a notice for purposes of this paragraph. Notice, as used in this paragraph, is such notice as CDA gives management in writing of the date of a Site Visit (or partial Site Visit) as required under IRS regulations adopted in 2020 that states that such notice shall not exceed 15 days.

C. Compliance Training

Management staff must remain up to date on all IRS Code regulations and CDA policy changes that are published, incorporated into modifications of the QAP, provided in the Compliance Manual or included in updates to this Compliance Manual. This may be accomplished through the IRS website, several nationally known LIHTC training/consultation providers and DHCD's web site and Library.

CDA

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

A. Prepare Regulatory Agreements

For LIHTC projects, CDA will prepare Covenants prior to the issuance of the IRS Form 8609. Upon recordation, the Covenants are an encumbrance on the property. This document must be recorded before the end of the calendar year in which credits are first claimed. It is typically recorded in conjunction with the closing of the project.

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

Upon receiving a CPA-prepared cost certification for each building, CDA will complete and execute Part I of an IRS Form 8609 and send it to the owner. See the discussion of IRS Form 8609 below.
If rehabilitation and acquisition credits are claimed on the same building, the rehabilitation and acquisition credits are each calculated separately. Therefore, the acquisition and rehabilitation will receive separate Forms 8609 [see Chapter 11]. The owner completes and executes Part II of the 8609 and submits it to the IRS when the owner's personal, partnership or corporate tax returns are filed for the first year. Refer to the most current 8609 instructions to determine when and how a copy of the 8609 must be submitted. A copy of each fully executed 8609 must be forwarded to CDA. Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms.

C. Review OCCPCs and other required reporting

CDA will give notice by email to owners and/or their authorized agents specifying the due date for submission of OCCPCs, accompanied by invoices for compliance monitoring fees. The completed OCPC is analyzed, and the owner and/or its authorized agent is contacted if questions arise. Payments of compliance fees are required annually and are monitored by CDA staff.

D. Conduct On-Site Monitoring

CDA is required by the IRS to conduct in-depth, on-site inspections of all buildings and to perform physical inspections and file reviews for that number of units based on IRS governance. Specifically, units will be the lesser of: a) 20% (rounded up) of the total of tax credit units; and b) the IRS table from the final regulation.

E. Notify IRS of Noncompliance

CDA will provide written notification to the owner for items of noncompliance and assign an allowed correction period. The correction period cannot exceed 90 days from the date of the notice of noncompliance, but often will be less (typically 30 days), depending on the nature of the

noncompliance. CDA may extend the correction period for up to six months, but only if CDA determines there are extenuating circumstances creating good cause for granting the extension. The owner/agent must supply documentation that verifies the project is back in compliance before the end of the correction period. Currently CDA uses the UPCS inspection format for tax credit physical inspections. Every Level 3 violation found on site will result in an 8823 and will also require owner/agent to provide appropriate proof that such violation has been corrected no later than 72 hours after the Level 3 violation has been reported to owner/agent by CDA in writing.

F. Use of Subcontractors

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

G. Administration and Notification

Information regarding compliance is posted on the DHCD website and is updated regularly. See LIHTC Compliance Documents and Notices. Email blasts of our Notices and changes, subtractions, or additions to our LIHTC Compliance Documents are available for sign up.

CHAPTER 3: INCOME AND RENT LIMITS

SELECTING THE CORRECT INCOME LIMITS

A very important aspect of determining whether households are eligible for affordable housing is ensuring that their household income is at or below specific income limits. These limits differ by program (LIHTC, HOME, Section 8, etc.).
Annually, HUD publishes median income information for each county or Metropolitan Statistical Area (MSA) in each state. HUD MSAs are larger metropolitan areas that may include multiple counties in one “area”. The LIHTC and tax-exempt bond programs’ income limits are labeled by HUD as Multifamily Tax Subsidy Program (MTSP) limits. The MTSP income limits can be found on the HUD website. As a service to our partners, CDA provides a Notice each year that lists online resources to assist in determining income limits.

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

1. 50% (very low) and 60% Income Limits
    - Select the 50% or 60% limits based on the property’s minimum set-aside (that is, for 20-50 properties use the 50% limits and for 40-60 and Income Averaging properties use the **60%**).
    - Calculate the **20%**, **30%**, **40%**, **70%**, and **80%** income limits (for Income Averaging properties only) by multiplying the 50% limit by .4, .6, .8, 1.4 and 1.6, respectively.

NOTE: HUD was not publishing these income limits in 2018 when Income Averaging was passed into law; until HUD publishes these limits, owners will need to manually calculate the applicable income limits.

2. HERA Special Income Limits 50% and 60% (if applicable)
    - These limits can only be applied to projects for which at least one building in the project was placed in service prior to January 1, 2009.
    - Not all MSA’s or counties in Maryland 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 languagelimits, the project is not eligible. Also, counties with HERA special limits change from year to year so it is best not to assume that if you had HERA special limits one year that you will automatically have them the next (or vice versa).

LIHTC income limits are said to be “*held harmless”*. This means that once a building is in service, it never has to decrease the income limits it uses from one year to the next.
Being “held harmless” is beneficial to projects where income limits might fluctuate from year to year and helps the project to better achieve economic stability. For purposes of this rule, a project “places in service” when the first building in the project places in service. “Project” is defined by the 8609 8(b) multi-building election (see Chapter 7, *Minimum Set-Aside* for further information on the 8(b) election).

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

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

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

Questions to determine if *HERA Special* limits are applicable:

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

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

INCOME AND RENT LIMITS

In a LIHTC project in which the Minimum Set-Aside is "40/60", the number "60" indicates that the owner has chosen to limit itself to households in which the household income is equal to or less than 60% of the Average Median Gross Income (AMGI) for the location where the project is located. If 60% of AMGI in a given location is equal to $48,000 per year for a one-person household, then that income would be equal to $4,000 per month. At the time that Section 42 was adopted it was thought that housing costs should not absorb more than 30% of a household's gross income, particularly where low-income people were concerned. Further, Section 42 sought to include the costs of Rent and cost of utilities in arriving at the ceiling of not more than 30% of gross monthly income on housing. In this hypothetical, then, Section 42 would require a rent limit of $1,200 [($48,000/12) times .3 = $1,200]. This simple goal that low-income people should not be asked to spend more than 30% of their gross income on housing guides all of the Rent limits of the program. However, the impact of many other elements is also factored into Rent and Income limits, including, for example, the date that the project was placed in service, a formula indicating that one should assume 1.5 household members per bedroom, gross rent floors, etc.

CDA will post guidance regarding the calculation of Rent and Income limits each year based on HUD data typically released and available on or about April 1 of each calendar year. Nevertheless, determining Rent and Income limits accurately is ultimately the responsibility of the owner/agent. A resource that CDA finds to be invaluable for these purposes is the Novogradac Rent and Income Calculator.

Owners/agents should be cautioned that there are many caveats provided in connection with use of the Calculator. Here is a link to the Calculator:

https://ric.novoco.com/tenant/rentincome/calculator/z4.jsp

Once again, Section 42's goal is to ensure that low-income people spend no more than 30% of their gross monthly income on housing. But how do we get from a Rent limit for a low-income apartment to the broad goal of low-income people spending not more than 30% of their income on housing. The answer is that the amount of Rent chargeable to a household has to be adjusted downwards by the amount of any "standard fees" charged generally to all tenants in the project in the lease and by the Utility Allowance (UA, or UAs). Rent chargeable is adjusted downwards by "standard fees" charged in the lease because, if the "standard fees" are, in fact, standard, they are really rent. Rent is adjusted downwards by the UA (discussed in great detail below) because the UA is a professional estimate of how much the household will be paying for utilities. Today it is rare to see an attempt by an owner/agent to charge a "standard fee" in the lease.

The amount of Rent that can be charged then is typically equal to the Rent limit for the unit in the project (see the Calculator above) minus the UA.

The stated goal of limiting low-income people to spending not more than 30% of their gross income for housing INCLUDES standard utility services billed directly to the tenant. In the above example the maximum rent for a unit is calculated to be $1,200 per month. However, if the current UA for that size unit in that project is $100 per month, then the maximum Rent chargeable is $1,100 per month. If the lease for a household calls out a different Rent than the Tenant Income Certification (TIC), then the correct Rent will be deemed to be the lower of the two numbers until and unless the tenant and owner/agent agree in writing to a resolution of the error. However, the resolution of such an error can never justify a rent above the limits imposed by Section 42.

Subsidies received from Section 8, Rural Development or other similar sources are not included in tenant rent. At times the gross rent (tenant + utility allowance + rental subsidy) will be more than the LIHTC rent limit. The tenant portion of the rent may exceed the LIHTC rent limit as long as there is a rental subsidy. If at any point the household no longer receives the rental subsidy, the LIHTC rent limit cannot be exceeded.

GROSS RENT FLOOR

The gross rent "floor" establishes a minimum rent for a property based on the owner's election of the gross rent amount on the date of either credit allocation or the placed in-service date. The election must be made no later than the placed in-service date. Rent 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 places in service, the owner/agent will not have to charge rents based on the lower income limits but will use the gross rent floor until increases in the AMGI limits translate into Rent limits that exceed the floor Rents.

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

UTILITY ALLOWANCES

As stated above, when households pay for rent and utilities, the total costs for rent and utilities to the household must be kept at or below the maximum rent limits. However, in actual practice, it is impossible to know what utility usage will be for any specific month. To deal with this, LIHTC units in which residents pay utilities out of their pockets must have utility cost estimates calculated per unit size. These are UAs. Resident-paid utilities c such as telephone, cable TV and internet service are considered optional and are not included in the UA. The rent that a tenant pays plus the UA and other required charges must not exceed the LIHTC rent limits. See the exception above for units with a rental subsidy. When all utilities are included in the household's rent, there is no UA.

UA CALCULATION METHODOLOGIES

When utilities are not included in the household rent, the IRS allows the UA to be calculated using a variety of methods. CDA provides a guide to UAs in the Library at the following link:

https://dhcd.maryland.gov/HousingDevelopment/Documents/mfresources/Utility%20Allowance%20Procedures%20Version%202%20-%20January%202011.pdf

Further, this link identifies all approved engineers and qualified professionals in Maryland, and the process that an engineering firm can follow to becomes an approved engineer:

https://dhcd.maryland.gov/HousingDevelopment/Documents/lihtc/CDAApprovedEngineerQualifiedProfessionalList.pdf

UAs for a project or building can also be a combination of one UA for one or more categories of utilities paid for by the household and additional UAs for other categories of utilities paid by the household; provided, however, that such combined UA does not violate other laws or regulations. In such cases the UA is the sum of the UAs for the various categories of utility costs.

