



Housing Finance  
Agency

# Low-Income Housing Tax Credit Program (LIHTC) *Compliance Manual*



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## Introduction

The Ohio Housing Finance Agency (OHFA) administers the Low-Income Housing Tax Credit (LIHTC) program. Ohio projects funded with these funds are subject to specific rules designed to ensure that they remain affordable throughout the required period of affordability. OHFA's LIHTC compliance manual is designed to assist owners and property management agents with maintaining compliance with the regulatory requirements associated with these funds in multifamily projects.

In order to realize the benefits afforded by the LIHTC program, it is essential that each building in a project remain in compliance. An especially critical time to ensure compliance is at the time of initial lease-up. Errors made in the screening of applicants for eligibility may have serious implications on the future viability of tax credits for that building. OHFA and its compliance monitoring staff are committed to working closely with owners and management agents to assist them in meeting their compliance responsibilities.

Importantly, this manual is to be used only as a supplement to compliance with the Code and all other applicable laws and regulations. This manual should not be considered a complete guide to LIHTC compliance. The responsibility for compliance with federal program regulations lies with the owner(s) of a LIHTC project.

This manual contains Housing Opportunity Through Modernization Act (HOTMA) updates. It does not however address the HOME, National Housing Trust Fund (NHTF) or the Ohio Housing Trust Fund (OHTF) programs. Regulations and policies on these programs can be found in OHFA's HDAP Compliance Manual.

### **Disclaimer**

*The publication of this manual is for convenience only. Owners/management agents reliance upon any of the provisions or forms contained herein does not, expressly or implied, directly or indirectly, suggest, represent, or warrant that the project will be in compliance with the requirements of the Code, regulations, IRS guidance, or HUD guidance as amended. OHFA hereby disclaims any and all responsibility of liability that may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants. OHFA's obligation to monitor for compliance with the requirements of the Code does not make OHFA liable for owners/ management agents noncompliance.*

Some calculation examples and charts contained within this manual are used by the permission of [Costello Compliance](#) and [US Housing Consultants](#).

Section 1:

# **LIHTC Program Background**



The LIHTC program is a funding source for affordable housing that provides investors and owners with tax reductions for creating low-income housing. This program is unique since before its creation, other affordable multifamily housing programs, such as HUD and Rural Development (RD), were subsidized by the federal government with rental assistance whereas the LIHTC program is not.



## What Is the LIHTC Program?

- The program was established by the Tax Reform Act of 1986.
- The program is regulated by Section 42 of the Internal Revenue Code monitoring guidance given by IRS 1.42-5.
- The program is monitored by individual state housing finance agencies, such as OHFA.
- [Guide for Completing Form 8823](#) (as may be amended from time to time) provides standardized operational definitions for the noncompliance categories listed on Form 8823. It is the IRS's intent that this guide will encourage consistent interpretation and application of LIHTC requirements.

## Qualified Allocation Plan (QAP)

- The QAP is developed annually by each state Housing Finance Agency (HFA) such as OHFA and provides developers with information on the LIHTC program, including minimum development requirements, competitive scoring, and underwriting criteria.
- The plan contains rules specific to certain housing needs and state preferences. Any state preferences would be considered OHFA's policies.
- Developers prepare applications based on the items identified in the QAP to request tax credit money to build new properties or to acquire/rehabilitate existing properties.
- All OHFA QAPs can be found on [OHFA's website](#). Owners/management agents should know the particular requirements outlined in the QAP for their projects awarded tax credits. This will help owners/management agents to stay in compliance.



## Types of LIHTC Projects

Tax credits can be used for all three of the following situations: new construction, acquisition and rehabilitation, and rehabilitation of a project already owned by a developer.

**New construction** is a completely new structure built from the ground up as opposed to minor, moderate, substantial, or gut rehab work, which is related to existing buildings being renovated to various degrees with **acquisition/rehabilitation** (acq/rehab) or rehab only. With an acq/rehab project, an owner purchases a project at the time of the rehab of the building(s). **Rehab-only** differs since the project was previously purchased at one time and rehab began once awarded tax credits. Both acq/rehab and rehab-only projects most likely have different types of affordable housing financing such as HUD Section 8 before being awarded tax credits.

There are cases where different types of buildings, such as schools or hotels, are transformed into rental housing. This is considered an **adaptive reuse** project.

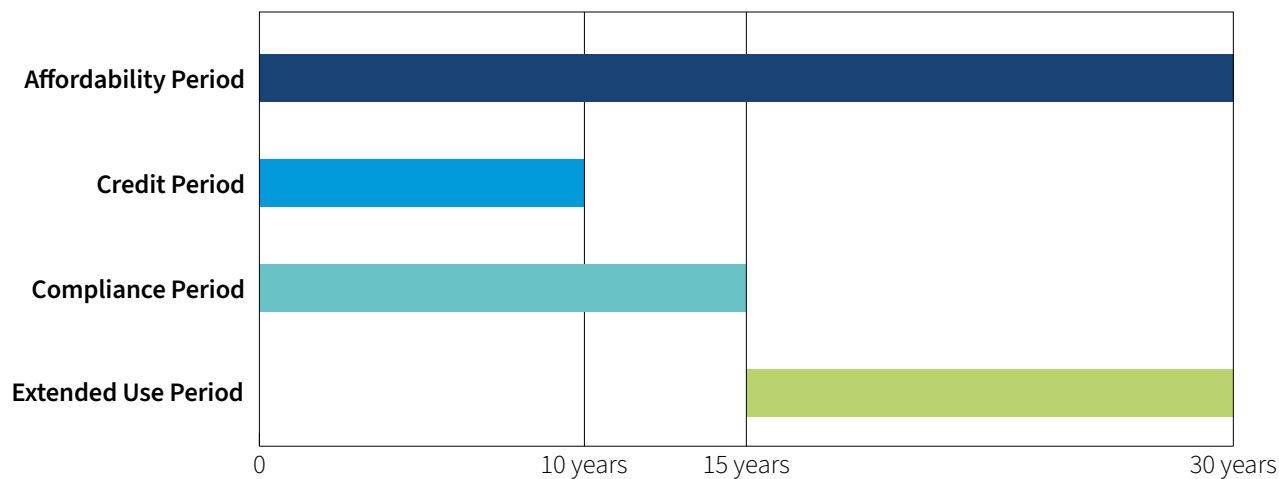
Since the LIHTC program has been in existence since 1986, older LIHTC projects have completed or are coming close to completing their affordability periods. In order to keep LIHTC funding on these projects, owners are able to apply and be awarded a new allocation of tax credits during the extended use period of the first allocation.

This is called a **resyndication** project. If a project completes its extended use period before being awarded new tax credits, the project is categorized as **reallocation**. Reallocated projects consist of any project that receives a new allocation after the first allocation has ended.

It should be noted tax credits can also be used to preserve projects funded or supported by other affordable housing programs [e.g., Federal Housing Act (42 U.S.C. § 1437f) Sections 8 (Rental Voucher Program), 236 (Rental Assistance Program), 221(d)(3) (Rent Supplement Program), 202 (for elderly households), 515 (for rural renters), or 514/516 (for farm workers)].



## LIHTC Time Periods



The **credit period** (IRC 42(f)) is 10 years following the date a building was placed in service. It is the time period in which the owners of the LIHTC project receive tax credits, which they can then apply to their respective income tax liabilities.

The **compliance period** (IRC 42(i)(1)) is the duration of the credit period plus five years. The compliance period is 15 years beginning with the first year of the tax credit period (placed in service year or subsequent year if deferral was elected).

The **extended use period** (IRC 42(h)(6)(D)) restricts the eligibility of projects to receive an allocation of tax credits to only those that agree to keep income and rent restrictions for an extended period of time. The term for this period is a minimum of 15 years in addition to the 15-year compliance period. This results in a total term of 30 years for the **affordability period**.



## What Are Tax Credits?

	Dollar-for-dollar reduction in tax liability in exchange for money invested in LIHTC projects
	IRS allocates federal tax credits based on each state's population
	Portion of building set-aside for low-income tenants
	In return for investing in a project, owners must reserve a number of low-income units and restrict rent on them for a minimum of 15 years

Tax credits are dollar-for-dollar reductions in the tax liability of the LIHTC project owner(s) in exchange for monies invested into LIHTC projects. Investors' equity contributions subsidize low-income housing projects thus allowing subsidized units to rent at below market rates. In return, investors receive tax credits paid in annual allotments generally over 10 years. Without the incentive, affordable rental housing projects are generally financially unfeasible.

Tax credits are awarded annually based on the state's population.

The credits generated by units first occupied by qualified residents during the first year of the credit period are more valuable than those produced by those not qualified until after the first year. For a unit first occupied by a qualified household during the first year of the credit period, the owner may take 1/10th its total credit each year of the 10-year credit period.

If not occupied by a qualified household until after the close of the first year, owners may take 1/15th of its total credit each year of the 15-year compliance period beginning the year it first qualified for the LIHTC program. A simpler way to explain the impact of this rule may be to say that for a unit first qualified after the first year of the credit period, the owners may take 2/3 its projected annual credit every year beginning with the first year it is occupied by a qualified resident and ending with year 15 of the compliance period (i.e., 2/3 credit rule).

Although investors claim the low-income housing credit over a 10-year period, the owners of a LIHTC project are required to provide low-income housing in compliance with IRC §42 for 15 years (the compliance period) and throughout the extended use period. In effect, the taxpayer is claiming credit in advance of providing housing during the last five years after the credit period has ended. By using a 10-year credit period, Congress increased the financial present value of those credits, which increased investors' appetites and the price they are willing to pay. This presented a problem as it created a disparity between the credits earned and the credits claimed. This gap in credits is most commonly referred to as "accelerated credits." "Recapture" is simply the method of returning those credits claimed but unearned credits back to the Treasury or Internal Revenue Service (IRS).



## Who Is Involved in a Tax Credit Deal?

The LIHTC program requires teams of differently skilled people to create successful projects, including developers, investors, syndicators, owners, management companies, state agencies, and the IRS.

### The roles and responsibilities of a developer:

- Research and prepare applications for OHFA multifamily projects.
- Obtain financing for projects.
- Oversee:
  - ▶ Construction of new projects
  - ▶ Acquisition of existing buildings
  - ▶ Rehabilitation of acquired buildings

### The roles and responsibilities of an investor/syndicator:

- Work with developers during the application process.
- Pool monies from various sources for investment into housing projects.
- Serve as an asset manager for projects.

### The roles and responsibilities of an owner:

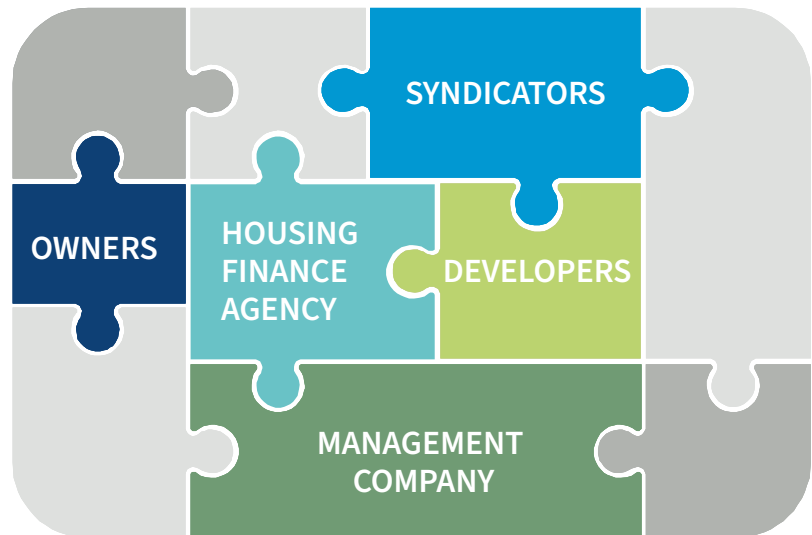
- Ensure the projects is run within compliance regulations/ policies as outlined by the IRS and the HFA.
- Ensure the physical asset is maintained.
- Ensure units are occupied by qualified households.

### The roles and responsibilities of a management company:

- Conduct the day-to-day operations of the project.
- Maintain the physical asset.
- Maintain the documentation of qualified households.
- Prepare reports on the owner's behalf.

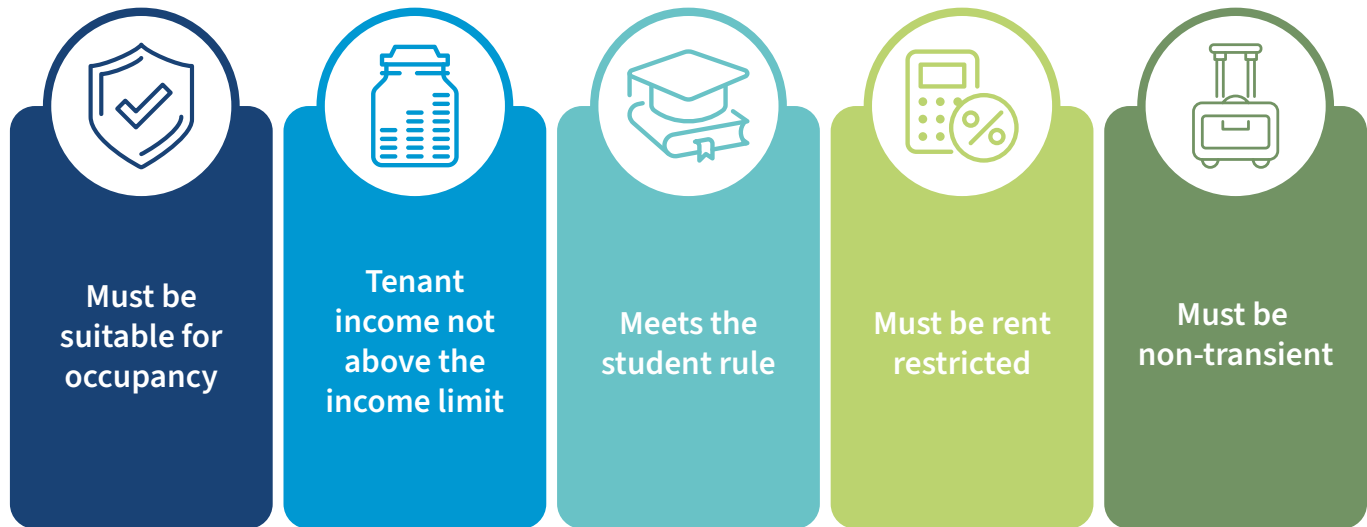
### The roles and responsibilities of OHFA:

- Allocate credits each year for the project or preservation of affordable housing.
- Monitor projects for compliance during compliance and extended use periods.
- Refer items of uncorrected noncompliance and all physical noncompliance to the IRS and other federal/ state agencies as warranted.
- Provide training resources to industry partners.
- Work with projects to achieve and maintain compliance.



# What Does it Take to Have a Qualified LIHTC Unit?

A tax credit unit is a building block. These building blocks then add up to qualified projects.



## Occupancy suitability

- All units must be suitable for occupancy as determined under regulations prescribed by the IRS who will take into account health, safety, and building codes. Owners/management agents must certify this requirement is met annually by completing and certifying the Annual Owner Certification (AOC).

## Income limit

- Owners commit to specific income and rent levels when they apply to OHFA for tax credits
- HUD publishes income limits annually for LIHTC projects (called MTSP limits). New limits must be implemented within 45 days of the publication date. Review section 6 of this manual for further information.

## Student rule

- This rule is discussed in Section 11 of this manual

## Rent restricted

- Rents are based on the applicable income limit (equal to 30% of that limit assuming 1.5 persons per bedroom). With Section 8 housing, rent is based on 30% of adjusted income. Review section 7 of this manual for further information.

## Non-transient

- The building must not be used for transient housing. In general, a tenant is considered transient if the initial lease term is fewer than six months. The only exceptions to the initial six-month lease restriction are Single Room Occupancy (SRO) housing, which permits units to be rented on a monthly basis, and Transitional Housing for the Homeless in which there is no length of the lease or minimum rental requirements.

## Housing and Economic Recovery Act of 2008 (HERA)

On July 30, 2008, Congress passed H.R. 3221, which is also known as the Housing and Economic Recovery Act of 2008 (HERA). This legislation was enacted as a response to the market conditions and economic issues of the time. Changes to Section 42 that came about as a result of HERA include:

- The recertification exemption for 100% tax credit projects
- The hold-harmless policy and HERA special rent and income limits
- Alignment of tax credit and tax-exempt bond compliance rules
- Addition of a fifth student status exemption for individuals formerly in foster care
- Revisions to the applicable credit percentage rules



## Housing Opportunity Through Modernization Act of 2016 (HOTMA)

Section 102 of HOTMA redefines income and asset calculations and verification requirements. This manual includes HOTMA provisions, including requirements from the HOTMA Final Rule and HUD Notice H 2023- 10/PIH 2023-27 and Implementation Guidance: Sections 102 and 104 of HOTMA. The updated implementation notice may be [found here](#). [This document](#) outlines items affecting the LIHTC, HOME, and NHTF programs due to HOTMA. The information is used with the permission of Costello Compliance.

On September 20, 2024, [HUD issued a Notice](#) delaying HOTMA for Multifamily programs, pending the release of TRACS 203A. The previous deadline to come into compliance from the most recent version of HUD Notice H 2023-10 was January 1, 2025. The new deadline is July 1, 2025.

*For a quick and very useful reference on HOTMA changes, view [Appendix A-HOTMA Crosswalk](#).*

Note: From the Implementation Guidance HUD Notice H 2023-10 / PIH 2023-27, attachments E (Household Composition), F (Income), G (Income Exclusions), and H (Inflationary Adjustments) are the most applicable to the LIHTC program. Attachment A (Asset Limitation) **DOES NOT** apply to the LIHTC program because it is an ELIGIBILITY requirement, not an income calculation requirement.

## Key Concepts and Terms

It is important to understand LIHTC key concepts and terms. Reference Appendix B for definitions on Building Identification Numbers, Eligible Basis, Applicable Fraction, Qualified Basis, Applicable Credit Percentage, Annual Credit, calculating and claiming credits, Minimum Set-aside, the 8609 Line 8b Election, Credit and Compliance Periods, placed-in-service dates, and much more.

## Owners/Management Agents and OHFA Responsibilities

There are several key roles, players, and responsibilities associated with the LIHTC program. Reference Appendix C for further information.

Section 2:

**Important  
Documents  
and OHFA Forms**





## Important Documents

In order for a project to run efficiently, the following documents need to be readily available to property management and/or compliance staff. Keeping copies of these documents on site or electronically at all times will help staff understand the complexities of LIHTC compliance.

**8609 Form(s)** — This form is issued for each building in a tax credit project. The form can be used to obtain a tax credit allocation from an HFA and certify certain information, such as the 8b election, the building's minimum set aside, and placed in service date.

**Final Affordable Housing Funding Application (AHFA)** — The final AHFA summarizes project characteristics, such as the type of funding requested, number of units and buildings and their types (low income, market, and employee), and the various income and restrictions for each funding type. Any hyperlinks in this section provide information for each document from [OHFA's website](#) which may be amended from time to time.

**Restrictive Covenant** — A restrictive covenant imposes a restriction on the use of land. The restrictive covenant is an agreement between owners and a HFA. Income and rent restrictions are included in the covenant along with how long the affordability period is for a project. Ohio's affordability period is 30 years. Owners/management agents must ensure they have knowledge of any amendments to the original restrictive covenant.

**Restrictive Covenant Amendments** — Amendments are usually created during the extended use period and used to alter the rent and/or income restrictions for a project. Amendments can be imposed for other reasons as well, such as change in ownership, affordability period, applicable fraction changes, etc., at any time during the life of a project. Reference OHFA's [Restrictive Covenant Modifications Policy](#) which may be amended from time to time.

**Affirmative Fair Housing Marketing Plan (AFHMP)** — The purpose of the AFHMP is to help applicants and tenants receive equal housing opportunities regardless of race, color, national origin, religion, sex, familial status, or disability. The AFHMP helps owners/management agents effectively market the availability of housing opportunities to individuals of both minority and non-minority groups that are least likely to apply for occupancy. Affirmative fair housing marketing and planning should be part of all new construction, substantial rehabilitation, and existing project marketing and advertising activities. Additional information is [found here](#), which may be amended from time to time.

**Tenant Selection Plans (TSPs)** — Owners/management agents must develop and make public written tenant selection policies and procedures that include descriptions, including but not limited to: eligibility requirements, income limits for admission, student rules, supportive services, and Violence Against Women Act (VAWA) information. Reference OHFA's [TSP Guidelines](#) which may be amended from time to time.

**VAWA Emergency Transfer Plan** — This plan identifies eligibility for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. Reference [OHFA's Policy on VAWA](#) which may be amended from time to time.

**Inspection Certifications and Maintenance Records** — Ensuring possession of updated certification records for all building systems, including elevators, sprinklers, generators, etc., is critical and required for auditing purposes.

**Utility Allowances** — This is an average monthly cost for the utilities paid by tenants. Utility allowances must be current and updated annually per IRS regulation 1.42.10. 1.42-10 (a) Inclusion of utility allowances must be in the gross rent. If the cost of any utilities (other than telephone, cable, and internet) for a residential rental unit is paid directly by the tenant(s), the gross rent for the unit includes the applicable utility allowance determined under this section. Reference OHFA's [Utility Allowance Request Procedure](#) as may be amended from time to time.

## Reference Documentation for the LIHTC Program

The following documents are federal guidance to the rules and regulations for the LIHTC program.

**IRS Section 42** — This [document](#), published by the IRS, gives all the rules for the LIHTC program.

**IRS 8823 Audit Guide** — Designed for HFA's so they know how to report noncompliance to the IRS, [this guide](#) provides definitions of noncompliance for HFAs. The guide which may be amended from time to time gives clarification on certain rules in Section 42 as well.

**IRS Revenue Ruling and Revenue Procedures** — Revenue rulings and procedures issued by the IRS essentially have the force of law, and outlines the IRS's interpretation of the tax laws. Anytime there are updates to Section 42, a ruling or revenue procedure will be issued and numbered with the year it is released along with the number of the ruling from that year. Further information is [found here](#).

**IRS Notices and Newsletters** — Similar to rulings and procedures, IRS notices are another way to inform of any temporary or permanent changes to Section 42.

**HUD Handbook 4350.3** — The LIHTC program uses HUD's rules when determining income and calculating rent for tenants and establishing eligibility for housing.

- **Chapter 5** — determines income and calculates rent
- **Appendix 3** — lists acceptable forms of verification

Note: HUD has not updated the [HUD Handbook 4350.3: Occupancy Requirements](#) with HOTMA updates as of the publication of this manual.

## OHFA Forms

Owners/management agents of OHFA funded projects must complete various forms in order to certify tenants are qualified for housing. OHFA's policy is to update forms as warranted in January and/or June of each year. Owners/management agents must ensure the most updated forms are used by the effective date after publication. OHFA required forms may be [found here](#).

Section 3:

**Initial  
Occupancy**



## Lease Requirements

All tenants occupying LIHTC units must be certified and under a lease no later than the time that the household moves into the unit.

A signed lease must be in effect for each household/unit. Once executed, the lease terms cannot be modified without at least a 30-day written notice to the tenant(s). Leases must reflect the correct date that a household moves into it or otherwise takes possession of a unit.

A household may have a cosigner, if necessary, but the cosigner must sign a self-affidavit stating that:

1. He/she will not reside in the unit, and
2. Disclose whether or not he/she will be providing income to the household in the form of rent, utility payments, or other recurring gifts. If income is provided, this must be treated as recurring gift income.

It is extremely important owners/management agents do not terminate the tenancy or refuse to renew the lease of a tenant receiving rental housing assistance with LIHTC funds, except for serious or repeated violations of the terms and conditions of the lease or for other just cause.



## Initial Minimum Term of Lease (Non-transient Use)

Under program requirements, a unit cannot be LIHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is fewer than six months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six months on all LIHTC units. Subsequent leases are not subject to a minimum lease period.

## Single Room Occupancy and Homeless Units

Federal regulations do allow shorter leases for certain types of transitional housing for homeless individuals and SRO units. The following types of housing are exempt from the six-month minimum lease period:

1. Certain transitional housing for the homeless provided that the rental unit contains sleeping accommodations and kitchen, and bathroom facilities located in the building:
  - ▶ In which is used exclusively to facilitate the transition of homeless individuals (as defined in the McKinney Homeless Act 42 USC 11302) to independent living within 12 months
  - AND
  - ▶ In which a government entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing
2. SRO units that permit the sharing of kitchen, bathroom, and dining facilities are not treated as used on a transient basis merely because they are rented on a month-by-month basis.

## Eviction or Termination of Tenancy

If a household cannot pay the rent or otherwise commits material violation of the lease, owners/management agents have the same rights in dealing with the income-eligible tenants as with any other tenant, including, if necessary, eviction.

IRS regulations instruct there must be just cause for eviction or other form of termination of tenancy (e.g., non-renewal of lease). This provision is often referred to as “good cause eviction.” Language outlining actions that constitute “good cause” for eviction or termination of tenancy must be included in writing at the time of initial occupancy — preferably in the lease. Examples of good cause evictions may include: nonpayment of rent, violations of the lease agreement, destruction or damage of the property, interference with other tenants, tenant fraud, or use of the property for an unlawful purpose. When dealing with a tenant’s conduct issues, owners/management agents are strongly encouraged to provide a written warning/notice to the tenant prior to beginning eviction. This notice should include a statement that continued poor conduct could constitute a basis for future tenancy termination/eviction.



## Affirmative Fair Housing Marketing

Owners/management agents of LIHTC projects are responsible for marketing the assisted units regardless of the number of assisted units. Owners/management agents must develop and implement an AFHMP in accordance with HUD and OHFA requirements. Owners/management agents must regularly review and update the plan and use affirmative fair housing marketing practices in soliciting renters, determining eligibility, and concluding all transactions. Affirmative marketing includes actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status (persons with children under 18 years of age, including pregnant women), or disability.

Information on OHFA's AFHMP guidance may be [found here](#), which may be amended from time to time.

## Rents and Security Deposits

Rents on LIHTC units may not exceed the maximum allowable rent. Any violation of overcharging rents is considered noncompliance for which owners/management agents will have to adjust rents and repay the overcharged rents. OHFA will issue an IRS Form 8823. For more information on rent limits, see Section 7 of this manual.

Upon termination of a rental agreement, the full amount of the security deposit must be returned to the tenant(s) minus any amount applied to:

- ▶ The payment of accrued unpaid rent
- ▶ The amount of damages, not including normal wear and tear, caused by tenant negligence
- ▶ Unpaid utility charges that the tenant(s) is/are obligated to pay

## Tenant Selection Plan (TSP)

Owners/management agents must develop a formal written policy that clearly states the procedures and criteria they will consistently apply in drawing applicants from the waiting list, screening them for suitability for tenancy, and implementing income targeting requirements. The TSP must state whether or not there are any restrictions or preferences for the admission of tenants.

As part of the mission, OHFA seeks to reduce barriers to housing and further that goal. All projects financed through OHFA must have a TSP. OHFA's TSP guidelines provide direction for owners/management agents on what must be included in a project's TSP. Reference [OHFA's TSP Guidelines](#), which may be amended from time to time.

Note: It is acceptable for owners/management agents to call the TSP a “resident selection plan” or “qualifying criteria.” Compliance with the mandatory elements in the TSP guidelines is a requirement for all projects funded by OHFA. The Tenant Screening Criteria section contains recommended best practices.

### HOTMA Update on TSPs

HUD's Office of Multifamily Housing Programs published a [Housing Notice](#) extending the HOTMA compliance date in Section 6.2 of [Notice H 2023-10](#) for owners to update their Tenant Selection Plans (TSPs) and Enterprise Income Verifications (EIVs) policies and procedures from **March 31 to May 31, 2024**. This guidance is applicable to owners of HUD Multifamily Housing Programs (Section 8 PBRA, Section 202, 811) and HUD Public Indian Housing (Public Housing, Housing Choice Vouchers, Project-based Vouchers). [Here](#) is a helpful link of the HUD mandated updates.

Note: The HOTMA mandated TSP updates do not apply to LIHTC-, HOME-, or NHTF-funded projects. While owners of these projects must have TSPs per OHFA's guidelines, HOTMA updates are not required to be incorporated into them.

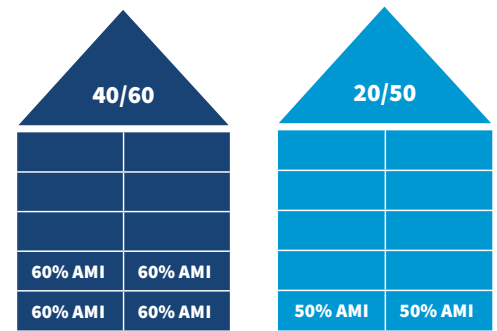


Section 4:

**Minimum  
Set-asides and  
Form 8609**

## Minimum Set-asides

The Minimum Set-Aside (MSA) is the minimum number of LIHTC units that must be reserved for a project to produce a tax credit. This minimum number of units needs to be met for an entire project. Once owners select the MSA on Form 8609, it is irrevocable, which means the set-aside has to be used for the entire affordability period. Buildings receiving tax credits must meet the minimum set-aside no later than the year the project was placed in service or, if credits are deferred, the following year in which the building was placed in service. In Ohio, there are three minimum set-asides:



- **40/60** – 40% of the units in a project will be income and rent restricted to households at/or below 60% of the area median gross income (AMGI).
- **20/50** – 20% of the units in a project will be income and rent restricted to households at/or below 50% of the AMGI.
- **Average Income** – The Consolidated Appropriations Act of 2018, also known as the “Omnibus Spending Bill,” created a new average income set-aside. At least 40% of the units must be both rent restricted and occupied by individuals whose incomes do not exceed 60% of the AMGI. The average of the designated imputed income limits cannot exceed 60% of the AMGI.

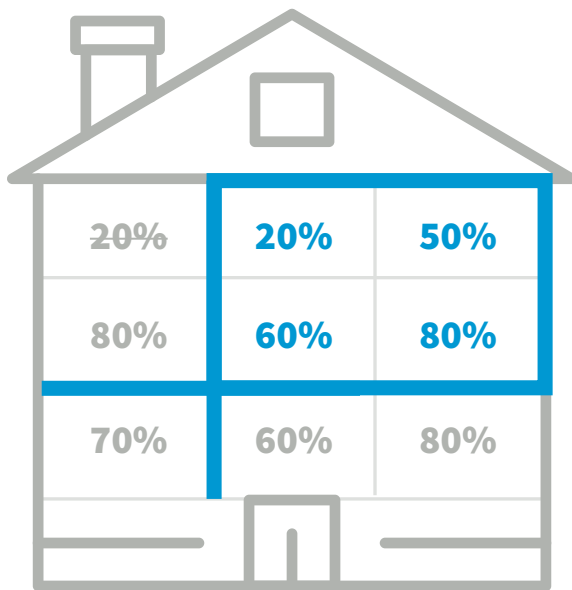
Income averaging applies to the designated income/rent levels of the units, not the incomes of individual tenant households. OHFA’s QAP outlines requirements for average income projects:

- ▶ Unit designations will be documented in the Carryover Agreement or 42(m) Letter of Eligibility but will not be recorded in the restrictive covenant.
- ▶ If IRS Form 8609 is issued and recorded, the project is not eligible for average income set-aside.
- ▶ Unit designations must be equally distributed across bedroom sizes.
- ▶ Project owners must select “yes” to the 8b election on IRS Form 8609.
- ▶ Unit designations are set at 10% increments between 20%–80% and can float within the project or building.
- ▶ Projects approved before 2018 (2015–2017) must consist of 100% low-income units.

The average income set-aside allows LIHTC units to serve households earning as much as 80% of the AMGI. Higher rents charged to households with incomes above 60% of the AMGI have the potential to offset the lower rents for households living in units designated at lower income levels. Average income preserves rigorous targeting to low-income households while providing greater income-mixing potential. Further information on OHFA’s average income policy, which may be amended from time to time is [found here](#).

In addition to the minimum set-aside, a project may have additional income and rent restrictions that stem from either the tax credit application submitted to OHFA or other financing secured to build a project. The most restrictive of these set-asides will determine how units are leased.

### Average Income MSA Example



**9 total units x 40% = 3.6 units**

*This shows that at least four units are needed to meet the 40% requirement.*

**$20\% + 50\% + 60\% + 80\% / 4 = 52.5\%$**

*Four units with average  $\leq 60\%$  meets the minimum set aside. OHFA requires the average-income projects to average at 60% or below. The nine units average to 57.8%.*

## Form 8609

Owners of residential LIHTC buildings are allowed tax credits for each qualified building over a 10-year credit period. A separate Form 8609 must be issued for each building in a multi-building project. The form can be used to obtain a tax credit allocation from the state HFA and certify certain information, including the Building Identification Number (BIN), placed in service date, maximum credit amount for the building, the minimum set-aside, and the multi-building election. Further information is [found here](#).

**Building Identification Number** — Each LIHTC building is assigned a BIN. The number consists of two letters (i.e., state abbreviation), a two-digit year for the year the allocation was made, and a five-digit number assigned by the state HFA.

The BIN is helpful in determining the lifecycle of buildings financed with tax-exempt bonds. However, once a BIN is assigned, it will also be the BIN for all subsequent allocations of credit. This is important to note for reallocated and resyndicated projects. The BIN is identified on Line E of the 8609 form.

**Allocation Dates** — Line 1a, the date of allocation, identifies the date (1) the taxpayer was able to receive the allocation and place the building in service all within one calendar year or (2) the taxpayer and the state HFA entered into a carryover allocation. However, because of the complexity of tax credit development, most IRC §42 projects use a carryover allocation under IRC §42(h) (1) (E) or (F). If the IRC §42 project is also a qualified residential rental project under IRC §142(a) (7), Line 1a is left blank.

**Placed-in-Service Date** — Line 5 identifies the date the first unit in the building is ready and available for occupancy under state or local law. For owners receiving carryover allocations of credit, the placed-in-service date should be no later than the close of the second calendar year following the calendar year in which the allocation was made. For example, if the allocation date is June 14, 2022, the placed-in-service date should be no later than December 31, 2024. The placed-in-service dates are usually identified with a certificate of occupancy for new construction projects. For acquisition rehabilitation projects, there are two sets of 8609s so the placed-in-service date is the date the deed transfers ownership for the acquisition 8609 while the rehabilitation 8609 placed-in-service date is chosen by the owner after the greater of the minimum per unit amounts is spent or 20% of the adjusted basis is expended.

**Maximum Credit Amount for the Building** — This is the housing credit dollar amount allocated to a building for each year of the 10-year credit period. The amount should equal the percentage on Line 2 multiplied by the amount on Line 3a. State HFAs are required to allocate only the amount necessary to assure project feasibility.

**Minimum Set-aside (MSA)** — Line 10c identifies the MSA election for the project.

**Multi-building Election** — Line 8b indicates each building is considered a separate project under section 42(g) (3) (D) unless, before the close of the first calendar year in the project period, each building that is (or will be) part of a multi-building project is identified by attaching a statement to the 8609, including the name and address of the project and each building in the project, the BIN of each building in the project, the credit dollar amount for the project, and the credit allocated to each building in the project.

The 8609 also identifies the maximum qualified basis and the eligible basis for a building.