Sub-metered and renewable energy utilities

Utility charges that are sub-metered are based on a household's actual energy consumption and treated as "paid by the tenant" to the utility company even if the owner collects the sub-metered utility payments because the owner ultimately pays the utility company for the utilities. Owners can, therefore, calculate a UA estimate for utilities that are sub-metered. Owners may also charge a very small fee, published by IRS Notice, for the work of submetering. IRS Notices should be monitored for the current allowable fee by owner/agents who sub-meter.

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

Updates

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

Tenant notification - "the 90-day period"

Two types of UA's, those that are RD- and HUD-regulated, must be posted for tenant review according to the applicable RD or HUD rules. For other UA calculation methods, if the applicable UA changes, the owner must begin preparing for the change 90 days prior to the effective date. Owner/agents are required to implement and document the following: (1) households and CDA must be timely notified 90 days prior to new UA's being effective, and (2) the new UA must be used to compute gross rents effective the first day immediately following the 90-day period. Any rates and other data used must be current within 60 days of the start of the 90-day period. Failure to implement any changes to the UA may affect the LIHTC gross rents, which could cause the gross rents to exceed the applicable rent limit and create rent noncompliance. For most UA estimate methods, the owner/agent initiates the UA calculation. However, for estimates completed by the local Public Housing Authority (PHA), the PHA calculates and publishes these UA's on their own schedule; for this UA option, the 90-day period begins when the PHA estimates are effective. Rents may need to decrease by the end of the 90-day period in cases where the PHA-published UAs increase.

Copies of the notification of UA changes must be retained in tenant files. It is not required to adjust the TIC between annual certifications.

Lease-ups

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

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

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

Understand and implement the 90-day rule!

For PHA estimates: Make sure to ask the PHA every 60 days if the UA has changed. If the UA has increased, and the new UA plus the rent plus other required charges are over the LIHTC rent limit, the rent needs to be lowered no later than 90 days after the date of the UA change. Keep documentation of the PHA's responses to inquiries in the project file.
All other estimates: CDA and tenants must be notified of the new UA 90 days before any change in rent is implemented. Keep copies of the notifications in household files.

1. **HOME:** As HOME is a HUD regulated program, HOME UA's must be used for all tax credit units in buildings with HOME funds that are not RD-regulated.
2. **Voucher Holders:** Unless a building is RD or HUD-regulated (including HOME funds), the PHA UA that comes with a Section 8 Voucher must be used for units that voucher holders live in. As mentioned in a previous section, the PHA estimate may also be used for all units within the building, even if the remainder of the units receive no rental subsidy.

CHAPTER 4: INITIALLY QUALIFYING HOUSEHOLDS

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

There are certain measures that can be taken to ensure that a household qualifies for a LIHTC unit. Owner/agents must take the steps listed below to complete the certification process.
This Chapter will discuss steps 1-3 as well as details about leasing, per step 8. Chapter 5 will discuss steps 4-7. Please note, Chapter 3 discussed the income limits referred to in step 6.

THE APPLICATION

Upon beginning the certification process, an interview (or interviews) should be conducted with all adult household members. The basics of the housing program(s) at the property should be explained. Some suggested topics are:

- Income limits. NOTE: Actual anticipated income limits based on the anticipated size of the household should NOT be discussed with potential household members.
- Student eligibility rules.
- The anticipated income of all household members occupying the unit must be verified, so this basic information must be included on the application and/or questionnaire with all questions thoroughly answered. Household members should understand that income in the form of tips, particularly if such tips are not reflected on pay stubs, will be thoroughly explored as part of qualifying the household.
- Eligibility will continue to be reviewed on an annual basis with some level of annual certification. This may include income certification and always includes student status.
- Specific to your property and residents: Over time, owners/agents develop a list of issues that commonly come up at their property. If a property is near a school, for instance, extra time may need to be spent explaining student status rules. Additionally, some agents find that people have a hard time understanding the complex alimony/child support rules. Preparing extra guidance on such topics may ensure that the household is enabled to provide complete and accurate information for the purpose of a thorough certification. It is important to ask only questions relative to the eligibility of the household and written screening criteria policies. Only fair-housing compliant screening criteria are allowed, including income minimums, credit checks, and criminal background checks.

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

The application/questionnaire must be signed by all adult household members; no question should be left blank. Questions relating to minor dependents in the household must be answered by the responsible adult. A national study indicated that 30% of all compliance issues arise from incomplete applications/questionnaires. Apparently, sometimes there is a reason why a question on an application is left unanswered or not completely answered.

OCCUPANCY STANDARDS AND OTHER OWNER CRITERIA

An owner must adhere to occupancy standards that establish how many people can occupy a unit in accordance with local and state law. For example, two persons per bedroom plus one additional person per unit is common; however, an owner must take into consideration several factors specific to the property such as the size of rooms and total square footage.

AVAILABILITY TO THE GENERAL PUBLIC

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

OCCUPANCY PREFERENCES OR RESTRICTION

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

FAIR HOUSING

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

THE VIOLENCE AGAINST WOMEN ACT

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

VAWA reauthorizations in 2005 and 2013 progressively added housing provisions. The 2005 version affected Section 8 programs and public housing. The 2013 reauthorization greatly expanded the housing programs covered by the Act to include most of HUD multi-family housing programs, including HOME, LIHTC and Rural Development-funded housing. The final VAWA regulation and forms were released by HUD in November 2016, and follow-up guidance was published in June of 2017 (Federal Register Vol. 81, No. 221 and HUD Notice H-2017-05). The regulation is directly applicable to HUD programs, including HOME and the Housing Trust Fund. Rural Development also adopted the HUD guidance. For technical reasons, the IRS is unlikely to provide any guidance and the tax credits are not directly at risk if an owner does not apply VAWA rules. However, the VAWA law still applies to LIHTC properties and noncompliance creates legal exposure. CDA encourages owner/agents to become familiar with the HUD regulations and forms used at application and other times and apply these to their LIHTC properties. Although lack of compliance with VAWA is not grounds for LIHTC noncompliance and loss of tax credits, there have been violations of VAWA that HUD determined were disparate impact discrimination under the Fair Housing Act based on gender, race or national origin. If HUD finds a VAWA violation to also violate Fair Housing, then credits are at risk (see section on “Fair Housing” above). This should make an owner realize the importance of applying VAWA guidance and forms as spelled out by HUD even if the IRS is unlikely to address the matter.

VERIFICATION

Crucial eligibility factors must be verified through knowledgeable third parties. For example, an employer may verify earned income. A financial institution may identify types of accounts, their applicable cash value, balance, and interest rate. The verification must be an **unaltered**, original written document prepared by the third party. Examples include pay stubs, or a form completed and returned directly by the third party. Note that simple paychecks or copies of paychecks are not sufficient, as these reflect net rather than gross income. The accompanying pay stubs, with gross income and all deductions listed, 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. These URLs will likely be found in the header or footer of the printout from the internet. In all cases, the verifications used must establish enough information to accurately calculate income and determine other eligibility factors.

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

1. **Third party verification**
    - The owner/agent must obtain the applicant/tenant’s consent for the release of information before contacting third parties. For **earned income**, a verification form completed and returned directly by the employer suffices. For **unearned income** such as a pension, social security, unemployment, child

support/alimony, temporary disability benefit, etc., a verification form completed and returned directly from the source is required. For **Assets,** a verification form completed and returned directly by the financial institution. For **student status**, a verification form completed and returned directly by the educational institution.

2. **Alternate documents**
   - For **earned income**, two months of recent consecutive pay stubs. The most recent pay stub must be no more than 60 days old on the effective date of a certification. Also allowed is information obtained from Equifax's *Work Number for Everyone* service or other private or government database documentation. HUD's EIV (*Enterprise Income Verification)* is not an acceptable source to verify income for the LIHTC program. If an applicant does not yet have two months of consecutive pay stubs because they have recently started a job, the agent must thoroughly document the file explaining the situation.
   - For **unearned income** such as pensions, social security, unemployment, child support/alimony, temporary disability benefit, a letter from pension fund management, the Social Security benefit award letter (dated or undated); Unemployment benefit letter, Temporary Disability letter, Child Support printouts, bank statements, or similar documentation are required.
   - For **student status**, a copy of the report card, quarterly grades, diploma, or official documentation from the educational institution.

3. **Self-Certification of Student Status**
   - Self-Certifications of student status are not allowed for a student who attends school part-time and the only person in a household who is not a full-time student. It is also not allowed when determining if an adult dependent is a full-time student and thus eligible for limiting earned income to $480 annually. Student status must be verified with the school attended in these cases. Where applicable a statement from a published resource of the education institution should address the institution's definition of full versus part-time student status. Failing that, a signed letter from an employee of the institution describing the institution's distinction between full and part-time status is acceptable.

4. **Miscellaneous Notes**
   - If a verification form is incomplete and missing key information needed to establish eligibility, an owner/agent may document a clarifying phone or email conversation with the verifier. If documenting a phone conversation, the clarification record must include the date and time of the conversation and the name and title of the verifier as well as the clarified information.

   - The tenant file must be documented to show failed attempts to obtain third-party verification.

   - Tips income that is included on pay stubs need not be further documented. Tip income that is not reflected in pay stubs (typically, cash tips) must be carefully estimated by securing from the recipient of this type of tip income an estimate of average tips per shift and then using that estimate to determine annual cash tips. If tips are shown on a form of third-party verification from the employer, an inquiry must be made with the employer to determine whether such tips are tips that would be reflected on pay stubs, the employer's estimate of average tips per shift for similarly situated employees, or both.

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

VOUCHER HOLDERS

A Housing Choice Voucher is a form of tenant-based Section 8 rental assistance provided by a local Public issueHousing Authority (PHA) to individual households. If documentation is received by an owner/agent from the PHA stating the household's income and composition, the documentation is considered third-party verification. The HUD 50058 certification form may be used as verification of income for LIHTC income certification. If it is not possible to obtain the 50058 from the PHA, a signed statement from the PHA indicating all household members and the household's gross annual income may also be used to verify income. Note: other paperwork such as an application, student status paperwork and a TIC must also be included in the file. Student financial assistance income is covered in the PHA verification of income. However, such verification does not address LIHTC student eligibility status. Separate student eligibility verification must still be obtained (see Chapter 5 for further information on student financial assistance as income).