## Low-Income Housing Credit Allocation and Certification

► Go to [www.irs.gov/Form8609](http://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

<b>A</b> Address of <b>building</b> (do not use P.O. box) (see instructions)	<b>B</b> Name and address of <b>housing credit agency</b>
<b>C</b> Name, address, and TIN of <b>building owner</b> receiving allocation	<b>D</b> Employer identification number of agency
	<b>E</b> Building identification number (BIN)
TIN ►	

<b>1a</b> <b>Date of allocation</b> ►	<b>b</b> Maximum housing credit dollar amount allowable	<b>1b</b>	
<b>2</b> Maximum applicable credit percentage allowable (see instructions)		<b>2</b>	%
<b>3a</b> <b>Maximum qualified basis</b>		<b>3a</b>	
<b>b</b> Check here <input type="checkbox"/> if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)		<b>3b</b>	1 %
<b>4</b> Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)		<b>4</b>	%
<b>5a</b> <b>Date building placed in service</b> ►			
<b>b</b> Check here <input type="checkbox"/> if the date of allocation on line 1a is in calendar year 2021 or 2022 and the building is located in a qualified disaster zone (see instructions).			
<b>6</b> Check the boxes that describe the allocation for the building (check those that apply):			
<b>a</b> <input type="checkbox"/> Newly constructed and federally subsidized	<b>b</b> <input type="checkbox"/> Newly constructed and <b>not</b> federally subsidized	<b>c</b> <input type="checkbox"/> Existing building	
<b>d</b> <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures federally subsidized	<b>e</b> <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures <b>not</b> federally subsidized		
<b>f</b> <input type="checkbox"/> Allocation subject to nonprofit set-aside under sec. 42(h)(5)			

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

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

Signature of authorized official	Name (please type or print)	Date
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### Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

<b>7</b> Eligible basis of building (see instructions)	<b>7</b>	
<b>8a</b> Original qualified basis of the building at close of first year of credit period	<b>8a</b>	
<b>b</b> <b>Are you treating this building as part of a multiple building project for purposes of section 42</b> (see instructions)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>9a</b> If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>b</b> For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>10</b> Check the appropriate box for each election.		
<b>Caution:</b> Once made, the following elections are irrevocable.		
<b>a</b> Elect to begin credit period the first year after the building is placed in service (section 42(f)(1))	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>b</b> Elect <b>not</b> to treat large partnership as taxpayer (section 42(j)(5))	<input type="checkbox"/> Yes	
<b>c</b> <b>Select minimum set-aside requirement</b> (section 42(g)) (see instructions): <input type="checkbox"/> 20-50 <input type="checkbox"/> 40-60 <input type="checkbox"/> Average income <input type="checkbox"/> 25-60 (N.Y.C. only)		
<b>d</b> Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)	<input type="checkbox"/> 15-40	

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

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



## Multi-building Election

Owners can choose:

- EACH building as a separate project, OR
- ALL buildings as ONE project, OR
- Buildings grouped together to form various projects

The default position for the IRS is that each building is its own project unless owners elect on the 8609 to group buildings together into a multi-building project. When the 8609s are completed, owners must answer question 8b: *Are you treating this building as part of a multiple building project for purposes of section 42?* If owners select “Yes,” the building will be part of a multi-building project. Owners must also attach a listing of all the building addresses to be included in the multi-building project. If owners select “No,” then a building will be its own project.

For long-term compliance purposes, it’s easier if all the buildings are included in one multi-building project. However, owners frequently use the multi-building election to be able to meet minimum set-asides and claim credits in the first year of the credit period.

Rule	Individual Building Is a Project	Multiple Buildings Are a Project
Minimum Set-aside	Each building must meet and maintain the minimum set-aside.	Minimum set-aside must be met and maintained on total number of units in project.
Transfers	No “transfers” are permitted between buildings. Households must move out/in and qualify as low-income at the time of the move. A new certification is required.	Transfers can be made to different buildings within a project. Households whose income has increased above 140% of the income limit cannot transfer between buildings.
State HFA Inspections/ Audits	The housing finance agency must inspect and audit the lesser of 20% or the IRS Minimum Unit Sample Size Chart of units in each building.	The housing finance agency must inspect and audit the lesser of 20% or the IRS Minimum Unit Sample Size Chart of units in the project.
Example Project	Ten 10-unit projects with two units in each project equals either the lesser of 20 units or the number shown in the IRS Minimum Unit Sample Size Chart.	A 100-unit project equals either the lesser of 20 units or the number shown in the IRS Minimum Unit Sample Size Chart.

## Compliance Rules Affected by the Multi-building Election

A multi-building election can be helpful for credit delivery and meeting the commitments contained in the partnership agreement. However, there are several compliance rules that can be affected by the multi-building election that will need to be met for the next 15 years:

- Minimum set-aside
- Transfers
- HFA inspections
- Annual recertification exemption
- Income limits
- Unit vacancy rule

### Multi-building Election Effect on Minimum Set-aside

If each individual building is a project, each building must meet the minimum set-aside at all times.

If buildings are grouped together into ONE project, then minimum set-aside would apply to the total units overall.

For example, if there is **ONE** project with 100 units and a 40/60 minimum set-aside, credits cannot be claimed if the minimum set-aside hasn't been met by the end of the first year. Also, in future years, the minimum set-aside must be maintained at all times. If fewer than 40 units qualify, no credits can be claimed until the year the minimum set-aside is restored. On the other hand, if each of the ten 10-unit buildings is its own project, each building must have four units that qualify. It might be easier to fall below the minimum set-aside in this situation. An example would be if an error was made with the utility allowance and all the two-bedroom units are over rent, or if two buildings have eight two-bedroom units, then the two buildings will have fallen below minimum set-aside. Credits cannot be claimed on these buildings until minimum set-aside is restored.

### Multi-building Election Effect on Transfers

When a transfer between units is permitted, the household's lease and Tenant Income Certification (TIC) are moved over to the new unit. The management agent does not need to execute a new lease or a new TIC for a transfer event but must report the transfer event in OHFA's online reporting system. The household's annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

Management agents are not permitted to transfer qualifying tenants to non-qualified vacant units (i.e., empty units that have never been occupied by qualified households) in order for the project to meet the Minimum Set-Aside requirements elected at the time of LIHTC funding application. One household cannot be used to qualify multiple units. Such action is considered noncompliance and will be reported to the IRS via IRS Form 8823 by the state HFA.

The unit transfer rule is a project rule, so proper implementation is based on the definition of project as defined on Form 8609 Line 8b.

## Implications of the Multi-Building Election

In general, each building (as identified by the building identification number assigned) is its own project. However, when an owner completes the first IRS Form 8609 for the building, line 8b on the 8609 allows the owner to choose to group buildings together to form a “project”. The owner could choose to set up each building as its own project, all buildings as one project, or buildings could be grouped together to form more than one project. In order to group buildings together to form a project, the owner elects to treat the project as a multiple building project on line 8b of the 8609 and attaches a statement to the 8609 identifying the name and address of the project and each building to be included in the project. (See the instructions to Form 8609 for the complete requirements.) If the owner elects to treat the project as a multiple building project, but fails to attach the required statement, the IRS will treat each building as its own project. Also, for buildings to be included in a multiple building project, the buildings must be located on the same tract of land, unless all of the units to be included are low-income units. The buildings to be included must also be owned by the same person, financed under a common plan, and have similarly constructed units.

If the owner chooses to include the building as part of a multiple building project, rules applied at the project level are applied to all buildings in the aggregate (all the buildings identified as being in the project constitute ONE project). For example, the Minimum Set-Aside would be based on the total number of units in all buildings included in the project. On the other hand, if the owner chooses not to include multiple buildings in the project, each building must meet the Minimum Set-Aside. Rules that are applied at the building level still get applied by building. (e.g., the Available Unit Rule must be applied within each building.) LIHTC requirements affected by the multiple building election include:

- Minimum Set-Aside – must be met on the total number of units in the project
- Unit Vacancy Rule – reasonable attempts to fill vacant tax credit units must be made before leasing any comparable or smaller market rate units in the same project
- Income Limits – applied based on the first building in the project to be placed in service
- Unit Transfers – transfers can be made to different buildings within the project (except households whose income has increased above 140% of the income limit cannot transfer between buildings)
- Annual Recertification Exemption – if all buildings within the project are 100% LIHTC, annual recertifications are not required
- Inspections and Audits – HFAs must inspect and audit the lesser of 20% of the units in the project or
- IRS unit sample size chart

## **Why Choose to Include a Building in a Multiple Building Project?**

**First Year Credit Delivery** – There is always a great deal of pressure to maximize first year credit delivery and using the multiple building election can assist in reaching this goal. If an owner placed ten 10-unit buildings (100 units total) in service in 2020 and selected the 40/60 Minimum Set-Aside, the owner would have to have 40 units qualified by the end of the tax year. However, if leasing is going slowly and only 3 buildings have been fully qualified by the end of the tax year, the owner could choose to make these 3 buildings a project, or each of these buildings a project, or could group these buildings with other buildings in some other fashion that allowed the Minimum Set-Aside to be met.

**Cushion Against Minimum Set-Aside Violations** – In a mixed income development, there could be some buildings with low applicable fractions that might not meet the Minimum Set-Aside on their own. Or, the applicable fraction might be low enough that non-compliance in just one unit might mean the Minimum Set-Aside is no longer met. If these buildings are grouped with other buildings with higher applicable fractions, the project can then meet and maintain the Minimum Set-Aside more easily.

**Transfers in Acquisition/Rehab Properties** –The multiple building election could be part of the strategy in completing the initial certifications and transferring households. Buildings that are set up as part of a multiple building project could allow transfers between buildings without the need to certify households again. This could be especially helpful if tenants are being relocated within the project during the rehabilitation. Or, if buildings are set up as part of different projects, “transfers” would be treated as a move-out and move-in and households would have to complete a new certification to move to a new building.

**Annual Recertification Exemption** – Within a mixed income development, there could be some buildings that are 100% low income. If these buildings were selected to be a project, annual recertifications would not be required for units in these buildings. (Good luck explaining to residents in the mixed income buildings why they have to recertify!)

**Income Limits** –If some buildings are placed in service before the income limits are issued for the year, and some buildings are placed in service after the income limits are issued and the income limits decrease in that year, if the buildings are set up as individual projects, they will have different income limits. If the owner chooses to make these buildings one project, the income limit will be based on the first building’s placed in service date.

**Ease of Applying Compliance Rules** – Setting up all buildings in a development to be one project can make applying various aspects of compliance easier. The entire development can have one set of income limits. Transfers can be permitted to take place between all buildings within the project. The state housing finance agency is only required to conduct inspections and audits on 20% of the total number of units in the project. The management agent and owner only have to worry about tracking one Minimum Set-Aside. And while the Unit Vacancy Rule would apply to all units in the project, at least the owner and manager only have to worry about tracking the rule for one project. If this is a mixed-income development, annual recertifications are required for all low-income units, but at least it’s a consistent rule throughout the development.

## **Pitfalls of the Multiple Building Election**

The greatest challenge of the multiple building election is making sure that all of the key parties in a tax credit deal understand the implications of the election—and know which option is being/has been selected. The owner needs to decide which buildings will or will not be included in a multiple building project before households are initially qualified and the strategy needs to be communicated to and clearly understood by the management agent. The owner's CPA (or whoever will be completing the 8609s) must know the strategy selected by the owner and, since the 8609s are almost always completed after the first year, confirm that the property was actually leased up in accordance with the strategy selected by the owner. Once the 8609s are filed, any time the management agent changes, the strategy should be communicated to the new agent to ensure they understand how the project has been defined.

As with most compliance rules, it's best to check with your state housing finance agency for their interpretation of the effects of the multiple building election before implementing any changes in the application of these rules to your projects.

## **Multi-building Election Effect on State HFA Inspections and Audits**

The IRS requires HFAs to inspect the lesser of 20% of the units or the IRS Minimum Unit Sample Size Chart. If the owner elects to treat all buildings as part of a multi-building project, OHFA will inspect the lesser of 20% of the units across **the project** or the IRS Sample Unit Chart. If the owner elects to not treat all buildings in the project as part of a multi-building project, then OHFA will inspect the lesser of 20% or the IRS Minimum Units Sample Size Chart for each **building**.

Section 5:

**Utility  
Allowances**

## Treasury Regulation 1.42-10

A utility allowance represents the average monthly cost for the utilities paid by a tenant(s). If the cost of any utility other than telephone, cable television, or internet for a residential rental unit is paid directly by the tenant(s), not by or through owners of the building, the gross rent for that unit includes the applicable utility allowance. There are many ways and rules for determining this monthly average cost. A building or project needs to use the correct utility allowance depending on all the funding for the project. There is a hierarchy which determines what utility allowance to use at LIHTC projects especially if other federal funding has been issued for the building/project.

- **Rural Development (RD) Building/Units** — If a **building** or any **tenant** in a building receives assistance from the Rural Housing Service (i.e., RHS-assisted building), the RD utility allowance must be used for **ALL** rent-restricted units.
- **HUD Regulated Buildings** — If neither a building nor any tenant in a building receives RHS housing assistance and the building's rent and utility allowances are regulated by HUD, the HUD utility allowance is used.
- **No RD or HUD Funding at a LIHTC Project** — LIHTC buildings not regulated by either RHS or HUD may use either the **local public housing authority (PHA) utility allowance** or an **OHFA-approved utility allowance**.
  - ▶ Tenant(s) receiving Housing Choice Vouchers **must** use the PHA utility allowance for that unit(s).
  - ▶ Due to HUD's 2025 HOME Rule [published](#) January 6, 2025, HOME units can use the PHA utility allowance for all allocated HOME projects. The 2013 Final HOME Rule eliminated the option for owners to use the PHA allowance for HOME units on/after August 2013. The 2025 HOME Rule reinstates the use of the PHA option. Owners/management agents can also use estimates, HUD's Utility Schedule Model (HUSM), or an engineer's consumption model for HOME units.
  - ▶ **Public Housing Authority Utility Allowance**
    - The PHA utility allowances can be updated sporadically. Owners/management agents using the PHA utility allowance need to check to see if a county's PHA utility allowance has been updated on a quarterly basis because:
      - If a utility allowance has been updated, the project must adopt the new utility allowance within 90 days of publication.
      - The project must adjust rents within the 90-day period if applicable.

A photograph showing a close-up of a white and black calculator, a white incandescent light bulb, and a document titled "ELECTRIC BILL". The calculator is on the left, the light bulb is on the right, and the bill is in the foreground. The bill has a table with columns for "Previous Balance", "Current Balance", "Interest", "Total Charges", "Adjustments", and "Amount Due".

## ELECTRIC BILL

### ► OHFA-approved Utility Allowance Methods

- The PHA utility allowance amounts are usually overestimated since housing authorities are looking at an entire county to determine an amount. Alternative methods that are approved by an HFA can be closer to a particular project's average and are usually lower than the PHA utility allowance. Owners may choose to adopt these alternative methods because if the utility allowance is lower, the actual tenant's rent can be a higher amount. These alternative methods include:
  - Utility Company Estimates — Owners/management agents may obtain a local utility company's estimate for a unit. The estimate is obtained when the interested party receives in writing information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area. The estimate must be on a utility companies' letterhead.
  - HUD Utility Schedule Model (HUSM) — Owners/management agents may calculate a utility estimate using the HUD Utility Schedule Model.
  - Engineer's Energy Consumption Model — Building Owners/management agents may calculate utility estimates using an energy, water, and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors, including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of a building location, and available historical data. This type of estimate must be calculated by a properly licensed engineer or other qualified professional.



# OHFA's Utility Allowance Policy

## New Projects

OHFA requires new projects receiving an allocation of credits must submit their utility allowance requests during the final application phase for the projects. Even though the requests are submitted during the application, utility allowances are not required to be reviewed until a building achieves 90% occupancy for 90 consecutive days or by the end of the first year of the credit period.

## OHFA Approved Utility Allowances — Renewals

If owners/management agents decide to use an alternative method, OHFA requires the utility allowance is approved on an annual basis. Utility allowance requests must be submitted to [uarequest@ohiohome.org](mailto:uarequest@ohiohome.org).

Owners/management agents are required to notify tenants a utility allowance request has been proposed to OHFA at the beginning of the 90-day period before the prior one expires. This is a federal rule.

The request must be submitted at least 90 days before the previous utility allowance expires. All data cannot be older than 60 days prior to the start of the 90-day period. This gives owners a short period of only 60 days to obtain consumption data and submit a request to OHFA in order to be in compliance with OHFA policy and federal regulations.

OHFA will send an email with an approval or denial letter before the prior utility allowance expires. All documentation must be submitted in a timely manner, especially if additional information is requested. The letter will provide owners the effective date of the new utility allowance. If applicable, rents must be updated in OHFA's on-line reporting system by the effective date of the new utility allowance.

## OHFA Approved Utility Allowances — Expires

If an OHFA-approved utility allowance has expired before the owner/management agent receives a new approved utility allowance, the utility allowance must revert back to the local PHA's utility allowance, which can be costly for projects if the approved utility allowance was lower than the PHA utility allowance. Rents need to be adjusted accordingly to ensure they are not over the maximum rents allowable for a project. If an approved utility allowance expired and owners/management agents do not wish to renew them, OHFA must be notified.

## OHFA Utility Allowance Policy Overview

Owners/management agents need to ensure they receive an OHFA-approved utility allowance on an annual basis unless the PHA is used.

- Owners/management agents must submit utility allowance documentation at least 90 days before the previous one expires to [uarequest@ohiohome.org](mailto:uarequest@ohiohome.org).
- OHFA will provide an approval or denial before the 90-day period expires.
- Submitted utility allowance documentation cannot be older than 60 days before the start of the 90-day period.
- If the utility allowance expires before the new OHFA-approved utility allowance is in effect, owners/management agents are required to default to the PHA utility allowance or submit the Utility Allowance Statement of Non-Renewal form. Be mindful that a utility allowance change may affect maximum rental amounts and tenant-paid rent.
- New projects are required to submit utility allowance documentation at final application for underwriting purposes. Utility allowances are not required until a building achieves 90% occupancy for 90 consecutive days or the end of the first year of the credit period (whichever happens first). If a new project has an OHFA approved utility allowance, an approval/denial will be to comply with these federal regulations.
- OHFA requires air conditioning to be included in utility allowances, if applicable, effective July 1, 2022.

Section 6:

# **Income Limits**



An important part of determining if households are eligible for the LIHTC program is ensuring that they have household income that is at or below applicable income limits. These limits differ by program.

Income limits vary based upon household size as they are published based on the number of persons in a household with higher income limits for households with more members. HUD annually publishes median income information for each county or metropolitan statistical area in the country. HUD metropolitan statistical areas are metropolitan areas that may encompass all or parts of multiple counties.

The tax credit and tax-exempt bond programs' income limits are referred to as Multifamily Tax Subsidy Program (MTSP) limits.

MTSP limits are published annually by HUD and must be implemented within 45 days of publication.

Project income limits are determined by:

- Minimum set-aside
- Household size
- Placed-in-service date
- County

Income limits are 50% (very low) and 60% of MTSP income limits. Owners select the 50% or 60% limit based on a project's minimum set-aside. 20/50 properties use the 50% limit while 40/60 properties use the 60% limits.

**Income Conversion Factors**

Original Income Limit	Convert To:	Conversion Factor	Formula
<b>50%</b>	80%	1.6	50% limit x 1.6 =80%
	70%	1.4	50% limit x 1.4 =70%
	60%	1.2	50% limit x 1.2 =60%
	40%	0.8	50% limit x .8 =40%
	30%	0.6	50% limit x .6 =30%
	20%	0.4	50% limit x .4 =20%

Household income is determined in a manner consistent with the Section 8 housing methodology of calculating annual income as outlined in Chapter 5 of the HUD Handbook 4350.3. When determining if a household’s income is at or below the applicable limit, the earned income from each adult (18 years old or older) household member and the unearned income of all members of the household (regardless of age) must be included in the total household income calculation. Complete rules for calculating income may be found in the HUD Handbook 4350.3 in Appendix 6-C. NOTE: be sure to check the Handbook has been HOTMA updated by HUD.

If the current household income of a qualifying unit increases above the 140% limit but the unit initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent restricted and the next available unit of comparable or smaller size is rented to a qualified low-income household.

## Projects with Multiple Buildings: Placed-in-Service Date(s)

The owner’s election of whether to treat buildings as part of a multi-building project or not can affect how income limits are applied in the project.

If owners elect to treat a building as part of a multi-building project by selecting ‘Yes’ to item 8b on IRS Form 8609, the project’s placed-in-service date is the date the first building in the project went into service. This date is used to determine income limits for the entire project. It does not matter how many other buildings are in a project or the other placed in services dates.

If owners have a project with multiple buildings and selects “No” to item 8b on the 8609s, each building’s placed-in-service date will determine which income limits to use. This can be critical if one building places in service before new MTSP limits are released and another building places in service after the limits for the new year are published.

Rule	Individual Building is a Project	Multiple Buildings are a Project
	<b>8b “No”</b>	<b>8b “Yes”</b>
<b>Income Limits</b>	Each building must use its own placed-in-service date to determine which income limits to use.	The first building’s placed-in-service date determines the income limits used for all buildings in the project.

## HERA Limits

HERA was signed into law on July 30, 2008. Not all counties have HERA limits, and not all projects that have HERA limits can use them. Only projects with tax credits and/or multifamily bonds may use HERA income and rent limits in counties where HERA limits apply. In counties where HERA limits are not applicable, projects must use the income and rent limits issued by HUD. LIHTC units funded with HOME or Ohio Housing Trust Fund dollars must continue to use the HOME rent and income limits, and NHTF units must continue to follow the NHTF rent and income limits as published by HUD. The HERA income and rent limits cannot be used by projects already financed with HUD programs, such as Section 8, or Rural Development 515 projects.



### Helpful Tips:

- HERA was signed into law on July 30, 2008. Not all counties have HERA limits.
- Must meet two factors to use HERA special limits:
  - ▶ Project placed in service prior to January 1, 2009, AND
  - ▶ Project is in county that HUD indicates HERA limits apply.
- HERA limits cannot be used by projects financed with HUD or RD programs.

#### Example #1: HERA Limits Can Be Used

- ▶ Beechwold View Townhomes is in a HERA special limit area and placed in service August 1, 2008.
- ▶ Since Beechwold View Townhomes placed in service before January 1, 2009, HERA limits CAN be used.

#### Example #2: When HERA Limits Are Not Used

- ▶ Clintonville Apartments is in a HERA special limits county and placed in service on April 1, 2018.
- ▶ Since Clintonville Apartments is not placed in service before January 1, 2009, HERA limits CANNOT be used.

## Held Harmless Limits

Another rule that came from HERA of 2008 is being able to use the highest limits available since a project's placed-in-service date. In other words, a project's income and/or rent limits will never decrease.

### HERA Harmless Example

- The 2018 60% 1-person income limit is \$35,000.
  - The 2019 60% 1-person income limit is \$34,000.
  - Salmoncrest Apartments, a two-building project located in Franklin County, had a decrease in income limit in 2019. Owners elect to treat the apartments as a multi-building project.
    - ▶ Building 1 is placed in service on March 1, 2019.
    - ▶ Building 2 is placed in service on December 20, 2019.
    - ▶ HUD published 2019 limits on April 15, 2019.
- ⇒ The project is considered placed in service on the date the first building was placed in service (i.e., March 1, 2019)

**Higher 2018 limits can be used for both buildings**

## Rural Limits

National non-metropolitan average limits are allowed for some rural counties that also have low-income limits. These limits only apply to projects in areas deemed to be “rural” by the USDA RD housing program and are not funded with tax-exempt bonds.

### **Questions to determine if national non-metropolitan limits apply:**

- Is the project NOT financed with tax-exempt bonds?
- Is the property in a rural area as defined by RD rules?
- Are applicable MTSP limits lower than the national non-metropolitan limits?

If the answer to all these questions is “Yes”, the property uses the national non-metropolitan limits.

## State Set-asides

State tax credit housing finance agencies can add their own restrictions on eligibility based on more restrictive income limits than imposed by the federal minimum set-aside. Violations of these limits do not constitute federal tax credit noncompliance and will not result in issuance of IRS Form 8823 or the loss of tax credits. However, owners’ violation of these limits may result in the ownership entities and/or property management agents being placed in “Not in Good Partnership” status with OHFA.

Section 7:

**Rent Limits**

## Rent Limits

IRC §42(g)(2)(B)(i) and the General Explanation of the Tax Reform Act of 1986

The maximum rent limit is the maximum allowable amount a tenant may pay for rent. Maximum rent is based on 30% of the imputed income limits. Rent limits are based on bedroom size and are 30% of the income limit calculated as if there are 1.5 people per bedroom.

*Not based on the actual number of household members, the computation of max rent imputes 1.5 persons per bedroom.*

The formula is ***Imputed Income Limit x 30% / 12 = Maximum Monthly Rent Limit***

Three-person limit is equivalent to the two-bedroom rent limit.

1.5 persons/bedroom x 2 = 3 persons

**38,850 x 30%/12= 971.25 (Always round down.)**

**\$971** = two-bedroom 50% rent limit

### Example #1: Calculate Rent Limit

#### Formula for Even Number of Bedrooms

- Rent for a two-bedroom unit calculated on income limits for a household of three (1.5 x 2 = 3 persons)
- Three-person income limit is \$29,300.
- $(\$29,300 \times 30\%)/12 = \$732.50$
- Rent is \$732 per month.

#### **Note: Gross rents are rounded down to the nearest dollar. Never round up!**

The gross rent applies only to payments made directly by the tenant, including a utility allowance plus any non-optional charges. Rental assistance payments made on behalf of a household, such as through Section 8 or any comparable federal rental assistance payments (tenant- or project-based), are not included in gross rent. For a household to be qualified, rent must be restricted. For a unit to be compliant with LIHTC regulations, the gross rent charged for a unit cannot exceed the LIHTC maximum rent limit.

### Example #2: Calculate Rent Limit

#### Formula for Odd Number of Bedrooms

- Rent limits for a three-bedroom unit is calculated on a household of 4.5 persons.
- Calculate the average of two income limits to get the income limit needed to calculate the rent limit.
- Four-person household at 50% AMGI: \$42,100
- Five-person household at 50% AMGI: \$45,500
- $(\$42,100 + \$45,500)/2 = \$43,800$  (4.5-person income limit)
- All other calculations are the same as those for an even number of bedrooms.
- $(\$43,800 \times 0.3)/12 = \$1,095$
- **Rent is \$1,095 per month.**

## Gross Rent Floors

Rev. Proc. 94-57

### Calculation

$$\text{Tenant Paid Rent} + \text{Utility Allowance} + \text{Non-optional Fees} = \text{GROSS RENT}$$

The gross rent “floor” establishes a minimum rent for a project based on the owners’ selection of the gross rent amount on the date of either:

- Credit allocation
- OR
- Placed-in-service date

Remember income limits become effective once the first building is placed in service, so the gross rent floor could actually be higher than the gross rents based on the income limits in place at the placed-in-service date. Because income limits can be held harmless, there is no benefit to owners choosing the rent floor based on the placed-in-service date.

***Page 140 of the 8823 Guide States: “A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis.”***

“A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees.” (Page 141, 8823 Guide)

Once a unit has exceeded the applicable rent limit, that unit is out of compliance for the entire tax year regardless of how quickly the rent is adjusted or if the tenants are reimbursed for the overcharge.

The 8823 Guide instructs on Page 142: “Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner’s tax year. A unit is back in compliance on the first day of the owner’s next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHC by rebating excess rent or fees to the affected tenants.”

If OHFA discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued with the correction date marked as the beginning of the next year if the rent has been properly lowered and is now below the applicable limit.

While refunding the overcharge does not prevent the 8823 from being issued, OHFA will still require the owner to reimburse the tenants and adjust the rent before a corrected 8823 will be issued for a unit.

If the owners/management agents discover rent has been overcharged, they must immediately act to correctly adjust the rent and reimburse the overcharges.



## Gross Rent Noncompliance

Once a unit goes over the maximum rent:

- The unit is no longer an LIHTC unit for the remainder of the tax year! No exceptions!

A unit will not be back in compliance until:

- The first day of the new tax year.
- Maximum rent has not been exceeded.
- Owners have refunded excess rent to tenant(s).

This could lead to:

- Recapture of credits
- The project not meeting the minimum set-aside (No credits can be claimed! BE CAREFUL!)

# Section 8:

## **Fees**

Under Treas. Reg. 1.42-11(a)(3), any fee that is non-optional and charged to tenants as a condition of occupancy must be included in the gross rent charges and outlined in leases. Chapter 11 from the IRS 8823 Guide provides additional information on gross rent and fees (Chapter 11, Category 11g). All mandatory allowable fees must be included in the gross rent.

## Items in Eligible Basis

Owners/management agents may not charge fees for use of amenities that were included in a project's eligible basis. Eligible basis includes development and construction costs of a project's units and common spaces. If an amenity is eligible, owners/management agents cannot charge fees for the use of residential facilities, such as fitness centers, swimming pools, parking areas, community rooms, storage, or recreational amenities. Owners/management agents should check with the owners' accountant(s) with any questions regarding which items are included in eligible basis.

## Non-optional Fees

Non-optional fees must be included when calculating gross rent. Per Treas. Reg. 1.42-11, "Charges to low-income tenant for services that are not optional must be included in gross rent."

Non-optional fees must be included when calculating gross rent.

Non-optional fees include any fee that is charged as a condition of occupancy, such as:

- Required renter's insurance
- Month-to-month fees
- Parking or storage fees

### Helpful Tips:

- Charges to tenants for services that are not optional should be included in gross rent.
- A service is considered optional when the service is not a condition of occupancy and there is a reasonable alternative.
- If optional, pet, laundry room, garage, and storage fees may be charged in addition to rent.
- Refundable fees for renting a LIHTC unit are not included in the rent calculation (i.e., security deposits and fees paid for prematurely terminating a lease).
- Fees for preparing a unit or 'make ready' for occupancy must not be charged to a tenant. These costs are the owners' responsibility unless the cost is due to tenant damage beyond normal wear and tear.
- Application fees may be charged to cover the actual cost. Fees are limited to recovery of the actual out-of-pocket costs by owners.

## Is It “Normal Wear and Tear” or Tenant Damage?

Owners/management agents must be careful charging residents or withholding too much from tenants’ security deposits for items that are “normal wear and tear.” OHFA considers the following guidance from HUD on what is and what is not allowed, as well as considering the length of tenant occupancy. Owners/management agents must conduct move-in, annual, and move-out inspections with the tenants present. Both the management agents and tenants must sign and date the inspection forms. The examples of tenant damages listed below apply only to damages done directly by the tenants of the units concerned — not to damage by other persons (unless guests of the unit tenants) or by tenants of other units.

Normal Wear & Tear	VS.	Tenant Damage
<p>The normal costs of turning apartments after tenants vacate may not be charged to either the former or the next tenants.</p> <p>Costs an owner/management agent incurs for the basic cleaning and repair of items necessary to make a unit ready for occupancy are part of the cost of doing business.</p>		<p>Tenant damages usually require more extensive repair and at greater costs than normal wear and tear and are often the results of tenants’ abuse or negligence that is not the result of normal living activities.</p>
Walls & Ceilings		
<ul style="list-style-type: none"> <li>• Small chips in plaster</li> <li>• Nail holes, pin holes, or cracks in walls</li> <li>• Fading, peeling, or cracked paint</li> <li>• Slightly torn or faded wallpaper</li> </ul>		<ul style="list-style-type: none"> <li>• Gaping holes in walls or plaster</li> <li>• Holes in the ceiling from removed fixtures</li> <li>• Drawing (e.g., with crayons), markings, or wallpaper that owners/management agents did not approve</li> <li>• Seriously damaged or ruined wallpaper</li> </ul>
Doors & Windows		
<ul style="list-style-type: none"> <li>• Doors sticking from humidity</li> <li>• Cracked windows from faulty foundation/building settlement</li> </ul>		<ul style="list-style-type: none"> <li>• Doors ripped off hinges <ul style="list-style-type: none"> <li>▶ Holes in doors</li> </ul> </li> <li>• Broken windows when caused by tenants or their guest(s)</li> </ul>
Floors		
<ul style="list-style-type: none"> <li>• Floors needing a coat of varnish</li> <li>• Carpet faded or worn thin from walking</li> <li>• Loose grouting and bathroom tiles</li> </ul>		<ul style="list-style-type: none"> <li>• Chipped or gouged wooden floors</li> <li>• Holes, stains, or burns in the carpet</li> <li>• Missing or cracked bathroom tiles</li> </ul>
Fixtures		
<ul style="list-style-type: none"> <li>• Worn or scratched enamel in old bathtubs, sinks, or toilets</li> <li>• Partially clogged sinks caused by aging pipes</li> <li>• Rusty shower rods</li> <li>• Dirty or faded lamps or window shades</li> </ul>		<ul style="list-style-type: none"> <li>• Chipped and broken enamel in bathtubs and sinks</li> <li>• Clogged or damaged toilets from improper use</li> <li>• Missing or bent shower rods</li> <li>• Missing or broken fixtures</li> </ul>

## Fees at LIHTC Properties

The following are only allowable if identified areas, items, or spaces are not part of eligible basis:

<b>Community Room Usage or Rental Fee</b>	Community facilities in eligible basis must be available without charge. Deposits may be charged if fully refundable and the room is left clean and undamaged. Owners/management agents must have clearly written policies.
<b>Laundry Areas in Common Space</b>	Laundry areas in eligible basis must be available without charge. Additionally, machines in the space may or may not be in eligible basis. Fees would be based on this separately.
<b>Coin-operated Laundry or Other Vending Machines</b>	Machines may have fees if they are not included in eligible basis. This also includes rentable machines that may not be part of a common area.
<b>Parking or Storage Fees</b>	Only acceptable for LIHTC projects if the parking lot or storage units are not in eligible basis and there is at least one alternative available, such as free parking.

The following table shows allowed fees. Some may have limitations on the maximum fee allowable:

<b>Application Fees</b>	Charging application fees is allowed. Fees charged must be for reimbursement for owners'/management agents' actual out-of-pocket costs when screening, such as the actual cost to complete a credit background check. These fees would not be included in the gross rent.
<b>Security Deposits</b>	Security deposits must be fully refundable if a unit is left reasonably clean and does not have damages beyond normal wear and tear.
<b>Pet Deposits and Monthly Pet Rent</b>	<p>Pet deposits must be fully refundable if a unit is left reasonably clean and the pet(s) did not cause damages beyond normal wear and tear.</p> <p>Monthly pet fees should be no more than \$30 total, not per pet.</p> <p><b>Owners/management agents cannot charge non-refundable deposits and monthly pet fees; it must be one or the other. Pet fees are not allowed for companion/service animals.</b></p>
<b>Late Rent Fees</b>	Fees may be charged if the rates are explicitly spelled out in writing either in the lease or a lease addendum. Late fees must be reasonable.
<b>Service Fees</b>	Fees, such as for lockouts and key losses, may be charged if the rates are explicitly spelled out in writing either in the lease or a lease addendum. Service fees must be reasonable.
<b>Maintenance Fees</b>	Maintenance completed by owners/management agents but is normally required to be completed by the households, such as changing unit light bulbs or removing furniture, may be charged if the rates are explicitly spelled out in writing either in the lease or a lease addendum. Maintenance fees must be reasonable.
<b>Unit Transfer Fees</b>	Transfer fees must not exceed the actual out-of-pocket costs to process a unit transfer and may not include expenses to make the original apartment ready to rent again.

<b>Lease Breakage Fees</b>	Having contingency lease breakage fees does not make a lease transient. This is true even if tenants break their leases less than six months after move-in if the initial term of the leases was at least six months. Fees must be worth no more than two months' rent and release tenants from any further liability. Fees are not allowed when a lease breakage is due to a VAWA request. If tenants terminate their leases pursuant to RC 5321.07(A)(3), lease termination/breakage fees shall not apply.
<b>Monthly or One-time Processing or Rebill Fee</b>	When tenants do not put utility services in their names at time of move-in, a fee is limited to \$10 per month per utility.

## Not Allowable Fees

The following table shows fees that are not allowed:

<b>Fee to Pay for Third-Party Verification</b>	If owners/management agents opt to require verifications that cost money (e.g., work number), owners/management agents must bear the costs. Importantly, this is not to be confused with fees for recouping actual costs for processing background checks at the time of applications, which must not exceed the actual out-of-pocket costs.
<b>Attorney Fees</b>	<a href="#">ORC 5321.13(C)</a> states that any lease provision regarding the payment of attorney fees is prohibited by the Ohio Revised Code. No agreement to pay the landlords' or tenants' attorney's fees shall be recognized in any rental agreements for residential premises or any other agreements between landlords and tenants unless specifically permitted by the statute in Chapter 5321. See RC 5321.05(C) and 5321.09(D).
<b>Month-to-month Tenancy Fees</b>	The IRS considers these fees not optional, so they must be included in gross rents even if tenants are given the option to sign for longer lease terms.
<b>Required Renter's Insurance</b>	Owners/management agents may suggest that tenants secure insurance but only if the insurance is optional and not a condition of occupancy. Mandatory renter's insurance must be included in the gross rent.
<b>Assistance Animal Deposits</b>	Companion/Service animals are not considered "pets" so they are not legally subject to pet deposits. However, actual costs to repair damages beyond normal wear and tear caused by such animals may be charged.
<b>Property Liability Coverage Fees</b>	Tenants cannot be charged for property-specific liability insurance. Owners / management agents are prohibited from charging this fee. Property Liability Coverage Fees are designed to protect tenants against covered financial claims arising from damages they may cause to the owners'/management agents' property.