WHEN HOUSEHOLD ASSETS DO NOT EXCEED $5,000

When the cash value of a household's assets is **$5,000 or less**, third-party verification of assets is not required, and self-certification is allowed. The household is required to complete a form of Certification of Assets Less than $5,000 form (the "<5K Form") indicating that household assets do not exceed $5,000. The household uses the <5K Form to disclose all asset information and to indicate whether or not assets were disposed for less than fair market value. The <5K Form must be completed by the household. Income from assets declared on the <5K Form will be included in the calculation of annual income. If the information on the <5K Form appears to be questionable or unreasonable, or if the owner/agent has

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

Household Name:__________ **Unit #:**______ **Address:**__________

1. My/our assets include:

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

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

→ PLEASE NOTE: Certain Funds (e.g. Retirement, Pension, Trust) may or may not be (fully) accessible to you. Include only those amounts which are:

* Cash value is defined as market value minus the cost of converting the asset to cash, such as broker's fees, settlement costs, outstanding loans, early withdrawal penalties, etc.

** Personal property held as an investment may include, but is not limited to, gems or coin collections, art, antique cars, etc. DO NOT include necessary personal property such as, but not necessarily limited to, household furniture, daily use of autos, clothing, assets of an active business, or special equipment for use of the disabled.

*** Examples: Payroll, Social Security or Welfare Accounts. [Do not count food stamp accounts or checking accounts already listed].

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

2. Disposed Assets

☐ (YES) ☐ (NO) I/We have disposed of assets for less than fair market value in the last 2 years. Examples would reason to believe false information was disclosed, third-party verification of the assets will be required.

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

STUDENT STATUS

Generally, households made up entirely of full-time students do not qualify; the Tax Code also prohibits tax credits from being used to fund dormitories. When determining eligibility, the owner/agent must begin by requiring the household, in writing, to answer the question:

"Are ALL household members full-time students?"

If the answer is "no," the household is LIHTC student-eligible and no further action is needed.
If the answer is "yes," there are five exceptions, and the household may qualify if they meet one of them.

Full-time student status of an adult dependent will limit his/her earned income to $480 (see Chapter 5 for more on the adult dependent earned income rule). In these cases, the full-time status must be verified with the school attended. See the discussion above regarding verification by schools. If an otherwise full-time student household qualifies because one-member attests that they are only a part-time student, that status should also be third-party verified.

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

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

(1) attends a school with facilities and a regular student body, including online-based learning.
(2) attends school full time all or part of any 5 months (not necessarily consecutive months) of the calendar year during which the Move-In Cert or any Recertification is being done. A person who attended school full-time during any part of five months of such a calendar year is a student throughout the remainder of the calendar year, even after they are out of school; this is sometimes referred to as the "5-month look-back." If out of school on the following January 1, then at that time they will be considered a non-student.
(3) is considered full-time by the educational institution they attend. This will be based on the school's definition of a full-time workload, not full time as defined by the student, or owner/agent.

VERIFICATION

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

EXCEPTIONS

While the LIHTC student rule generally prohibits full-time student households, there are five exceptions:

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

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

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

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

A member receives Maryland welfare (TANF) assistance.

Verification: A current award letter.

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

Verification: Written documentation from the placement agency.

A member receives assistance from a program similar to the Job Training Partnership Act (JTPA), including the Workforce Investment Act.

Verification: If a program is proposed to be "similar" to the JTPA, then the administrator of the program must establish that the program: a) gets federal, state or local government funding; and b) has a mission similar to the mission of the JTPA program.

HOUSEHOLD MEMBERS

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

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

- Children subject to a verifiable joint custody agreement who will be ***in the unit at least 50% of the time.***
- Dependent ***students away at school***.
- Children ***away in foster care*** who will be returning to the household to live with their parents.
- Children in the process of ***being adopted***.
- Members ***temporarily*** in a ***hospital or nursing home***.
- **Foster children and adults**. Foster adults are usually people with disabilities unrelated to the household who are unable to live alone and placed by a foster agency.
- A temporarily absent ***individual on active military duty*** who is the head of the household, spouse, or cohead; or whose spouse or dependent resides in the unit.
- A ***future spouse or roommate***. Applications must ask if there are any definite plans to add any such members, and their income must be verified.
- ***Unborn children***. It is only acceptable to verify the existence of unborn children through self-affidavit from the pregnant woman. *No further verification is allowable.* If adding an unborn child is necessary for income-limit eligibility and the child does not come to term, the household's LIHTC qualification will not be affected as long as the self-affidavit establishing the pregnancy was in the file at the time of move-in.

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

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

Because of the uncertainty of some informal custody and guardianship arrangements, in order for a child to be counted as a household member for determining household size and income eligibility, management must prove the child's permanent residency in the household and establish that the child is not a "guest." Verification of the permanent residency of the child can include documentation from an attorney, court records, doctor's records, child support, school records, school bus passes or similar.

ABSENT MEMBERS

Temporarily absent household members include, for example, dependent students away at school and military members assigned out of town that have a spouse or a dependent child residing in the unit. These individuals must always be counted as household members along with their income as applicable. When a household member is **permanently absent** because they are confined to a care facility such as a hospital or nursing home, the household has the right to decide whether to count the confined household member or not. This decision will affect both the number of persons for income limit purposes and whether income from the confined member is counted.

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

EXAMPLE RESIDENT ON ACTIVE DUTY WITH SPOUSE IN UNIT

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

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

EXAMPLE RESIDENT ON ACTIVE DUTY WITH DEPENDENTS IN UNIT

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

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

EXAMPLE RESIDENT ON ACTIVE DUTY WITH DEPENDENTS IN UNIT

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

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

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

EXAMPLE HOUSEHOLD SIZE

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

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

CHANGES IN HOUSEHOLD SIZE

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

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 and income and asset questions. If the addition of the new member of the household occurs during the calendar year following initial move-in and the result is an over-income situation, then the new household member is not eligible to move-in. If the addition of the new member occurs one year or more after the effective date of the Move-In Cert and would place the household in an over-income situation, then the proposed new household member can be accepted, however, if triggered and applicable to the project, the NAUR rule will be applied effective the date of the move-in of the new household member. See Chapter 6 regarding the NAUR. However, the move-in income for the new member will possibly be quite relevant later if all original household members ever vacate the unit, as described below.

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

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

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

EXAMPLE ADDING HOUSEHOLD MEMBERS

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

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

Second, as he is personally above the income limit for one person when he moves in, he will NOT qualify in the future for continued occupancy if his girlfriend ever moves out because he would not have qualified if he had entered the property by himself in 2019. This will be true unless:
1. At a future recertification (if such is required), they together are below the income limit OR
2. The boyfriend is below the income limit at the time that the girlfriend leaves the unit.

CHAPTER 5: HOUSEHOLD INCOME

ANTICIPATED INCOME

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

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

In the event that CDA reviews a tenant file after the 1st Year Recertification has been completed and the supporting documentation for that year indicates that a household member has actually commenced new employment prior to the date of execution of the Move-In Certification and such new employment, had it been disclosed, would have put the household over-income, an 8823 will be generated indicating non-compliance from the date of the Move-In. Such units will continue to be out of compliance until such time as the tenant who failed to disclose the change in employment has been evicted. Similarly, if a household member accepts new employment within a short period of time after Move-In that, had it been used in calculating income would have resulted in over-income status, and the nature of the position accepted is such as to suggest to a reasonable person that the household member would have known that such employment was highly likely to commence shortly after Move-In, then the unit will be deemed to be out of compliance. In this latter circumstance, if further investigation by the owner/agent (including communication with the new employer) suggests that the new employment was not highly likely to commence shortly after Move-In, then CDA shall exercise its judgment in determining whether the unit is out of compliance.

USE OF AFFIDAVITS AS A SOLUTION FOR OVER-INCOME APPLICANTS

In completing Third-Party Verifications of earned income forms, employers will frequently resort to providing a range in lieu of a precise number. For example, on the issue of hours anticipated and/or overtime hours anticipated an employer might answer 32 – 40 hours and 4-8 hours, respectively. Common industry practice would result in a calculation of anticipated annual income based on 40 hours of regular time and 8 hours of overtime (i.e., the top of the range in each category). CDA will continue to require the "top of the range" numbers to be applied in these circumstances, however, owner/agents are encouraged to seek affidavits from employers clarifying a range of hour issues where such clarification may result in tenant eligibility rather than over-income status. For example, if a property manager reached out by phone to the employer representative who originally completed the Third-Party Verification, and that employer representative indicated that during an average week the employer anticipated 36 hours of work, and, further, that overtime was only anticipated for approximately 12 weeks during the year and overtime hours would average 6 hours for those 12 weeks, then income for that household member can be calculated per the information gleaned in the conversation with the employer representative. In such a case, an Affidavit meeting all the standards provided elsewhere should be executed by the property manager who secured the information from the employer representative.

DEPENDENTS INCOME

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

Whose Income Do We Count?

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

EXAMPLE ADULT DEPENDENT INCOME

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

No, though she is an adult full-time student, Rachael is a spouse and not eligible to be a dependent and has her income limited to $480.

EXAMPLE MINOR DEPENDENT INCOME

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

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

INCOME EXCLUSIONS

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

EARNED INCOME

Earned income includes employment, self-employment and military income. To the extent that these may apply to a minor, they are excluded when calculating household income. If they apply to an adult dependent full-time student, they are limited to $480 a year.

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

EMPLOYMENT

"The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and other compensation for personal services…Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic or seasonal income or a tenant who is self-employed.

In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year."

FORMULAS TO ANNUALIZE INCOME

When in doubt, determine the total gross income per day and multiply by 365.