<b>Ad Valorem Taxes/Fees</b>	Owners/management agents of multifamily projects cannot charge fees imposed on them by city/state/local entities for the number of occupants in each unit. Examples include charges for zoning violations, noise ordinance/litter charges, and nuisance statute. In the case of projects involving single-family homes intended for lease purchase for which the fee is imposed as a result of such resident's action/inaction, the owner/management agent may charge the resident the actual cost of the fee.
<b>Transaction Fees or Charges Related to Online Payment Systems</b>	Fees and charges, such as for walk-in payment systems (WIPS) (e.g., RentPayment.com), are not permitted.
<b>After-hours Emergency Maintenance Service Fees</b>	Owners/management agents must have a policy in place to determine what "emergency calls" are and how to respond. Policies must specifically outline what events are labeled "emergencies" and what charges, if any, will be assessed to unit tenants if maintenance repairs are not deemed emergencies.
<b>Smoke Detector Battery Fees</b>	Smoke detector batteries are the responsibility of owners/management agents as a cost of doing business.
<b>Storage or Administrative Fees for Mail and/or Packages</b>	Owners/management agents cannot charge tenants when they do not pick up packages/mail delivered to management offices.
<b>Washer/Dryer Hook-up Fees</b>	Installation fees are not permitted. Withholding water or other hook-ups is also not permitted when the applicants/tenants do not rent the owners'/management agents' washers/dryers.
<b>Routine/Preventable Exterminating Fees</b>	Owners/management agents may charge tenants a fee due to tenants' negligence (e.g., failure to allow extermination companies into units). However, these fees must be clearly written into the lease or a lease addendum and signed by the tenants.



Section 9:

**Compliance  
Regulations**



This section highlights some of the statutory and regulatory provisions directly affecting compliance. However, this is not meant as an exhaustive listing of compliance regulations. Reference **Appendix D** for further information.

Section 10:

**Determining  
Household Size**



Determining household size is critical for determining income and rent limits for a unit. There are no current LIHTC requirements governing minimum or maximum household size for a particular unit. However, owners/management agents must comply with all applicable local laws, regulations, and/or financing requirements (e.g., if HUD or Rural Development, use HUD or RD regulations). OHFA advises all owners/management agents to be consistent when accepting or rejecting applications. Occupancy guidelines/requirements must be incorporated into a project's written Tenant Selection Plan.

Owners/management agents must count all persons living in or intending to live in a unit during a certification year and considers the unit their primary residence. This includes anyone expected to live in a unit in the next 12 months.

Note: The IRS has a continuous occupancy requirement. This requirement indicates that once a resident enters into a lease for a tax credit unit, such unit may be their only residence. If they were to maintain a second residence, then they would not be in "continuous" occupancy of the low-income unit, and the unit would not be considered low-income. Also, in order for a unit to be considered a non-transient unit, a tenant's lease must be six months or more.

Under HOTMA, one of the biggest changes concerns foster adults and children as they are no longer counted for income limit purposes.

## **"Household" vs. "Family"**

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

## Treatment of Foster Adults and Children

Under HOTMA, foster adults or children are used for occupancy bedroom size standards but are no longer counted for income limit purposes. Their incomes and any assets are not counted. They are now treated like a live-in aide.

### HOTMA Definitions - Foster Child and Adult

**Foster child:** A member of a household who meets the definition of a foster child under state law and, in general, is placed with a family by an authorized placement agency (e.g., public child welfare agency)

**Foster adult:** A member of a household who is 18 years of age or older, meets the definition of a foster adult under state law, is unable to live independently due to a physical and/or mental condition, and is placed with a family by an authorized placement agency

**Reminder:** When a member of a household is temporarily placed in foster care, that member is still counted as a household member for the unit from which he/she was removed. This is why the treatment of foster children was changed under HOTMA to avoid double-counting foster children in their new and old units.

## Unborn Children

It is only acceptable to verify the existence of unborn children through a self-affidavit from the pregnant woman. No further verification is allowable. If adding an unborn child is necessary for income-limit eligibility and the child does not come to term, the household's LIHTC qualification will not be affected as long as a self-certification establishing the pregnancy was in the file at the time of move-in. Unborn children are also counted as non-students for purposes of the student rules.

## Permanently Confined Household Members

4350.3 3-6 E 4 h

When a household member is permanently confined to a hospital or nursing home, the household determines whether to count that member as part of the household. If the absent member is counted as part of the household, his/her income is included in the household income.



## Live-in Aides

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

### Definition of a Live-in Aide

A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and wellbeing of the person(s)
- Is not responsible for the financial support of the person(s) and will not contribute materially to a household
- Would not be living in a unit except to provide necessary supportive services to a person within a unit

**A live-in attendant may never be a dependent of a household. The live-in aide can be a family member/relative so long as they meet the requirements as outlined above.**

For instance, adult children often return home to care for an elderly parent. Court cases have established that even a spouse may qualify if it can be proved that the live-in aide spouse would truly not have been in the unit except to provide assistance. It is important in these cases that the facts be examined, that the eligibility of a live-in aide is carefully documented, and that legal counsel is sought, if necessary.

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

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

## Household Members in the Military

*4350.3 5-6 C, HB-2-3560 6.9 A 3*

Household members in the military who have a spouse and/or child(ren) in a unit are included. HUD encourages some leniency. A military member and his/her children might NOT be considered household members when grandparents are temporarily caring for their grandchildren while a parent in the military is deployed on active duty even though the military member's dependents are in the unit.

Owners/management agents might not consider temporary guardians as household members (or count the temporary guardian's incomes) when those guardians are in a unit solely to care for the children of a household member that is on active duty.

## Household Size Inclusions

All persons living or intending to live in a unit during a certification year, including:

- Children who:
  - ▶ Live in a unit 50% of the time or more
  - ▶ Are away at school
  - ▶ Are being adopted
  - ▶ Are unborn
- A future spouse or roommate
- Temporarily absent persons:
  - ▶ Work-related
  - ▶ Hospitalization
- Military household members on active duty if a tenant is:
  - ▶ Head of household, co-head, or spouse of the head/co-head **or**
  - ▶ A dependent or spouse in a unit

## Household Size May Include:

- Other types of military household members
- Persons permanently confined to a hospital or nursing home:
  - ▶ Each household decides if such persons are to be included.
  - ▶ If a person is included, then any income received by that absent member must be included when determining household size.
  - ▶ This person cannot be listed as head, co-head, or a spouse of the head/co-head

## Household Members Do NOT Include:

- Guests
- Live-in aides/attendants for elderly or disabled household members
- Foster adults or children



Section 11:

**Qualifying  
Households for  
LIHTC Units**



## IRS Notice 88-80

Household income for tax credit projects is determined in a manner consistent with Section 8 housing rules. The IRS [instructs](#) that the legal authority for income and asset questions is from the HUD Handbook 4350.3. When this document is changed by HUD, the tax credit income and asset rules change with it.

Annual income does not include amounts that HUD is required to exclude by federal statute when determining eligibility or benefits under assistance programs, including those to which the exclusions specified in HUD regulations apply. HUD published [this notice](#) on January 31, 2024 in the Federal Register to identify the benefits that qualify for this exclusion.

**Reference:** *24 CFR 5.609(b)(22). Refer to **Appendix G** of this manual for further information.*

## IRS Form 8823

All households that qualify as a tax credit household must have their eligibility extensively documented. The following components are part of a complete tenant file. The IRS states "a tenant income certification (TIC) and supporting documentation are not sufficient unless, at a minimum, the following documents are included:"

1. **OHFA Sworn Income and Asset Statement (SIAS):** For compliance purposes, this is a signed household affidavit that gathers income(s), asset(s), student status, and other relevant information.
2. **Verification of income and assets:** Most factors disclosed on the application will be verified with paperwork provided or prepared by knowledgeable third parties. According to the IRS, "all sources of income and assets must be verified to establish move-in eligibility."
3. **Student Status:** This must be verified using OHFA's required student status form.
4. **OHFA Tenant Income Certification (TIC):** Is completed by the management agent, not the household. The TIC summarizes the data gathered during a household's application process and compares it to applicable student status, income, and rent limits. Documents must be signed by all the adult members of a household prior to move-in and at the time of the annual recertification and must state the anticipated annual gross income of the household.

## OHFA Tenant Income Certification (TIC)

The TIC is the verified summary of the information that has been gathered for the household. This is a required LIHTC form and must be completed at move-in (initial certification) and annual recertification, if necessary.

Management agents may also create TICs for transferring units in the same project and if they have composition updates to their units (i.e., a household member was added or removed from a unit).

### The TIC outlines:

- Information on a unit, such as number of bedrooms and square footage
- Date of move-in for the current certification
- Type of certification
- Members in a household and how they are related to the head of household
- Each household member's student status
- Household income separated by household member and source
- Rent that will be charged to a resident
- Utility allowance (if applicable)
- Demographic information

### Key Points:

- Tenant paid rent is the amount that a tenant pays out-of-pocket each month.
- The gross rent (i.e., the amount a tenant pays plus the utility allowance) cannot go over the maximum amount of rent allowed for that unit/set-aside.
- The TIC is signed by all household members who are age 18 or older, not just the head, co-head, or spouse!
- The TIC is to be signed by a management agent at the same time as the household members sign it.

## TIC Guide

Income sources should be listed separately by individual and source. In addition, use annual amounts. Assets disposed of at less than fair market value must be counted for two years from the date of disposal. A project will have a minimum set-aside income restriction of either 40/60, 20/50, or average income. A project may also have set-asides in addition to the minimum set-asides. This information may be accessed in the restrictive covenant and financing documents. If a household is above 140% of the current AMGI, the next available unit rule (reference Section 17 of this manual) goes into effect. The TIC will automatically calculate 140% of the current AMGI at recertification time. This percentage is calculated based on the minimum set-asides for a project. Owners/ management agents may also have additional set-asides from other funding sources such as HOME or NHTF.

The term “tenant-paid rent” refers to the amount a tenant pays out-of-pocket toward rent. A project may also receive a subsidy on behalf of tenants to assist them with their monthly housing costs. This subsidy is not included in the tenant-paid rent amount.

Here are some key points to remember regarding rents for low-income units and housing tax credit lease requirements:

1. Tax credit rent limits apply to gross rent (i.e., tenant-paid rent plus an allowance for utilities).
2. Tax credit rent restrictions act as rent ceilings. Actual rents charged may be less depending on market conditions and requirements of other programs

## Steps to Qualifying a Household

1	An applicant fills out a self-disclosure form of income, assets (SIAS), OHFA's student status certification, an application, and any other required forms for the project.
2	Supporting documentation is gathered and verified for income and assets.
3	Income and assets are calculated to determine a household's eligibility for affordable housing.
4	A TIC is signed by the resident(s) and management agent.

All adults age 18 and over are required to fill out an application. OHFA's [Applicant/Tenant Sworn Income and Asset Statement \(PC-E01\)](#) and [Student Certification \(PC-E42\)](#) forms, which may be amended from time to time, are also required. All questions must be answered completely leaving no blanks and without the use of correction fluid. Both forms must be completed, signed, and dated by both the household member and the management agent in ink.

Note: Signatures in pencil are not allowable.

### Application

Owners/management agents may provide their own application.

The following minimum requirements must be included in the application:

- The names of the individuals living in the unit
- The ages and the relationships of each household member
- Changes to the household anticipated in the next 12 months

There must be a space for each household member over the age of 18 to sign the application. This information is necessary in order to:

- Determine whose income must be counted and what rules may apply
- Ensure that the correct income limit for the household size is used

Applications may also be used to collect information on the following topics:

- Household qualifications for a special needs category, such as:
  - ▶ Elderly
  - ▶ Extremely low-income
  - ▶ Persons with certain disabilities
  - ▶ Persons who need permanent supportive housing
- Income sources
- Assets
- References
- Previous rental/housing history



## Sworn Income and Asset Statement (SIAS)

Each applicant is required to fill out OHFA's [Applicant/Tenant Sworn Income and Asset Statement \(PC-E01\)](#), which may be amended from time to time. This is a required form for self-certification for new move-ins and any LIHTC project required to conduct annual recertifications. The SIAS is used for the applicant(s)/tenant(s) to disclose all income and assets. The SIAS is the management agent's guide to know which income and assets to verify.

During the verification process, management agents may discover some income or assets that were not disclosed. It is not required for the applicant(s)/tenant(s) to correct the SIAS with information discovered during the verification process. However, management agents will verify or clarify any new discovery of income and assets on the TIC.

Note: Some owners/management agents may require the SIAS to be corrected. No correction fluid should be used on the SIAS. If a tenant needs to make changes, cross out the incorrect information, add the correct information, and initial and date the correction. Make sure the SIAS is signed and dated by both the tenant and management agent.

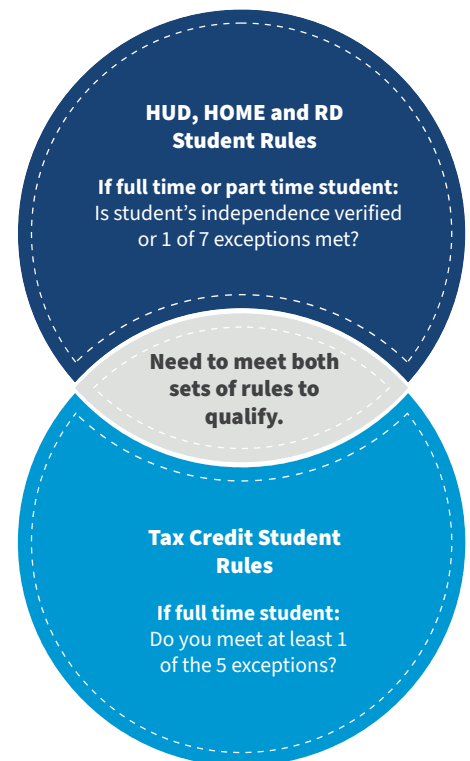
## Student Status Certification

A full-time student is defined as any individual who is a full-time student at an educational institution (e.g., elementary, high school, college, trade school, university) at least five months in a calendar year (Section 151(c)(4) of the IRC Code). All or part of a month is considered a full month.

The LIHTC program prohibits renting to households made up entirely of full-time students unless at least one member of the household meets one or more of the following five exceptions:

1. All adults are married and ENTITLED to file a joint tax return – Same-sex couples qualify if legally married under any state's law (IRS Revenue Ruling 2013-17).
2. A single parent household with at least one dependent child – The parent is not a dependent of another individual, and the child is only a dependent of the tenant or another nonresident parent.
3. The household contains a member enrolled in a government-sponsored job training program, such as programs funded by the Workforce Investment Act.
4. The household contains a member who formerly received foster care assistance.
5. The household contains a member who is receiving assistance under Title IV of the Social Security Act (e.g., Temporary Assistance for Needy Families or TANF).

Households must provide proof that one of the exceptions is met if they are claiming to have full-time student status. Documentation on how a tenant meets an exception is required in the tenant's file.



## Student Eligibility

(8823 Guide 17 and Exhibit 17-1)

The LIHTC student rule must be maintained at all times throughout the compliance period for a project.

Student eligibility is evaluated at:

- Move-in
- Recertification (even for 100% LIHTC properties when every year this form must be completed)
- When a household reports a change in household composition
- When a household reports a change in student status

Owners must use OHFA's [Student Certification \(PC-E42\)](#) form, which may be amended from time to time, to verify household student status in Ohio. All adults 18 years or older are required to complete the form.

### Example: Student Status

**Brandy is a full-time student and single mom at The Ohio State University. She will be graduating in the class of 2024 on May 13. She finished classes on May 2. Brandy is applying to live at the LIHTC project in Cincinnati after graduation.**

- Although Brandy is graduating in May and only attended classes for two days in the month of May, she is still considered a full-time student and must meet one of the exceptions to qualify for LIHTC housing.
- Since Brandy is a single mother and her daughter lives with her at least 50% of the time AND Brandy claims her daughter on her taxes, she meets an exception.

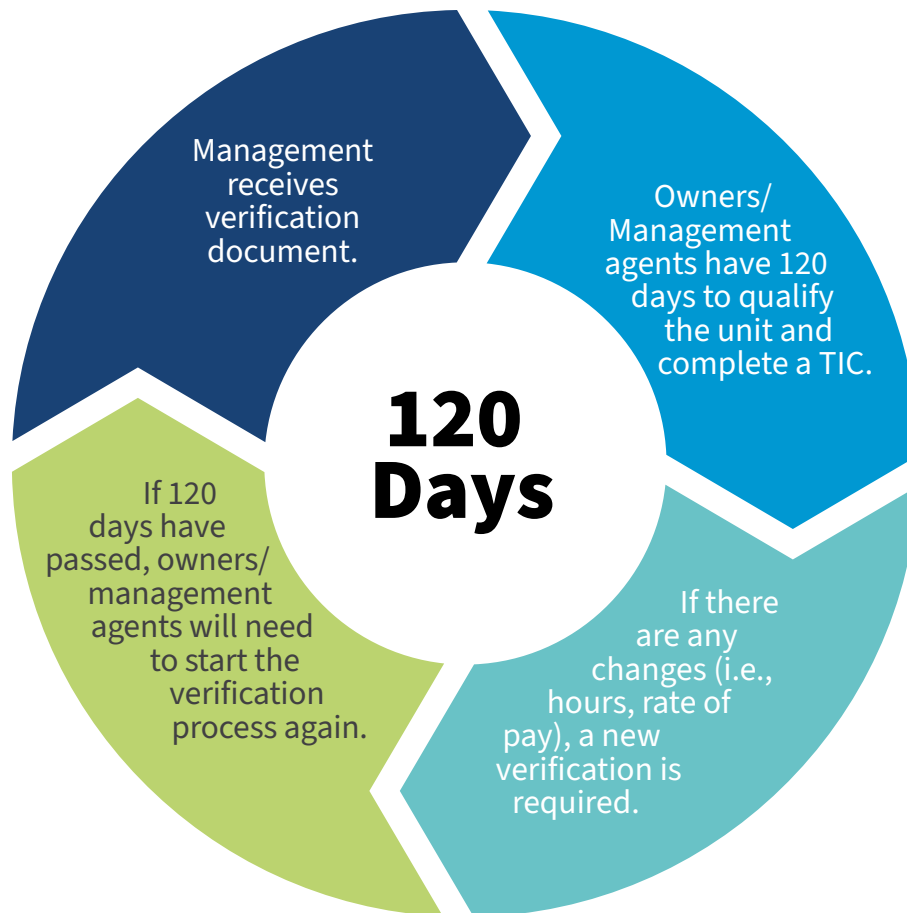
## Comparing Student Rules

Owners/management agents must be mindful LIHTC student rules may differ from HUD/RD/HOME student rules. For example, the LIHTC rule focuses on households made up of full-time students of any age whereas HUD's student rule applies to individuals who are either part-time or full-time students through age 23. When comparing the HUD and LIHTC student rules, it is evident each set of rules is too dissimilar so it is impossible to pick just "the most restrictive" rules. If a tenant resides in a LIHTC unit and also has funding from HOME, RD, or Section 8, he/she needs to qualify under both sets of student rules.

## Verification Timeline

All verifications must be dated within 120 days of the effective date of the initial household certification or annual recertification.

- The verification timeline is critical. Management agents must ensure all verifications are dated. Management agents are permitted to date stamp verifications to verify the dates the documents were received. If there is an actual date from the source on the verification, the date stamp does not override the original date on the verification form.





## Recertifications

As part of the Housing Assistance Tax Act of 2008, Congress amended Internal Revenue Code Section 142(d)(3)(A) regarding annual income certifications. Projects financed with LIHTC or multifamily bonds issued by OHFA may discontinue recertifying the incomes of existing residents provided all of the units in a project are restricted for low-income occupancy (i.e., there are no market units in the project.). However, student status must continue to be verified annually.

The amended Internal Revenue Code Section 142(d)(3)(A) does not modify the owners/management agents' obligation to certify a household's income at move-in. Owners/management agents should review their policies and procedures to ensure initial TICs are accurate and properly documented.

OHFA reserves the right to require recertifications when a pattern of noncompliance is identified with initial TICs or a project is out of compliance as a result of leasing a unit to a household that is not income qualified.

### Helpful Tip:

OHFA LIHTC and multifamily bond projects financed by HOME, National Housing Trust Fund (NHTF), or Ohio Housing Trust Fund (OHTF) must continue to recertify the income of residents in assisted units per HUD guidelines.

## Over Income at Recertification

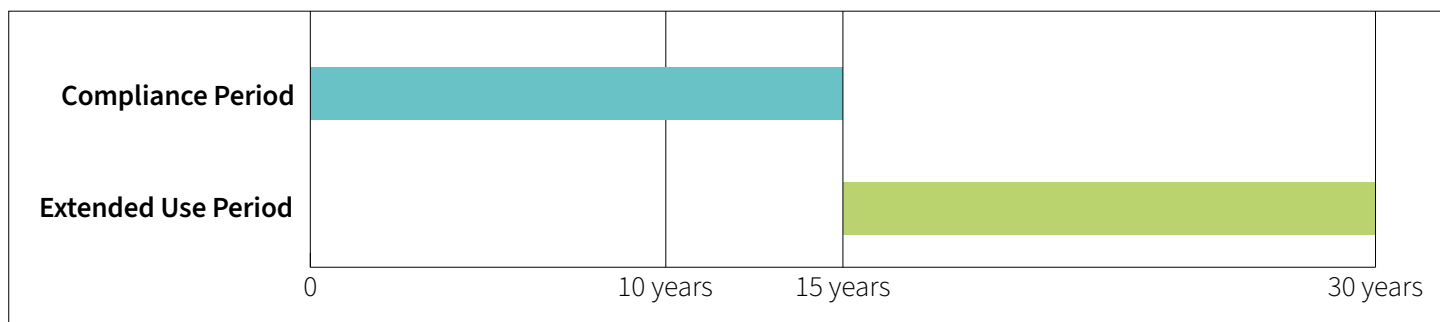
At recertification, a tenant is considered over income only if their income is over 140% of the income limit. In this case, a unit will still be considered a LIHTC unit until the next available unit rule is fulfilled. Reference Section 16 of this manual for further information.

## Student Recertifications

Owners/management agents must continue to comply with the student rule throughout the compliance period. OHFA requires a Student Status Certification form be completed annually within 120 days of the anniversary date of the initial certification.

### Note:

- Student status certifications are only recommended during the extended use period.
- Student status certifications are highly recommended if owners/management agents plan on resyndicating the project.



## Recertification Process

In order to recertify a household, the recertification needs to be signed by the anniversary of the initial certification date. Owners/management agents are allowed to have tenants sign the recertification TIC 120 days before the recertification is due BUT the effective date on the TIC will still be the anniversary date of the last certification.

- ⇒ Owners/management agents who want to align OHFA-funded project certification dates with other affordable housing funding (i.e., Section 8) can take advantage of the 120-day window before a certificate's due date to "marry" the certifications. It may take longer than one year to marry these certification dates since owners/management agents are not permitted to certify more than 120 days before the certification date. Management agents are permitted to certify twice in one calendar in order to align certifications quickly with other funding programs.
- ⇒ Any recertifications signed after the established certification date will be considered late and out of compliance. If this occurs, an [OHFA Clarification Record \(PC-E20\)](#) must be placed in the tenant file fully explaining why the certification was completed late.

### Example:

#### **Amy moved into an LIHTC unit on December 12, 2023.**

- Her recertification needs to be completed by December 12, 2024, and the owners can complete the recertification within 120 days of the December 12, 2024, date.
- Amy's recertification was completed and signed October 15, 2024, but the effective date of the recertification does not change (It is still December 12, 2023.).

Following is a summary of the recertification rules and requirements for the LIHTC program:

LIHTC Recertification Document Requirements	
100 % LIHTC	Less Than 100% LIHTC (Market Rate Units)
<ul style="list-style-type: none"><li>• Student Status Certification(s)</li><li>• Any clarification records</li><li>• Annual unit inspection</li><li>• LIHTC Addendum (if a new lease has been signed)</li></ul>	<ul style="list-style-type: none"><li>• SIAS</li><li>• Student Status Certification(s)</li><li>• Income verifications</li><li>• Asset verifications</li><li>• Any clarification records</li><li>• Annual unit inspection(s)</li><li>• TIC</li></ul>

## Projects with Market Rate Units

For those projects with market rate units, the following steps should be followed for the recertification process:

- An applicant fills out a self-disclosure of income, assets (Sworn Income and Asset Statement), and Student Status Certification form.
- Supporting documentation is gathered.
- Income is calculated based on the information gathered.
- A TIC is completed and signed.

Remember, verifications are valid for 120 days from the date they are received by management agents for the LIHTC program.

- In order to capitalize on this window, the process should be started four months before certifications are due. For example, if a recertification is due in April, the paperwork should be started in December.

OHFA will allow the recertified TIC to be signed up to 120 days before the original certification date.



Any certifications that are signed after the established certification date will be considered late and out of compliance. If this occurs, management agents must put an OHFA clarification record in the file explaining why the certification was completed late.



## “Marrying” Certification Dates

Marrying certification dates is a common practice which allows management agents to align different funding certification dates. Projects may have federal, state, and even city funding with different program requirements. Marrying the certification dates allows management agents to recertify tenants around the same time each year, instead of completing recertifications multiple times a year for different programs. OHFA allows owners/management agents to marry their project certification dates with other programs as long as:

- Management agents only change the recertification dates. The original move-in date needs to stay the same to ensure verifications are still valid for all OHFA-funded programs.
- Recertifications must be completed early to marry the dates.
- An OHFA Clarification Record is required to be placed in the tenant file fully explaining why a certification date is changing.

### Example #1: Unit A

LIHTC move-in date:

**November 12, 2023**

Section 8 annual certification date:

**February 14, 2024**

The management agent decides to certify early on February 14, 2024, for LIHTC to marry the certification date to the Section 8 certification date.

**Allowed!**

### Example #2: Unit B

LIHTC move-in date:

**March 30, 2022**

Section 8 annual certification date:

**July 30, 2023**

The management agent completes the initial certification/move-in on March 30, 2022, but recertifies the LIHTC unit on July 30, 2023.

**Not allowed!**

*Management agents must recertify tenants by July 30, 2022, in order to marry the certification dates. If this did not occur, management agents will have to wait a year by recertifying the LIHTC on March 30, 2023, and again on July 30, 2023, to marry the date to the Section 8 certification date.*

## Household Composition Changes

Composition changes include a birth, a death, a new tenant moving into a household, or an existing tenant vacating a household. If a new adult household member is added to a qualified household, the following steps must be taken.

Key points owners/management agents need to remember when adding new household members to a 100% LIHTC project:

- ⇒ A new tenant's income must be verified and added to the household's income that was verified on the existing household's original income certification.

Caution: Student status must be verified.

- ⇒ Create a composition update TIC in OHFA's database system with the added member's income.

Remember, since owners/management agents will always rent the Next Available Unit Rule (NAUR) to an income-qualified household, there is no violation of the NAUR even if a new tenant's income causes the household to go over the 140% AMI limit. And importantly, at 100% LIHTC projects (i.e., no market rate units) there is no violation of the NAUR.

Key points owners/management agents need to remember when adding new household members to a LIHTC mixed-income project (i.e., has market rate units):

- ⇒ Verify student status.
- ⇒ Create a composition update TIC adding the new member's income to the household's income that was verified during the most recent annual certification.

The NAUR must be tested. Since recertifications are required for mixed-income projects, the NAUR must be followed if the new member's income puts the household income over the 140% AMI limit, which

means the next unit of comparable or smaller unit size must be rented to a qualified low-income household.

OHFA recommends household members not be added shortly after occupancy to ensure a household is not manipulating the initial qualification.

Of course, there are unexpected situations that may result in changes in household size shortly after move-in. The best rule of thumb is to act with due diligence and make reasonable judgments in a case when there is an increase in household size right after qualifying the household for its initial move-in.

### Qualifying Units When All Original Members Vacate a Unit

The 8823 Guide includes a section on "Original Household No Longer Occupies Unit". The following excerpt from page 52 is of particular importance:

"A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of a unit, the remaining added tenants must be certified as new income-qualified households unless" the following exceptions are met:

- ⇒ For mixed-use projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the times they moved into the unit.
- ⇒ For 100% LIHTC projects, the remaining added tenants were independently income qualified at the time they moved into the unit.

Even if all the original household members vacate a unit, tenants who moved in at later dates may be eligible to remain in the unit without being treated as new move-ins if they meet one of the above two exceptions.

### Helpful Tip:

Owners/management agents should have policies as to how soon new members may be added and when household additions may not be allowed.

## Methods of Verification - New Hierarchy

Owners/management agents must follow HUD's verification hierarchy (refer to [HUD's Implementation Guidance: Sections 102 and 104 of HOTMA](#)), which lists verification documentation from most to least acceptable. Owners/management agents must demonstrate efforts to obtain third-party verifications prior to accepting self-certifications, except in instances where self-certifications are explicitly allowed (i.e., when net assets do not exceed \$51,600 as adjusted annually for inflation).

### Verification Hierarchy\*

Level	Verification Technique	Ranking/Order of Acceptability
5	Upfront Income Verification (UIV) using non-Enterprise Verification Income System (EIV) (e.g., The Work Number, web-based state benefit systems, etc.)	Highest
4	Written third-party verification from the source provided by a tenant (e.g., paystubs, bank statements, benefit letters, etc.)	High
3	Written third-party verification form	Medium - Use if applicant or tenant is unable to provide level 4 documentation.
2	Verbal third-party verification	Medium
1	Self-certification (not third-party)	Low - Use as a last resort if unable to obtain any third-party verification or when specifically permitted, such as when net assets do not exceed \$51,600 when adjusted for inflation.

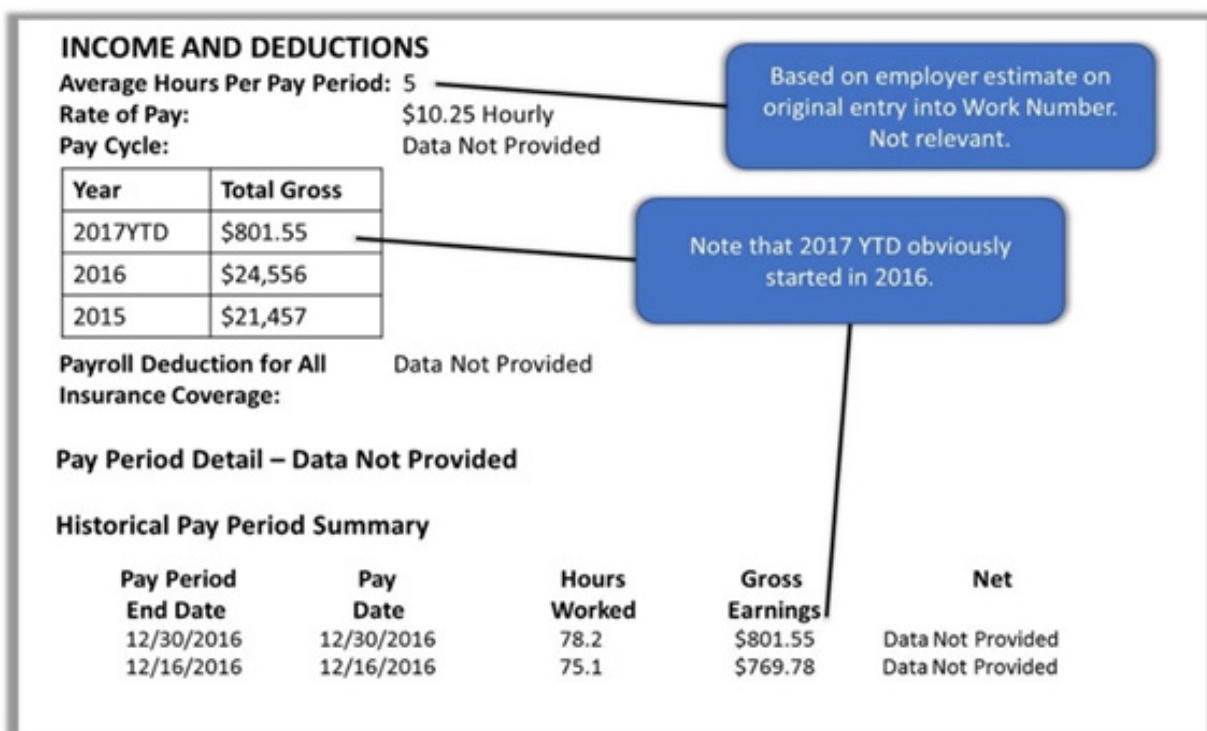
*\*Adapted from Table J2: Verification Hierarchy from HUD Notice H 2023-10/PIH 2023-7*

## Upfront Income Verification Using Non-EIV (Level 5 - Highest Order of Acceptability)

If owners/management agents use a work number, two important points to keep in mind are:

1. There is an “average hours per pay period” that never seems to track with the other data provided. Contacts at The Work Number explain that the number is simply entered when it is initially set up for a profile of a covered employee. The number does not generally change unless there is a job change and is not a live-calculated number.
2. If owners/management agents use year-to-date (YTD) calculations, it is important to observe that YTD often does not start with the first of a year.

The following illustrates this.



Conclusion: The Average Hours number is misleading while looking at the pay history yields better information and accurate income determination. When using the year-to-date information, be sure to determine an accurate number of pay periods using the true YTD. OHFA will not allow YTD calculations as the sole eligibility determinant of income, because they may not be indicative of anticipated income for the next 12 months. Technically, annualizing YTD earnings does not calculate anticipated earnings because the information is historical. Paystubs are also historical but usually more current (i.e., don't go as far back as YTD). If owners or management agents mandate YTD calculations, OHFA requires two calculations be conducted, and the higher amount must be used.



## Third-party Tenant-provided Documents (Level 4 - High Order of Acceptability)

An original or authentic document generated by a third-party source dated within 120 days from the date of receipt by the owner/management agent may be used to verify a tenant's income. Such documentation may be possessed by a tenant (or applicant) and is commonly referred to as "tenant-provided documents." These documents are considered third-party verification(s) because they originated from a third-party source(s).

Examples of tenant-provided documentation that may be used includes but is not limited to: paystubs, payroll summary reports, employer notices/letters of hire/termination, Social Security benefits letters, bank statements, child support payment stubs, and welfare benefit letters and/or printouts.

When using tenant-provided documents, owners/management agents must consider the following:

- Is a document current?
- Is a document complete?
- Is a document an unaltered original copy?

The following requirements apply to tenant-provided documents:

- ⇒ **Using Paystubs for Employment Verification:** If utilizing paystubs for employment verification, owners/management agents must obtain the two most recent consecutive paystubs from the tenant/applicant. However, if a unit is also HOME/NHTF/OHTF assisted, then the paystubs obtained must also cover at least a full two months of consecutive payments.
- ⇒ **Using Bank Statements:** If utilizing bank statements, owners/management agents must obtain the most recent statement to verify current balances (If net assets exceed \$50,000 when adjusted for inflation, third-party asset verification is required.).

Owners/Management agents must be able to reasonably project anticipated income for the next 12 months from the tenant-provided documents.

## Third-party Written Verification (Level 3 - Medium Order of Acceptability—use if applicant/tenant is unable to provide Level 4 documentation)

Owners/management agents must use OHFA's required forms for third-party verifications. All verifications should be received via fax, mail, or email. The verifications should not be hand delivered by an applicant. A tenant must sign a release form.