How to Annualize Wages

4350.3 5-5 B

For full-time employment, multiply by the following:

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

SELF-EMPLOYMENT INCOME

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

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

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

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

How to annualize net business income based on a partial year…

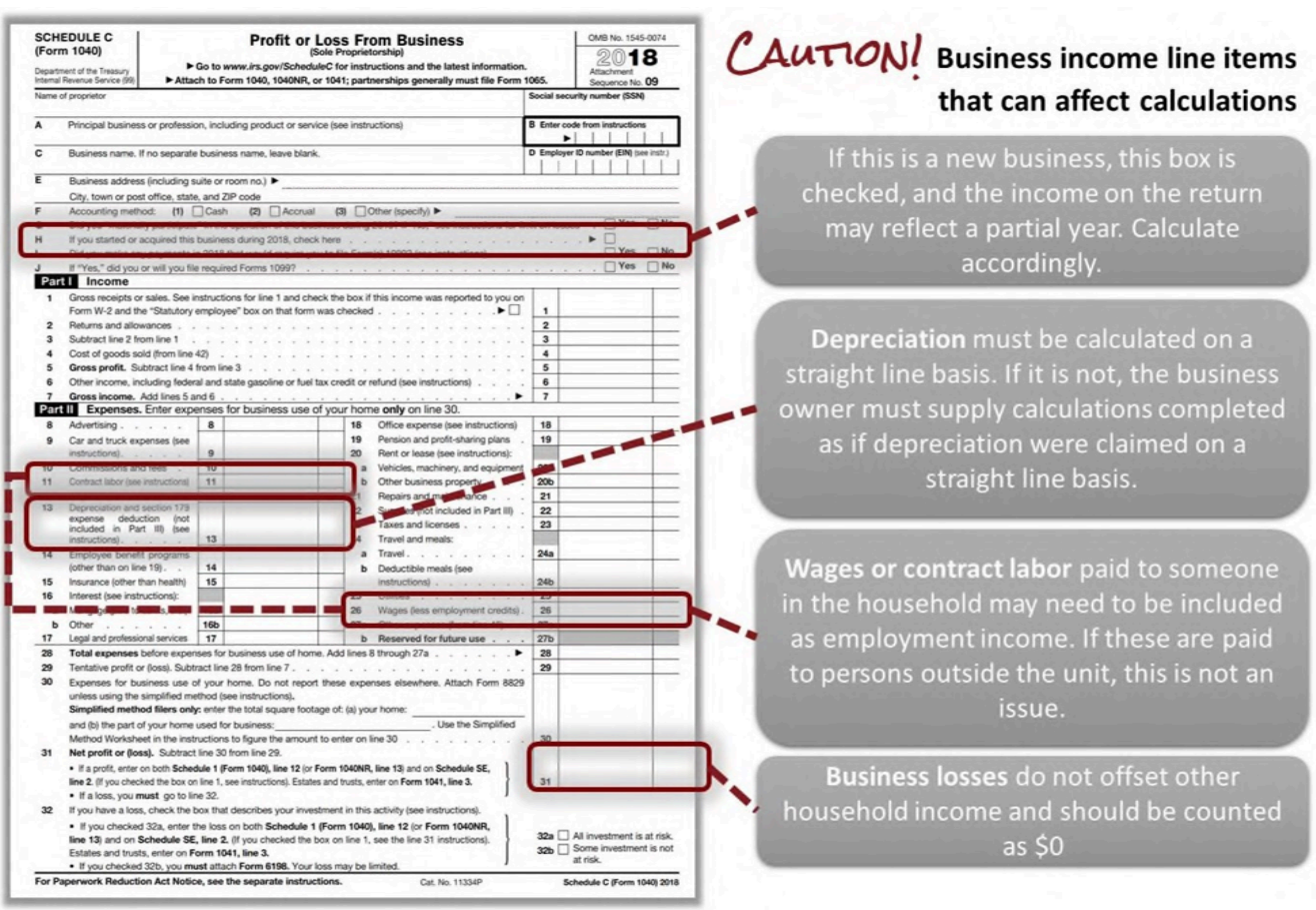
Net Income Year-to-Date ÷ Number of Months in Business during the Current Year x 12

Internet-Based Businesses

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

Office in the Home

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



RENTAL INCOME

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

> "The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action)." However, not counted are "deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts."

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

MILITARY PAY

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

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

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

EXAMPLE MILITARY PAY

Susan is the head of an LIHTC household but is away from the unit on active duty. Her husband has power of attorney for her and secures the four most recent Leave and Earnings Statements. Among the monthly allowances listed on the LES are:
$150 Hazardous Duty Incentive Pay
$225 Hostile Fire Pay
$1,623 Basic Allowance Housing
How much income is counted for these items?

$1,773: $150 Hazardous Duty Incentive Pay + $1,623 Basic Allowance Housing. The Hostile Fire Pay is excluded from income.

SOCIAL SECURITY AND OTHER PERIODIC BENEFITS

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

EXAMPLE SOCIAL SECURITY WITH DELAYED BENEFITS

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

$750: The delayed benefits are excluded.

EXAMPLE SOCIAL SECURITY WITH PRIOR OVERPAYMENTS

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

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

EXAMPLE SOCIAL SECURITY WITH COLA

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

Step 1: Calculate the remaining 2018 income.
$931 x 2 = $1,862 (income for November and December 2018)
Step 2: Calculate the 2019 monthly income with COLA.
$931 x 1.028 = $957.07 (2019 monthly benefit)
Step 3: Calculate the total 2019 income.
$957.07 x 10 = $ 9,570.70 (income for January-October 2019)
Step 4: Add 2018 and 2019 benefit income.
$1,862 + $ 9,570.70 = $11,432.70 annual benefit income.

EXAMPLE SUPPLEMENTAL SECURITY INCOME (SSI) WITH COLA

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

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

EXAMPLE SOCIAL SECURITY GARNISHED

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

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

PAYMENTS IN LIEU OF EARNINGS

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

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

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

EXAMPLE UNEMPLOYMENT BENEFITS

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

$11,950: $230 x 52 weeks.

EXAMPLE UNEMPLOYMENT BENEFITS WITH JOB SECURED

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

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

WELFARE

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

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

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

EXAMPLE WELFARE

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

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

ALIMONY, CHILD SUPPORT OR GIFTS

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

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

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

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

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

EXAMPLE ALIMONY

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

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

EXAMPLE CHILD SUPPORT—FULL AMOUNT NOT RECEIVED

Billy has a court-ordered right to receive child support of $803 a month. His ex-wife has paid sporadic amounts every month even though Billy has pursued the case through child support enforcement. A printout from the enforcement agency shows the following payments. What annual child support should be counted?
Jan: $ 1,010
Feb: $ 350
Mar: $ 550
May: $ 1,060
Jun: $400
Total: $ 3,370

$6,740: $3,370 ÷ 6 x 12.

EXAMPLE CHILD SUPPORT IN EXCESS OF COURT ORDER

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

$12,000: Full amounts received are counted.

Income includes regular contributions to the household received from organizations or from persons not residing with the household. This includes amounts paid for bills that would normally be considered a household expense. All periodic cash and non-cash contributions to the household are counted as income except:

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

ASSET INCOME

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

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

ASSET EXCLUSION

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

Net family assets DO NOT include the following:
IMPORTANT: The owner does not compute income from any assets in this paragraph.

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

EXAMPLE ASSETS PART OF AN ACTIVE BUSINESS

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

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

EXAMPLE ASSETS NOT EFFECTIVELY OWNED

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

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

EXAMPLE ASSETS NOT ACCESSIBLE

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

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

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

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

CASH OR EQUIVALENT

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

Debit Cards. Many social security, SSI, unemployment, and welfare recipients receive their benefits from a "Direct Debit Express" or similar debit card. For accounts of this type, this debit card is the only evidence of management-created affidavit completed after calling the online account service, or paper statements from the applicant. Note, original ATM slips on thermal paper should be photocopied to preserve the data.

this asset. The balance existing on the debit card is considered an asset and it is verified like a savings account asset using the *current balance* via documents such as ATM slips showing the balance, a

EXAMPLE **CHECKING AND SAVINGS**

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

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

EXAMPLE INTERNET FUND ACCOUNT

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

931: $1,020 - $89

TRUSTS

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

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

A trust is an account in which a bank or a custodian holds funds for a specific purpose. If an applicant or tenant has set up a trust, determine if it is "revocable" or "irrevocable". If the applicant has set up an irrevocable trust from which the applicant is not entitled to receive anything, this should be treated as disposal of an asset for less than fair market value.

Trust Checklist

Secure the trust agreement. Determine:

❑ Is the applicant/resident the ***creator*** or ***beneficiary*** of the trust?

❑ Is the trust ***revocable*** or ***irrevocable***?

Results:

- If revocable, it remains an asset for the creator.
- If irrevocable, it may or may not be accessible to the beneficiary. If created in the last two years, it may be a *disposed of asset* to the creator.

❑ Who has access to the trust balance? This is an asset to this person.

- This could be the beneficiary, the creator or neither.

❑ Who receives any periodic distributions? This is income to the person.

- This could be the beneficiary, the creator or neither

REAL ESTATE

Real Estate as Rental Property

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

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

EXAMPLE **ASSETS <u>NOT</u> PART OF AN ACTIVE BUSINESS**

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

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

EXAMPLE **REAL ESTATE RENTED**

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

A) $70,000: Market value of $200,000 less outstanding mortgage balance of $110,000 less cost to convert to cash of $20,000.
B) $0**:** Annual rent of $14,400, less interest payments on the mortgage of $9,200, less maintenance and other costs of $7,884 for a loss of $2,684.

EXAMPLE REAL ESTATE NOT RENTED

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

A) No. Operating expenses, such as mortgage interest, ongoing taxes and maintenance payments, are not deductible unless they offset rental income (see *Real Estate as Rental Property* Chart above).
B) $60,000: Market value of $300,000 less outstanding mortgage balance of $210,000 less cost to convert to cash of $20,000.

REVERSE MORTGAGE

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

FORECLOSURES AND SHORT SALES

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

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

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

DEEDS OF TRUST

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

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

(a) Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

(b) This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

(c) To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

(d) To count the imputed income for this asset, determine the asset value as of the effective date of the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification."

EXAMPLE DEED OF TRUST INCOME

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

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

1) $3,000: The anticipated interest payments.
2) $58,000: $60,000 – $2,000 principal payment.

STOCKS, BONDS, T-BILLS, CDS, ETC.

Some of the above accounts accumulate income based on an interest rate.
Stocks and Mutual Funds. Income in stock-based investments is paid in dividends per share.

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

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

CHAPTER 6: ONGOING COMPLIANCE

UNIT TRANSFERS

When a household transfers from one unit to another within the same building, the owner/agent does not need to requalify or recertify the household. The two units involved in the transfer simply switch status. This is most important if the household is moving to a non-LIHTC unit.

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

Although a full recertification is not required, CDA requires that the owner/agent produce a new TIC for the unit transfer. A new Lease and applicable addendums will need to be executed along with any other paperwork required as a byproduct of Maryland state or local law or owner policy.

EXAMPLE UNIT TRANSFERS WITHIN A PROJECT DURING LEASE-UP

A LIHTC resident lives in a four-plex in which three units have been LIHTC-qualified, and one is considered "empty" – not yet LIHTC-qualified. The resident transfers to the empty unit. The units involved in the transfer switch status and there are still three LIHTC units and one empty unit.

In a LIHTC property where a transfer takes place, the owner/agent may continue using the effective date of the original move-in for the recertification cycle (see *Annual Recertifications* below). It is not required that

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

the effective date be changed to the unit transfer date. The household may continue to be recertified by the anniversary of the original date it moved into the project. For 100% LIHTC projects not subject to full income recertification, student status verification continues to be due on the anniversary date of original move-in after a transfer occurs. This rule regarding effective dates and recertification may not apply to properties with other funding such as HUD or Rural Development. Such programs may require adjustment to effective dates or interim certifications at transfer.

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

THE NEXT AVAILABLE UNIT RULE (NAUR)

One of the precepts of LIHTC is that households shall not be punished for success in climbing the economic ladder. At Move-In, each household has to meet the Income Limitations prescribed for that household.. Sometimes, the members of that household overcome their low-income status. The choices of the policy makers in 1986 were to either kick the successful out or to allow them to stay. The latter course was adopted, but subject to a limitation called the Next Available Unit Rule. Before turning to the fundamentals of the Rule it is important to understand that it only applies in a project that is 100% LIHTC. The fundamentals of the Next Available Unit Rule are illustrated in this Novogradac video link: https://www.youtube.com/watch?v=_AVyhrlmg38.

THE VACANT UNIT RULE

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

Additionally, the VUE requires that units must be made rent-ready in a reasonable time, whether there is a waiting list or not. Vacant units that continue to qualify as rent-ready cannot be utilized to store maintenance supplies or be used to conduct repairs on items for other units. Appliances and fixtures from a vacant unit should not be “cannibalized” to supply occupied units.
If the VUR is violated, each unit of comparable or smaller size to the vacant LIHTC unit that is rented to non-LIHTC (market) households prior to renting to an LIHTC qualified household will be reported to the IRS as noncompliant. Vacant units that were previously LIHTC-qualified are still qualified LIHTC units while a building is in lease up. In most cases, all “empty” units that have not been occupied by an LIHTC-qualified household should be rented before any newly vacant unit is rented to a second LIHTC household.

RENT ADJUSTMENTS

Because LIHTC income and rent limits hold harmless (see Chapter 3), these limits will always stay the same or increase each year; therefore, adjustments to reduce gross tenant rent is never necessary. An increase in the utility allowance (UA) will require that the tenant portion of rent be decreased upon the latter of: a.) the end of the 90-day notice period; and b) the effective date of the next Recertification.

Rent adjustments must comply with all Section 42 requirements and other federal and state program rules that may apply and must comply with the terms of the Lease.

FEES

Non-Optional Fees

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

Optional Fees

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

Fees Not Permitted

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

EXAMPLE **FEES THAT ARE NOT PERMITTED**

- Fees for the use of residential facilities, such as swimming pools, parking areas, storage, or recreational facilities, ***when the cost of the facilities was included in a building's eligible basis.***

- Fees that an owner requires residents to pay as a condition of their occupancy, even if these fees are not paid to the owner. Examples are requiring mandatory renter's insurance or fees for month-to-month tenancy.

- Fees for the routine "turning" of units to make rent ready. Mandatory carpet cleaning fees, for instance, are not acceptable. Carpets must be left unusually dirty or damaged beyond normal wear and tear to justify charging a tenant for their cleaning.

If it is determined that a LIHTC resident has been overcharged rent or has been charged inappropriate fees at any point within a certification year, CDA 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 a 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.

FEES THAT YOU CAN CHARGE and THOSE THAT YOU CAN'T

Acceptable **Not Acceptable**

Fee Type	Notes	Fee Type	Notes
Application Fees	Must not exceed the average out-of-pocket costs to run background or credit checks.	**Fees to Pay for 3rd-party Verification**	If there is a cost for verification directly from a 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 at application.
Unit Transfer Fees	Must not exceed the average out-of-pocket costs to process a unit transfer and may not include expenses to make-ready either unit involved in the transfer.	**Month-to-Month Tenancy Fees**	The IRS considers this a non-optional fee even if the tenant is given the option to sign a longer term lease.
Security Deposits	The security deposit due to the tenant shall be the entire amount given by the tenant as a security deposit, minus any amount of unpaid accrued rent, the amount due, if any, for reasonable cleaning expenses, the amount due, if any, for reasonable trash disposal expenses and the costs of physical damages to the premises, other than ordinary wear and tear, which the landlord has suffered.	**Required Renter's Insurance**	An owner may suggest that residents secure insurance, but only if the insurance is optional and not a condition of occupancy.
Pet Deposits	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. Pent rent is not permitted.	**Assistance Animal Deposits**	*Assistance animals* help persons with disabilities, are not pets and are not legally subject to deposits. However, actual costs to repair damage caused by such animals beyond normal wear and tear may be charged.
Coin Operated Laundry Machines or other vending machines.	If the area where the machines are located is accessible to all residents and the machines are not on an eligible basis.	**Community Room Usage or Rental Fee**	Community facilities on an eligible basis must be available without charge. A deposit may be charged if fully refundable if the room is left clean & undamaged. A clear written policy must exist.
Late Rent Fees	May be charged if the rates are explicitly spelled out in writing.	**Parking or Storage Fees**	Only acceptable for LIHTC projects if the parking lot or storage units are not on an eligible basis.
Service Fees (for example lockout or key loss)	May be charged if the rates are explicitly spelled out in writing.	**Make-Ready Fees** (also known as cleaning, turnaround,	Only costs beyond normal wear-and-tear may be charged. Helpful hint: pictures are very

		preparation, mandatory carpet cleaning, and unit turnaround fees)	effective in documenting the state a unit was left in and demonstrating damage beyond normal wear and tear. A reasonable number of holes associated with wall hangings is ordinary wear-and-tear.
Maintenance completed by the owner that is normally required to be completed by the household (such as changing unit light bulbs or removing furniture).	May be charged if the rates are explicitly spelled out in writing.		
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 less than six months after move-in if the initial term of the lease was at least six months.		

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

✔ Normal Wear & Tear *vs* **✔ Tenant Damage**

Walls & Ceilings

❑Small chips in plaster	❑ Gaping holes in walls or plaster
❑Nail holes, pinholes, or cracks in walls	❑ Holes in the ceiling from removed fixtures
❑Fading, peeling, or cracked paint	❑ Drawing, crayon marking, or wallpaper that the owner did not approve
❑Slightly torn or faded wallpaper	❑ Seriously damaged or ruined wallpaper

Doors & Windows

❑Door sticking from humidity	❑ Doors ripped off hinges
❑Cracked windows from faulty foundation/building settling	❑ Broken windows

Floors

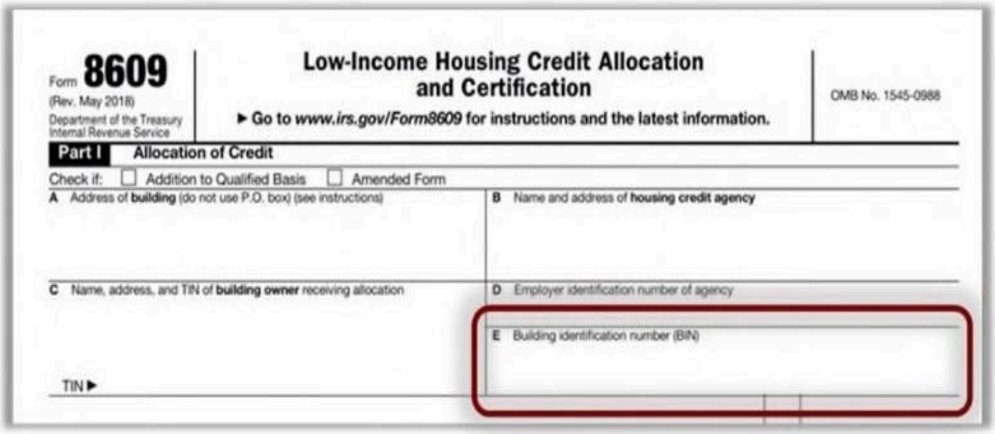
❑Floors needing a coat of varnish	❑ Chipped or gouged wood floors

❑Carpet faded or worn thin from walking	❑Holes, stains, or burns in the carpet
❑Loose grouting and bathroom tiles **Fixtures**	❑Missing or cracked bathroom tiles
❑Worn or scratched enamel in old bathtubs, sinks, or toilets	❑Chipped and broken enamel in bathtubs and sinks
❑Partially clogged sinks caused by aging pipes	❑Clogged or damaged toilet from improper use
❑Rusty shower rod	❑Missing or bent shower rods
❑Dirty or faded lamp or window shades	❑Missing fixtures

CHAPTER 7: TAX CREDIT FUNDAMENTALS

BUILDING IDENTIFICATION NUMBERS (BINS)

Each LIHTC building has an assigned identification number. This is called a Building Identification Number, or BIN. All tax credits are claimed by building and tax forms often reference the BIN. The BIN is located on line E at the top of the form 8609. Every BIN in the country has a specific format. The first part is the two-letter state postal abbreviation. The first two numbers indicate the year that tax credits were allocated. The last 5 numbers are assigned by CDA. Of the five, the first two numbers indicate the sequence of allocation during that calendar year. The final 3 numbers are the sequence for the BIN. If a property has only one BIN, the last 3 numbers will be "001". If a property has 37 BINs, the last three numbers will be "037".



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

Low-Income Housing Credit Allocation and Certification
▶ Go to www.irs.gov/Form8609 for instructions and the latest information.

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of building (do not use P.O. box) (see instructions)

B Name and address of housing credit agency

C Name, address, and TIN of building owner receiving allocation

D Employer identification number of agency

E Building identification number (BIN)

TIN ▶

The exception to the above arises when a project that was built with credits is substantially rehabilitated with new tax credits. In that circumstance, the BIN number(s) for the project assigned at the time of the original is retained.

TAX CREDIT CALCULATIONS

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

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

Use this link to get to a more detailed discussion of the tax credit calculations (including Eligible Basis enhancements for developments in difficult areas):

https://www.ncsha.org/wp-content/uploads/2018/11/Eligible-Basis-and-Credit-Calculations.pdf

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

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

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

Calculations: the unit fraction is 6/10 (60.00%). The square footage fraction is 5,000/10,000 (50.00%).

The lower number [50.00%] is the applicable fraction.