### Helpful Tips:

- Copies of tax returns with corresponding official tax forms and schedules attached, including third-party receipt of the transmission for income tax return filed (e.g., a tax preparer's transmittal receipt, a summary of transmittal from an online source, etc.), are acceptable forms of third-party written verification.
- The value of any tax return or refundable tax credit that a household received in the last 12 months is subtracted from total net assets.

### **Helpful Tips:**

- Use a date stamp and retain envelopes if a verification is received by mail.
- Use OHFA's Clarification Record if a verification is incomplete.
- Owners/management agents must send and receive verification forms directly to and from a third-party, not through an applicant/tenant.
- A Social Security benefit verification letter is considered a third-party verification and can be used for an entire year. However, this does not apply to Supplemental Security Income (SSI) because these benefits can fluctuate.

## **Third-party Oral Verification (Level 2 - Medium Order of Acceptability)**

When written verification is impossible, direct contact with a source to obtain oral verification is acceptable to OHFA only as a last resort. A conversation must be documented in the tenant file with an OHFA Clarification Record to include all information that would have been contained in a written verification. The information must include the name, title, and phone number of the third-party contact; the name of the management agent accepting the information; and the date the information was obtained.

If owners/management agents receive unclear or incomplete third-party verifications, a documented verbal clarification may be acceptable if it includes the name and title of the third-party contact, the name and signature of the management agent accepting the information, and the date the information was obtained. An OHFA Clarification Record must be placed in the tenant file.

## **Self-certification (Level 1 - Low Order of Acceptability)**

As a last resort, owners/management agents may accept a tenant's signed affidavit if third-party verification cannot be obtained. Owners/management agents should refrain from using self-certifications, except where specifically allowed, such as when net family assets do not exceed \$51,600 as adjusted annually for inflation.

If a self-certification must be used, owners/management agents are required to document it in the tenant file with an OHFA Clarification Record fully explaining the reason third-party or tenant- provided verification could not be obtained and outline all efforts made to obtain such verification.

Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in a tenant file:

1. A copy of the original date-stamped request sent to the third-party; and/or
2. Written notes or documentation indicating follow-up efforts to reach a third-party to obtain verification; and/or
3. A written note indicating a request has been outstanding without a response from a third-party (Use OHFA's Clarification Record.)

Owners/management agents may accept self-certifications if there is a fee associated with receiving a third-party verification. If owners choose to pay a fee to obtain a third-party verification, the expense cannot be passed on to a tenant or applicant.

# Verification of Other Program Determinations

24 CFR §(c)(3)(ii) [2024]

## Safe Harbor Income Determination for “Means-tested” Assistance



In lieu of conducting their own income calculations, owners/management agents may rely on an income determination completed for another Safe Harbor “means-tested” form of federal public assistance within the previous 12-month period. Approved Safe Harbor “means- tested” programs are as follows:

- TANF
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP) (e.g., food stamps)
- Earned Income Tax Credit (EITC)
- Low-Income Housing Tax Credit (LIHTC)
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Supplemental Security Income (SSI)
- Other programs determined by HUD to have comparable reliability as announced through the Federal Register

**Note:** Units funded with RD cannot use “means-tested” income.

Owners/management agents must obtain a third-party verification from the applicable program administrator which indicates household size, includes all household members, and provides a household’s annual income. This may be in the form of a benefit award letter from a relevant program/agency.

Such verification is valid if any of the following dates falls into the 12-month period prior to receipt of a verification by owners/management agents:

- Income determination effective date
- Program administrator’s signature and date
- Family member’s signature and date
- Report effective date
- Other report-specific dates that verify an income determination date

If a verification is not available or a household disputes a verification, then owners/management agents must conduct a traditional income verification and calculation.

If owners/management agents use means-tested verification, then OHFA’s [Safe Harbor Income Verification](#) form, which may be amended from time to time, must be completed and placed in the tenant file.

## PHA Verification

If PHAs or owners/management agents intend to use the annual income determination made by an administrator for allowable forms of federal “means-tested” public assistance, the PHAs or owners/management agents must obtain the annual income determination using an appropriate third-party verification. The verification must indicate a tenant’s family size and composition and state the amount of a family’s annual income. The verification must also meet all HUD requirements related to the length of time that is permitted before a third-party verification is considered out of date and no longer an eligible source of income verification. If an appropriate third-party verification is unavailable or if a family disputes a determination made for purposes of the other form of federal means-tested public assistance, PHAs or owners must calculate annual income per HUD’s usual anticipated income rules.

In a case of a tenant receiving housing assistance payments under the Section 8 program, a third-party income verification requirement is satisfied if a PHA provides a statement to the owner/management agent certifying a household’s income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code.

### Form 50058

OHFA’s Safe Harbor Income Verification form should be used for the PHA verification. However, the HUD Form 50058 from a Public Housing Authority is also acceptable. Either form must be completed in its entirety by a qualified representative of a PHA and list the members of a household and its gross income before any deductions are taken for which the household may be eligible under the Section 8 program. Either form will not be considered valid verification if it is dated more than 120 days prior to a household’s move-in date or recertification effective date.

Once owners/management agents receive HUD Form 50058 or OHFA’s Safe Harbor Income Verification form, no other verifications of income are required. However, OHFA requires verifications for other eligibility requirements, such as OHFA’s [Student Certification](#) and the OHFA TIC form. Form 50058 or OHFA’s Safe Harbor Income Verification form replaces a third-party income verification but does not replace OHFA’s TIC. The TIC must be included in a tenant file regardless of whether or not there is a Form 50058 or OHFA’s Safe Harbor Income Verification.

### Form 50059

Because HUD Form 50059 used for Section 8 project-based rental assistance is not signed by a PHA representative, Form 50059 cannot be used as income verification.

It is important to remember the LIHTC program cannot accept the EIV used by Section 8 to verify income. Therefore, the income of Section 8 recipients living in LIHTC units must continue to be third-party verified. EIV documentation must be kept in a separate file from tax credit verifications so that it is completely inaccessible to an OHFA compliance auditor.

## Streamlining (FAST Act)–For HUD-assisted Projects Only

The “Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs Final Rule” (a.k.a. the Streamlining Rule) provides a simplified manner of verifying fixed income sources. The Streamlining Rule may but is not required to be used to verify and adjust fixed income sources.

Per the Streamlining Rule as codified through regulation in 24 CFR Part 5.657 and Part 982.516, fixed income sources are defined as “periodic payments at reasonably predictable levels.” Fixed income sources include the following:

- Social Security payments, including Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI);
- Federal, state, local, and private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; and
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest

Fixed income sources must initially be verified through third-party verification. The owner/management agent is not required to re-verify until the household’s third recertification and every three recertifications thereafter (referred to as the “triennial verification”). For years that do not require third-party verification, the owner/management agent utilizes the existing verification form and applies an adjustment factor that comes from either

(1) A public source (e.g., the Social Security Administration’s annual COLA announcement) or

(2) Tenant-provided third-party generated documentation. The adjustment factor used must be verified and documented in the file. If no public or third-party verification of the COLA/increase is available, then a traditional verification must be obtained.

### **Special Rule When 90% or More of Household Income is From Fixed Income Sources**

When 90% or more of a household’s gross income comes from fixed income sources (as defined above), in addition to the streamlining requirements above, the owner may accept the household’s self-certification of income sources that are not fixed during years that do not require the full “triennial verification.”

Example:

**Household where fixed income source is 90% of more of gross income. Example assumes the project is subject to recertification of income (i.e., that the project is not 100% tax credit). If the project is 100% tax credit, annual income recertification is not required for tax credit compliance.**

- ⇒ Move-in: Owner/management agent obtains full verification of all income sources.
- ⇒ 1st Recertification: Owner/management agent obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- ⇒ 2nd Recertification: Owner/management obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- ⇒ 3rd Recertification: Owner/management agent obtains full verification of all income sources, similar to process at move-in.
- ⇒ 4th Recertification: Owner/management agent obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3rd recertification file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.

This process continues to cycle as demonstrated above.

Section 12:

**Earned Income**



**All types of income are divided into two categories, earned and unearned. This section will identify the types of earned income sources and ways to verify these sources for the LIHTC program. Earned income is any compensation in the form of wages or tips for work performed.**



HUD issued additional guidance regarding annual income on January 31, 2024. These updates may be found in Appendix G of this manual.



*(Minor-earned income is excluded.)*

Under LIHTC program regulations, “income” is defined not only as regular sources of income (e.g., wages, Social Security, pension, etc.) but also income earned by household assets.

- **Gross Income:** Not net (Count before deductions for taxes and insurance.)
- **Anticipated Income:** Project income for the 12 months following the effective date of a certification based on current circumstances includes any imminent raises or changes in hours, etc.
- **Temporary Income (i.e., unemployment):** If a family indicates that income might not be received for a full 12 months, still treat the income as though it will be received for 12 months based on current circumstances.

When verifying earned income, take the following into consideration:

- Base pay rate (gross)
- Overtime (OT) pay rate
- Other compensation (e.g., tips, bonuses, commissions, etc.)
- Total anticipated pay for the next 12 months (i.e., any raises)
- Total anticipated OT pay for the next 12 months
- Frequency of pay (i.e., hourly, biweekly, monthly, etc.)
- Employment termination if applicable

## Income Exclusions

The 24 CFR § 5.609(b) currently lists income inclusions under HOTMA. Income inclusions will be replaced by income exclusions (currently the 24 CFR § 5.609(c)).

- Remember, if an income is not specifically excluded, then it must be included.

The updated exclusion list may be found here: [HUD's Income Exclusions](#).

The following chart provides a helpful detailed summary (i.e., dependents, students, foster adults/children, etc.) of income exclusions.

Category	Exclusion	CFR	Description
Other	Federally Mandated Income Exclusions	24 CFR 5.609(b)(22)	Amounts that must be excluded by federal statute. HUD will publish a Federal Register notice that includes the qualifying benefits.
Assets	Imputed Income from Assets	24 CFR 5.609(b)(1)	Any imputed return on an asset when net family assets total \$50,000 (adjusted annually) or less and no actual income from the net family assets can be determined.
Non-recurring income	Non-recurring income	24 CFR 5.609(b)(24)	Income that will not be repeated in the coming year based on information provided by the family.
Self-employment	Gross Self-employment Income	24 CFR 5.609(b)(28)	Gross income received through self-employment or operation of a business
Dependents	Minors (children under the age of 18 years)	24 CFR 5.609(b)(3)	All earned income of all children under the age of 18, including foster children.
Dependents	Adoption assistance payments	24 CFR 5.609(b)(15)	Adoption assistance payments for a child in excess of the amount of the dependent deduction.
Students	Earned Income of Dependent Students	24 CFR 5.609(b)(14)	Earned income of dependent full-time students in excess of the amount of the dependent deduction.
Students	Title IV HEA Assistance	24 CFR 5.609(b)(9)(i)	Any assistance that Section 479B of the Higher Education Act (HEA) of 1965, as amended, requires to be excluded from a family's income.
Students	Other Student Financial Assistance	24 CFR 5.609(b)(9)(ii)	Student financial assistance, not excluded under the HEA, for actual covered costs of higher education.
Students	Educational Savings Account	24 CFR 5.609(b)(10)	Income and distributions from any Coverdell educational savings account or any qualified tuition program under IRS section 530 or any qualified tuition program under section 529.
Baby bonds	Baby bonds	24 CFR 5.609(b)(10)	Income earned by government contributions to, or distributions from, 'baby bond' accounts created, authorized or funded by federal, state or local government.
Foster children / adults	Payments for Foster Children / Adults	24 CFR 5.609(b)(4)	Payments received for the care of foster children or adults, including State kinship, guardianship care payments, or tribal kinship payments.
Foster children / adults	Income of foster children / adults	24 CFR 5.609(b)(8)	Income of a live-in aide, foster child, or foster adult as defined in 24 CFR 5.403 and 5.603.
Live-in Aide	Income of a Live-in Aide	24 CFR 5.609(b)(8)	Income of a live-in aide, foster child, or foster adult.
People with Disabilities	ABLE accounts	24 CFR 5.609(b)(22)	Will be included in federally mandated excluded amounts. Notice PIH 2019-09/H-2019-06 details when ABLE account income is excluded.
People with Disabilities	State Payments to Allow Individuals with Disabilities to Live at Home	24 CFR 5.609(b)(19)	Payment made by an authorized by a state Medicaid managed care system or other state agency to a family to enable a family member to live in the family's assisted unit.
People with Disabilities	Plan to Attain Self-Sufficiency (PASS)	24 CFR 5.609(b)(12)(i)	Amounts set aside for use under a Plan to Attain Self-Sufficiency (PASS).

Category	Exclusion	CFR	Description
People with Disabilities	Reimbursements for Health and Medical Care Expenses	24 CFR 5.609(b)(6)	Amounts for, or in reimbursement of, health and medical care expenses for any family member.
Trusts	Trust distributions	24 CFR 5.609(b)(2)	Any distributions of a trust's principal are excluded. PHAs and owners must count any distributions of income from an irrevocable trust or a trust not under the control of the family (e.g., distributions of earned interest) as income to the family with the expectation of distributions used to pay the health and medical care expenses of a minor.
Insurance	Insurance payments and settlements for personal or property loss	24 CFR 5.609(b)(5)	Insurance payments and settlements for personal or property loss including, but not limited to: payments through health insurance, motor vehicle insurance, and workers' compensation.
Retirement	Retirement plan	24 CFR 5.609(b)(26)	Income received from any account under an IRS-recognized retirement plan. However, periodic payments are income at the time of receipt.
Military	Hostile fire special payment	24 CFR 5.609(b)(11)	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
Veterans	Veterans aid and attendance payments	24 CFR 5.609(b)(17)	Payments related to aid and attendance for veterans under 38 U.S.C. 1521.
Lawsuits	Lawsuit Settlements	24 CFR 5.609(b)(7)	Amounts recovered in a civil action or settlement based on malpractice, negligence and other breach of duty claim resulting in a family member becoming disabled.
Lawsuits	Reparations for Persecution	24 CFR 5.609(b)(13)	Reparation payments paid by a foreign government for claims by people persecuted during the Nazi era.
Lawsuits	Tribal Claims Payments	24 CFR 5.609(b)(21)	Payments received by tribal members from claims relating to the mismanagement of assets held in trust by the United States.
Lawsuits	Lawsuits related to civil rights	24 CFR 5.609(b)(25)	Civil rights settlements or judgments, including settlements or judgments for back pay.
Reimbursements	Reimbursements from publicly assisted programs	24 CFR 5.609(b)(12)(ii)	Amounts received by a participant in other publicly assisted programs for or in reimbursement of expenses to allow program participation (e.g., special equipment, clothing, transportation, child care, etc.).
Resident Services Stipend	Resident Services Stipend	24 CFR 5.609(b)(12)(iii)	Resident service stipends of \$200 or less per month for performing a part-time service for the PHA that enhances the quality of life in the development.
Employment training programs	Employment training programs	24 CFR 5.609(b)(12)(iv)	Incremental earnings and benefits from training programs HUD and qualifying employment training programs and training of a family member as resident management staff.
FSS	Family Self Sufficiency Account	24 CFR 5.609(b)(27)	Income earned on amounts placed in a family's FSS account.
Housing gap payments	Housing "gap" payments	24 CFR 5.609(b)(23)	Replacement housing "gap" payments to offset increased rent and utility costs to families displaced from one federally subsidized housing unit and another.
Benefits	Deferred Supplemental Security Income, SS income and benefits, or VA disability benefits	24 CFR 5.609(b)(16)	Deferred periodic amounts from: SSI, Supplemental Security Income and benefits or VA disability benefits that are received in a lump sum or prospective monthly amounts.
Property tax rebates	Property Tax Rebates	24 CFR 5.609(b)(18)	Refunds or rebates under state or local law for property taxes paid on the dwelling unit.
Loans	Loan Proceeds	24 CFR 5.609(b)(20)	The net amount disbursed by a lender to a borrower or a third party (e.g., educational institution or car dealership).

## Definitions of Earned Income

The HUD HOTMA rule added three new definitions for earned income:

**Day laborer** is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future. Income earned as a day laborer is not considered nonrecurring income under 24 CFR § 5.609(b)(24) (paragraph G.1) and must be included unless specifically excluded in 24 CFR § 5.609(b).

**Independent contractor** is defined as an individual who qualifies as an independent contractor, instead of an employee, in accordance with the Internal Revenue Code federal income tax requirements and whose earnings are consequently subject to self-employment tax. Individuals considered “gig workers,” such as babysitters, landscapers, rideshare or app-based delivery drivers, and house cleaners, typically fall into the category of independent contractors. Income earned as an independent contractor is not considered nonrecurring income and must be included unless specifically excluded in 24 CFR § 5.609(b).

**Seasonal worker** is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer). Employment begins about the same time each year, such as summer or winter. Typically, an individual is hired to address seasonal demands that arise for the employer or industry. Examples include employment linked to holidays, agricultural seasons, lifeguards, ballpark vendors, snowplow drivers, etc.

Such income does not meet HUD’s definition of nonrecurring and must be counted as income. If income cannot be determined using current information, owners may anticipate income based on the actual income that was earned within the last 12 months prior to an income determination. However, prior years’ income should not be used if information is available that shows circumstances have changed.

## Whose Income Is Counted?

Member	Earned Income	Unearned/Asset Income
Head of household	Yes	Yes
Spouse/Co-head	Yes	Yes
Other adult	Yes	Yes
Dependent child under 18	No	Yes
Full-time student over 18	** (See note below)	Yes
Non-members (e.g., live-in aides, guests, foster children, foster adults, etc.)	No	No

*\*\*If a full-time student over 18 is a dependent of a household, a maximum of \$480 when adjusted for inflation of earned income is included in annual household income.*

## Calculating Income

24 CFR 5.609 provides rules for Section 8 and other HUD programs. This is applicable for the LIHTC program, because “tenant income is calculated in a manner consistent with the determination of annual income under Section 8.” To the extent HOTMA changes how Section 8 determines income, the changes legally apply to the LIHTC program.



OHFA will not allow YTD calculations as the sole eligibility determinant of income, because they may not be indicative of anticipated income for the next 12 months. Technically, annualizing YTD earnings does not calculate anticipated earnings because the information is historical. Paystubs are also historical but usually more current (i.e., don’t go as far back as YTD). If owners or management agents mandate YTD calculations, OHFA requires two calculations be conducted, and the higher amount must be used.



In Notice PIH 2023-27 issued February 2024, HUD clarified how owners/management agents must consider certain amounts that are taken out of a person's wages or benefits before a family receives them. The updated notice may be [found here](#). When a family member’s wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, PHAs/multifamily housing owners must use the gross amount of the income **before the reduction(s)** to determine a family’s annual income. This is in contrast to child support or alimony, where only income received is counted as income.

Per HOTMA implementation guidance’s hierarchy of verification, an upfront income verification system, such as the work number, is the preferred source for employment verification followed by tenant-provided source documents (e.g., paystubs) and then a written third-party verification form completed by an employer.

If an owner/management agent uses tenant-provided source documents:

- For tenants with jobs that provide steady employment, obtain the two most recent, consecutive paystubs.
- For seasonal workers or day laborers, obtain additional paystubs or an alternate form of verification. Seasonal workers and day laborers are considered to have recurring earned income and these income sources must be annualized and counted in total household income.
  - ⇒ *For tenants with jobs that provide steady employment, the owner/management agent must obtain the two most recent, consecutive paystubs for determining projected annual income from wages.*
  - ⇒ *For seasonal workers or day laborers, the owner may need to obtain additional paystubs or an alternate form of verification. Seasonal workers and day laborers are considered to have recurring earned income and these income sources must be annualized and counted in total household income.*

## Sporadic or Seasonal Income

Owners/management agents must use reasonable judgment to determine the most reliable method for calculating income in scenarios where income fluctuates, such as when income is received as an independent contractor, day laborer, or seasonal worker.

## Nonrecurring Income

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification) based on information provided by a family is considered nonrecurring income and is excluded from annual income.

Examples that are considered nonrecurring income and thus excluded include:

- Payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment
- Direct federal or state payments for economic stimulus or recovery
- Tax refunds or tax credits
- Gifts for significant life events or milestones (e.g., holidays, birthdays, weddings, baby showers, etc.)
- Lump sum additions to net household assets, including lottery or contest winnings
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization
- Payments made to a family or third party on behalf of a family to assist with utilities or eviction prevention
- Security deposits to secure housing
- Payments for participating in research studies (depending on the duration)
- Other general one-time payments
- Non-monetary in-kind donations from friends and family (Be careful that these donations are truly nonrecurring or they will be counted as income if they will recur even if they are sporadic.)

## Full-time Student Income

When full-time students who are 18 years of age or older are dependents of a household, a maximum of \$480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income. Note: Per HOTMA, the \$480 amount will be indexed for inflation and may change annually.

When full-time students who are 18 years of age or older are the head of household, co-head, or a spouse, the full amount of earned, unearned, and assets income is counted in the total household income calculation.

## Examples of Nonrecurring Income

### Example 1:

#### **Nonrecurring earned income excluded from annual income**

Dusty Simpson worked for four months over the past year for a company that has since gone out of business. During the Simpson's household recertification, owners/management agents ask Dusty whether he expects to work for the company again in the coming year. Dusty provides proof that the company went out of business. Owners/management agents must exclude Dusty's earned income received from the company that went out of business from the household's annual income.

### Example #2:

#### **Recurring earned income included in annual income**

Ana Johnson works as an independent information technology (IT) contractor during various times of the year when her clients require additional IT contract support. Ana reasonably believes that she will be contracted again the following year based on discussions with her clients. Owners/management agents must include the income that Ana earns as an IT contractor in the family's annual income.





## How to Handle Wages: Tips

Note: For persons in industries where tips are common, the workers are often paid considerably less than minimum wage.

- It must be clarified why an employer is reporting paying less than federal law requires. In most cases, the employment verification (EV) does not contain accurate information. It is important to have the employer disclose year-to-date earnings (both hourly wages and tips) to help determine actual income.
- A documented telephone conversation with an employer is an acceptable method of clarification although a series of paystubs is preferred.
- Obtaining two consecutive paystubs is helpful in determining if an employee is really working as many hours as an EV might report. Paystubs will also show tips earned; be sure to compare the tips on the stubs with what is reported on the EV. If an individual has had the same job for more than one year, previous years' tax returns can be useful.

### How to Handle Tips

Ask when verifying tips:

- Were tips already on the employment verification?
- Were paystubs obtained?
- Did a tenant submit a self-affidavit to verify all tips?

OHFA recommends that an applicant complete a self-affidavit under penalty of perjury stating all tip income, including tips not reported to an employer.

## How Income Is Calculated

### Converting Wages to Annual Figures

Pay Rate	Formula	Examples
Hourly	hourly rate × # of hours worked × 52 weeks	\$7.00/hour × 30 hours × 52 weeks = \$10,920
Weekly	weekly rate × 52 weeks per year	\$400/week × 52 = \$20,800
Bi-Weekly	bi-weekly rate × 26 pay periods	\$900/pay period × 26 pay periods = \$23,400
Semi- Monthly	Semi-monthly Rate × 24 Pay Periods	\$900/pay period × 24 pay periods = \$21,600
Monthly	Monthly Rate × 12 Months	\$1,500/month × 12 months = \$18,000

### Pay Raises

Example: Change in Pay Rate	
Certification Date:	February 1
Current Rate of Pay:	\$10.00 per hour, working 40 hours a week
Increase in Pay:	\$11.00 per hour, working 40 hours a week effective March 1 (February 1 to March 1 is 4 weeks.)
\$10.00 × 40 × 4 weeks (February)	= \$1,600
\$11.00 × 40 × 48 weeks (March through January)	= <u>\$21,120</u>
<b>Annual Income from Wages:</b>	<b>\$22,720</b>
<i>Note: Make sure the number of weeks adds up to 52 (4 weeks + 48 weeks = 52 weeks).</i>	

## Raises and Overtime Pay

Example:

**If any employee is receiving a pay raise and he/she also earns overtime, the overtime rate will need to be increased based upon the new hourly rate. The overtime rate can be determined by multiplying the new rate of pay by 1.5.**

Certification Date:	February 1
Current Rate of Pay:	\$10.00 per hour, working 40 regular hours per week
Current OT Pay:	\$15.00 per hour, 3 hours per week
Increase in Pay:	\$11.00 per hour, working 40 hours per week effective March 1
Increase in OT Pay:	\$16.50 (\$11.00 × 1.5) per hour, 3 hours per week (February 1 to March 1 is 4 weeks.)

$\$10.00 \times 40 \times 4$ weeks (February)	= \$1,600
$\$15.00 \times 3 \times 4$ weeks (February)	= \$180
$\$11.00 \times 40 \times 48$ weeks (March through January)	= \$21,120
$\$16.50 \times 3 \times 48$ weeks (March through January)	= <u>\$2,376</u>

<b>Annual Income from wages:</b>	<b>\$25,276</b>
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## Self-employment and Verification

Common self-employment jobs are: restaurant staff, bartenders, hairdressers, and barbers.

Verification for self-employment includes: Form 1040 Tax Return — Schedule C is the preferred verification. Schedule E is preferred for rental properties, partnerships, and S corporations. Schedule F is preferred for farm properties.

To determine net income from a business:

Gross income

- ▶ Business expenses minus
- ▶ Interest payments, NOT the principal, on loans unless for expansion or capital improvements minus
- ▶ Depreciation on business equipment (computed on a straight-line basis)
- ▶ Equals Net income (which is listed on the TIC)

Self-employment income is an earned income source.

Self-employed tenants/applicants must provide the following:

- IRS Schedule C (1040) if net earnings are \$400 or more
- IRS Schedule F for rental properties and farm properties
- IRS Schedule S for corporations
- IRS Form 1099 or Form 1099k (if earned over \$600)
- Audited or unaudited financial statement(s) for the business

### 1040 versus 1099

Typically, employees of a business in the U.S. receive W-2 forms that list the income they received during the calendar year. This form also contains deductions taken from income in the form of federal and state taxes, deferred compensation, and Social Security contributions, to name a few. A 1099 form is used for various reasons, but it typically is given to an independent contractor — also known as a freelancer — as a record of the income that he or she received from a particular business. Other versions of the 1099 can be used to report different types of income, such as interest, dividends, real estate sale proceeds, and debt cancellations.

Any 1099 forms received are listed on the 1040 form as income. A 1040 form, however, is used to file individual tax returns, inclusive of all 1099 forms received. It is used to list all income an individual has, all deductions an individual is claiming, any credits for a variety of expenses, and so on. The form states the amount of tax that the individual owes or is owed as a refund by the IRS. .

Any 1099 forms received are listed on the 1040 form as income or statement, or business proforma and self-affidavit.

### Self-affidavit

If a source document is not received, please obtain a self-certification that describes:

- The tenant's work
- Frequency of work
- Payment (annualize)
- Use OHFA's Clarification form

#### Helpful Tip:

If a tenant has been in business less than one year, the tenant should provide a Profit and Loss Statement.

## GoFundMe Accounts - Income or Asset?

Many people today benefit from crowd-funding accounts, such as GoFundMe, including Fundly and Donately. With these accounts, friends, family, and even strangers on the internet can contribute to a person's fund. As we enter the HOTMA era, the question is raised if funds received online in donations represent income, asset, or both for applicants and residents of affordable housing. HOTMA implementation guidance indicates that it depends on whether the fund is one-time and nonrecurring or repeated. Following are examples adapted from the Joint HOTMA Implementation Notice 2023-10 from HUD's Office of Multifamily Housing (MFH) to help ensure this funding is calculated correctly:

### Example: Year One

MaryAnn raises \$5,000 through GoFundMe online to help pay for personal expenses. The manager verifies with MaryAnn that this is a one-time solicitation for donations of cash and that she does not intend for this to be a recurring source of income.

***The \$5,000 is a one-time, lump-sum addition to net family assets and should not be included in the annual income calculation.***

### Example: Year Two

At the next annual reexamination, the manager determines that MaryAnn solicited donations online a second time and raised an additional \$4,500. Again, MaryAnn certifies that she does not intend for this to be a recurring source of income, but because the manager can establish a pattern.

***The \$4,500 is not considered a one-time, lump-sum addition to net family assets and should be included in the annual income calculation.***

### Helpful Tip:

When conducting certifications in the HOTMA era, applications and recertification questionnaires must establish if applicants or tenants have GoFundMe or other similar crowd-funding internet accounts. Additionally, applications/questionnaires need to ask if such accounts have been funded historically for multiple rounds. If accounts have been funded for one round, the balance is a one-time lump-sum asset. If the accounts have been funded more than once, proceeds must be counted as income, not assets.

## Digital Age Income: Gig Work

Alternative means of employment, such as internet “work,” continues to be an emerging field. Digital age income should be treated as self-employment. Many owners and management agents are finding tenants and applicants with self-employment income for companies, such as Uber, Uber Eats, and Lyft. Tenants are also making money from creating YouTube channels. It is hard to keep up with the explosion of income-making internet/phone apps. Some other digital age income sources include:

- Fiverr
- Foap
- In-game economies/Sale of virtual goods
- E-commerce sites (e.g., Shopify, Ebay, Etsy, Poshmark)
- App-based services (e.g., Grubhub, Doordash, Instacart)
- Social media influencers (e.g., TikTok, YouTube, Instagram)

## How to Verify Gigs

- Treat them as self-employment.
- The 8823 Guide suggests verifying self-employment income through Form 1040 (tax return), signed statements from business owners, and completed IRS 1040 Schedules, such as C and F.
- Printouts from the gig work website/app as a basis for income
- Any receipts as a basis for expenses
- Ridesharing apps provide mileage as part of their printouts. Once owners/management companies know the timeframe that the IRS 1040 Schedule C covers, annualize appropriately.

**Caution:** Be mindful of tenants renting their units as Airbnbs on weekends. This is becoming more common, especially for projects located close to concert venues or other popular public places. Leases should prohibit use of units as Airbnbs that the IRS considers commercial spaces.



# Cryptocurrency

## Virtual Currency

Virtual currency is a digital representation of a monetary value that acts like currency. It can be stored, traded, and can be exchanged into U.S. Dollars. However, virtual currency is not regulated by a federal or state agency and does not hold any legal tender status.

## Types of Cryptocurrency

A cryptocurrency is a type of virtual currency that is secured by cryptography. Cryptocurrencies work using a decentralized technology called Blockchain which spreads its transactions across a large network of computers that manages and records these transactions. Common types of virtual currency include:

- Bitcoin (BTC)
- Ethereum (Ether)
- Ripple (XRP)
- Bitcoin Cash (BCH)
- Litecoin (LTC)
- Stellar (XLM)

## Data Mining Cryptocurrency

Data Mining is the process of verifying blockchain transactions. This is done by using computers to solve cryptographic equations. As a reward for solving the equation, or "mining the block", the miner will receive new digital coins.

## How is it Treated? Income Source OR Income from Asset?

HUD has not addressed the treatment of data mining, it would appear that the value of the coins received by the miner would fall under paragraph (1) of 24 CFR 5.609(b) Income Inclusions:

*"The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and **other compensation for personal services;**"*

While the IRS is generally not the authority of what is includable as income when determining income eligibility for most affordable housing programs, it is interesting to note that in IRS Notice 2014-21 to regarding cryptomining, the IRS states:

*"When a taxpayer successfully mines a cryptocurrency, the fair market value of the coins mined is includible in gross income. Furthermore, an individual whose mining operations constitute a trade or business is subject to self-employment tax on the income derived from those activities. The amount of this income equals the market price of the coins on the day they were awarded on the blockchain. This amount also becomes the miner's basis in the coins going forward and is used to calculate future gains and losses."*



## Cryptocurrency Investing

Investors buy, sell, trade and exchange cryptocurrencies over Coinbase, GDAX, and other exchanges.

### Is Cryptocurrency an Asset?

Yes, in the HUD handbook 4350.3, HUD defines an asset as an item of value that can be turned into Cash. As Cryptocurrency can be exchanged for U.S. Dollars, it is considered an asset.

### Are There Fees to Convert Crypto to Cash?

Sometimes, but not always. Most crypto exchanges charge a fee ranging from .05% to 1.5%, however; some exchanges, such as Robinhood, do not charge any fees.

### Does it produce Income or Dividends?

Sometimes, but not always!

Crypto dividends, or crypto rewards, are a type of passive income that is earned for "staking" a crypto asset. The amount of the reward is usually based on the amount of the crypto asset held and often requires that the holder take a specific action to receive the reward, such as staking or creating a transaction.

***"Staking" involves buying and setting aside a specified amount of coins for specified amount of time, which varies based on the exchange used and the type of cryptocurrency being held.***



## What is a Digital Income source?

Any source of income that involves the use of programs or applications to conduct or manage the sale of goods, services, or other resources over the internet.

## Importance for Multifamily Housing

Many industry officials believe these sources of self-employment income (or even assets) will become increasingly common. These streams of income should be treated as self-employment (8823 Guide, Chapter 4).

Make sure the tenant application includes questions on digital income and app-based income sources.

## Online Sales & E-commerce



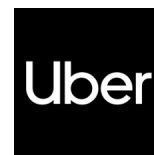
Income generated in this category is predominately based on sales apps or other platforms. Sales may include items (real or in-game), art, photography, and more.

This category also includes platforms that allow for generating income from completing surveys.

## App-based “Gig” Work

This category varies greatly. Many companies provide a platform for self-employment.

The most common “gigs” include ride hailing, deliveries, services, or labor. The number and types of apps related to “gigs” is ever growing.





## Social Media Influencer



A social media influencer is a social media user who has established credibility in a specific industry. An influencer receives income based on their reach to an audience.

## Best Practices for Verifying Digital Income

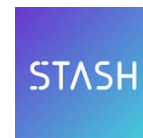
- **Best Compliance Practice:** Provide last year's tax return (Form 1040 or 1040 Schedules C, E, F)
  - Applicant should always complete a self-employment or income from business declaration
- **Better Compliance Practice:** Obtain payment history (available on internet websites) including receipts as a basis for expenses
- **Good Compliance Practice:** If best and better practices are not available, obtain an account financial statement of net income from self-employment

## Digital Age Assets

There are several platforms that allow for investing in small increments.

Additionally, crowdfunding on apps can become an asset depending on how monies are used.

Cryptocurrency is another digital age asset source.





## **Best Practices for Digital Age Assets**

- What type of transactions will occur or the frequency of transactions will determine how the asset should be treated for verification.
- Apps or platforms focused on investing generally should be treated like any other investment with stocks or bonds.
  - Some apps also provide checking and savings account features as well.
- Internet-based fundraising or crowdfunding may need to be treated like a bank account. This is dependent on the volume and regularity of activity that occurs.



## Military Pay

All allowances must be included in determining income. Allowances include:

- Basic Allowance for Sustenance (BAS)
- Basic Allowance or Housing (BAH)
- Family Separation Allowance (FSA)
- Clothing Allowance
- Overseas Cost-of-living Allowances (COLAs)

Regular and special pay include:

- Basic pay
- Career Sea Pay (CSP)
- Career Sea Premium Pay (CSPP)
- Hazardous Duty Incentive Pay (HDIP)
- Hardship Duty Pay (HDP)
- Imminent Danger Pay (IDP)
- Entitlement to Foreign Language Proficiency Bonus (FLPB)

The only type of military pay **excluded** is **Hostile Fire Pay** for which verification is as follows:

- Leave and Earnings Statement
  - ▶ Service members can obtain statements in their “My Pay” accounts.
  - ▶ Special powers of attorney can be designated to verify information if needed.

## Zero Income Households

It is possible that a household will have total annual income of \$0. This is possible if the household is receiving rental assistance, food stamps, and other forms of assistance that are not counted as income. However, it is often the case the households claiming zero income are in fact receiving some type of recurring gift from friends or family members. If a household member is currently unemployed and claims no income from sources, such as Social Security, pensions, income from assets, etc., the tenant must complete OHFA's [Zero Income Verification \(PC-E15\)](#) and/or Tenant Affidavit. While zero income households do exist, it is the responsibility of the owner agent to prove due diligence when reporting households as zero income. Zero income households can raise a red flag for auditors, especially if the household that is claiming zero income is responsible for a portion of rent.

## Adjustment Factors

Per HOTMA, several factors will be adjusted annually for inflation or other factors.