Note that the applicable fraction should be rounded to two decimal points.

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

Calculation: $2,000,000 X 50.00% = $1,000,000 qualified basis

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

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

X 10 years = $900,000 credits claimed total

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

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

1. The factor in the calculation most relating to a site manager's daily duties is the ***applicable fraction*****.** Keeping units in the applicable fraction means keeping them in LIHTC compliance. This includes renting to qualified households, keeping rents affordable and maintaining the property decent, safe and sanitary (see Chapter 1). These are substantial components of management's responsibility, both the property manager and those in supporting roles (maintenance, janitorial, supervisor).

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

EXAMPLE REMOVED AMENITY

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

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

Employee Units

Properties with a unit occupied by a full-time employee who is not income qualified may treat the unit essentially the same as a "common area" if the property requires the employee to live on-site. To meet the requirements of being designated a common area unit, the unit must benefit all rental units in the property and the employee occupying the unit must be full-time at the property.

EXAMPLE APPLICABLE FRACTION & EMPLOYEE UNITS

In a building consisting of 200 units, 198 units are occupied by low-income tenants and two units are each occupied by a full-time manager and a full-time maintenance tech. The applicable fraction would *not be 198/200 or 99%*

Rather the employee units are removed from both the numerator and the denominator of the applicable fraction. Below is the correct applicable fraction

198/198 (100%)

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

Model Units

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

PRORATED APPLICABLE FRACTION

The first-year applicable fraction is pro-rated to account for the fact that the project is often not in service for the full first year and because units are occupied progressively.
The first-year pro-rata is an accounting matter for an owner to track.

MINIMUM SET-ASIDE

Every LIHTC property has a minimum set-aside. There are 4 options in Maryland: 15-40 (deep rent skewed), 20-50, 40-60 and *Income Averaging*. The minimum set-aside (MSA) is elected by the owner on the IRS form 8609, line 10(c). The 8609 is a key compliance form issued by CDA. Part II of the 8609 is then completed by the owner and submitted to the IRS in order for credits to be claimed (see Chapter 2 for further details on the 8609).

Once the MSA is chosen, it cannot be changed. The MSA requirements are *minimums* only. To meet the MSA chosen, an owner may include units with more *restrictive* income limits. For example, assume that an owner has chosen the 40-60 MSA and the property has 100 tax credit units. At the end of the first tax credit year, 40 of those units were leased and occupied by LIHTC qualified households. If 30 of the tax credit units are 60% AMGI units while 10 are 50% AMGI units, all 40 are included for purposes of meeting the MSA.

In the event that an owner is concerned about meeting the MSA by December 31 of the "placed in service (or last "placed in service, as applicable) year, then the owner has the option to secure additional time to meet the test by choosing "Yes" on Question 10.a. of Part II of Form 8609. By doing so, the owner elects to take 1st tax credits for the tax year AFTER the year that the property "placed in service".

To determine how the MSA is met for a property, an owner/agent needs to understand the project's 8609s. Line 8(b), asks, "are you treating this building as part of a multiple building project for purposes of Section 42". The answer to this question will determine how to calculate units when determining whether the MSA has been met. If the 8(b) election is "yes," the MSA is based on the total number of units for the entire project (see Example 1 below). On the other hand, if the answer is "no," this means that each building (BIN) is a project unto itself, and the MSA must be met by each building (Example 2).

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

Depending on the multi-building elections on form 8609 8(b), a four-building development may be:
1. One project.
2. One three-building project and one single-building project.
3. Two two-building projects.
4. Four single-building projects.

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

If the project, which may be a single BIN depending on the 8(b) election, does not meet the minimum set-aside during the first year of the Credit Period, the owner will never be permitted to claim tax credits.

EXAMPLE MINIMUM SET ASIDE FOR SINGLE– BIN PROJECTS

A development consists of 10 duplexes. Each building is considered a single-BIN project, based on the 8609s. The minimum number of units required by the 40-60 Minimum Set Aside is:

2 units per BIN x 40% = .8 units rounded up to 1 unit. If the 8609's for all 10 BINS reflect "placed-in-service dates in calendar year 2020, and 5 buildings were occupied by one or more tax credit units by December 31, 2020, then those 5 BINs would meet the Minimum-Set-Aside rule. However, if 2 of the 5 other BINs were not occupied by December 31, and the other 3 BINS were occupied by both duplex units in each, then 2 of the BINs would not meet the Minimum-Set-Aside standard in a timely fashion while the remaining 3 did meet the standard. The 2 BINs that did not meet the standard could never be part of the tax credit program. Had the owner elected the multi-bin project (see below), then the Minimum-Set-Aside would have sufficed.

EXAMPLE MINIMUM SET ASIDE FOR A MULTI – BIN PROJECT

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

8 Units: 20 units x 40%= 8 units with a total of 11 units to meet the standard.

Subsequent violations of the Minimum Set Aside result in the loss of credits for the year that the Minimum Set Aside is not met as well as the tax penalty called recapture on previously claimed credits.

Special Concerns about the Income Averaging Minimum Set-Aside

In 2018, the Income Averaging Minimum Set Aside option was added by Congress. Effective calendar year 2020, CDA allowed projects to choose the Income Averaging minimum set-aside. CDA reserves the right, as the rules governing Income Averaging unfold over the next year or so, to charge higher compliance fees per unit for Income Averaging projects.

On October 20, 2020, the IRS published proposed rules for Income Averaging projects (Proposed Regulation). The Proposed Regulation, in the opinion of many industry leaders, hobble Income Averaging projects - ironically when the original impetus for adoption of Income Averaging was to create more flexibility. The Proposed Regulation can be reviewed at this link:

https://www.federalregister.gov/documents/2020/10/30/2020-20221/section-42-low-income-housing-credit-average-income-test-regulations

The IRS has made substantial revisions to the Proposed Regulations, generally addressing prior challenges. On page 3 above, at the end of Chapter 1, CDA will provide Notices for several subjects that are in flux when this Manual was distributed. One of those subjects is Income Averaging.

OWNER SET-ASIDES

Owners may elect to have set-asides that are lower than the amount allowed by the minimum set-aside. This could be for LIHTC or for other program reasons. For instance, an owner of a 40-60 project could have agreed to have 50% units for favorable consideration during the LIHTC application process or because they have brought HOME Funds or section 8 into the development mix of the property. Noncompliance with set-asides elected for LIHTC reasons will be monitored by CDA and noncompliance could result in adverse consequences other than loss of tax credits for an owner. Other program set asides are monitored separately, and consequences vary by program.

LEASE REQUIREMENTS

Non-Transience. LIHTC housing is not intended to be "transitory" (temporary). To prevent this, tax credit properties are required to have an initial lease of at least six months for each new household. This is a minimum, so the initial term can be more than six months. After the initial term, owners/agents are free to apply any term they choose; provided no lease provision violates LIHTC requirements or Fair Housing law. Other programs, such as project-based Section 8 or HOME, often dictate that a specific lease must be used. These leases do not conflict with LIHTC requirements and can be used if the initial term is at least six months.

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

LIHTC Lease Termination

LIHTC rules prohibit "the eviction or the termination of tenancy (other than for good cause)" of LIHTC residents during the entire period of compliance, including the Extended Use Period and three years after. Eviction or termination of tenancy mid-lease without good cause is clearly prohibited.
What if a lease is up for renewal? Is not renewing a lease that has expired "eviction" or "termination of tenancy"? The IRS has clarified that "neither the owner nor the tenant is obligated to renew a lease once it expires" and that nonrenewal of leases does not necessarily equate to "termination of tenancy." However, per the provisions of the 8823 Guide 26-4, if an owner intends to non-renew a lease, they will have to ensure that doing so is acceptable as "good cause". In short, once a tenant has entered a lease and moved-in to a project, they are entitled to renew leases subject to "good cause". .

Do not use LIHTC units for non-residential use!

Using a vacant unit as an office, storage area for maintenance supplies or other facility does not change the vacant unit's status. It is still a vacant unit and subject to the rules governing vacant units. If a vacant unit has been converted to a different use it is highly likely that it will not be in compliance.

CHAPTER 8: LIFE OF A TAX CREDIT PROPERTY

DEVELOPMENT DEADLINES

Reservation and Allocation

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

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

PLACING IN-SERVICE AND LEASE-UP

When a building is *ready for its intended purpose*, the IRS considers it to be placed in-service, and leasing can begin. For **new construction** this generally happens when a *Certificate of Occupancy* is issued that allows an owner to legally rent at least one unit in a building. In many cases, tax credits can be claimed for units occupied by LIHTC-qualified households starting the first full month after the building is placed in-service. For credits based on the **acquisition** of a building that is already occupied, the placed in-service date is the date that the building is purchased per IRC §179.
Rehabilitation credits are placed in-service when enough money is spent to meet Tax Code required minimums and to achieve the eligible basis on which the credits will be claimed (see Chapter 11 for further details on acquisition/rehab credits).

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

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

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

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

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

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

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

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

Credit Deferral and Income Testing. Once a building is placed in-service, the owner may choose to begin claiming tax credits that year, or they may choose to claim credits the next year. Claiming the year after the year placed-in-service is called *deferring* credits. The decision to defer credits is often made when a building is not LIHTC-occupied to the level needed to support the planned tax credits by the end of the placed-in-service year. Deferral may also be the right choice is a "close call". 40 units out of 100 units meets the 40% Minimum Set-Aside. However, what if one of those 40 units is determined to have been over-income? Consider. Beware.

CHAPTER 9: OWNER'S RECORDS

OWNER'S CERTIFICATION

Federal LIHTC regulations state that the owner of a LIHTC development is required to certify to CDA that the development met the requirements of Section 42 for the preceding 12 months. Any provisions that have not been met must be disclosed and explained. Treasury regulations list twelve specific requirements that must be addressed in the *Certification*. CDA requires owners to report on the form of Owner's Certification of Continuing Program Compliance (OCCPC). The current approved version of the OCCPC can be reviewed and downloaded at the following link:

https://dhcd.maryland.gov/HousingDevelopment/Documents/mfresources/OwnersCertificateofContinuingCompliance.pdf.

On the OCCPC the owner, or its designated agent, under the penalty of perjury, certifies that their/its answers to the 16 questions on the OCCPC are accurate. Additionally, the OCCPC requires the owner/agent to update certain critical information concerning changes in ownership and/or owner contact information and changes in management.

OWNER'S REPORTING

See the end of Chapter 1 at page 3 wherein we indicate that CDA will publish a Notice during 2024 describing Software Upgrades for LIHTC Compliance. CDA is currently engaged in training for such software. The Compliance software selected is HDS: NexGen. The Notice may have been disseminated before this Manual has been delivered. Note, as well, that the HDS: NexGen software will also be used in 2024 in lieu of the End of Year Data, and its portal, previously used by CDA.

END OF YEAR DATA REPORTING

By law, CDA must collect and review certain LIHTC household occupancy and demographic data each calendar year (End of Year Data). CDA posts a Notice describing these obligations during the following calendar year, which Notice (or related materials disclosed in the Notice) shall provide a stated period of time during which the owner/agent shall have the opportunity to upload the End of Year Data to meet its obligations. Under law, after all such End of Year Data has been collected and reviewed with respect to each project subject to such reporting, CDA uploads all such data to HUD in accordance with federal requirements.

See the comments in the next above section (Ongoing Reporting) describing a Notice (also referenced in Chapter 1) about Software Upgrades for LIHTC Compliance.

RECORD KEEPING AND RETENTION

The owner is responsible to keep records for each qualified low-income building in the project that show, 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 household and the documentation to support each of these items.

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

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the buildings that are low-income units.
3. The rent charged for each residential rental unit in the building, supporting documentation, and the applicable utility allowance.
4. The number of occupants in each LIHTC unit.
5. Unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, resident name, move-in dates and move-out dates for all residents, including market residents).
6. The annual income certification of each eligible resident (as applicable).
7. Documentation to support each eligible resident's income certification.
8. The eligible basis and qualified basis of the building at the end of the first year of the Credit Period.
9. The character and use of the nonresidential portion of any building included in the building's eligible basis.
10. Elevator certifications and maintenance records.
11. General maintenance records, to include the dates of requests for services from tenants and the dates of completion of maintenance.
12. History of building or grounds related charges, requests or orders from any subdivision in which the building is located requiring the owner/agent to correct work.

EXAMPLE FIRST YEAR RECORD RETENTION

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

April of 2041: This is six years after the April 2035 deadline for filing 2034 taxes.

CHAPTER 10: COMPLIANCE MONITORING

SITE VISITS

IRS regulations require, at least once every 3 years, that CDA conduct on-site inspections (the Site Visit) of the premises and files. If a Site Visit is to include both physical inspections and file reviews, then no more than 15 days' notice, nor less than 3 days' Notice shall be given to property management of the date/time of such Site Visit. Property management shall typically be required to furnish CDA by email with documentation prior to the Site Visit, however. Notwithstanding any provision of documentation prior to a Site Visit, management shall be responsible to have all of the materials described in Chapter 2 under "Maintain a Project File" on site and organized for easy access by CDA's personnel during the Site Visit. CDA may choose to bifurcate physical inspection and file review components of a Site Visit by performing those functions on different dates. In that case notice shall be provided for each date and different units will be selected for physical inspections and file reviews, respectively. Each Site Visit shall include the following:

1. Physical inspections component of the Site Visit, which shall be conducted under either the UPCS or REAC protocols as determined by CDA.

- **a.** Inspection of all of the common areas of buildings in the project and the exterior components of such buildings regardless of whether any units are inspected in one or more of such buildings.
- **b.** Inspection of the site and site amenities.
- **c.** Inspection of the lesser of: 1) 20% (rounded up) of all tax credit units in the project; and 2) the number of units prescribed by the IRS Table. Such units are to be selected randomly. Under no circumstances shall CDA disclose the identity of the units to be inspected prior to the date of the Site Visit.

2. File review components of the Site Visit shall meet or exceed the requirements of Section 42 and this Compliance Manual (see also Chapter 4), including, without limitations, the following:

- **a.** Confirmation of rent, income limit and utility allowances as provided on the Move-In Certification, the 1st Year Recertification and the most recent Recertification;
- **b.** Supporting documentation for all household income and assets.
- **c.** All documentation regarding student status.

Initial Review. IRS regulations require that CDA conduct the an Initial Site Visit (to include on-site inspections of all buildings in the project; inspection of a percentage of the project's low-income units (20% rounded up), review of the certifications and supporting documentation for the same 20% of the units, and review of the rent records for all the tenants living in the units) by not later than the end of the second calendar year following the year that the last building in a project is placed in service.

EXAMPLE **FIRST INSPECTIONS**

A two-building project had BIN # 1 placed in-service on October 1, 2019 and BIN # 2 placed in service March 30, 2020. When is the latest possible date for the Initial Site Visit?

December 31, 2022: That is the end of the second calendar year after the date that the last BIN is placed in service.

CDA will give the owner/agent not more than 15 days' notice before a Site Visit or Initial Site Visit, and not less than 3 days' notice of the same. Owners/agents must provide CDA compliance staff with access to all documents regarding continuing compliance and other relevant materials. CDA will evaluate the state of continuing compliance and report the results to the owner/agent upon conclusion of the LIHTC review.

FILE INSPECTIONS

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

PHYSICAL INSPECTIONS

All buildings and a sample percentage of units are inspected during a Site Visit in accordance with guidance from the IRS. CDA will inspect any vacant units that are reported as rent-ready and have been vacant for 30 days or more. Physical Inspections are conducted using HUD's Uniform Physical Conditions Standards (UPCS) protocol, or HOOD's Real Estate Assessment Center (REAC) inspection protocol.

HUD has published a *Dictionary of Deficiency Definitions* that explains which specific UPCS deficiencies are noncompliant. The *UPCS Dictionary* then defines specific severity codes for physical problems on a scale from 1 to 3, in ascending order of seriousness. All Level 3 issues will be reported to the IRS on form 8823, and each such issue shall be corrected within 72 hours after the Site Visit. *The Dictionary* also defines special issues that are *Health and Safety* concerns.

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

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

SITE	
Site components must be free of health and safety hazards and be in good repair.	
• Fencing and gates	• Play areas and equipment
• Grounds	• Refuse disposal
• Mailboxes	• Retaining walls
• Project signs	• Storm drainage
• Market appeal	• Walkways/steps
• Parking lots/driveways/roads	

Warning Possible site concerns!

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

BUILDING EXTERIOR	
Each building on the site must be structurally sound, secure, habitable and in good repair.	
• Doors	• Lighting
• FHEO & Uniform Federal Accessibility Standards (UFAS)	• Roofs
• Fire escapes	• Walls
• Foundations	• Windows

Warning Possible building exterior concerns!

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

BUILDING SYSTEMS

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

Warning Possible building system concerns!

• Domestic water	• Fire protection
• Electrical systems	• HVAC
• Elevators	• Roof exhaust systems
• Emergency power	• Sanitary systems
• Blocked access to the electrical panels by furniture or other items.	• Water heater pressure relief valve discharge tube does not extend to within 18 inches of the floor.
• Open breaker/fuse ports	

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

Warning Possible common area concerns!

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

Warning Possible common area concerns!

• Clothes dryers not properly vented in public laundry rooms.	• Expired certification, missing, damaged, or discharged fire extinguisher.

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

• Bathrooms	• Laundry areas
• Calls-for-aid	• Lighting
• Ceilings	• Outlets/switches
• Doors	• Patios/porches/balconies
• Electrical Systems	• Smoke detectors
• Floors	• Stairs
• Hot water heaters	• Walls
• HVAC systems	• Windows
• Kitchens	• Lack of an adequate source of potable water
• Lack of hot and cold running water	• Lack of at least one working smoke detector on each level of the unit
• Bathrooms that are not in proper operating condition, including: o Being usable in public o Adequate for personal hygiene	

HEALTH AND SAFETY ITEMS

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

Warning Possible H&S concerns!

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

Warning Possible H&S concerns!

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

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

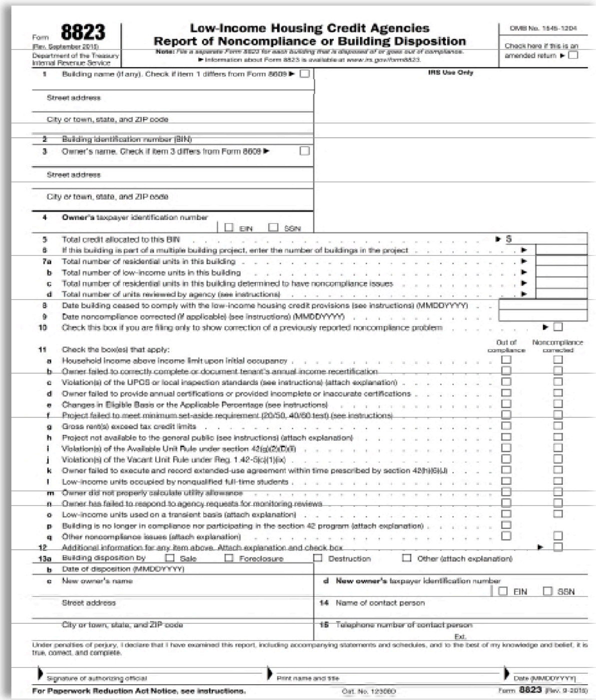
• Mold observed or propane, natural, sewer or methane gas odor.	• Inoperable smoke detectors
• Improperly stored flammable materials	• Blocked egress

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

After the physical inspection. The inspector will notify the owner/manager of Level 3 deficiencies immediately upon conclusion of the physical inspection. Level 3 findings must be corrected within 24 hours of the inspection if life threatening and 72 hours if non-life threatening. Evidence of correction must be submitted within the timeframe allowed.

8823 REPORTING

CDA has an obligation and is responsible for monitoring LIHTC projects for compliance with the requirements of Internal Revenue Code (IRC) §42. When noncompliance is identified, either in tenant files or during a UPCS or REAC physical inspection, or if a building is disposed of, CDA is required to notify the IRS using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. Level 3 physical inspection issues will be reported to the IRS. With respect to file review issues, all over-income non-compliance and violations of the NAUR will be reported to the IRS. As regards other file issues, CDA will exercise the authority conferred upon it under the Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide) in the section captioned "Overview" at the beginning of Chapter 3 of the 8823 Guide, to wit:



Form **8823** (Rev. September 2015) Department of the Treasury Internal Revenue Service

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

Note: *File a separate Form 8823 for each building that is disposed of or goes out of compliance.*
► Information about Form 8823 is available at www.irs.gov/form8823.