### The Details:

According to the HONTA Implementation Notice F.5., "HUD will annually publish the eight inflation-adjusted items in the table below no later than September 1, and the updated values will be shared online at the HUD User [website](#). The publication applies to both HUD Multifamily Housing (MFH) and Public and Indian Housing (PIH) programs. The revised amounts will be effective on January 1 of the following year. The first set of adjustments for inflation will be made effective January 1, 2025. Further information is [found here](#).

Section 13:

**Unearned  
Income**



### Unearned income sources include:

- Social Security and Supplemental Security Income
- Welfare
- Cash and non-cash contributions
- Payment in lieu of earnings (e.g., unemployment, disability compensation)
- Student financial assistance

## Social Security and Supplemental Security Income (SSI)

OHFA will accept the benefit verification letter provided from the Social Security Administration to verify Social Security benefits. However, all Supplemental Security Income (SSI or SSDI) is required to be verified and dated within 120 days prior to a certification date. When interpreting Social Security benefit letters, remember to use the gross amount before deductions unless the deduction is for a prior overpayment of benefits.

Benefits received through direct deposit or a Direct Express Debit Mastercard are treated as income. In addition, the balance on a Direct Express Debit Mastercard is also considered an asset and must be verified consistent with verification procedures for a checking or savings account. A current balance must be provided and included as an asset in addition to the benefit income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Count the full benefit amount before any deductions for Medicare (including the cents!).

**Garnishments:** Monthly benefit portions are garnished due to unpaid child support, alimony, or student loans. The full benefit amount must be **INCLUDED**.

**Lump-sum Payments:** If an individual is denied SS and wins an appeal, the benefits will be awarded retroactively to the date of the individual's application for benefits. This is **EXCLUDED** (i.e., VA lump-sum payments).

**Adjustment for Past Overpayments:** If recipients have their benefit amounts reduced to adjust for a prior overpayment, only the amount that is actually provided after the adjustment for the overpayment is **INCLUDED**.

**NOTE:** Pay attention to the amount a tenant owes and for what time period. For example, Tara has an overpayment of \$500 and \$100 will be withheld monthly. Management will only calculate the overpayment for five months and the full benefits for seven months.

Example:  
**Garnishment of Benefits**

Ruth's benefit letter indicates the gross monthly benefit amount is \$500. The letter also states, "this is after we withheld \$150 for your obligation to pay child support."

***In this scenario, \$650 per month would be included for Ruth when determining income as the garnished amount must be included in the income.***

Example:  
**Delayed Benefits**

Pete receives a gross benefit amount of \$774; \$574 is his regular benefit amount and \$200 is due to delayed benefits.

***In this scenario, only \$574 per month would be included for determining Pete's income as the \$200 is due to a delay in benefits and must be excluded.***

Example:  
**Adjustments for Past Overpayments**

Chloe's SS monthly payment of \$200 is being reduced by \$30 per month for the first six months of the certification year to make up for a prior overpayment.

***In this scenario, count Chloe's SS income of \$170 per month for the first six months and as \$200 per month for the remaining six months.***

**Helpful Tip:**

**Social Security Benefit Letter (SS)**

The annual letter is considered third party and can be used the entire calendar year

**Supplemental Social Security Benefits (SSI)**

Benefits can fluctuate throughout the year so owners/management agents must obtain current documentation for verification.

## COLA Increases

When Social Security announces cost-of-living adjustment (COLA) increases, the adjustment is incorporated for new move-ins after it becomes known and verifiable. Owners/management agents are required to factor in COLAs when determining SS and SSI annual income for all annual reexaminations and interim reexaminations (HUD-funded projects only) of family income that have not yet been completed and will be effective January 1 or later of the upcoming year.

Since 1975, Social Security general benefit increases have been COLAs. The 1975–1982 COLAs were effective with Social Security benefits payable for June in each of those years; thereafter, COLAs have been effective with benefits payable for December. COLAs are published every October.

Owners/management agents must obtain a copy of the Social Security COLA letter and place it in each file when using to calculate income. An OHFA Clarification Record must be in all tenant files where the COLA has been imputed when calculating income.

How to Calculate:

- Multiply the benefit amount by the COLA percentage to get the amount of the increase. Add that amount to the current benefit.

OR

- Multiply the benefit amount by one plus the COLA percentage expressed as a decimal (1.3% = .013).

### How to Calculate

Rosie moves into a unit on November 1.

Her SS benefit is \$546.

COLA is published October 15 at 1.3%.

$$\$546 \times 2 = \$1,092$$

$$\$546 \times 1.3\% = \$7.098 \text{ (Round to \$7.10.)}$$

$$\$553.10 \times 10 = \$5,331$$

$$\mathbf{\$5,331 + \$1,092 = \$6,623}$$

## Child Support and Alimony

The amount of child or spousal support included in annual income is “all amounts received,” not any amount the household may be legally entitled to but is not receiving. HUD’s HOTMA implementation guidance specifically states that “child support or alimony must be based on the payments received, not the amounts to which the family is entitled by court or agency orders.”

Owners/management agents must verify the amount of support actually received to annualize income. HUD’s HOTMA implementation guidance notes that “a copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family” since that order would demonstrate the amount the household is entitled to, not the amount it is receiving.

### Example:

**A family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders.**

## Welfare

Welfare payments in the form of TANF are included as household income. Food stamps are not included as household income.

Settlement payments from claim disputes over unemployment or welfare are treated as lump sum assets. However, lump sum payments caused by delays in periodic processing of unemployment or welfare benefits are included as income (See pages 5–18 and Figure 5-3 on pages 5–19 of HUD Handbook 4350.3.).

Always excluded:

- Earned Income Tax Credit (EITC) and Child Tax Credit
- Supplemental Nutrition Assistance Program (SNAP) or food stamps
- Federal housing assistance
- Child nutrition food programs
- Head Start
- Job training programs
- Women, infants, and children (WIC) programs
- LIHEAP (Low-income Home Energy Assistance Program)
- Lifeline cell phone



## Gifts

Any regular contributions and gifts to a household from persons not living in the unit must be included in annual income. This includes payments paid on behalf of the family and other cash or noncash contributions provided on a regular basis. Do not count temporary, nonrecurring, or sporadic contributions or gifts.

The following items are specifically excluded as income:

- Groceries provided directly to a household (not money given to buy groceries)
- Childcare payments paid directly to a childcare provider on behalf of the tenant(s)
- Non-monetary goods, such as food, clothing, or toiletries, received from a food bank or similar organization
- Gifts for holidays, birthdays, or other significant life events or milestones, such as weddings, baby showers, or anniversaries

Recurring gifts/contributions should be third-party verified when possible by having the contributor sign a certification stating the amount and frequency of the gift(s)/contribution(s) as well as any anticipated changes in the gift(s).

### In-Kind Donations (G.1.f):

HOTMA excludes as income any non-monetary, in-kind donations, such as food, clothing or toiletries, **received from a food bank or similar organization**

### Example

#### Gracie receives the following monthly non-cash contributions:

- ⇒ \$100 worth of food from the local food bank
- ⇒ \$75 worth of toiletries from the local food bank
- ⇒ \$100 worth of toiletries from her father

In this example, the two non-cash contributions received from the food bank, are **EXCLUDED** as income; however, the non-cash contribution received from her father must be **INCLUDED** as income.

## Workers' Compensation

Workers' compensation payments, regardless of the length or frequency of the payments, are always excluded from annual income.

## Tax Refund Verification

HOTMA changed how owners/management agents should calculate tax refunds or refundable tax credit and when it should be deducted from net assets. HOTMA instructs when and when not to verify tax refunds:

- Not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$51,600 (adjusted annually for inflation), even in years when full verification of assets is required or if self-certification of assets is not accepted
- Must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$51,600

## Student Financial Aid

Treatment of student financial assistance depends on whether a household is receiving Section 8 assistance (housing choice and project-based vouchers, or project-based rental assistance). HOTMA removed the student financial assistance income exclusion for non-Section 8 households. If the household is receiving student financial aid, OHFA's [Student Financial Aid Verification \(PC-E12\)](#) which may be amended from time to time, must be used.

### Does a household receive Section 8 assistance?

- If **YES**, follow the current Section 8 student financial assistance regulations.
- If **YES**, but the household is exempt from the Section 8 Student Financial Assistance rules due to being over the age of 23 with dependent children, or if the student is living with their parent who receives Section 8 assistance, HOTMA rules will apply.
- **If NO, HOTMA rules apply!**

On the next page are examples of what is included or excluded from income:



### Example A: Current Regulation

Jennie is a 20-year-old student applying for a unit and she does NOT receive Section 8 assistance.

She receives student financial assistance to attend college.

- ✓ *Since Jennie does not receive Section 8 assistance, ALL of her student financial assistance is excluded from income.*

### Example A: HOTMA New Regulation

Jennie is a 20-year-old student applying for a unit and she does NOT receive Section 8 assistance. She receives student financial assistance to attend college.

- ✓ *Any amounts of student financial assistance not covered under the Higher Education Act (HEA) that exceeds the actual costs of attending school must be included as income.*

### Example B: Current Regulation

Jean is a 24-year-old student who applies for a unit with her husband, Tom, and their daughter. They do NOT receive Section 8 assistance. Jean receives student financial assistance to attend college.

- ✓ *Since Jean's household does not receive Section 8 assistance, ALL student financial assistance is excluded.*

### Example B: HOTMA New Regulation

Jean is a 24-year-old student who applies for a unit with her husband, Tom, and their daughter. They do NOT receive Section 8 assistance. Jean receives student financial assistance to attend college.

- ✓ *Any amounts of student financial assistance not covered under the Higher Education Act that exceed the actual costs of attending school must be included as income.*



## Actual Covered Costs

Actual covered costs include tuition, books, supplies, equipment to support students with disabilities, room and board, and other fees required by an institution of higher education. If a student is not the head of household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending an institution of higher education but not residing in an assisted unit.

## Student Financial Assistance Received Under Section 479B of the Higher Education Act

All assistance under Section 479B of the HEA or the Bureau of Indian Affairs (BIA) student assistance program, even amounts more than the actual covered costs of a student, is **EXCLUDED** from income.

Examples:

- Federal Pell Grants
- Federal Work-Study (FWS) Program
- Teach Grants
- Perkins Loans
- Higher education tribal grants
- Assistance received under the Bureau of Indian Education
- Tribally controlled colleges or university grant programs
- Employment training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA)

## Other Student Financial Assistance

The amount of other assistance, such as scholarships or grants, not covered under HEA or BIA, that **is in excess of “actual covered costs” of a student are included in annual income.**

This can include grants or scholarships received from:

- Federal government
- State, tribe(s), or local government(s)
- Private foundation(s) registered as nonprofit
- Business entity (e.g., corporation, joint venture)
- Institution of higher education

### Helpful Tip:

To properly calculate student financial assistance, owners/agents must verify and calculate:

- ✓ actual covered costs
- ✓ student financial assistance received under the Higher Education Act
- ✓ other student financial assistance

The following are **NO longer** considered student assistance:

- Financial support provided to a student in the form of a fee for services performed (e.g., work-study, teaching fellowship)
- Gifts, including those from family and/or friends
- Other student financial assistance may be paid directly to a student or an educational institution on a student's behalf.

Note: While these items are not considered student assistance, they are considered “regular” income.

### Calculating Student Income For Households Without Section 8 Assistance

Step 1: Subtract the amount of HEA assistance FROM the actual covered costs.

$$\text{ACTUAL COVERED COSTS} - \text{HEA ASSISTANCE} = X$$

Step 2: Subtract the amount from Step 1 FROM the amount of non-HEA assistance.

$$\text{NON-HEA ASSISTANCE} - X = \text{INCOME}$$

### Example 1:

A student who does not receive Section 8 assistance but receives the following in student financial assistance:

- \$15,000 scholarship under HEA
- \$5,000 private scholarship non-HEA assistance
- Student's actual covered costs: \$22,000

**Step 1: Subtract the amount of HEA assistance from the actual covered costs.**

$$\$22,000 \text{ (actual covered costs)} - \$15,000 \text{ (HEA assistance)} = \$7,000$$

**Step 2: Subtract the amount determined in Step 1 from the non-HEA assistance.**

$$\$5,000 \text{ (non-HEA assistance)} - \$7,000 \text{ (result of Step 1)} = \$0$$

*As the amount of the scholarship combined with the assistance excluded under HEA (\$20,000) is less than the student's actual covered costs (\$22,000), **no financial assistance will be included in the income.***

### Example 2:

A student who does not receive Section 8 assistance but receives the following in student financial assistance:

- \$15,000 scholarship under HEA
- \$5,000 private scholarship non-HEA assistance
- \$500 gift from Aunt Lois, received twice a year
- Student's actual covered costs: \$18,000

**Step 1: Subtract the amount of HEA assistance from the actual covered costs.**

$$\$18,000 \text{ (actual covered costs)} - \$15,000 \text{ (HEA assistance)} = \$3,000$$

**Step 2: Subtract the amount determined in Step 1 from the non-HEA assistance.**

$$\$5,000 \text{ (non-HEA assistance)} - \$3,000 \text{ (result of Step 1)} = \$2,000$$

*The recurring gift from Aunt Lois is NOT considered student financial assistance, but will be INCLUDED in income.*

*As the student's assistance is more than the actual covered costs, the excess of \$2,000 **must be included** when determining income.*

### Example 3:

A student who does not receive Section 8 assistance but receives the following in student financial assistance:

- \$25,000 scholarship under HEA
- Student's actual covered costs: \$18,000

Since the only form of student financial assistance received is covered under HEA, **the entire amount of the above scholarship is excluded from income** even though the assistance exceeds the actual covered cost.

### Helpful Tip:

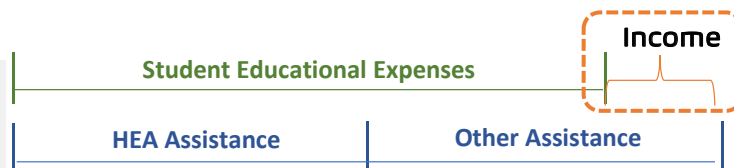
If the household receives Section 8 assistance, follow the **CURRENT REGULATIONS** to calculate income.

The following charts\* provide a helpful visual regarding student financial assistance:

#### Student Financial Assistance

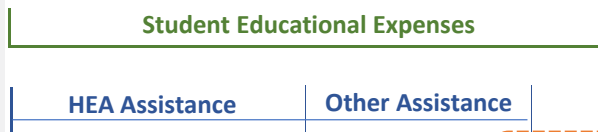
If...

1. HEA & other assistance exceeds covered costs

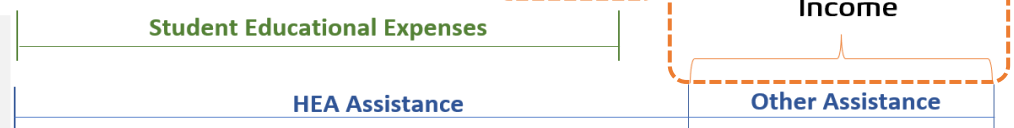


If...

2. HEA & other assistance does not exceed covered costs



3. HEA exceeds covered costs



NOTE | HEA assistance is never income

\*Charts used by permission of Costello Compliance.

Section 14:

**Assets and  
Exclusions**

Annual income also includes income from assets to which any member of the household has access derived during the 12-month certification period (HUD 4350.3 5-4C/5-3).

An “asset” is an item of value that can be converted into cash and is accessible to a household.



Importantly, owners/management agents should not count unsecured and unverifiable income that is not imminent, known, and verifiable.

## Common Asset-related Definitions

- **Market Value:** The value of an asset on the open market or the money that another person would pay to acquire an asset.
- **Cash Value:** The market value of an asset less the cost to turn it into cash.
- **Actual Asset Income:** The actual income from an asset is generally calculated by multiplying the market value by the interest rate.
- **Imputed Asset Income:** The income from assets based on the cash value of all household assets is multiplied by the current value.

## Net Family Assets Defined

Net family assets are defined as the net cash value of all assets owned by a household, (except necessary personal property and specifically excluded assets) after deducting reasonable costs that would be incurred to dispose of real property, savings, stocks, bonds, and other forms of investment.

Helpful Tip: Actual income is always included regardless of the total value of net family assets or whether an asset itself is included or excluded from net family assets unless the income is specifically excluded by 24 CFR 5.609.

Reference [HUD's Income Exclusions HUD's Federally Mandated Exclusions From Income—Updated Listing](#).

## Assets with Negative Equity

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit a household from selling its property or other investments, so negative equity alone would not justify excluding property or other investments from household assets.

## Real Estate

### Determining Value and Income

Real estate is one of a few assets that may need to be treated as income or an asset depending on certain factors. Any real estate owned by a household member is considered an asset, and the cash value of the real estate must be determined and included as an asset when determining the cash value of all household assets.

### Determining Market Value and Cash Value

Market value is the amount real estate is worth on the open market.

Cash Value is market Value less

- Unpaid mortgages AND
- Reasonable cost(s) to sell

Look at OHFA's real estate verification form to help calculate values.

### Net Rental Income

4350.3 Appendix 6-C M./10

If a household member's main business is real estate, count any net rental income as business income and disregard the real estate when determining a household's net assets.

Steps:

Determine the annual gross rental income (monthly rent multiplied by 12 months).

#### Gross Rental Income:

Annual mortgage interest payment + costs for maintenance and upkeep = net rental income

This should be counted as income, NOT an asset.

- Asset is the net value of a home.

### Calculating Income

Generally, there is no actual income derived from real estate since it does not yield interest. However, if a homeowner is renting out a home, the net rental income would be considered the actual income from the asset.

#### Example 1: Determining Cash Value of Real Estate

Nichelle owns a home worth \$200,000.

- She has an outstanding mortgage of \$25,000.
- If she were to sell her home, she would pay \$6,000 in realtor fees.

**MARKET VALUE:** \$200,000

**CASH VALUE:** \$169,000 (market value – unpaid mortgage – realtor fees)

**INCOME:** \$0 (Her home is not being rented out.)

#### Example 2: Determining Net Rental Income

Rhonda is renting her home.

- She collects \$1,000/month rent.
- The cost to maintain her home is \$250/month.
- She will pay \$4,000 in mortgage interest payments.

**What is the rental income amount?**

\$5,000 (yearly rent - annual upkeep - interest payment)

## Assets Disposed of for Less Than Fair Market Value

If an asset is disposed of for less than fair market value (FMV), the asset must be included for two years from the date of disposal. Note: prior to HOTMA, assets disposed of for \$1,000 less than FMV were to be included for two years. But with HUD Notice 2023-10, #F.4.a, page. 59, HUD eliminated the \$1,000 threshold.

### Net Family Assets Include:

- Disposed of by an applicant/tenant for less than FMV
- In excess of consideration received
- Include a disposition in trust to someone outside the household

### Net Family Assets Do Not Include:

- Assets disposed through a foreclosure or bankruptcy AND
- Assets disposed through separation or divorce settlement if the applicant/tenant receives consideration not measurable in dollar or monetary terms. An example of this is if an applicant/tenant agreed to sell her camper for less than FMV in a divorce settlement to her ex-husband in exchange for his promise to not resell the camper



### Market Value

- Costs to Sell (if any)
  - ▶ i.e. legal fees

Actual amount received for asset (if any)  
= **Disposed Asset Value**

### Example: Disposed Assets

Kerry sold her home worth \$300,000 to her grandson for \$30,000. Legal fees totaled \$5,000.

MARKET VALUE:	\$300,000
COST TO SELL (legal fees):	\$5,000
Amount received from grandson:	\$30,000

***\$265,000 is the disposed asset value that must be counted as a household asset for two years from the date of disposal.***



## Assets Owned Jointly

If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentages are specified or provided by state/local laws, prorate the assets evenly between/among the owners.

If an asset is not effectively owned by an individual, do not count it as an asset. This is often the case when an adult child is on a parent's account for survivorship purposes. Determining which individuals have ownership of an asset requires collecting as much information as is available and making a best judgement.

An asset is not effectively owned by an individual when the asset:

- Is held in an individual's name, but the asset and any income it earns/accrues benefits a non-household member, AND
- Generates income taxes for which a non-household member is responsible.

## Types of Assets

Under the HOTMA rule, there are three types of assets:

1. **Real Property** is included in net family assets. Real property includes land or a home.
2. **Necessary Personal Property** is excluded from net family assets. Necessary personal property includes:
  - ▶ Items essential to a family for the maintenance, use, and occupancy of the premises as a home
  - ▶ Items necessary for employment, education, or health and wellness
  - ▶ Items that assist a household member with a disability or that may be required for a reasonable accommodation for a person with a disability
  - ▶ Personal items that are convenient or useful for a reasonable existence and that support and facilitate daily life within a home
3. **Non-necessary Real Property** includes bank accounts, other financial investments, luxury items, and other items not counted as necessary personal property. Non-necessary personal property is treated as follows:
  - ▶ If the combined value > \$51,600 (adjusted annually for inflation), then include it in net family assets.
  - ▶ If the combined value < \$51,600 (adjusted annually for inflation), then exclude it from net family assets, but actual income from the assets is still included as income.

### Necessary Personal Property

- Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) Furniture, carpets, linens, kitchenware
- Common appliances
- Common electronics (e.g., radio, television, DVD player, gaming system)
- Clothing
- Personal effects that are not luxury items (e.g., toys, books)
- Wedding and engagement rings
- Jewelry used in religious/cultural celebrations and ceremonies
- Religious and cultural items
- Medical equipment and supplies
- Health care-related supplies
- Musical instruments used by the family
- Personal computers, phones, tablets, and related equipment
- Professional tools of trade of the family, for example professional books
- Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities
- Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)

### Non-Necessary Personal Property

- Recreational car/vehicle not needed for day- to-day transportation (campers, motorhomes, travel trailers, all- terrain vehicles (ATVs))
- Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)
- Recreational boat/watercraft
- Expensive jewelry without religious or cultural value, or which does not hold family significance
- Collectibles (e.g., coins/stamps)
- Equipment/machinery that is not used to generate income for a business
- Items such as gems/precious metals, antique cars, artwork, etc.

## Exclusions from Net Family Assets

24 CFR § 5.603(b)(3)–(b)(4)

Required exclusions from net family assets include:

- Value of **necessary items of personal property**
- **Combined value of all non-necessary items of personal property** (which includes bank accounts or other financial investments) if the combined total value does not exceed \$50,000
- Value of **any retirement plan account** recognized by the IRS
- Value of **real property that the family does not have legal authority to sell** in the jurisdiction where the property is located
- **Amounts received in any civil action or settlement** based on a claim of malpractice, negligence, or other breach of duty resulting in a family member being a person with a disability
- Interest in **Indian trust land**
- Full amount of assets held in an **irrevocable trust**
- Full value of assets held in a revocable **trust where a member of the family is the beneficiary but the grantor/owner of the trust is not a member of the household**
- **Federal tax refunds or refundable tax credits** for a period of 12 months after receipt by the household — The tax refund/credit amount must be subtracted from the total net family assets regardless of where the amount is deposited.
- Value of any **Coverdell education savings account**
- Amounts in, contributions to, and distributions from any Achieving a Better Life Experience (**ABLE**) **account**
- Value of any **“baby bond” account(s)** created, authorized, or funded by the federal, state, or local government (i.e., money held in trust by the government for children until they are adults)
- **Equity in a manufactured home** where the family receives assistance under 24 CFR Part 982
- **Equity in property under the Homeownership Option** for which a family receives assistance under 24 CFR Part 982
- **Family Self-Sufficiency (FSS)** accounts
- **Lump sum earnings, such lottery winnings**

## Checking Account(s)

Under HOTMA, only a CURRENT checking account balance is required. Owners/management agents should only obtain one statement. The six-month average balance will no longer be required.

## Savings Account(s)

### Determining Market Value and Cash Value:

The market value and cash value are the current balance of the savings account.

### Calculating Income:

Actual income is determined by multiplying the current value by the interest rate that applies to the account.

## Retirement Account(s)

### Individual Retirement Accounts (IRAs)

An individual retirement account (IRA) is a type of savings account that is used by individuals to plan for their retirement later in their lives. There are two types of IRAs: traditional IRA and Roth IRA. The biggest difference between a traditional IRA and a Roth IRA is that required minimum distributions (RMDs) do not apply to Roth IRAs.

### 401(k) Plan

A 401(k) is a qualified profit-sharing plan that allows employees to contribute a percentage of their wages to an account within the plan. Funds can usually be withdrawn under the following conditions:

- The employee's retirement, death, disability, or
- Separation from service with the employer; or
- Employee turns age 59½; or
- Employee experiences a hardship as defined under the plan

Generally, early withdrawal from a 401(k) prior to age 59½ is subject to a 10% penalty unless the individual meets an exception defined under his/her 401(k) plan.

### Keogh Account

A Keogh Account is a tax-deferred retirement savings plan for people who are self-employed. The account is very similar to a traditional IRA. The main difference between a Keogh Account and an IRA is the contribution limit.

### Retirement and Pension Fund Accounts

Retirement and pension funds are types of retirement accounts that are different than the options previously discussed (i.e., 401(k), IRA, and Keogh). Retirement and pension fund accounts are primarily employer funded.



Retirement accounts ARE NOT considered assets under the HOTMA rule. However, the distribution of periodic payments from retirement accounts is included as income and must be verified. Retirement accounts include IRAs; employer plans, such as 401(k) or 403(b) plans, and retirement plans for self-employed individuals.



Periodic payments from retirement accounts **will continue** to be included when determining household income

### Example: Retirement Accounts

Andy, age 60, has a traditional IRA. The brokerage firm verified the following information:

Current Balance:	\$150,000
Penalty for Early Withdrawal:	\$0
Interest Rate:	1.7%

The brokerage firm also verified that Andy is receiving monthly payments in the amount of \$825.

In this example, the monthly amount of \$825 would be **included** when determining annual income.

$$\$825 \times 12 = \$9,900$$

## Trust Accounts

1. Irrevocable trusts are excluded as an asset and asset income (actual income earned by the trust) is excluded
  - ▶ Distributions of periodic payments from principal or corpus is excluded as income
  - ▶ Distributions of periodic payments from interest earned on the trusts' principal is included as income, unless the distributions are used to pay for the health and medical expenses of a minor
2. Revocable trusts where the grantor is part of the household and is **under the control** of the trust is considered an asset and asset income (actual income earned by the trust) is included in income
  - ▶ The distribution of periodic payments from the trusts' principal is excluded as income.
  - ▶ The distribution of periodic payments from interest earned on the trusts' principal is excluded as income.
3. Revocable trusts where the grantor is NOT part of the household and does not have control of the trust is not counted as an asset and asset income (actual income earned by the trust) is excluded
  - ▶ The distribution of periodic payments from the trust's principal is excluded as income
  - ▶ The distribution of periodic payments from interest earned on the trusts' principal is included as income, unless the distributions are used to pay for the health and medical expenses of a minor

### HOTMA Example: Payments from a Trust

*Lane receives periodic income distributions from a nonrevocable trust established by their parents. Last year they received \$20,000 from the trust. The attorney managing the trust reported that \$5,500 of the funds distributed was interest income and \$14,500 was principal.*

In this example, only **include** the \$5,500 in interest income when determining annual income. The amount (\$14,500) of the distribution that is principal is **excluded**.

## Annual Income/Net Family Assets Scenarios based on Trust Type

Trust Type	Is the trust considered a net family asset?	Is the actual interest earned by the trust considered family income?	Are distributions of trust principal considered family income?	Are distributions of interest earned on the trust principal considered family income?
Revocable - Grantor is not part of the assisted family or household (and the family or household is not otherwise in control of the trust)	No	No	No	Yes, unless the distributions are used to pay for the health and medical expenses for a minor
Irrevocable (Typically, Special Needs Trusts are irrevocable.)	No	No	No	Yes, unless the distributions are used to pay for the health and medical expenses for a minor
Revocable - Grantor is part of the assisted family or household (or the trust is otherwise under the control of the family or household)	Yes	Yes	No	No



## Tax Refunds

HOTMA changed how owners/management agents should calculate tax refunds or refundable tax credit and when it should be deducted from net assets. HOTMA instructs when and when not to verify tax refunds:

- Not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$51,600 (adjusted annually for inflation), even in years when full verification of assets is required or if self-certification of assets is not accepted
- Must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$51,600

While a tax refund or refundable tax credit is not counted as an asset, owners/management agents still have to anticipate income earned by the assets in which a household has deposited their tax refund or refundable tax credit. Owners/management agents are permitted to deduct the value of any tax return the household received in the last 12 months. Note: deduction of the tax refund only makes an impact on households where the total net family assets is greater than \$51,600, as adjusted annually for inflation by HUD.

According to HUD, a tax refund gets subtracted from total new family assets:

*“At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of net family assets.”*



### **Tax Refunds Example: (#1)**

**The Rodriguez family received a \$4,500 federal tax refund on 3/1 /2024:**

- At their annual review, the family tells the property manager they received a \$4,500 refund and deposited the refund into their checking account, which has a balance of \$50,000
- Family reports actual income of \$1000 from the checking account
- Family owns no other assets

In this example, total calculation of net family assets is \$45,500 (\$50,000 -\$4,500 tax refund). The \$45,500 would be excluded since the assets are all non-necessary personal property and equal to or less than \$51,600 making total net family assets \$0. But the \$1,000 from the checking account will be counted as income.

### **Tax Refunds Example: (#2)**

**The Rodriguez family received a \$4,500 federal tax refund on 3/1 /2024:**

- At their annual review, the family tells the property manager they received a \$4,500 refund and deposited the refund into their checking account, which has a balance of \$50,000
- Family reports actual income of \$1000 from the checking account
- Family owns a \$10,000 plot of land

In this example, the \$50,000 is excluded because it is non-necessary personal property and equal to or less than \$51,600. The \$4,500 tax refund is deducted from the \$10,000 making the total net family assets \$5,500 (\$10,000 - \$4,500). The \$1,000 from the checking account will be counted as income.

## ABLE Accounts

The entire value of an individual's ABLE account will be excluded from a household's assets. This means that interest on the ABLE account balance will not be counted as income (actual income or imputed asset income).

- Distributions from an ABLE account are also not considered income.
- All wage income received is included as income — even the part that is deposited into an ABLE account.
- If someone other than a designated beneficiary contributes directly to an ABLE account, that contribution will not be counted as income for the designated beneficiary. This could include the employer that the question asked about. Any person can contribute to someone's ABLE account. However, the IRS limits the total annual contributions that an ABLE account can receive from all sources for a given calendar year.

## Payment Apps: Income or Asset?

### Are These Assets?

As all the below apps allow users to maintain cash balances in their accounts, the balances of these accounts should be treated as assets for the account holders.



**PayPal** is a service that allows an individual to pay, send money, and accept payments through the use of an internet application. PayPal has primarily been used to process payments for businesses for online purchases although it can be used for personal transactions.



**Square Cash** is a peer-to-peer payment app that is similar to Venmo, except the Square Cash does not have the social networking aspect that Venmo has.



**Venmo**, a subsidiary of PayPal, is a peer-to-peer social application primarily used to pay back money to family or friends.

### Market Value and Cash Value:

*HUD 4350.3 Exhibit 5-2*

Market value and cash value are the current balance of an account.

### **Calculating Income:**

There is not any actual income derived from app accounts as interest is not earned on any balance. However, the cash value of the account(s) must be included when calculating the total cash value of all assets for the purpose of imputing asset income.

## **Are Deposits Considered Income?**

To determine if deposits made into an applicant's/tenant's account are considered income depends on the answers to the following questions:

- Are deposits "loan proceeds"? Are the payments being made to an applicant/tenant by an individual to pay an applicant/tenant back for money that an applicant/tenant loaned to the individual? If yes, the deposits should not be included as income.
- Are deposits being made into the account from another household member residing in the unit? If yes, the deposits should not be included as income.
- Are deposits being made on a periodic basis (i.e., from someone not included in the household) to an applicant/tenant in order to help financially support an applicant/tenant? If yes, the deposit should be included as income. Importantly, if an applicant/tenant has already disclosed that he/she receives cash contributions, use caution to ensure not to count the contributions twice.
- Are deposits an applicant/tenant is accepting payments for a business? If yes, the deposits are not considered income. As for self-employment, the net income from the business is used.

## **Express Debit Cards**

*(HUD Listserv Posting #296)*

A Direct Express Debit Card is a payment option for individuals who do not have a bank or credit union. The balance on the Direct Express Debit Card is considered an asset and must be verified.

### **Determining Market Value and Cash Value:**

Market value and cash value are the current balance as of the date verified.

### **Calculating Income:**

No actual income is derived from a Direct Express Debit Card; however, the cash value will be included when calculating the total cash value of all assets.

## **Cash Held in Safe Deposit Box/Home**

The current amount of any cash held is considered an asset for determining annual income.

To verify cash on hand or in a safe deposit box, take the amount from the OHFA Sworn Income and Asset Statement (SIAS).

### **Determining Market Value and Cash Value:**

Market value and cash value are the current amount of cash being held by an applicant or tenant.

### **Calculating Income:**

There is no actual income from cash on hand.

## Stocks

Stocks are a type of security that gives stockholders a share of ownership in a corporation. Stockholders receive dividend payments when a company distributes some of its earnings. Each share of stock earns an annual dividend. Dividends can fluctuate year to year based on a stock's performance.

- Market Value of Stocks: Determined by multiplying the number of shares owned by the price per share
- Cash Value: Is the market value less the cost to sell the stocks (i.e., commissions, fees)
- Calculating Income: Determined by multiplying the number of shares by the dividend earned per share

### Example: Determining Asset Value and Income of Stocks

#### Stock Information

# of Shares Owned: 8	Dividend per Share: \$10
Price per Share: \$300	Commission to Sell: \$60

**Market Value: \$2,400** (# of Shares X Price to Sell)

8 Shares X \$300 per Share = \$2400

**Cash Value: \$2,340** (Market Value – Commissions/Fees)

\$2400 Market Value - \$60 Commission = \$2340

**Income: \$80** (# Shares X Dividend/per Share)

8 Shares X \$10 Dividend = \$80

## Certificates of Deposit

A Certificate of Deposit (CD) is a savings certificate with a set maturity date. Generally, CDs have a fixed interest rate.

An early withdrawal penalty will be incurred prior to a CD's maturity.

- **Market Value:** the amount of a CD
- **Cash Value:** the market value of a CD less any penalties for early withdrawal
- **Calculating Income:** Determined by multiplying the market value of a CD by the current interest rate

**Verification:** A written third-party verification is the preferred method of verification. This can be obtained through an asset holder's financial institution. An asset holder may have a paper certificate but it is now common for a CD to be a book entry and an item shown in an individual's bank statements. However, additional clarification may need to be sought from a bank regarding penalties for early withdrawal.

### Example: Determining Asset Value and Income of CDs

#### CD Information

**Current Value:** \$5,000

**Current Interest Rate:** 3%

**Penalty for early withdrawal:** \$150

**Market Value:** \$5,000

**Cash Value:** \$4,850 ( Market Value less the Penalty Amount)

**Income:** \$150 (Multiply Market Value by the Current Interest Rate)

## Asset Income

### Actual Income from Assets

Actual income from assets, which is income generated by an asset (such as interest or dividend payments), is always included in annual income regardless of whether the asset itself is included or excluded from net family assets unless the income is specifically excluded.

#### Example:

Household has a \$20,000 savings account with a 2% interest rate.

The household has no other assets.

**Total value of assets = \$20,000**

**Net family assets = \$0**

*(The total value of assets is less than \$51,600 so net family assets is considered \$0.)*

**Actual asset income from the savings account = \$400**

*(\$20,000 balance x .02) even though the net family assets is \$0*

#### Helpful Tip:

For an LIHTC unit, if the cash value of all household assets exceeds \$51,600 (adjusted annually for inflation), verification of all assets is required.

## Imputed Asset Income

Imputed income must be calculated for specific assets, not all assets, when three conditions are met:

- The value of net family assets **exceeds \$51,600** (adjusted annually for inflation).
- The specific asset is included in net family assets; and
- Actual asset income cannot be calculated for a specific asset.

Imputed asset income is NOT required.