OMB No. 1545-1204

Check here if this is an amended return ► ☐

IRS Use Only

1 Building name (if any). Check if item 1 differs from Form 8609 ► ☐
Street address
City or town, state, and ZIP code
2 Building identification number (BIN)
3 Owner's name. Check if item 3 differs from Form 8609 ► ☐
Street address
City or town, state, and ZIP code
4 **Owner's** taxpayer identification number ☐ EIN ☐ SSN
5 Total credit allocated to this BIN ► $
6 If this building is part of a multiple building project, enter the number of buildings in the project ►
7a Total number of residential units in this building ►
b Total number of low-income units in this building ►
c Total number of residential units in this building determined to have noncompliance issues ►
d Total number of units reviewed by agency (see instructions) ►
8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY)
9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY)
10 Check this box if you are filing only to show correction of a previously reported noncompliance problem ► ☐

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

12 Additional information for any item above. Attach explanation and check box ► ☐
13a Building disposition by ☐ Sale ☐ Foreclosure ☐ Destruction ☐ Other (attach explanation)
b Date of disposition (MMDDYYYY)
c New owner's name
d **New owner's** taxpayer identification number ☐ EIN ☐ SSN
Street address
14 Name of contact person
City or town, state, and ZIP code
15 Telephone number of contact person Ext.

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

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

For Paperwork Reduction Act Notice, see instructions. Cat. No. 12308D Form **8823** (Rev. 9-2015)

Professional judgment should be used to identify **significant noncompliance** issues.

Typically, within 30 days after a Site Visit or Initial Site Visit, CDA will provide the owner or their/its authorized agent with a written report of all findings of noncompliance (the "Initial Report) which Initial Report will designate which file findings may lead to an 8823 reporting. The Initial Report typically will provide the owner with an opportunity to satisfy CDA with respect to issues that may otherwise lead to an 8823. All issues must be resolved within thirty days after the delivery of the Initial Report. However, upon the written request of owner or the management company the time period for resolving issues may be extended provided that all issues must be resolved by an outside date of 6 calendar months after the date of the Initial Report. 45 days after the 6 month period 8823 will be delivered.

If the owner discovers and corrects noncompliance before notice is given of a LIHTC Site Visit, CDA will not report the noncompliance to the IRS. For 8823s that were filed showing uncorrected noncompliance, CDA will file a "corrected" Form 8823 with the IRS after receipt of proof of correction from the owner.

CASUALTY LOSS

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

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

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

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

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

CHAPTER 11: | RULES FOR ACQUISITION/REHAB

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

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

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

PLACED IN SERVICE DATES AND ANNUAL CERTIFICATION DATES

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

Acquisition

For buildings that are **acquired with households living in-place**, the building is ready for its intended purpose upon acquisition. Therefore, the date of acquisition by purchase (as defined by section 179 (d)(2) depreciation rules) becomes the placed in-service date for the tax credits. For buildings in which there are no occupied residential units at **time of acquisition**, the placed-in-service date is determined once the units are ready for occupancy as evidenced by a CO, similar to new construction.

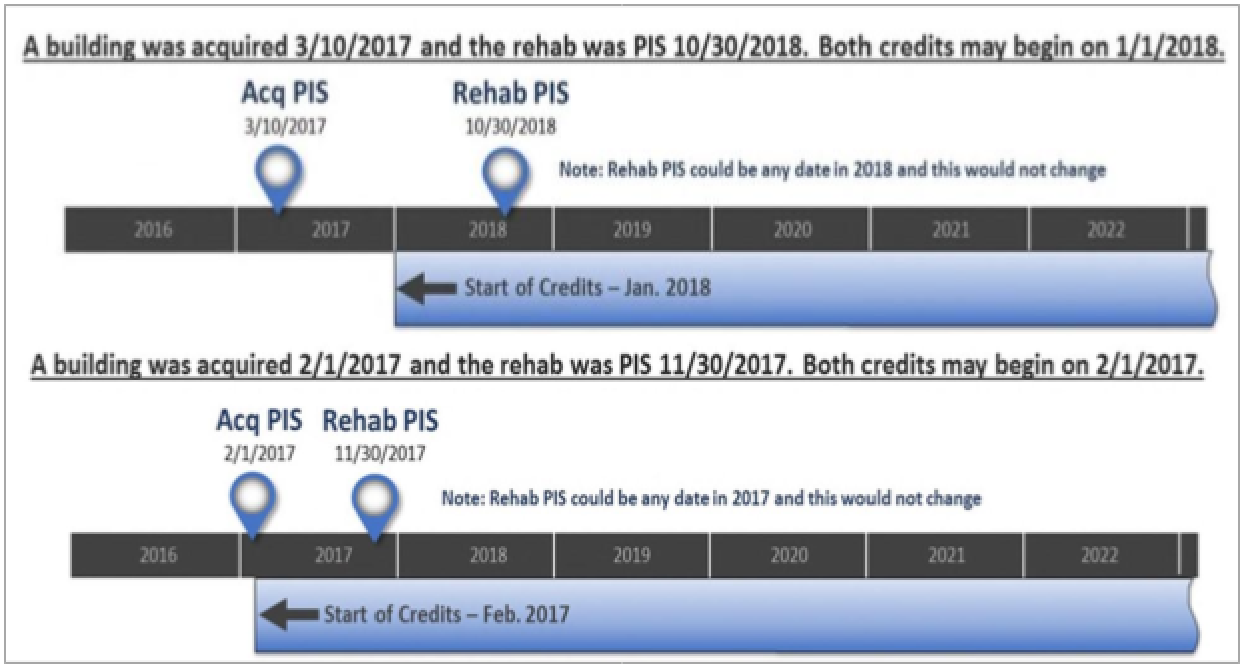
Rehab

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

Start of Acquisition/Rehab Credit Periods

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

EXAMPLE STARTS OF ACQUISITION/REHAB CREDITS



Note: The above demonstrates the earliest possible first year Credits. Credits may be deferred one year in each case.

EXISTING HOUSEHOLDS

120-day Certification Rule

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

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

In many cases, credits will be claimed going back to acquisition. This can be true for units with households that were in-place at acquisition and that are certified within the 120-day deadline. Even if credits are not going to be claimed the year of acquisition, completing the certifications at acquisition still accomplishes some very important things.

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

Safe Harbor Income Testing

Acquisition credits are deferred when the rehab is not placed in service the year of acquisition. Unless deferred by the owner for one year, both acquisition and rehab credits will begin at the start of the year that the rehab is PIS. Any tenant qualified up through January 31st of that year starts credits for their unit for that entire year. When credits are deferred, units qualified before the start of the credit period with households who are still in-place at the start of the credit period will not need to be re-qualified. If they have been in the property more than 120 days before the start of the first year, however, an "income test" may need to be run on the household at the start of the first credit year. The income test is self-certification by the household as to whether their income has changed since they were initially qualified. The household will provide supporting documentation to allow for new calculations if their income has changed. The household's eligibility to stay is not in question, but the Next Available Unit Rule (NAUR) will be applied to any units that are over the 140% limit at the time of the start of the credit period. Because of how the NAUR works, this only applies to projects that are less than 100% tax credit.

Transfers

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

Re-syndication

When an owner of a tax credit property finishes the 15-year compliance period, they may consider rehabilitating the property and applying for new tax credits based on projected acquisition/rehab costs. Since general partner/investor relationships are established through *syndicators*, this process is often referred to as "re-*syndication.*" The IRS generally calls re-syndication a "subsequent allocation of credits." After the end of the compliance period, there is still an agreement in place to continue affordable housing restrictions for at least an additional 15 years beyond the end of the compliance period. This results in a total of at least a 30-year extended use agreement. For a subsequent allocation of credits, the new credits will also have a new extended use agreement for at least 30 years, and it will start with the new credits. In other words, the extended use periods will likely overlap by several years.

Grandfathering of Residents

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

The 8823 Guide goes on to illustrate:

> *"An owner received IRC §42 credits to construct new low-income housing. The owner placed the buildings in-service in 1991 and started claiming credits the same year. The 15 year compliance period ended December 31, 2005. In 2007, the owner applied for and received an allocation of credit to rehabilitate the existing low-income buildings. The rehabilitation is completed, and the owner starts claiming the credit in 2009.*
> *"On February 1, 2004, John and Mary were determined to be income qualified and moved into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2008. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.*
>
> *"The unit is a low-income unit on January 1, 2009, when the owner (a calendar year taxpayer) begins claiming the credit. If the unit was determined to be an over-income unit under IRC §42(g)(2)(D) at the time of the household's last income recertification in January of 2008, then the owner is subject to the Next Available Unit Rule.*
>
> "NOTE: Similarly, vacant units previously occupied by income-qualified households continue to qualify as low-income units if the units are suitable for occupancy. However, the owner is subject to the Vacant Unit Rule."

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

The IRS does not specify what paperwork is required to prove that an in-place household qualified; however, at minimum, the original tenant income certification (TIC) and backup documentation proving that the household qualified at move-in should be retained with the new file establishing the second set of credits. The owner/agent must review the original certification documents to ensure that there is sufficient evidence of income qualification. If these documents are not available, the principles for move-in compliance established in the 8823 Guide indicate that a subsequent recertification file demonstrating that the household qualified under limits in effect at the time of a recertification establishes a point that the household qualified, even if that time was after move-in. Alternatively, a certification created retroactively to the move-in date can accomplish the same thing. Either approach in cases where the original file is missing or insufficient should establish that they qualified at some point during the first extended use period and continue to qualify for the second set of credits. An owner may discover that older files at a re-syndicated property do not well-establish household eligibility, as verification requirements have become more clearly understood over time.

In order to ensure a clean file that meets modern verification standards and bolsters investor confidence, an owner may complete an initial recertification on in-place households. If the household qualifies under current income limits for the new credits, no further work is necessary. If the household is over the current income limits, then the above paperwork, along with a note explaining why the older paperwork is being used, can be placed in the file to take advantage of the grandfathering provision. CDA allows either relying on original paperwork or a certification current to re-syndication as evidence of initial qualification.

INCOME AND RENT LIMITS

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

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

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

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

Safe Harbor Income Testing

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

Available Unit Rule (NAUR) will be applied to any units that are over the 140% limit at the time of the start of the credit period.

THE UNIFORM RELOCATION ACT (URA)

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

Some of the URA responsibilities toward displaced households include:

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

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

Rule	New Construction	Acquisition/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*** moving 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, and applicable fraction and a credit percentage.	Each building has two eligible basis figures (one for acquisition costs and one for rehab costs). The credit percentage will be 4% for the acquisition credits and may be 4 or 9% for the rehab credits, depending 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.