- If a household's net family assets exceed \$51,600 but actual income from ALL assets can be determined, imputing income is not required.
- If a household's net family assets are less than \$51,600 even if actual income cannot be determined for all assets, imputing asset income is not required.

If actual income from assets can be obtained for some assets but not all, owners/agents must add the actual income from assets for those assets where actual income can be calculated, and then calculate imputed income only for those assets where actual income cannot be calculated.

The following chart outlines when to input asset income:

	Actual Income	Imputed Income	Income to Include in Annual Income
<b>Total Assets ≤ \$51,600</b>	Include	(N/A)	Actual Income
<b>Total Assets &gt; \$51,600 &amp; Actual Income can be calculated for ALL assets</b>	Include	(N/A)	Actual Income
<b>Total Assets &gt; \$51,600 &amp; Actual Income can be calculated on SOME assets</b>	Calculate the Actual Income for the assets which actual income can be calculated	Calculate the Imputed Income for remaining assets	Actual Income + Imputed Income
<b>Total Assets &gt; \$51,600 &amp; Actual Income cannot be calculated on ANY assets</b>	(N/A)	Calculate asset income using total Cash Value of ALL assets x HUD passbook rate	Imputed Income

## HOTMA New Regulation Example: **Imputing Asset Income IS Required**

**Kenny and Denny are twins who are applying for a unit.**

Denny has the following asset:

- ✓ Savings account with a cash value of \$14,500 and an interest rate of .05%, generating \$7.25 in annual interest income.

Kenny has the following assets:

- ✓ A CD with a current value of \$30,000 and a cash value of \$28,100, and an interest rate of 0.1% generating \$30.00 in annual interest income.
- ✓ A recreational boat with a cash value of \$10,000

In this scenario, since the **Cash Value exceeds \$51,600**, and actual income from all assets cannot be determined, imputing asset income is required for the asset where the actual income cannot be determined (i.e., Actual Income cannot be determined for the boat.).

**Cash Value** of all assets is **\$52,600**.

**Imputed Income: \$45.00** ( $\$10,000 \times .45\% = \$45$  [*Cash Value of boat  $\times$  current passbook rate*])

**Actual Income: \$37.25** ( $\$7.25 + \$30.00 = \$37.25$ )

**Total Income from Assets: \$82.25** ( $\$45.00 + \$37.25$ )



### HOTMA New Regulation Example: Imputing Asset Income **IS NOT** Required

#### **Destiny and Sam are cousins who are applying for a unit.**

Destiny has the following assets:

- ✓ Savings account with a cash value of \$37,000 and an interest rate of .05%, generating \$18.50 in annual interest income.
- ✓ Savings Bond with a cash value of \$15,000 and an interest rate of 2.3%, generating \$345.00 in annual interest income.

Sam has the following assets:

- ✓ Savings account with a cash value of \$4,000 and an interest rate of .05%, generating \$2.00 in annual interest income.
- ✓ A CD with a current value of \$20,000 and a cash value of \$8,000. The CD has an interest rate of .5%, generating \$100.00 in annual interest income.

In this scenario, even though the **Cash Value exceeds \$51,600** since actual income from all assets can be determined, imputing asset income **is not** required.

### HOTMA New Regulation Example: Imputing Asset Income **IS NOT** Required

#### **Remington and Eli Leroy are cousins who are applying for a unit.**

Remington has the following assets:

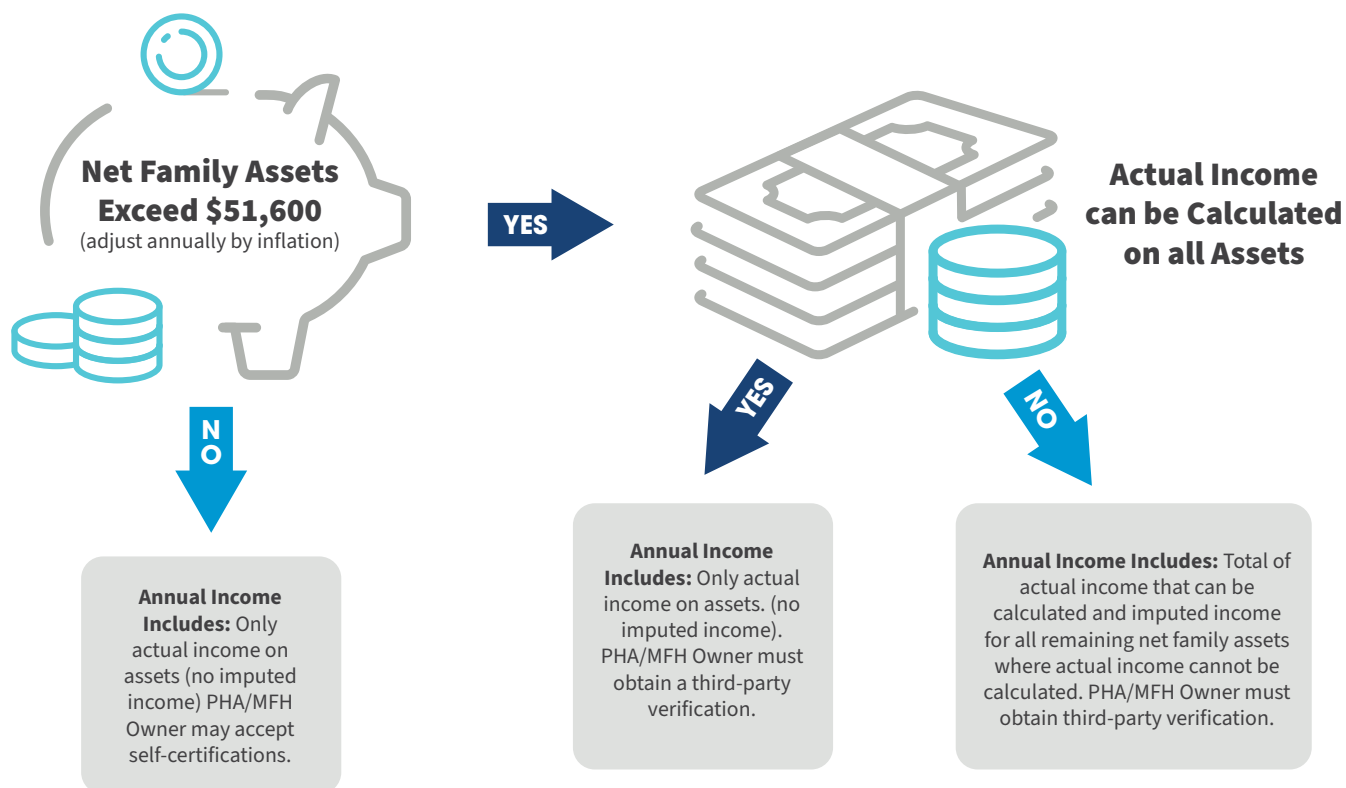
- ✓ Savings account with a cash value of \$7,000 and an interest rate of .05%, generating \$3.50 in annual interest income.

Eli Leroy has the following assets:

- ✓ Savings account with a cash value of \$4,000 and an interest rate of .05%, generating \$2.00 in annual interest income.
- ✓ A jet ski with a cash value of \$10,000.

In this scenario, since the **Cash Value does not exceed \$51,600**, imputing asset income on the jet ski **is not** required.

## Decision Chart to Determining Income from Assets



## When Actual Income Is \$0

If a financial asset does not generate income, the actual income from an asset is considered to be \$0 and the income on the asset is not imputed.

Section 15:

**Compliance  
Reporting and  
Monitoring**

## Compliance Reporting

Owners/management agents must annually certify project compliance for OHFA under penalty of perjury.

The Annual Owner Certification (AOC) is due on or before March 1 of each year and certifies information for the preceding 12-month period. Complete submission includes finalizing the AOC questions and submitting all tenant events using OHFA's database system. A submission is not complete until owner/ management agent completes the finalization process by selecting "Finalize Year" in the online reporting system.

Under the IRS § 1.42-5 (c), owners of LIHTC projects are required to certify at least annually to OHFA for the preceding 12-month period. Each state housing finance agency is required to determine its method of acquiring certification. OHFA requires owners to submit annual owner certifications to fulfill these requirements. OHFA's annual reporting process consists of two parts: the AOC and submission of tenant data for the calendar year.

All annual owner reporting for the LIHTC program is submitted through our database system. Project owners/ management agents are required to gain access to the system and complete the required reporting by March 1 of each year.

The affordability period stage determines the annual owner reporting requirements.



## Projects Leasing Up

Projects leasing up are projects that recently received an allocation of LIHTCs. They have not made it to the end of the first year of the credit period but received a carryover allocation, so they have an additional two years to qualify tenants. During this time, owners/management agents are still required to submit annual owner reports if at least one household has been qualified and housed in the project.

## Projects Sold to a New Owner(s) During a Reporting Year

Owners/management agents at the end of a reporting year are responsible for submitting the annual owner report for the entire year.

When acquiring a project, owners must keep in mind all compliance regulations and make sure they are able to abide by LIHTC regulations. It is imperative for owners/management agents to obtain all tenant files and project documentation from the previous owner(s) during the sale. Be mindful, OHFA is not responsible for obtaining any tenant files, utility allowance information, or important project documents from new owners.

## Projects in Extended Use

OHFA requires owners/management agents of extended use projects to complete an Extended Use AOC. All rental activity should be entered into OHFA's database system. Although student status certifications and income recertifications are not required during the extended use period, owners/management are required to enter them into the database system if they are completed. Any other rental activity, such as move-ins, move-outs, transfers, composition updates, and rent updates, need to be recorded in the database system. Many extended use projects may not have much rental activity due to low unit turnover, which is acceptable.

## Annual Certification

Items owners/management agents certify:

Minimum Set-Aside met	15-40 test for deep rent skewed projects <i>if applicable</i>	Changes in applicable fractions	Annual income certifications for LIHTC units <i>if required</i>	Rent Restrictions
Project use by the general public	Suitable for occupancy	Changes to eligible basis	Unit Vacancy Rule	Next Available Unit Rule
Voucher Holder's rights	Non-Transient units	Evictions for good cause	VAWA compliance	Training Requirements
	Supportive Services	Updates to Owner/Management Information	Code Violations	

OHFA's Annual Owner Certification covers all the required items from IRC§ 1.42–5 (c) along with additional items that are specific to Ohio. Above is a list of topics covered in OHFA's current owner certification. All questions must be answered before submitting the certification.

Importantly, owners must certify under penalties of perjury, question #8 in the Annual Owner Certification which describes local health, safety and building code violations and vacant units over 60 days Failure to report code violations and/or prolonged vacant units is noncompliance and will be handled in accordance with IRS and OHFA policies, including the "Good Standing Policy" in OHFA guidelines. Additional information is [found here](#).

There are three types of Annual Owner Certifications:

1. **Tax Credit** — for projects in a compliance period
2. **Extended Use** — for projects in an extended use period
3. **Gap Financing** — for projects funded with HDAP funds, such as HOME, HOME-ARP, Ohio Housing Trust Fund (OHTF), and/or National Housing Trust Fund (NHTF)

Projects funded with both LIHTC and HDAP funds will need to complete both certifications.

## Updating Utility Allowances

Under federal requirements, utility allowances must be updated annually.

- If utility allowance amounts have not changed (i.e., PHA not updated), owners/management agents still need to copy the old utility allowances and add new verification dates in system.
- New utility allowances should have the same effective and verified dates.

Owner-paid utility allowances only need to be marked on the building details page, not the utility allowance section.

## Finalizing Tenant Data

Projects must enter all rental activity into OHFA's database system. This includes: move-ins, move-outs, transfers, composition updates, rent updates, and student certification updates. Information about what each event type is can be found in OHFA's [DevCo Compliance Guides](#).

After entering all activity manually or by compliance software uploads, owners/management agents must "finalize year" in order to submit the information.

## Third Party Management

Is your project third-partied managed (i.e. has no ownership interest in the project)? If so, the third-party management agent must hold an active Ohio Broker's License in accordance with real estate law (Ohio Revised Code Chapter 4735).

No person, partnership, association, or corporation shall act as a real estate broker or real estate salesperson or advertise or assume to act as such without first being licensed with the Ohio Department of Commerce. Additional information regarding real estate broker requirements is found [here](#)

[Requirements for an Ohio Real Estate Broker's License.](#)

# Compliance Monitoring

## IRS REGULATION 1.42-5

This regulation addresses how state Housing Finance Agencies (HFAs) should monitor for compliance with the LIHTC program requirements. Under the inspection provision, OHFA has the responsibility to perform an on-site inspection/audit of all LIHTC projects through the end of the compliance period. OHFA also inspects projects in the Extended Use Period.

OHFA reserves the right to inspect the files and/or physical units at any time at its discretion. Decisions to audit more frequently may be based on tenant complaints or OHFA's assessment that a project is high risk. A project may be deemed high risk based on compliance issues identified through the Annual Owner Certification, previous audits, or on financial issues identified through OHFA's Asset Management Office.

### “Bright Line”

The “bright line” is an IRS concept related to the audit process when noncompliance is corrected prior to an audit.

- The “bright line” date is established by the date of the audit notice letter OHFA sends to the owners/management agents for an upcoming project audit.
- Any item of noncompliance that is discovered and fixed by owners/management agents before the date provided will not lead to the issuance of an 8823.

#### ⇒ 1st Example:

The review notice is sent on September 1 indicating that OHFA will be conducting an audit on September 17. In this example, the “bright line” date is September 1.

During an internal audit on August 15, it was discovered that the employment verification was not as complete as it should have been for a move-in that occurred earlier in the year. The management agent contacts the employer, clarifies the information, and proceeds to make the needed corrections to the file and the TIC.

The tenant reviews the corrections and dates and initials the changes with the management agent on August 18.

Since this was discovered and fixed prior to the “bright line” date of September 1, OHFA would not issue an 8823 based solely on this noncompliance correction.

#### ⇒ 2nd Example:

On the same internal audit (August 15) in the previous example, the management agent discovers another file missing a pension verification. The verification is sent but not received until September 5.

The management agent proceeds to make the needed corrections to the file and TIC. On September 10, the tenant initials the corrections with the management agent in the office.

Since this was discovered before but fixed after the “bright line” date of September 1, this would lead to a finding on the compliance audit report.



## COMPLIANCE PERIOD

Required every 3 years

- all buildings, sample of units and tenant files

These are the minimum requirements. OHFA reserves the right to conduct more physical or file audits

## EXTENDED USE PERIOD

Audit every 3 or 5 years depending on the extended use risk assessment score. OHFA may audit more frequently based upon the Extended Use risk assessment

## Physical Inspections/Audits

The IRS requires OHFA conduct physical inspections of units, buildings (including exteriors), and common areas for a project. OHFA must review any local health, safety, or building code violations.

- **Inspection Cycle/Timing** – First inspection by the end of the second calendar year the last building is placed in service and at least once every three years thereafter
- **Sample Size/Number of Low-income Units** – The required minimum sample size for low-income units and certification inspections is on the lesser of 20% of the LIHTC units or the IRS-published chart identified as Minimum Unit Sample Size Reference Chart.
- **Selection Method** – The selection method must be random, and the same units and files must not be selected if they are to be reviewed on separate days.
- **Advanced Notice** – OHFA cannot under any circumstances provide advance notice on the units/files being inspected. However, reasonable notice may be given for an audit. OHFA will notify owners/management agents the day of the inspection of the units and files being inspected. For inspections on multiple days, notice will be given each day.

### **Per Internal Revenue Service, Treasury § 1.42-5**

A file review or physical inspection/audit must include a review of:

- ⇒ 20% of the LIHTC units, OR
- ⇒ Not fewer than the number of units identified in the following IRS Minimum Unit Sample Size Reference Chart (shown on the next page). However, OHFA auditors may at their sole discretion choose to expand the sample size. Per the 8823 Guide, circumstances warranting an expansion of the sample size could include, but are not limited to:
  - ▶ Poor internal controls (significant risk of errors)
  - ▶ Multiple compliance issues
  - ▶ Significant number of nonqualified units

**IRS Minimum Unit Sample Size Reference Chart**

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

## Onsite Audits

Prior to performing an onsite audit, OHFA will:

1. Notify the owners/management agents of the date and approximate time an audit will take place.
2. Request that owners/management agent representatives be present and accompany the auditor throughout the entire inspection process.

**Important:** All units must be available for interior and exterior inspections (i.e., vacant units, occupied units, and common areas). Units to be inspected will be selected randomly at the time of inspection.

After performing an onsite inspection/audit, OHFA will:

- ⇒ Provide immediate notice which identifies all life-threatening or severe issues (per the NSPIRE severity classification) observed at the time of the audit that require immediate corrections.
- ⇒ Provide a copy of the compliance audit report to the owners/management agents indicating a correction timeframe per the NSPIRE severity classification. **Life-threatening or severe issues must be corrected within 24 hours.** Moderate severity issues must be corrected within 30 days. Low severity issues must be corrected within 60 days.
- ⇒ Request all noncompliance issues be corrected within the timeframe specified in the compliance audit report.
  - ▶ Request legible copies of proof of the corrections in the form of work orders, receipts, and/or invoices be provided to OHFA within the allotted time indicated in the compliance audit report.
- ⇒ Review the supporting documents for corrections.
  - ▶ Send correspondence indicating no further corrective actions regarding the physical condition of the project are required.
  - ▶ Report all instances of noncompliance to the IRS via Form 8823 within 45 days of the end of the correction period whether or not the noncompliance issues have been corrected.

## NSPIRE Protocol

OHFA will use [HUD's NSPIRE standards](#) for all physical inspections/audits. For further information, reference the [National Standards for the Physical Inspection of Real Estate](#) and Appendix E of this manual.

Further information is found in US Housing Consultants [free manual](#).

## File Audits

Remote desktop file audits occur through OHFA's inspection software.

The audit process is broken down into three steps for owners/management agents:

1. Receive an Audit Notice Letter from OHFA to send in prep documents for the audit and update tenant data in OHFA's online reporting system.
2. Receive a Day-Of-Audit letter. Management agents will then send in requested tenant files.
3. Management agents send all corrections to the audit findings to the assigned compliance auditor within the given timeframe.

### Receiving Audit Notice Letter

The compliance auditor will email a letter to the primary owners/and management agents listed in OHFA's online reporting system. The letter will instruct owners/management agents to:

1. Update tenant events in OHFA's online reporting system within three days from the date of the letter.
  - a. Management agents must ensure they have access to OHFA's reporting system in order to update the tenant events.
  - b. It is important HOME/HOME-ARP/NHTF/OHTF units are identified in the tenant events before the day of the audit!
2. Complete the Management Questionnaire form and submit the project's utility allowance documentation for the current and prior two years as well as the project's VAWA emergency transfer plan.
  - a. Primary owners and management agents listed on the Management Questionnaire will receive the compliance audit report and it is important to ensure all contact information (i.e., email addresses) is correct.
  - b. Upload all requested documents to OHFA's reporting system with the "Upload Documents" button for the project. Only use this section to upload prep documentation for a file audit!

The screenshot displays the OHFA reporting system interface. On the left is a sidebar with navigation links: 'Return to Property Listing', 'Manage Users', and a list of projects including 'TEST - X - Live Data - IT' and 'OH-16-Test'. The main content area is titled 'TEST - X - Live Data - IT' and shows 'Property Details'. The property address is '57 E Main St, Columbus OH, 43215'. The Compliance Analyst is 'Christina Knight' and the Scattered Site status is 'No'. A table lists the programs and their associated units: HDAP-LIHTC(HOME) with 20 units and LIHTC - Competitive with 5 units. The Reporting Year is 2021 and Floating Units are set to False. On the right, a vertical menu contains buttons for 'Utility Allowances', 'Import Events', 'Export Events', 'Remove Property', and 'Upload Documents'.

Program	Award Number	Award Date	Buildings	Units
HDAP-LIHTC(HOME)	NB 20020		0	20
LIHTC - Competitive	DONOTDELETE		1	5

Reporting Year: 2021 Floating Units: False

*This is an example of a project in OHFA's reporting system. Upload Documents is used to send in prep documents for an upcoming file audit. Do not use this section to upload tenant files.*

## OHFA-required Tenant File Documentation

Following are the required documents for tenant files and will be requested during a file audit.



## Day-of-Audit Letter

Owners/management agents will be instructed as to which units are randomly chosen for an audit. Since OHFA's reporting system randomly chooses the units, some vacant units may be chosen. Keep in mind the last tenants living in those units will need their files available for audit. Instructions on how to upload tenant files in OHFA's reporting system are available and the link is listed in the Day-Of-Audit letter. The letter will provide the date and time to have all tenant files uploaded into OHFA's reporting system.

- Label each file with the BIN, unit number, and audit number. Tenant name and address is helpful.
- Upload only one file per unit. Tenant files not labeled correctly will be rejected.
- Do not upload birth certificates, Social Security Numbers, or picture IDs.
- If the file is for a HUD model lease, only upload the first and last pages of the lease.
- If the file is not for a project-based assistance lease, upload the entire lease.

## Correction Period

Once the auditor has reviewed the files, a compliance audit report will be available for viewing in OHFA's reporting system. Any noncompliance file findings will be noted for each unit and given a correction period. Any questions about how to access the compliance audit report or how to submit corrections should be directed to the assigned compliance auditor.

Section 16:

**Unit Transfers,  
Next Available  
Unit Rule and Unit  
Vacancy Rule**

## Unit Transfers

When a household transfers from one unit to another unit, the unit being transferred into adopts the status of the unit being transferred out of. The unit being transferred out of adopts the status of the unit being transferred into so that essentially the units swap statuses. Some of the requirements regarding transfers will depend on whether the transfer is within the same building or a different building within the project (as defined by IRS Form 8609, line 8b).

### 1. Transfers in the Same Building

A household may transfer to a unit within the same building (BIN) without needing to complete a new recertification, even if the household's income is over 140% of the applicable federal income limit.

### 2. Transfers to a Different Building

A household may transfer to a unit in a different BIN within a project without needing to complete a new recertification if the household's income did not exceed 140% of the applicable federal income limit as of the household's most recent recertification.



If a household was over the 140% limit at their most recent recertification, the household CANNOT transfer to a unit in a different building. This is the case, even if the building is part of a multiple building project. Whether or not a building(s) is part of a multiple building project is elected by the owner on Form 8609, line 8b. It is important management agents know what this election is in order to stay in compliance.

## Next Available Unit Rule (NAUR)

A household is considered over-income (OI) when a household's annual income exceeds the 140% applicable income limit at the following times:

1. Upon annual recertification
2. Adding a new household member, or
3. Testing income at credit deferral

The NAUR must be followed in order for the OI unit to continue to be treated as a low-income unit, and thereby still be included as a low-income unit when determining the Applicable Fraction. The NAUR allows owners/management agents to continue claiming credits on the OI unit and for the household to stay if the household goes over the applicable income limit at recertification. It is important to remember the NAUR is a building rule. The IRS instructs the over-income household can stay as long as:

1. The household was qualified at the time of initial occupancy.
2. The next available unit of comparable or smaller size in the same building is rented to a qualified household until the required applicable fraction is restored.
3. The over-income unit remains rent restricted until the applicable fraction and the minimum set-aside are restored.



If owners/management agents fail to follow the NAUR, all OI units (comparable or smaller) must not be included as LIHTC units when determining the building's applicable fraction or the project's minimum set-aside.

Note: Generally, the NAUR does not apply to 100% LIHTC projects. Owners/management agents may not be aware of any OI residents due to the 2008 HERA rule, which states owners/management agents no longer have to conduct annual recertifications on 100% LIHTC projects. With 100% LIHTC projects, owners/management agents will always rent the next available units to qualified households.

In order to not violate the NAUR for mixed-income projects, owners/property managers must be very careful when transferring households. Noncompliance with the NAUR will affect a project's applicable fraction and ultimately how many credits owners can claim at the end of the year.

### Example: Mixed Income NAUR Violation

#### **20-Unit Building: All units are the same size.**

10 units are LIHTC and 10 are market rate.      AF is 50%-Minimum Set-Aside is 40/60%

On September 1st, three of the LIHTC units (101,102,102) are OI at recertification.

- Even though the building has three OI units, the units are still treated as LIHTC units until a market rate unit is available.

For the months of September-October the AF remains at 50%.

- On November 28, a market unit (111) becomes vacant.
- Owner must rent this unit to a LIHTC household.

#### ***BUT***

- Owner rented the unit to a household from another building who was OI.
- Owner failed to follow NAUR.
- All OI units are no longer LIHTC units.
- AF drops to 35%.

→ **Minimum Set-Aside Violation** ←

## Next Available Unit Rule

NAUR is not really an issue for 100% tax credit projects.

WHY?

*With a 100% project, you will always rent the next available unit to a qualified household.*



### Composition Household Changes and the NAUR

#### **When adding household members:**

- Verify new members' incomes and student statuses.
- Add incomes to household's most recent TIC.
- If added income goes over the 140% income limit, follow the NAUR.

#### **When removing household members:**

- No action is required. However for mixed-income projects (i.e., has market rate units), if the removal of a household member results in the household's income to go over 140% AMGI, the NAUR must be followed at the household's next recertification when the member is removed from the TIC.
- Remove the member(s) from the household composition at the next recertification.

Owners/management agents can continue to add household members to a unit if at least one member of the original household remains in the unit.

When all original members move-out of a unit, remaining tenants must be certified as a new income-qualified household.

## Unit Vacancy Rule (UVR)

IRC Section 42 1.42-15(c)

If a LIHTC unit becomes vacant during a year, reasonable attempts must be made to rent the unit or next available unit of comparable or smaller size to a household that has a qualifying income before any units in the project are or will be rented to households not having qualifying incomes. The UVR is applied on a project basis, which means it can apply to a multi-building LIHTC project that is considered one project.



Vacant units previously occupied by LIHTC-eligible households may continue to be treated as LIHTC units so long as the following are met:

- Reasonable attempts are made to rent the units before any market-rate units are rented to qualified households.
- Units are made suitable for occupancy (i.e., ready to rent).
- If a low-income unit becomes vacant, the property manager must prioritize renting that unit or a comparable or smaller unit to a qualified low-income household before renting any other unit in the project to a non-qualified household.

***If the unit vacancy rule is violated, all vacant units previously occupied by qualified households lose their LIHTC status per IRC Section 1.42-15(c) which may result in a reduction in the applicable fraction and result in recapture of previously claimed credits.***

### **Key Points**

- Management agents must maintain accurate records of all vacancies, including dates of vacancy, reasons for vacancy, and efforts to fill vacancies.
- In mixed-income projects (i.e., LIHTC and market-rate units), the UVR applies to the LIHTC units, meaning that vacant LIHTC units must be rented to qualified low-income households before any market-rate units can be rented.
- What is a “reasonable attempt to rent a vacant unit?” The definition of “reasonable attempt” is based on facts, but in [Revenue Ruling 2004-82](#), Q&A 9, the Internal Revenue Service (IRS) specifically declined to offer any objective definition for the term reasonable. In fact, that guidance specifies, “what constitutes a reasonable attempt to rent a vacant unit is based on facts and circumstances and may differ from project to project.” Management agents should contact OHFA with any questions on what constitutes “reasonable attempts.”

Section 17:

**Correction and  
Consequences of  
Noncompliance**

## Types of Noncompliance

Generally, a project is out of compliance and consequences may apply if during a compliance period:

- ⇒ There has been a change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of a building from one year to the next.
- ⇒ A building no longer meets the minimum set-aside requirements, the imputed income limitations, gross rent limitations, or other requirements for units that are set aside.
- ⇒ Owners/management agents fail to submit the annual utility allowance documentation and/or Annual Owner Certification.
- ⇒ An ineligible household resides in a LIHTC unit.
- ⇒ A unit or building is no longer suitable for occupancy or otherwise in violation of NSPIRE physical inspection criteria.
- ⇒ Owners/management agents do not comply with OHFA's requests to conduct a physical inspection or a file audit.

## Consequences

Noncompliance may be determined at a unit, building, or project level. Enforcement actions include but are not limited to the following:

- ⇒ Recapture of the accelerated portion of the tax credit for prior years by the IRS
- ⇒ Disallowance/loss of the tax credit for the entire year in which the noncompliance occurs
- ⇒ Notification to the IRS via Form 8823
- ⇒ Repayment of rent overages
- ⇒ Mandatory attendance at an OHFA training and/or a LIHTC compliance training offered by a national organization, such as [US Housing Consultants - Services for Affordable Housing](#) or [Costello Compliance](#)
- ⇒ Increase in the frequency of OHFA audits

## Notification of Noncompliance

OHFA is required to provide written notice of noncompliance to owners/management agents if:

- Any required submissions are not received by the due dates.
- Tenant files including TICs and supporting verification documentation are not made available during an audit or not submitted when requested by OHFA.
- The project is found to be out of compliance through physical unit inspection, Annual Owner Certification review, file audit, and/or other means.

## Correction Period

If OHFA discovers (through a physical audit, file monitoring, Annual Owner Certification review, or any other manner) that a project is not in compliance, OHFA will notify the owners/management agents. Owners/management agents must take appropriate action(s) to remedy noncompliance.

Owners/management agents have 30 days from the date of the compliance audit report to provide corrections for the findings.

- If an owner/management agent requires additional time to complete the corrections, two actions must occur:
  - ▶ Demonstrate active work on the corrections.
  - ▶ Request an extension. The request for an extension must be in writing and state the reason(s) why an extension is needed. The extension request must go directly to the compliance auditor who completed the inspection.

If OHFA determines there is good cause, an extension may be granted for a total correction period not to exceed six months. **Exception:** For physical inspections, the maximum correction period under NSPIRE standards is 24 hours for life-threatening or severe issues, 30 days for moderate severity issues, or 60 days for low severity issues.

## Reporting Noncompliance to the Internal Revenue Service



**Noncompliance discovered by OHFA during a file audit, physical inspection, owner certification review, etc., must be reported to the IRS. The IRS ultimately determines whether or not there is noncompliance that impacts owners claiming tax credits.**

OHFA is required to file IRS Form 8823, Low-income Housing Credit Agencies Report of Noncompliance, with the IRS no later than 45 days after the end of the correction period and no earlier than the end of the correction period regardless of whether the noncompliance is corrected. OHFA must identify on IRS Form 8823 the nature and dates of the noncompliance and indicate whether owners/management agents have corrected the issues of noncompliance.

Section 18:

**Key Components  
of Annual Tax  
Credit Calculation**



Tax credits can be involved in the new construction of a building, rehab of an existing building, or acquisition of an existing building which will also be rehabilitated. A formula is used to calculate the amount of credits owners can claim throughout the 10-year credit period. The credit amount is calculated for each low-income building in a project. The annual tax credit calculation involves three key components as outlined below.

## Eligible Basis

To calculate potential tax credits that can be claimed on a building, owners first need to determine how much was spent on a building, including construction, acquisition, and/or rehab costs. This dollar amount is called the “eligible basis.”

**New Buildings** - general construction costs

**Existing Buildings** - cost of acquisition plus rehabilitation expenditures

## Costs Included



**Engineer Reports and Fees**  
**Developer and Contractor Fees**  
**Cost of Amenities-Appliances**  
**Construction Costs (units and common areas)**

## Costs Excluded



**Federal Grants**  
**Land**  
**Soft Costs**

## Applicable Fraction

Applicable fraction is expressed as a percentage and reflects the portion of a building’s low-income units and floor space that qualify for credits. The applicable fraction is the percentage of a building that is treated as low-income use and generally eligible for LIHTC. The applicable fraction is the lesser of the unit fraction or the floor space fraction and is a building rule. Simply put, the applicable fraction is the portion of a building occupied by LIHTC-qualified tenants.

Applicable Fraction is the ***lesser*** of:

**Total Tax Credit Units  
divided by all  
Residential Units**

***OR***

**Total Tax Credit Square  
Feet Divided by all  
Residential Square Feet**

Total Tax Credit Units  
All Units

Total Tax Credit Sq. Ft  
All Sq. Ft.

Both applicable fraction calculations are done on a building-by-building basis. A building’s applicable fraction, representing that portion of the building occupied by qualified families, determines how much of it can produce an LIHTC credit. Common space is excluded from applicable fraction. Applicable fraction may fluctuate from year to year, but it cannot go below the applicable fraction set on the last day of the first year of the compliance period.

If owners/management agents are not meeting the required applicable fraction, tax credits will be lost.

Applicable Fraction as a Percentage	Include in Applicable Fraction	Exclude from Applicable Fraction
<ul style="list-style-type: none"> <li>Convert fraction into a decimal (<math>5/9 = .55555</math>).</li> <li>Carry the result out to four decimal points and round up the last number.</li> <li>.55555 becomes .5556.</li> <li>Move the decimal two places to the right (55.56%).</li> </ul>	<ul style="list-style-type: none"> <li>All residential units</li> <li>Model units (even if never occupied) <ul style="list-style-type: none"> <li>Can be included in eligible basis (included in denominator)</li> <li>Model units never considered LIHTC units unless rented to low-income tenants (excluded from numerator unless rented to low-income tenants)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Common areas</li> <li>Exempt employee unit(s) <ul style="list-style-type: none"> <li>Must be occupied by a full-time employee, such as a manager, security, or maintenance staff</li> <li>Commonly referred to as “manager unit”</li> <li>Can be included in eligible basis</li> </ul> </li> </ul> <p><b>Reference:</b> 8823 Guide, IRS Rev. Rul. 92-61 and 04-82 &amp; IRS Newsletter #14</p>

### Applicable Fraction: **Unit Formula Example**

A building has 10 units. All units are 1,000 sq. ft.  
Five are tax credit units.

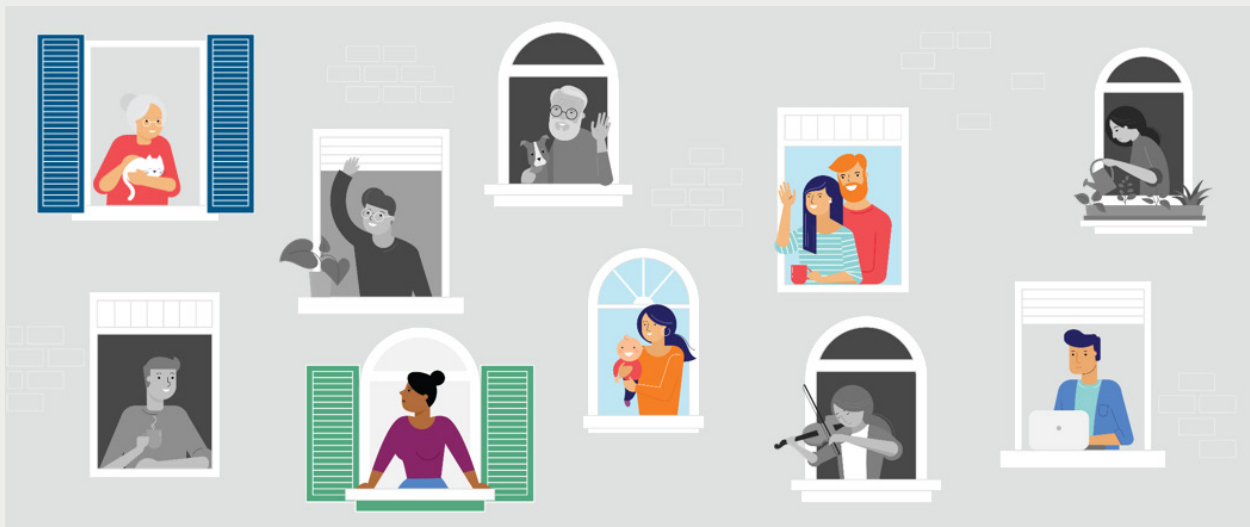


**Formula:** 5 tax credit units / 10 total units = .5000 or 50% AF

### Applicable Fraction: **Square Footage Formula Example**

A building has 10 units. Five units are one-bedroom at 500 sq. ft. each. The other five units are two-bedrooms at 1,300 sq. ft. each.

Four one-bedroom units are tax credit units. One two-bedroom unit is a tax credit unit.



**Formula:** 3,300 sq.ft. (tax credit units) / 9,000 sq. ft. (all units) = .3667 or 36.67% AF

## Converting the AF into a Decimal



**Building has 9 units, 6 are tax credit or low income units.**

**Applicable Fraction is  $6/9 = .6666$**

**Carry out answer 4 decimals, round up the last decimal.**

**AF is .6667 or 66.67%**

### **Key Applicable Fraction Points**

- Determined based on number of low-income units in compliance as of the last day of the tax year.
- The Applicable fraction reached at the end of the first year of the credit period **MUST** be maintained throughout the 15-year compliance period.

# Qualified Basis

Qualified basis is the portion of the building costs that went to the tax-credit part of the building. It is determined by multiplying the percentage of the building that is tax credit (the applicable fraction) by the eligible basis, which results in the qualified basis.

The annual tax-credit amount is the amount of credits that owners can claim each year for the years two through 10 of the compliance credit period.

Form **8609**  
(Rev. December 2021)  
Department of the Treasury  
Internal Revenue Service

**Low-Income Housing Credit Allocation and Certification**  
► Go to [www.irs.gov/Form8609](https://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 ►

**1a** Date of allocation ►

**b** Maximum housing credit dollar amount allowable

**1b**

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

**2**

%

**3a** Maximum qualified basis

**3a**

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

**3b**

1

%

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

**4**

%

**5a** Date building placed in service

**b** Check here ☐ if the date of allocation on line 1a is in calendar year 2021 or 2022 and the building is located in a qualified disaster zone (see instructions).

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

**a** ☐ Newly constructed and federally subsidized

**b** ☐ Newly constructed and **not** federally subsidized

**c** ☐ Existing building

**d** ☐ Sec. 42(e) rehabilitation expenditures federally subsidized

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

**f** ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

**Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only**  
Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

Signature of authorized official

Name (please type or print)

Date

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

**7** Eligible basis of building (see instructions)

**7**

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

**8a**

**b** Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

☐ Yes ☐ No

**9a** If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?

☐ Yes ☐ No

**b** For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)?

☐ Yes ☐ No

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

**a** Elect to begin credit period the first year after the building is placed in service (section 42(f)(1))

☐ Yes ☐ No

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

☐ Yes

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

☐ 20-50

☐ 40-60

☐ Average income

☐ 25-60 (N.Y.C. only)

☐ 15-40

**d** Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)

☐ 15-40

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

Signature

Taxpayer identification number

Date

Name (please type or print)

First year of the credit period

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63981U

Form **8609** (Rev. 12-2021)

**Helpful Tip:**  
Have a copy of the IRS 8609 at the project to adequately monitor compliance.

**Form IRS 8609:**

- Key credit allocation form
- Qualified and placed-in-service dates are indicated on the form as well as key elections that owners make (i.e., minimum set-aside, multiple building)

OHFA LIHTC COMPLIANCE MANUAL

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Section 19:

**Placing in  
Service**

## New Construction

§ 42 (e)(3)(A) & IRS Notice 88-116

A building is placed in service when it is ready for its intended purpose.

With new construction, this is generally the date when the first unit in a building can legally be occupied. This is supported by a certificate of occupancy. The certificate of occupancy could be temporary and only needs to be for one unit in the building.

## Acquisition

For buildings that are purchased/acquired with households already living in place, the buildings are ready for their intended purpose upon acquisition. The date of acquisition by purchase is the placed-in-service date for tax credits. The placed-in-service date is the date the deed for a building is transferred to new owners.

## Rehabilitation

The rehabilitation placed-in-service date does not directly relate to occupancy. It is an expenditure test to determine what year tax credits may be claimed. Rehabilitation credits can be placed in service at the close of any two-year period over which rehab expenditures are made. At least the greater of 20% of the adjusted basis of the project or \$6,700 per unit must be spent.

Some state HFAs often dictate a higher minimum, so management agents must ensure they know the minimum for each state.

## Deadlines, Reservations, and Allocations

With a successful application to a state's housing finance agency (HFA) for tax credits for a building, the HFA will issue a reservation of credits, which holds a portion of the credits allowable by a state in reserve for owners anticipating successful construction and occupancy of a project.

- If a building can be placed in service the year of allocation, IRS Form 8609 is issued by the HFA and becomes the official allocation document.
- In most cases, credits are “carried over” in a carryover allocation. Carryover documents must be completed by December 31 of the year of allocation.



### Placing in Service Deadline:

- A building is allocated credits on July 6, 2023.
- Owners receive a carryover allocation.
- Owners have until the end of the second calendar year of the allocation to place the building in service (i.e., December 31, 2025).



## Carryover Deadlines

To continue to qualify for a carryover allocation, 10% of reasonably expected basis must be incurred within one year of the date that the HFA issues allocation documents.

- Expected basis is the basis of the land and depreciable building expected at the time a building is placed in service.
- A building must be placed in service by December 31 of the second year after carryover.

## Deadlines

A building must be placed in service by the end of the year that credits were awarded.

### Carryover Allocation

A carryover allocation must be issued by completing Form 8610-A by December 31 of the year credits were awarded.

Owners now have until the end of the second year after a carryover allocation was issued.

## Reasons to Defer Credits

Deferring credits is an option provided on Form 8609. The IRS allows owners to defer claiming credits in the event the minimum set-aside (MSA) has not been met or if a building is not fully qualified by the end of the year when the project is placed in service. Failing to meet the minimum set-aside by the end of the first year of a credit period will result in a loss of all credits! Even if the MSA has been met but a building is not fully qualified by LIHTC units, there are still consequences for the owners. If a building is not fully qualified by the number of LIHTC units it needs by the end of the first year of a credit period, owners can only claim 2/3 of the credits for the duration of a compliance period (15 years) for those units, which is a huge loss since owners normally receive the full credit amount of an award yearly for 10 years.

Investors do not like the 2/3-credit rule since they will not receive the full amount and it is spread out over a longer period of time. Owners may only defer once.



Section 20:

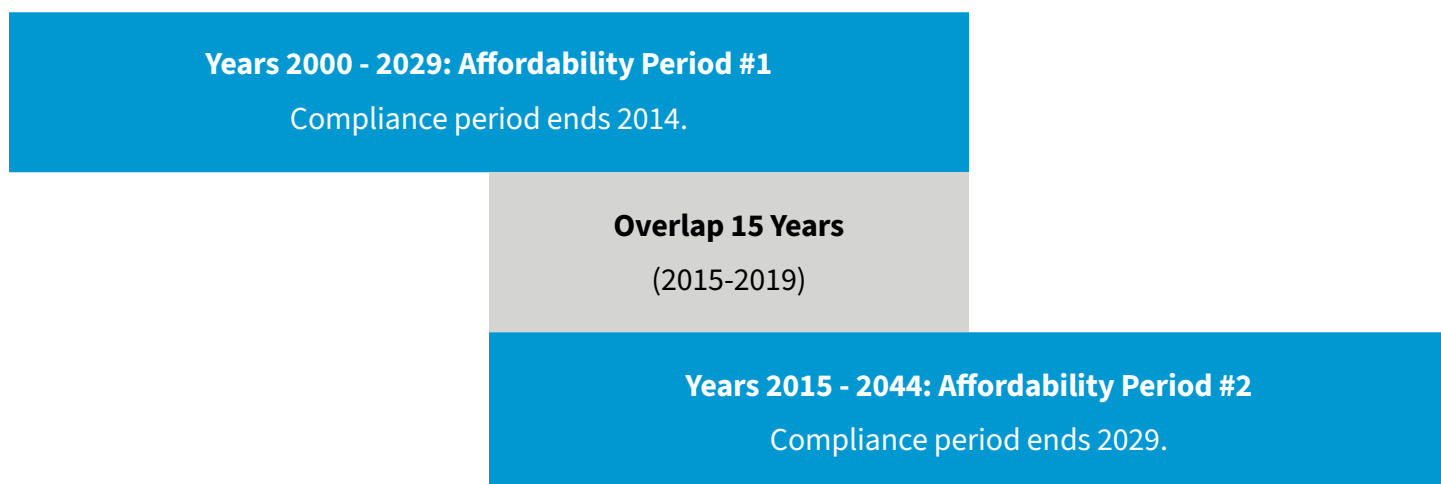
# **Resyndication**

When owners of a tax credit project finish the 15-year compliance period, they have the option of rehabbing the property and getting new credits based on how much they spend on the acquisition/rehab during the extended use period. “Resyndication” is an industry term used to describe a subsequent allocation of tax credits on a qualified project that served as LIHTC housing.

Planning and communication are key among all parties in the early stages.

## Extended Use Agreements

Beyond the end of a compliance period, owners of all tax-credit properties allocated credits since 1990 are required to have agreements in place to continue affordable housing restrictions for at least an additional 15 years. The result is a total of a 30-year extended use agreement (15-year compliance period plus 15 years). New allocations of credits will also have extended use agreements for at least 30 years that will start with new credits. To put it another way, extended use periods will overlap by several years.



## Grandfathering

It is important to remember households never lose tax-credit eligibility regardless of income increases after move-ins, but these households can always lose their tax-credit statuses if they become ineligible students. Although previously income-qualified households are protected, there is no such protection offered to full-time student households.

### What About Students?

Student status will need to be tested at acquisition to establish if households that are grandfathered in for income reasons are also student eligible.

# Tenant File Best Practices

## **How should I organize the file and what paperwork is required?**

- ⇒ Keep original file with files that establish the second set of credits.
  - ▶ A best practice is to keep the original qualification file with files establishing the second set of credits. This way, it will allow a more efficient review of files during an audit or compliance review.
- ⇒ Color code files.
  - ▶ Another best practice is to color code the original qualification file so that it is easily identifiable.

## **What paperwork is required to prove the household is qualified?**

The IRS does not specify. OHFA provides the following guidance.

- Use the original file showing the household qualified
- If that file is not available or is incomplete, use the most recent recertification file to demonstrate the household qualified under limits at the time of recertification even after move-in

Another way to prove the tenant was qualified if the original file is missing or incomplete is to conduct a retroactive certification back to the original move-in date. Either way, owners /management agents should establish that the household qualified during the first extended use period and therefore continues to qualify for the second set of credits.

The owner/management agent must know what is required by the Syndicator. The Syndicator, often known as the investor, purchases ownership interests in LIHTC projects by buying housing tax credits from the owners/developers.

As part of the transaction, the Syndicator becomes a limited partner. Syndicators may require that a full recertification of in-place households is conducted.

### **Help Tips:**

- To ensure a clean file that meets current verification standards, owner should consider conducting a full recertification.
- If household qualifies under current income limits for the new credits, no further work is necessary.
- If the household does not qualify after conducting a recertification, use an OHFA Clarification Record as to why the original file (even if incomplete) is being used.
- Conducting a recertification also ensures the NAUR is being followed if the in-place household income exceeds 140% of current income limits.

## What Income Limits Do I Use?

*IRS LIHC Newsletter #35 page 4, Q12*

According to the 8823 Guide from the IRS, “households determined to be income-qualified for purposes of the IRC §42 credit 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.” This is referred to as income “grandfathering”.

- Grandfathered households continue to qualify based on their original certification and income limits at the time of the start of new credits. So income limits aren’t really relevant to the income qualification status of grandfathered tenants
- New move-in households must be certified under current income limits.
- Since income limits are held harmless starting when a project places in service, and the new set of credits place in service at the new acquisition date, an owner cannot rely on income limits that are held harmless to a past year. They must start with the current published limits in effect as of acquisition.
- HERA established a Hold Harmless policy to avoid jeopardizing the financial feasibility of existing housing properties by maintaining the prior year established income limits and rents when annual income limits decrease. 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 that is after 2008, HERA special limits and rents cannot be used.

## Rent Limits

8823 Guide, Page 133

For households 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 property, or the gross rent floor in place with the second allocation, whichever is higher. Gross rents at a tax credit property never have to fall below what they were as of the date of the credit allocation. This ensures the rents never fall below the numbers that were used for financial feasibility and underwriting by the state agency and the owner near the time the development applied for and received tax credits. This is known as the Gross Rent Floor.

**Credit Allocation**

**OR**

**Placed-in-service date IF such election is made by the owner**

The Gross Rent Floor is the amount of rent that a project never has to decrease the existing gross rents even if the maximum rent limit decreases. The gross rent floor is determined at allocation or the projects placed-in-service date. This same concept is applied with Held Harmless income and rent limits.

In-place household 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. Therefore, the owner may actually have to drop rents based upon current income limits.

### **Noncompliance with Gross Rents**

**Once a unit is out of compliance with rent limits, the unit is no longer a low-income unit for the rest of the owner's tax year. A unit is back in compliance when the rent charged does not exceed the limit.**

Refer to OHFA's [Resyndication FAQs](#), which may be amended from time to time, for further information.

Section 21:

**Recordkeeping  
and Retention  
Requirements**



Many of the laws and regulations the owner of a LIHTC project must follow involves recordkeeping. Appropriate recordkeeping can prevent an owner from having noncompliance issues and may also help an owner when noncompliance is identified by evidencing a good faith effort to be in compliance. Recordkeeping includes all tenant files for the project throughout the affordability period.

Recordkeeping requirements are outlined in [IRS Regulation §1.42-5](#).

Per the guidance issued by the IRS in [Revenue Procedure 97-22](#) and [Revenue Ruling 2004-82](#), tenant records must be kept and retained for each building for the required periods of time recommended by the IRS. In addition:

- All tenant files for the first year of the credit period should be retained for a minimum of 21 years.
- Tenant files and records pertaining to years after year one should generally be retained for 6 years following the end of the tax year.
- Owners/management agents are allowed to keep electronic copies of files. If an audit occurs onsite, files will need to be available for the inspection.

Section 22:

**OHFA Policies  
and Resources**



As regulations and programs evolve, OHFA makes updates to the compliance rules and procedures associated with our various projects and programs. Owners/management agents of OHFA-funded projects are responsible for ensuring their projects comply with all applicable local, state, and federal laws and regulations. OHFA policies are specific to Ohio and can be [found here](#).

OHFA's policies may be amended from time to time so it is important for owners/management agents to be aware of all policy changes, but how?

**Stay Informed!** *Subscribe to OHFA's Constant Contact [email distribution list](#) that allows owners/management agents to receive important notifications from OHFA concerning compliance, regulatory and policy changes, development updates, and much more.*

## Electronic Signatures

OHFA offers owners of LIHTC projects the ability to submit eligible program documents with electronic signatures. To do so, owners must receive initial approval from OHFA and a recertification on an annual basis thereafter. Review the [Electronic Signature Policy](#) and submit the Partner Certification for Use of Electronic Signatures (Appendix A of the policy) to the OHFA e-signature mailbox at [mfesignature@ohiohome.org](mailto:mfesignature@ohiohome.org). OHFA will notify owners/management agents of approvals by email.

## Tenant Selection Plan Guidelines

OHFA's [Tenant Selection Plan Guidelines](#), which may be amended from time to time, provides direction for owners/management agents on what must be included in a project's TSP. It is acceptable for owners/management agents to refer to the TSP as a resident selection plan or qualifying criteria. Compliance with the mandatory elements in the TSP Guidelines is a requirement for all projects funded by OHFA. The tenant screening criteria section contains recommended best practices.

## Violence Against Women Act

Adherence to the requirements of the Violence Against Women Act Reauthorization Act of 2022 (VAWA) is required for all OHFA-funded programs, including LIHTC, HOME, NHTF, and OHTF. OHFA's VAWA policy, which may be amended from time to time, is [found here](#).

## Compliance Next Steps Meeting

The Compliance Next Steps (CNS) Meeting provides an opportunity to ensure all parties involved with OHFA-funded multifamily properties are aware of federal and state regulations. The meeting fosters partnership between OHFA and property contacts. Owners/Management agents are required to meet with OHFA when:

- **New Construction and HDAP:** A project reaches the 50% construction completion point.
- **Acquisition/Rehabilitation:** The property is transferred to a new ownership entity.

More information may be [found here](#).

## Partner Relationships and On-boarding

The On-boarding and Partner Relationship-building Program is for partners who are new to OHFA or experiencing significant compliance issues that could jeopardize the viability of their properties. OHFA staff will work with representatives of ownership entities, HDAP recipients, and/or property management agents to create tailored programs, which could include trainings, partner meetings, audits, and any other actions as determined by OHFA.

More information may be [found here](#).

## Average Income

The Consolidated Appropriations Act of 2018 (Act) established a third minimum set-aside election referred to as the “average income election” as defined in Internal Revenue Code (IRC) 26 USC 42(g)(1)(c). Further information may be [found here](#).

All other OHFA policies can be found on the [Compliance Policies](#) page of the website.

## Ohio’s Broker’s License Requirement

Is your project third-partied managed (i.e. has no ownership interest in the project)? If so, third-party companies must hold an active Ohio Broker’s License in accordance with Ohio real estate law (Ohio Revised Code, Chapter 4735).

### Compliance Tip: Third-Party Managing

#### ⇒ **Broker License Requirement**

Except as provided in [section 4735.022 of the Ohio Revised Code](#):

*No person, partnership, association, or corporation shall act as a real estate broker or real estate salesperson, or advertise or assume as such, without first being licensed with the Ohio Department of Commerce.*

#### ⇒ **License must be active.**

#### ⇒ **Annual Owner Certification Requirement**

Update Broker License information as necessary.

## Resources

(references to the 8823 Guide reflect the version published in 2011)

### **Applicable Fraction**

- IRC Section 42 (c)(1)(B)
- 8823 Guide, Page 8-6
- IRS Revenue Ruling 92-61 and 04-82
- IRS Newsletter #14

### **Placing In Service**

- IRC Section 42(e)(3)(A)
- IRS Notice 88-116
- 8823 Guide, 4-24 #39

### **Eligible and Qualified Basis**

- IRC Section 42 (d)
- 8823 Guide, Chapter 8
- IRC Section 42 (c)(1)

### **Calculating Credits**

- 8823 Guide, Page 9-1
- Tax Credit and Carryover Deadlines
- IRC Section 1.42-6(A)
- Section 42(e)(3)(A)(ii)(I)

### **Federal Set-asides**

- IRC 42(g)(1)
- 8823 Guide, Chapter 10

### **Income Limits**

- HERA

### **Annual Recertification**

#### **Exemption**

- 8823 Guide, Chapter 5
- HERA

### **Credit Streams**

- Section 42 (b)
- Section 42 (i)(2)

### **Claiming Credits Year One (Pro-rated applicable fraction)**

- IRC 42 (f)(2)(A)
- IRC 42 (f)(2)(B)

### **Deferred Credits**

- IRS Revenue Procedure 2003-828823 Guide, Page 4-25

### **Units Added After Year 1 (2/3 Credits)**

- IRC 42 (f)(3)

### **Transferring Units**

- IRC 1.42-15(d)
- 8823 Guide, Pages 4-23 – 4-25

### **Certifying Existing Households**

- 8823 Guide, 4-25
- IRS Revenue Ruling 2004-52

### **Safe Harbor Rule**

- 8823 Guide, Pages 4-25 – 4-26
- IRS Revenue Procedure 2003-82

### **Acquisition and Rehab Credits and Placed-in-service Date**

- IRC 42(e)(4)
- IRC 42 (f) (2)(A) and (8)
- IRS Notice 88-116

### **Uniform Relocation Act**

- 49 CFR 24
- 49 CFR 24.402(b)

### **Transferring Units**

- IRS Treasury Reg 1.42-(15)(d)
- 8823 Guide, Pages 4-23 – 4-24

### **NAUR**

- IRC 42(g)(2)(D)(ii)
- 8823 Guide, Chapter 14

### **Vacant Unit Rule**

- Treasury Reg 1.42-15(c)
- 8823 Guide, Chapter 16

### **Tenant Relocation**

- 8823 Guide, Pages 4-28 – 4-30
- IRS Newsletters #15, #26, #27, #29 and #39

### **Resyndication**

- 8823 Guide 4-27

### **Extended Use Agreements**

- IRC 42 (h)(6)
- 8823 Guide, Chapter 16

### **Paperwork to Prove**

#### **Household Qualification**

- 8823 Guide, Pages 4-35 – 4-36

### **Rent and Income Limits**

- IRS Revenue Procedure 2003-82
- IRS Newsletter #35, Page 4, Q12

## Other Resources

⇒ Compliance, or OHFA Inspection question? Please use OHFA's automated [Help Desk](#) feature to submit your inquiry. Utilization of the Help Desk enables OHFA to efficiently track the volume and types of inquiries received to target resources to better serve OHFA's partners.

⇒ [Compliance Forms](#)

Section 23:

**HUD 811 Program  
and LIHTC**



The Ohio 811 Project Rental Assistance (PRA) Program (Ohio 811 Program) is a project-based rental subsidy demonstration funded by HUD to expand the supply of housing for extremely low-income, non-elderly individuals with disabilities while also making available appropriate supports and services through Ohio's Medicaid plans. Subsidies are used to assist new and existing multifamily housing units that also receive LIHTC funding from OHFA. Ohio 811 Program funding can be used for up to 255 of the total number of units in a project. Extremely low-income households with at least one individual between the ages of 18 and 61 with a HUD-defined disability when an initial lease is signed are eligible to participate in the program. The subsidy covers the difference between 30% of an eligible household's income and 50% LIHTC rent limits or HUD's Fair Market Rent, whichever is lower.

Owners are required to sign a 20-year rental assistance contract (RAC) and 30-year use agreement binding owners to maintaining the number of contracted units for 30 years. Funding is guaranteed for the first five years with funding beyond subject to Congressional appropriations. Should subsidies not be appropriated at any point during the term of the RAC, HUD will not require OHFA to enforce the RAC.

Further information including owner/management agent responsibilities may be [found here](#) and amended at any time.

Section 24:

**Financial  
Reporting and  
Project Change  
Requirements**

## Financial Reporting

OHFA's Asset Management Office requires OHFA-funded projects to submit periodic financial information, including internally prepared and/or independently audited financial statements and other project-level information. Questions related to this should be sent to [assetmanagement@ohiohome.org](mailto:assetmanagement@ohiohome.org). OHFA currently requires periodic financial reporting from LIHTC projects funded through the 2018 Qualified Allocation Plan (QAP) and going forward, to submit annual audited financial information.

**Submission Frequency:** Annual

**Submission Requirements:** Independently audited and internally prepared financial statements for the previous year's operations, including a balance sheet, income statement, change in partners' capital, and statement of cash flow, are mandatory. The balance sheet must end on the last day of the previous year. In addition, owners must provide the following:

- Tenant receivable aged report
- Accounts payable aged report
- Replacement reserve account balance (bank statement)
- Operating reserve account balance (bank statement)

Further information on the financial review process may be found in the [Asset Management Policies](#), which may be amended at any time.

## Project Changes

Throughout the operational life of a project, owners may decide to change property management companies, sell their interests, or seek financial relief from deep rent skews enforced through the restrictive covenant. OHFA's Asset Management Office with assistance from other OHFA offices reviews these types of requests with goals to protect financial viability, preserve affordability, and safeguard tenants. Questions regarding a particular change request must be submitted to [OHFAprojectchanges@ohiohome.org](mailto:OHFAprojectchanges@ohiohome.org).

Owners'/management agents' reporting requirements are found in the following policies which may be amended from time to time:

- [Ownership Transfer Policy](#)
- [Management Change Policy](#)

## Changes to Units

If a unit is converted into an employee unit or taken offline, owners/management agents must notify OHFA by submitting the following applicable documents which may be amended from time to time:

- [Notification of Employee Unit\(s\)](#)
- [Notification of Unit\(s\) Offline](#)
- [Notification of Unit\(s\) Online](#)

*Failure to report project changes may result in owners/management agents placement on OHFA's Not in Good Partnership list.*



# Appendix A:

# **HOTMA Changes Crosswalk**



## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
<b>Assets</b>			
529 accounts	Not addressed in past rules.	Both the income and value are excluded from income and assets.	24 CFR 5.609(b)(10) & 5.603 definition "Net Family Assets" (6)
ABLE accounts	Not addressed in past rules.	Both the income and value are excluded from income and assets.	24 CFR 5.603 definition "Net Family Assets" (6)
"Baby bond" accounts	Not addressed in past rules.	Both the income and value are excluded from income and assets.	24 CFR 5.609(b)(10)
Checking balance	6-month average	Current balance	Notice H 2023-10 - J.5.a
Coverdell education Section 530 savings accounts	Not addressed in past rules.	Both the income and value are excluded from income and assets.	24 CFR 5.609(b)(10) & 5.603 definition "Net Family Assets" (6)
FSS accounts (public housing Self Sufficiency Accounts)	Not addressed in past rules.	Both the income and value are excluded from income and assets.	24 CFR 5.609(b)(27) & 5.603 definition "Net Family Assets" (10)
Imputed asset income	If total net assets exceeded \$5,000, imputed asset income was calculated on total household net assets using the passbook savings rate (2%, then adjusted to .06% in 2016). The greater of actual or imputed asset income for all assets was counted.	If total net assets exceed \$50,000 (as adjusted annually), imputed asset income is calculated on assets that cannot otherwise have income determined using the passbook savings rate (.4% in 2024, then adjusted annually by FDIC average passbook savings rate).	24 CFR 5.609(a)(2) Notice H 2023-10 – F.5
Personal property	Excluded from assets unless the property is being held as an investment. Did not include financial accounts.	Includes all assets that are not real property. Includes financial accounts (checking, savings, etc). Personal property is broken up into two categories: <ul style="list-style-type: none"> <li>• <b>Necessary personal property.</b> <ul style="list-style-type: none"> <li>○ These are excluded as assets.</li> </ul> </li> <li>• <b>Non-necessary personal property.</b> <ul style="list-style-type: none"> <li>○ <b>If total is over \$50,000 (as adjusted)</b>, all items of non-necessary property values and incomes are counted.</li> <li>○ <b>If total is \$50,000 (as adjusted) or lower</b>, all items of non-necessary personal property are assigned \$0 values, but income is counted.</li> </ul> </li> </ul>	24 CFR 5.609 (b)(4)-(4) Notice H 2023-10 – F.4.c

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
PASS (Plan to Achieve Self Sufficiency SSI accounts)	Not addressed in past rules.	The income is excluded from income.	24 CFR 5.609(b)(12)(i)
Retirement accounts	Retirement accounts were counted as assets with asset income until the owner of the account began to make periodic withdrawals. Then the withdrawals were counted as income and the value of the account was ignored as an asset.	Accounts recognized as retirement accounts by the IRS are never counted as assets. Once the owner of the account began to make periodic withdrawals, the withdrawals are counted as income and the value of the account continues to be ignored as an asset.	24 CFR 5.609(b)(26) Notice H 2023-10 – Example F3
Tax returns	Tax returns were not excluded from asset values.	Excluded from <b>total net family assets</b> for 12 months from the time the return was received. This is verified if net family assets exceed \$50,000. <b>[amended by HUD Feb. 2024]</b>	24 CFR 5.603 Notice H 2023-10 – F.4.e
Trust accounts	There were different rules for different types of trusts and different Offices of HUD (inheritance trusts, special needs trusts, etc). HUD PIH considered all distributions of principal or income earned on the principal as income unless the distribution qualified as an income exclusion. HUD MFH considered how the trust was funded, whether the distribution was from trust income or principal, and whether any distribution from trust income met an existing income exclusion.	All trusts are handled consistently. <ul style="list-style-type: none"> <li>• <b>If a trust is not in control of the family, it is not an asset to the household. This could include a nonrevocable trust or a trust that is revocable but that is only accessible by someone outside the household.</b> <ul style="list-style-type: none"> <li>○ <b>If distributions are being received</b>, the distribution of income from the trust is counted as income (but not distributions that come from the principle of the trust), with an exception for amounts received for the health and medical expenses for a minor child.</li> </ul> </li> <li>• <b>If a trust is in control of the family:</b> <ul style="list-style-type: none"> <li>○ Income is counted as the income generated by the trust and any distributions are not income.</li> </ul> </li> </ul>	24 CFR 5.603 24 CFR 5.609 Notice H 2023-10 – F.4.d Notice H 2023-10–Table F2
<b>Household Members</b>			
Foster children and adults	HUD MFH included foster members and their income. HUD PIH excluded them but allowed them bedrooms for occupancy standards. For HUD programs, child-care expenses were	For all programs, foster members in a unit are now part of the “household” (occupants of a unit) but not the “family” (those who are counted toward income limit and who have their income counted). For HUD programs, childcare expenses are allowed to be deducted for foster children under age 13 if the	24 CFR 5.603 24 CFR § 5.609(b)(8) Notice H 2023-10 – E.2 Notice H 2023-10 – C.5

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
	allowed to be deducted for foster children under age 13.	expenses allow a family member to work, look for work, or attend school. The definitions of foster child and foster adult are based on state law.	
<b>Income</b>			
Alimony (and Child support)	Full court-ordered amounts were counted unless the full amount was not being received and the household took reasonable efforts to collect with court or agency.	Only amounts received are counted, regardless of amounts the household is entitled to.	24 CFR 5.609(a)(1) Notice H 2023-10 - F.1
Adoption assistance payment limitation.	Adoption assistance income was limited to \$480 for each adopted child.	Adoption assistance is limited to HUD's dependent deduction per child (\$480 in 2024 but adjusted annually for inflation thereafter, rounded to the next lowest \$25).	24 CFR 5.609(b)(15) Notice H 2023-10 – G.9
Adult dependent earned income limitation	Earned income for adult dependent full-time students was limited to \$480 per year.	Earned income for adult dependent full-time students is limited to HUD's dependent deduction per year (\$480 in 2024 but adjusted annually for inflation thereafter, rounded to next lowest \$25).	24 CFR 5.609(b)(3) Notice H 2023-10 – G.8 Notice H 2023-10 – Table H1
Child support (and alimony)	Court-ordered amounts were counted unless the full amount was not being received and the household took reasonable efforts to collect with court or agency.	Only amounts received are counted, regardless of amounts the household is entitled to.	24 CFR 5.609(a)(1) Notice H 2023-10 - F.1
COLA calculations for SSA and SSI benefits	Owners were given choices on how to apply the COLA based on what showed on EIV reports and other factors.	COLAs are included for all new move-in certifications effective the day after the COLA is announced. Reexaminations – Effective the day after SSA has announced the COLA, owners/agents are required to factor in the COLA when determining SS and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year.	24 CFR 5.609(c)(2) Notice H 2023-10 – B.3

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
Medicaid benefits paid to keep a disabled household member in the household's unit (excluded from income).	Was limited to assistance paid by <b>Medicaid only</b> and just for the benefit of keeping <b>developmentally</b> disabled household members at home.	Now includes amounts from Medicaid <b>and other federal or state assistance</b> that is intended to assist persons with <b>any</b> disability remain in the household's unit. This does not include amounts received to help someone else stay in another unit.	24 CFR § 5.609(b)(19) Notice H 2023-10 – G.11
Non-monetary “in-kind” donations (food, clothing, toiletries)	Was counted as income, except when the contributions were food.	Excluded if received from a food bank or similar organization. However, <b>recurring</b> ( <i>i.e. has occurred more than once and cannot be established to have ended</i> ) in-kind donations from family or friends are counted.	24 CFR 5.609(b)(24)(vi) Notice H 2023-10 – G.1.f
Sporadic income	Excluded, along with “nonrecurring” income.	Included. Only “nonrecurring” income is excluded.	24 CFR 5.609(b)(24) Notice H 2023-10 – G.1
Student financial assistance	Student financial assistance was excluded for all but Section 8 assistance recipients. For Section 8 recipients, assistance from the Higher Education Act of 1965 (HEA), from other grants and scholarships, and from private sources (such as parents and grandparents) are added together, and tuition and other fixed costs were excluded. Any excess income is counted. Exceptions exist for dependents of the household and for persons over age 23 with a dependent child.	<ul style="list-style-type: none"> <li>○ <b>Section 8 recipients.</b> While current HUD Appropriations Act language is in place, student financial assistance for Section 8 recipients will continued to be counted as it was prior to HOTMA. Assistance from the Higher Education Act of 1965 (HEA), from other grants and scholarships, and from private sources (such as parents and grandparents) are added together, and total educational costs are excluded. Any excess assistance is counted. Exceptions exist for dependents of the household and for people over age 23 with a dependent child. People meeting the age 23 exception are treated as non-Section 8 recipients.</li> <li>○ <b>Non-Section 8 recipients.</b> HEA expenses are excluded. However, HEA educational assistance and other scholarships and grants from schools, businesses, or government programs are added together and total educational expenses are subtracted. If any of the non-HEA assistance is not covering the costs, the remainder is income.</li> </ul>	24 CFR § 5.609(b)(9) Notice H 2023-10 – G.16
Veterans Regular Aid and Attendance	Was not addressed in the past.	Is excluded if the benefits are paid for care of a veteran in the unit.	24 CFR § 5.609(b)(17) Notice H 2023-10 – G.10
Worker's compensation	Included in income.	Worker's compensation payments are excluded from income. <b>[amended by HUD Feb. 2024]</b>	24 CFR 5.609(b)(5) Notice H 2023-10 – G.6

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
<b>Verifications</b>			
Assets	<p>When applying HUD streamlining rules, when total net assets did not exceed \$5,000, assets could be verified using self-certification two out of three years, starting the year after move-in.</p> <p>For LIHTC rules, when net family assets do not exceed \$5,000, assets an owner may rely on self-certification of the assets every year.</p>	<p>When total net assets did not exceed \$50,000 (as adjusted annually), assets can be verified using self-certification two out of three years. Assets may be self-certified at move-in.</p> <p>This is NOT the basis for applying self-certification to the LIHTC program. The new HOTMA <b>imputed asset income</b> rules allow the LIHTC to increase the threshold for asset self-certification to \$50,000 for every year, as long as the state agency allows for it.</p>	<p>24 CFR 5.603</p> <p>Rev. Proc. 94-65</p>
Checking and other financial accounts.	6-months of statements or verification of deposit was required to determine a 6-month average for checking. Other accounts used current balance.	All accounts use current balance and a recent statement to verify.	Notice H 2023-10 J.5.a
Court orders (for child support or alimony)	Often required to verify entitlement to ordered income.	Only relevant if the household is receiving the full ordered amount. Will often not be needed when partial, sporadic, or over payments are received.	Notice H 2023-10 – F.1
Excluded income (verification of)	Was not directly addressed in former rules, although income that was totally excluded was generally not required to be verified.	For income sources where the entire amount qualifies to be excluded from the annual income the owner/agent is not required to 1) verify the income using third-party verification, 2) document in the tenant file why the third-party verification was not secured, or 3) report the income on certification forms. Owner/agents may accept an applicant or participant's self-certification as verification of excluded income. Owner's/agent's application and reexamination questionnaire documentation may serve as the self-certification of excluded income.	Notice H 2023-10 – J.7
Means tested public assistance income determination verification safe harbor.	HUD – The income determinations of other programs were not acceptable for HUD certifications.	For households receiving benefits from the below federal means tested programs, total household annual income can be based on an income determination made within the previous 12-month period from the means-	<p>24 CFR 5.609(c)(3)</p> <p>Notice H 2023-10 – J.4</p>

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
	LIHTC – The use of PHA determinations of income were acceptable for voucher-holding tenants.	<p>tested federal public assistance program. The 12 month deadline is from the time received by the owner/agent and can be determined from benefit letters, statements or other documentation supplied by the household or a form completed by an administrator of the other means tested program.</p> <p>Note: HOME officials have verbally stated that this will not be allowed for the HOME programs.</p> <ul style="list-style-type: none"> <li>○ TANF</li> <li>○ Medicaid</li> <li>○ SNAP</li> <li>○ The EITC</li> <li>○ The LIHTC</li> <li>○ WIC</li> <li>○ SSI</li> <li>○ Other programs administered by HUD</li> <li>○ Other means-tested federal public assistance that HUD establishes an MOU with.</li> <li>○ Other means tested federal programs with comparable reliability announced by HUD through Federal Register notice.</li> </ul>	
Paystubs and other documents supplied by a household.	Although considered “third-party verification” often less desirable than verification forms completed by an employer.	Considered “third-party verification” supplied by household. <b>Preferred</b> over forms completed by an employer. Less desirable than the Work Number, other verification databases, or EIV reports.	Notice H 2023-10–Table J2
Tax returns.	No particular rules, except for HOME, which required proof of a tax returns authenticity.	When needed for verification purposes, income tax returns with corresponding official tax forms and schedules attached and <b><i>including third-party receipt of transmission for income tax return filed</i></b> (i.e., tax preparer’s transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.	Notice H 2023-10 J.5.a
Upfront Income Verification (UIV) This included EIV, <i>Work</i>	Except for EIV, were not considered full third-party verification and other options were preferred.	UIV is the most preferred type of verification (of highest acceptability). Except for when EIV is required, HUD encourages use of these other UIV database systems.	Notice H 2023-10–Table J2

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
<i>Number for Everyone</i> government and other database reporting systems).			
Verification form completed by a third party.	Most desirable form of verification.	In most cases less desirable than EIV, Work Number and other database verification systems, as well as third-party verification supplied by a household. Only of medium acceptability and when other options are not available, such as with a new job.	Notice H 2023-10–Table J2
<i>Work Number for Everyone</i> and government and other Upfront Income Verification (UIV) database income verification systems).	Was not considered full third-party verification and other options were preferred.	Other than EIV reports, this is the most preferred type of verification (of highest acceptability). HUD encourages, but does not require, use of these database systems.	Notice H 2023-10–Table J2
<b>HUD-Only Issues</b>			
Asset limitation	No requirements.	<p><b>Initial Occupancy.</b> Occupancy is denied for HUD-assisted families who have:</p> <ul style="list-style-type: none"> <li>• Total net assets exceeding \$100,000 (as adjusted annually).</li> <li>• Real property that is suitable for occupancy (with some exceptions).</li> </ul> <p><b>At reexamination.</b> Owner/agents may create exemption policies to totally, partially, or selectively not implement the asset limitations for existing residents at reexamination. Note: Applies only to rental assistance programs such as Section 8 PBRA, 202/8, HCV, and public housing.</p> <p style="text-align: right;"><b>[amended by HUD Feb 2024]</b></p>	24 CFR 5.100 24 CFR 5.603 24 CFR 5.618 Notice H 2023-10–Appendix A
Child-care expense deduction	Child-care expenses could be deducted only if the expenses allowed a household member to work, look for work, or further their education.	Child-care expenses can be deducted if the expenses allowed a household member to work, look for work, or further their education. Owner/agents may develop hardship exemptions to temporarily allow child-care expenses that are needed for other purposes if the	24 CFR 5.603 - Child-Care Expenses 24 CFR 5.611(d) Notice H 2023-10 – C.5 Notice H 2023-10 – C.6

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
		household would not otherwise be able to pay their rent.	
Definition of income at annual reexamination	Was <b>anticipated</b> income, estimating income for the next 12 months after the certification effective date, the same as at initial income determination.	Based on the last 12 months' income, taking into consideration certain changes, EIV reports, and subject to household concurrence. Move-in and interim income is still calculated based on anticipated income. LIHTC – Most HFAs are likely to continue using anticipated income for all certifications.	24 CFR §§ 5.609(c)(2) Notice H 2023-10– B.2
EIV reports	Income reports were run at annual and interim examinations. Discrepancy reports were triggered by \$2,400 differences (the \$200 a month at which reporting of changes of income were required). Income reports were run 90 days after a household's initial certification effective date. New hires reports were run periodically during the year.	Income reports are only required at annual examinations. Discrepancy reports are triggered by the 10% of adjusted income threshold at which reporting of changes of income is required. Income reports are required to be run 120 days after a household's initial certification effective date. New hires reports are only required to be run at annual reexaminations.	24 CFR 5.233 Notice H 2023-10–Table J2 Notice H 2023-10 J.3 Notice H 2023-10 Table J1
Elderly household deduction	Was \$400 per elderly or disabled household.	\$525 per elderly or disabled household in 2024 and adjusted annually thereafter, rounded to next lowest \$25.	24 CFR 5.611(a)(2) Notice H 2023-10 Table H1
Health and medical and reasonable attendant care and auxiliary apparatus expense deduction	Expenses in excess of 3% of total annual income may be deducted when determining adjusted income.	Expenses in excess of 10% of total annual income may be deducted when determining adjusted income. For households receiving the deduction going into 01/01/2024, the threshold will phase in at 5% in 2024, and 7.5% and 10% in 2025 and 2026, respectively. Hardship exemptions may be implemented by an owner/agent.	24 CFR 5.611(a)(3) Notice H 2023-10 C.3 Notice H 2023-10 C.4 Notice H 2023-10 Table C1
Interim recertification	<b>Required for increases</b> of income of \$200 or more a month. <b>Required for decreases</b> of income upon request of a household.	<b>Required for increases</b> of <b>unearned</b> income exceeding 10% of household adjusted income. <b>Not required</b> for increases of <b>earned</b> income or for changes that are reported in <b>the last 3 months</b> of the certification year.	24 CFR 5.567(c)(1) Notice H 2023-10 Attachment I



## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
	<b>Required for certain changes</b> of household composition and other changes.	<b>Required for decreases</b> of income exceeding 10% of household adjusted income (or a lesser threshold set by the owner). <b>Required for certain changes</b> of household composition and other changes. <b>Must be conducted in a reasonable time</b> from report based on circumstances, but no more than 30 days.	
Releases of information	The HUD form 9886 (PIH) and 9887 (MFH) release packets were required to be signed annually. Assistance was terminated if not signed within 15 months of the execution of the last form.	The HUD form 9886 (PIH) and 9887 (MFH) release packets are only signed once by each adult, except: <ul style="list-style-type: none"> <li>• When any adult person joins the family</li> <li>• When a member of the family turns age 18</li> <li>• As required by HUD administrative instructions.</li> </ul>	24 CFR 5.230 Notice H 2023-10 - J.1
Social security number verification	Documentation of SSNs had to be collected prior to occupancy. This included a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name and SSN of the individual.	<p>After the owner/agent has attempted to first obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual, self-certification of SSN and at least one third-party document, such as a bank statement, utility or cell phone bill, benefit letter, etc., that contains the name of the individual. If verifying an individual's SSN using this method, the owner/agent must document why the other SSN documentation was not available.</p> <p>If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the PHA/MFH Owner must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.</p>	

## HOTMA Changes Crosswalk (March 2024)

Item	Former Rule	HOTMA Rule	New Reference
Tenant Selection Policies (TSP)	Required and suggested topics were listed in the 4350.3 Figure 4-2.	HOTMA implementation guidance requires all discretionary policies allowed by HOTMA to be listed in the TSP. This is true even for policies that do not relate to tenant selection, such as those relating to hardship exemptions and reexamination of income. These will be added to the TSPs existing topics in the 4350.3 Figure 4-2, except a few cases where HOTMA adjusts a currently included topic. HUD is requiring the TSPs and EIV policies to be amended by 5/31/2024 prior to HOTMA becoming in full affect.  [amended by HUD Feb 2024]	Notice H 2023-10 [throughout]



# Appendix B:

# **Key Concepts and Terms**

This appendix outlines key concepts including: Building Identification Numbers, eligible basis, applicable fraction, qualified basis, applicable credit percentage, annual credit amount, calculating and claiming credits, minimum set-aside, the 8609 Line 8b Election, Credit and Compliance Periods, and placed-in-service dates. This appendix is meant to supplement the LIHTC Compliance Manual.

## Calculating Credits

### Buildings and Building Identification Numbers

Tax credits are claimed on a building-by-building basis. Therefore, each building within a development is assigned a Building Identification Number (BIN) and issued a separate Form 8609. Every tax-credit building has a unique BIN. The BIN consists of a two-character state designation (i.e., OH) followed by a two-digit designation representing the year the credit was allocated followed by a five-digit numbering designation. For example, a BIN for a building allocated credit by OHFA in 2020 would be OH-20-XXXXX.

Each building will have its own eligible basis, applicable fraction, qualified basis, and annual credit as described below.

### Eligible Basis

The eligible basis of a building includes those costs incurred with respect to the construction, rehabilitation, or acquisition of a property minus non-depreciable costs, such as land, and certain other excluded items, such as federal grants and some soft costs. Simply, eligible basis is how much a building costs minus certain unallowable expenses.

The eligible basis is calculated as part of the final cost certification and is assigned to a building at the time of final credit allocation (i.e., issuance of IRS Form 8609). Although owners apportion the amount of eligible basis for each building in the final application/cost certification, the total eligible basis of a development will be limited by the total amount of credit that OHFA reserved for the development. In calculating the credit amount for each building, OHFA may adjust owners' eligible basis apportionment per building so as not to exceed the maximum credit amount reserved for the development.

⇒ *Reference Section 18 of the manual for further information.*

## Applicable Fraction

The applicable fraction is the percentage of a building that is designated for occupancy by low-income households. The applicable fraction is the lesser of:

1. the ratio of the number of low-income units to the total number of units in the building (unit fraction), or;
2. the ratio of the total floor space of the low-income units to the total floor space of all units in the building (floor space fraction). For purposes of claiming credits in an initial year, the applicable fraction is calculated on a monthly basis. For all other years of the Compliance Period, the applicable fraction is a “snapshot” determined at the end of the tax year.

For a building to remain in compliance, the applicable fraction must be at or above the fraction assigned to that building in the Final Application. A decrease in applicable fraction results in a decrease in qualified basis (See below.), which decreases the number of credits that can be claimed for a building.

**Example:** Building A has six units. Units 1–3 are two-bedroom units at 800 ft.<sup>2</sup> and units 4–6 are three-bedroom units at 1,200 ft.<sup>2</sup> each. According to the Final Application, the building’s applicable fraction is 50%. The owner of Building A has rented units 4–6 as market rate units so that they can charge higher rates for the larger sized units. The owner believes the building is in compliance because the unit fraction is 3/6 or 50%. However, the owner must also consider the floor space fraction. In this case, the total square footage is 6,000 ft.<sup>2</sup> for the units. The low-income square footage is 2,400 ft.<sup>2</sup> (sum of square footage for units 1–3).  $2,400 \text{ ft.}^2 / 6,000 \text{ ft.}^2$  gives a floor space fraction of 40%. Since the applicable fraction is defined as the lower of the two ratios, the actual applicable fraction for this building is 40%. The owner is out of compliance for violating the applicable fraction.

Note: The applicable fraction and the minimum set-aside are not the same thing. The applicable fraction tells the percentage of units and floor space that must be reserved for qualified low-income households in a specific building. The minimum set-aside tells the minimum percentage of units that must be set-aside as tax-credit units in the entire project (as defined on Form 8609) and the federal income and rent restrictions at which these units must be set aside. To comply, a project must meet its minimum set-aside, and each building within that project must meet its applicable fraction.

⇒ *Reference Section 18 of the manual for further information.*

## Qualified Basis

The qualified basis of a building is the portion of the cost of the building that went into tax credit units. The qualified basis is calculated by multiplying the eligible basis by the applicable fraction. A decrease in qualified basis can be caused by either a decrease in applicable fraction or a decrease in eligible basis and may result in a loss of credits and/or recapture.

For 100% tax credit buildings, the qualified basis will equal the eligible basis because all units are tax credit (i.e., the applicable fraction is 100%).

⇒ *Reference Section 18 of the manual for further information.*

## Applicable Credit Percentage

The qualified basis is multiplied by the applicable credit percentage to calculate the annual tax credit that can be claimed for a building. There are two categories of tax credits known as 4% credits and 9% credits.

4% credits are for acquisition credits and projects with private activity tax-exempt bonds. Prior to HERA, 4% credits also applied to projects that were federally subsidized (e.g., projects with HOME funding, RD 515, Section 8 Project-based Rental Assistance, etc.). 9% credits apply to new construction and rehabilitation credits, including federally subsidized projects post-HERA.

The applicable credit percentage for 4% credits is set at a true or “fixed” 4%-minimum rate. The 4% rate was permanently locked under the Consolidated Appropriations Act of 2020.

The applicable credit percentage for 9% credits is set at a true or fixed 9%-minimum rate. HERA temporarily set the 9%-applicable credit percentage at a fixed 9% (unless the current rate was higher). That temporary provision with extensions applied to the applicable credit percentage for 9% deals placed in service between July 30, 2008, and December 31, 2015. The 9% rate was then permanently locked under the Protecting Americans from Tax Hikes (PATH) Act of 2015.

## Annual Credit Amount

The maximum amount of credit that can be claimed annually is calculated by multiplying a building’s eligible basis by its applicable fraction to ascertain the qualified basis and then multiplying the qualified basis by the applicable credit percentage. Each of these items is defined and discussed in further detail previously.

**QUALIFIED BASIS = eligible basis x applicable fraction**

**ANNUAL LIHTC = qualified basis x applicable credit percentage**

The annual credit amount allocated may not exceed this amount; however, the annual credit amount may be less if OHFA determines that the maximum amount is unnecessary.

# Claiming Credits

## Claiming LIHTCs in an Initial Year

LIHTCs are claimed annually for 10 years. The Credit Period begins in the year that a building is placed in service or the following year if an owner elects on Form 8609 Line 10a to defer the Credit Period. Credits cannot be claimed until the minimum set-aside has been met. Since the Credit Period must begin in either the year that a building is placed in service or the following year, the minimum set-aside must also be met by the same deadline. If the minimum set-aside is not met by the deadline, no credits can ever be claimed. This is a non-correctable form of noncompliance.

During the first year of the Credit Period, the low-income occupancy percentage is calculated on a monthly basis. Occupancy for each month is determined on the last day of each month.

IRS Form 8609 is completed for each building in a development receiving credits and is filed with a taxpayer’s return for the first year of the Credit Period. An owner can elect to defer the start of the Credit Period by checking the appropriate box on IRS Form 8609 Line 10a.

## Initial Year Prorate/Disallowed First Year Credit Claimed in 11th Year

Owners/Management Agents claiming credit in the initial year of occupancy for a building are subject to a special provision that limits the credit to a proportionate amount based on average occupancy during the year as calculated on a monthly basis. Any disallowed first year credit is then claimed in year 11 (the first taxable year following the end of a credit period).

**Example:** A building has 40 units of which all are restricted to tax-credit qualified households. All units are completed and ready for occupancy at the end of October and move-ins begin in November. At the end of November, 20 out of 40 units are occupied. At the end of December, all 40 units are occupied. Assuming the partnership has a taxable calendar year the prorated credit for the initial year of the credit period is calculated as follows:

<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Total</i>
0/40	0/40	0/40	0/40	0/40	0/40	0/40	0/40	0/40	0/40	20/40	40/40	60/480 (12.5%)

A prorated amount of 12.5% of the credits is allowed for the first year. In the 11th year, the disallowed first year credit (87.5%) will be claimed.

To be eligible for credits in the first year of the credit period, a unit must be placed in service for an entire month and occupied by a qualified household by the end of that month.

**Example 1:** A unit is placed in service on September 15, 2023, and a qualified household moves in September 20, 2023. Credits begin on that unit in October 2023 Credits cannot be claimed in September since the unit was not placed in service the entire month. October is the first month for which the unit was placed in service for an entire month and in which there was a qualified household in place by the end of the month.

**Example 2:** A unit is placed in service on September 15, 2023, and a qualified household moves in October 10, 2023. Credits can begin on that unit in October 2023. October is the first month for which the unit was placed in service for an entire month and in which there was a qualified household in place by the end of the month. The unit does not have to be occupied an entire month to start claiming credits.

## The Two-thirds Rule

If a tax-credit unit is not occupied by a qualified household by the end of the first year of a credit period, tax credits cannot be claimed on that unit for the first year. If a unit is initially occupied as a qualified tax-credit unit after the end of the first year of the credit period, two-thirds credit can be claimed each year for the remaining years of the 15-year compliance period.

**Example:** If only 80 out of 100 of units in a 100% tax-credit project are rented to eligible households in year 1, the maximum qualified basis for the entire credit period would be based on 80% with the remaining 20% eligible for 2/3 credit if it is later rented to eligible tenants. If, for example, the remaining 20 units were rented in year 2, those units would be eligible for 2/3 credit each year for years 2–15. Year 1 credits for those units are lost and cannot be recovered.

## Claiming Credits in the Remaining Years of a Compliance Period

Owners must file Form 8586 (Low-Income Housing Tax Credit) with the Internal Revenue Service each year of a compliance period. The form indicates continuing compliance and reports the qualified basis of a project each year of a compliance period.

## Claiming Credits for Acquisition and Rehabilitation Projects

A project awarded tax credits for the acquisition and rehabilitation of an existing building will receive two sets of credits, one for acquisition and one for rehabilitation, and therefore have two Form 8609s for each building. Neither set of credits can be claimed prior to the date of acquisition nor prior to the year in which the rehabilitation expenditure requirement is complete. There will be separate acquisition and rehabilitation placed-in-service dates.

## Acquisition and Rehabilitation

### C. If Acquisition and Rehabilitation Occur in the Same Year

Owners have a 240-day window (120 days before and 120 days after the date of acquisition) in which to begin certifying in-place households (i.e., existing households that are living in units at the time of acquisition). Owners may prequalify households up to 120 days before the date of acquisition using the current income limits or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as a move-in even though the tenants have already been living in the units. Assuming rehabilitation is completed within the same year, move-in certification allows the credit flow to begin on the date of acquisition. If an existing household is not certified within the allowable timeframe, then the effective date of the certification cannot pull back to the date of acquisition but instead becomes the date on which the certification is completed.



New move-in events are treated the same as in new construction projects with the effective date being the date that a household takes possession of a unit.

**Example 1:** Claiming credits when acquisition and rehabilitation are completed in the same year A building is acquired on February 1, 2023, and rehabilitation is completed on October 1, 2023. Owners may begin claiming credits as of February 1 (date of acquisition) for those units that were qualified.

**Example 2: 240-day window**

A building is acquired on July 1, 2023. In-place households may be qualified anytime from March 3, 2023 (120 days prior to the date of acquisition), through October 28, 2023 (120 days after the date of acquisition). Any certifications completed during this 240-day window will be dated effective as of July 1, 2023 (the date of acquisition). Any existing households that are not certified until after October 28, 2023, will be initially qualified with an effective date of the actual date that a certification was completed.

⇒ *For more information on certification effective dates in acquisition and rehabilitation projects and much more, reference OHFA's Acquisition and Rehabilitation Training manual [found here](#).*

**D. If Acquisition and Rehabilitation Occur in Different Years/Safe Harbor and “The Test”**

Owners have a 240-day window (120 days before and 120 days after the date of acquisition) in which to begin certifying in-place households (i.e., existing households that are living in units at the time of acquisition). Owners may prequalify households up to 120 days before the date of acquisition using the current income limits or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as a move-in even though the tenants have already been living in the units. If an existing household is not certified within the allowable timeframe, then the effective date of the certification cannot pull back to the date of acquisition but instead becomes the date on which a certification is completed.

New move-in events are treated the same as in new construction projects with the effective date being the date that a household takes possession of a unit.

However, when rehabilitation is not completed until the year after the date of acquisition, owners cannot begin claiming credits on the date of acquisition but must wait until the beginning of the year in which a rehab. is completed.

**Example: Claiming credits when acquisition and rehabilitation are completed in different years**

A building is acquired on October 1, 2022, and rehabilitation is completed on April 1, 2023. Owners may begin claiming credits on January 1, 2023 (the beginning of the year in which rehabilitation was completed), for those units that were qualified.

Rev. Proc. 2003-82 states that a unit occupied before the beginning of a credit period will be considered a low-income unit at the beginning of the credit period so long as:

⇒ A household was income-qualified at the time owners acquired the building or the date on which the household started occupying the unit, — whichever is later.

- ⇒ The income of a household is tested for purposes of the Available Unit Rule at the beginning of the first year of the credit period.
- ⇒ The unit remains rent-restricted.

Therefore, at the beginning of the first year of the credit period per requirement No. 2 of Rev. Proc. 2003-82, incomes of households that were initially certified in the previous year must be tested to determine if any units trigger the Available Unit Rule. However, if the effective date of an initial certification is 120 days or less prior to the beginning of a credit year, then a “test” does not have to be performed. In this way, the program provides a safe harbor provision so that households that qualified their income before the beginning of the first year of a credit period but exceed the income limits at the beginning of the first year of a credit period are still considered qualified tax-credit households.

For units that must be tested, the test simply consists of confirming with households that the sources and amounts of anticipated annual income listed on the initial TIC forms are still current. If additional sources of income are identified, TICs must be updated based on households’ self-certifications. It is not necessary to complete third-party verifications for purposes of conducting tests. Any households that exceed the 140% limit at the time of a test will invoke the Available Unit Rule.

#### **Example 1: Test needed**

A building is acquired on July 1, 2022, and rehabilitation is completed on March 1, 2023. Owners certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2022 (the date of acquisition). Because rehabilitation is not completed until 2023, owners cannot claim credits until January 1, 2023. As of January 1, 2023 (the beginning of the first year of a credit period), owners must test the income of all households that were certified with an effective date more than 120 days prior to January 1, 2023. This includes all of the in-place households that were certified effective as of July 1, 2022.

### **E. Relocating Households During Rehabilitation**

In-place households may have to be relocated from their units, either temporarily or permanently, for units to be properly rehabilitated. Credits cannot be claimed while units are uninhabitable. However, if households are temporarily moved and then returned to their units within the same calendar month, credits are not interrupted.

#### **Example 1: Temporarily relocated but back within same calendar month**

A household is temporarily relocated on April 4, 2023. Rehabilitation is completed and the household is returned to its unit on April 26, 2023. Owners are eligible to claim credits on the unit for the month of April.

#### **Example 2: Temporarily relocated but back in a different calendar month**

A household is temporarily relocated on August 15, 2023. Rehabilitation is completed and the household is returned to its unit on September 5, 2023. Owners may not claim credits on the unit for the month of August but may claim credits for September.

If a household permanently relocates to an empty (i.e., never qualified) unit, the credits stop on the original unit and begin on the new unit. If a household permanently relocates to a unit that has already been initially qualified, then the units swap status.

⇒ *Further information on acquisition/rehabilitation may be [found here](#).*

## Minimum Set-aside or Average Income

On Form 8609, owners irrevocably elect one of the following minimum set-aside elections on a project basis:

1. 20/50 Election: At least 20% of available rental units in a project must be rented to households with incomes not exceeding 50% of area median income adjusted for family size. If the 20/50 election has been made, tax-credit units in a project may not be set aside at a rent or income level above 50% AMI.
2. 40/60 Election: At least 40% of available rental units in a project must be rented to households with incomes not exceeding 60% of area median income adjusted for family size. If the 40/60 election has been made, tax-credit units in a project may not be set aside at a rent or income level above 60% AMI.
3. Average Income Election: Average income was added as a new minimum set-aside election under the Consolidated Appropriations Act of 2018 (enacted on March 23, 2018) and is not retroactive to older tax-credit projects.

The minimum set-aside must be met on a project basis. "Project" is defined by the election made by the owners on IRS Form 8609 Part II, Line 8b. If each building is its own project, then the minimum set-aside must be met for each building.

**Once the election of a minimum set-aside is made by the owners on IRS Form 8609 Part II, Line 10c, the election is irrevocable.** The elected minimum set-aside and corresponding rent and income restrictions apply for the duration of a compliance and extended use periods applicable to the project.

**Note:** Owners may have also elected to target a percentage of units to persons at lower income levels (e.g., 30% or 40% AMI) and/or a higher percentage/number of units to low-income persons. Owners must also comply with additional elections as defined in a project's final application and extended use agreement.

### 1. Minimum Set-aside Violations in an Initial Year

Credits cannot be claimed until the minimum set-aside has been met. Since the credit period must begin in either the year that a building is placed in service or the following year, the minimum set-aside must also be met by this deadline. If the minimum set-aside is not met by the deadline, no credits can ever be claimed on the project. This is a non-correctable form of noncompliance.

### 2. Minimum Set-aside Violations in Subsequent Years

If a minimum set-aside is violated for a particular year of a compliance period—not the initial year of a credit period—the project is out of compliance for that year and subject to recapture of previously claimed credits. Furthermore, credits are lost, and no additional credits can be claimed until the minimum set-aside has been restored. The project is back in compliance for the taxable year in which the minimum set-aside is restored.

A minimum set-aside is violated if an insufficient number of units is qualified as tax-credit units. However, per the 8823 Guide (page 10-3), “noncompliance with the minimum set-aside should also be reported if systemic errors affecting all the LIHTC units are identified (e.g., using incorrect income or rent limits for all the units).”

### 3. Minimum Set-aside vs. Applicable Fraction

Applicable fraction and minimum set-aside are not the same thing. Applicable fraction tells the percentage of units and floor space that must be reserved for qualified low-income households in a specific building. Minimum set-aside tells the minimum percentage of units that must be set-aside as tax-credit units in an entire project (as defined on Form 8609) and the federal income restriction at which units must be set-aside. To comply, a project must meet its minimum set-aside, and each building within that project must meet its applicable fraction.

For more information on applicable fraction, see Section 4 of the LIHTC Compliance Manual.

### 4. Average Income Test

Under the Average Income Test, owners must designate two qualified groups of units: one to satisfy the minimum set-aside test and one to determine the applicable fraction. The required designations are defined in the final and temporary Average Income Test regulations (Treasury Regulations 1.42-19 and 1.42-19T).

⇒ *Further information may be [found here](#) as amended at any time.*

## 8609 Part II, Line 8b: Multiple Building Projects

On Form 8609 Part II, Line 8b, owners must answer the following question: “Are you treating this building as part of a multiple building project for purposes of Section 42?” If owners elect “Yes,” then the building is part of a multiple building project along with other buildings in the project. Owners must attach a list of those buildings that are considered part of the multiple building project to Form 8609. If owners elect “No,” then each building in the project is considered a separate project. This election has important compliance implications that affect the project for the duration of the compliance period.

- The minimum set-aside must be met on a project basis. Therefore, if owners elected “Yes” on Line 8b, then the building is part of a multiple building project and the minimum set-aside must be met across the entire project. If owners elected “No” on Line 8b, then the building is considered its own project and the minimum set-aside must be met for each building.
- The Line 8b election affects unit transfer rules. If owners elected “Yes” to a multiple building project, then tenants may transfer between buildings within the project without having to recertify for the program as long as a household is not above the 140% limit. If owners elected “No” to a multiple building project, then tenants may not transfer between buildings. If a household wants to move to another building, it must be treated as a new move-in and re-qualified for the program based on current circumstances.
- The Line 8b election impacts implementation of rent and income limits specifically regarding the applicability of HERA special and hold-harmless limits, because limits are project-specific.

- The Line 8b election impacts the 100% recertification exemption since it applies to a project per the 8609 definitions.
- Because the Part II, Line 8b election on Form 8609 is so important for ongoing compliance, it is crucial owners/management agents have copies of the 8609s for each building and understand the elections that have been made.

## Credit and Compliance Period

Tax credits are claimed annually over a 10-year period (Credit Period) beginning either in the year a building was placed in service or the following year depending on which option is elected by owners. Projects must, however, remain in compliance for a minimum of 15 years (Compliance Period). Additionally, all projects allocated credits during or after 1990 must enter into an extended use agreement requiring at least an additional 15 years of compliance after the initial 15-year Compliance Period.

## Placed in Service

Per IRS Notice 88-116, the placed-in-service date of a building is “the date on which the building is ready and available for its specifically assigned function (i.e., the date on which the first unit in the building is certified as being suitable for occupancy).” A building may be placed in service regardless of whether rental units are currently occupied.

- For new construction, the placed-in-service date is the date a building receives its certificate of occupancy.
- For acquisition, the placed-in-service date is the date of acquisition.
- For rehabilitation, the placed-in-service date is based on expenditure tests. A building can be considered placed in service at the close of any two-year period during which rehab. expenditures are made. At least the greater of 20% of the adjusted basis or \$6,700 per unit adjusted for cost-of-living inflation has been spent. However, a building should not be considered placed in service until the appropriate eligible basis has been met to maximize credits.

For multiple building projects, each building will have its own placed-in-service date. The project as defined by 8609 Part II, Line 8b election will be considered placed in service on the date that the first building within the project was placed in service. This is an important concept for determining rent and income limits.

⇒ ***More information may be found in Section 19 of the LIHTC Compliance Manual.***



## Appendix C:

# **OHFA's and Owners'/ Management Agents' Responsibilities**

## Responsibilities of OHFA

OHFA allocates tax credits and administers the LIHTC program for the state of Ohio. OHFA's responsibilities are as follows:

### **A. Issue IRS Form 8609 (Low-Income Housing Certification)**

OHFA prepares an IRS Form 8609 for each building in a project to officially allocate tax credits. OHFA completes Part I of Form 8609 and sends it to the owners when their project is placed in service and all required documentation (including the recorded extended use agreement and the final application/cost certification) has been received.

Owners must complete Part II of Form 8609 in the first taxable year for which a credit is claimed. After completion of Part II, a copy of the form is sent to OHFA as part of the first-year annual owner certification submission. The original form is sent to the IRS with the owner's personal, partnership, or corporate tax returns for the first taxable year in which a credit is claimed.

Owners are strongly encouraged to consult with their legal and tax advisors for advice on completing and filing IRS tax forms. OHFA cannot provide legal or tax advice on the filing or completion of any tax forms.

### **B. Prepare Extended Use Agreements**

OHFA will prepare and execute an extended use agreement prior to issuance of IRS Form 8609 for each project. The extended use agreement must be recorded by owners at the appropriate county recorder's office before the end of the first year of the credit period.

### **C. Review Annual Owner Certifications**

OHFA will review an annual owner certification for each project. For information on annual owner certifications, see Section 15 of the LIHTC Compliance Manual.

### **D. Compliance Next Steps**

Completion of the CNS meeting is required for all projects as they transition from the Agency's office of Multifamily Housing, Development Division to Compliance Division. If the meeting is not completed, issuance of Form 8609 may be delayed. The [Compliance Next Steps Process webpage](#) contains the most current information on the CNS meeting, including scheduling information and required forms and documents.

### **E. Conduct File Monitoring and Physical Inspections**

In accordance with 26 U.S.C. §42(m)(1)(B)(iii), OHFA provides monitoring procedures for identifying and notifying the IRS of noncompliance with the LIHTC program, including noncompliance with habitability standards through regular site visits. The requirements can be found on the [Compliance Policies page](#) of OHFA's website. Owners receiving a 9% LIHTC allocation are responsible for compliance with all requirements of the Internal Revenue Service Code, including such rules, regulations, administrative revenue proclamations, and revenue rulings, as may be issued at any time.

OHFA will monitor each project for compliance during the term of the restrictive covenant. Compliance monitoring requirements and protocols may be adjusted as deemed necessary or appropriate by OHFA.

Monitoring and protocols include compliance with 24 C.F.R. §1.42-5 and IRS Section 42 Audit Guide, which may be amended at any time by the IRS.

Initial audits for new projects must be conducted by the end of the second year after the last building is placed in service. The IRS permits agencies to monitor the lesser of 20% of the units on a project or the number provided in the minimum unit sample size delineated in 26 C.F.R. §1.42-5(c)(2)(iii)(B).

LIHTC recipients/owners must request access to a project in OHFA's database reporting system prior to qualifying tenants. Once owners gain access, they must approve access for others to use the database system. Owners must ensure property managers and appropriate on-site staff register and have access to necessary projects in the system.

OHFA retains the right to perform a file review for and/or physical inspection of any building and/or unit at any time during the compliance and extended use periods.

**F. Notify IRS of Noncompliance**

OHFA will notify the IRS of instances of potential noncompliance by issuing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. OHFA must send Form 8823 to the IRS no later than 45 days following the end of a correction period. For information on noncompliance, see Section 17 of the LIHTC Compliance Manual. While OHFA will notify owners of compliance issues, neither a finding of noncompliance nor a determination that noncompliance has been resolved is binding to the Internal Revenue Service. Owners who have received a notification from OHFA that a project is in compliance may still be subject to an IRS audit and the possibility of loss or recapture of LIHTCs. Refer to the Internal Revenue Service Code for additional information about federal compliance regulations

**G. Conduct and/or Sponsor Trainings**

OHFA will conduct or sponsor compliance trainings from time to time and provide training resources/materials on its website. A representative of the management company is required to attend a LIHTC training at least once every two years.

**H. Administer Partner Relationship Building Program.**

As part of its commitment to fostering positive relationships with partners, OHFA has established the On-Boarding and Partner Relationship Building Program for partners who are new to OHFA or experiencing significant compliance issues that could jeopardize the viability of a property. OHFA staff will work with representatives of ownership entities, HDAP recipients, and/or property management agents to create tailored programs, which could include trainings, partner meetings, audits, and any other actions as determined by OHFA.



## Responsibilities of Owners/Management Agents

Owners have chosen to utilize the LIHTC program to take advantage of available tax benefits. In exchange for these advantages, certain requirements must be met by owners to benefit low-income tenants. Owners must certify that all program requirements have been met. Any violation of program requirements could result in the loss and/or recapture of allocated credits.

The responsibilities of owners include but are not limited to the following:

**A. Lease units to eligible households in a non-discriminatory manner.**

For information on general leasing requirements, see Section 3 of the LIHTC Compliance Manual

**B. Charge no more than the maximum allowable rents (including utility allowances and non-optional fees).**

For information on rent limits and maximum allowable rent, see Section 7 of the LIHTC Compliance Manual

**C. Maintain the property in habitable condition.**

Owners are responsible for ensuring that their projects are maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is a reportable act of noncompliance. See Section 17 of the LIHTC Compliance Manual.

**D. Record retention requirements.**

Owners of any building for which credit has been or is intended to be claimed must keep records that include all the following information on a building basis for a minimum of six years after the due dates (with extensions) for filing federal income tax returns for each year. However, the records for the first year of the credit period (i.e., initial tenant files) must be kept for six years beyond the filing date of the federal income tax return for the last year of the compliance period of a building. This means initial tenant files must be maintained for a minimum of 21 years.

In accordance with IRS guidance in Revenue Procedure 97-22 and Revenue Ruling 2004-82, OHFA permits the electronic storage of records in lieu of hardcopies as long as the electronic storage system includes reasonable controls for accuracy and reliability and maintains documents that are accessible, legible, and readable.

Per Treasury Regulation 1.42-5(b)(1), records must include:

- 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
- Percentage of residential rental units in the buildings that are low-income units and the percentage of unit floor space in the buildings that is occupied by low-income households (applicable fraction)
- Rent charged on each residential rental unit and the applicable utility allowances — Utility allowance records must include copies of the annual supporting documentation.
- Number of occupants in each low-income unit

- Low-income unit vacancies in the building, documentation of marketing efforts, and information that shows when and to whom the next available units were rented — This information must include the unit number, tenant name, move-in dates, and move-out dates for all tenants, including market-rate tenants.
- Tenant Income Certification for each qualified household
- Documentation to support each eligible household's income certification
- Eligible basis and qualified basis of a building at the end of the first year of the credit period
- Character and use of the nonresidential portion of any building included in the project's eligible basis (e.g., any community building, recreational facility, etc.) available to all tenants and for which no separate fee is charged
- Any local health, safety, or building code violation reports or notices issued by a state or local government entity responsible for making local health, safety, or building code inspections

#### **E. Attend Compliance Trainings**

A representative of the management company is required to attend a LIHTC training at least once every two years. Owners are required to certify attendance through the submission of the annual owner certification indicating that the requirement has been met. OHFA will accept LIHTC trainings offered by nationally recognized trainers or consultants (e.g., US Housing Consultants, E&A Team, Costello, Zeffert & Associates, Quadrel). Trainings must incorporate such items as LIHTC fundamentals, qualifying tenants, assets and income, and IRS regulations.

#### **F. Annual Owner Reporting**

Owners must annually submit certifications and reports to remain in compliance with program requirements. Owners are required to prepare and submit to OHFA an AOC, which certifies that the project met the requirements of 26 U.S.C. §42. 26 C.F.R. §1.42-5(c)(1) for the preceding 12-month period. Owners are required to submit the AOC and tenant data to OHFA electronically. Owner reports are due March 1 of each year unless amended by OHFA. Refer to OHFA's [Compliance Policies webpage](#) in the Annual Reporting section for current information and requirements and Section 15 of the LIHTC Compliance Manual.

#### **G. Violence Against Women Act (VAWA) Compliance**

Adherence to the requirements of VAWA is required for all projects receiving funding through one or more of OHFA's multifamily housing programs. Projects that receive HOME, OHTF, and/or NHTF funding are required to follow the 2022 VAWA Final Rule. Although the IRS has not provided guidance on how to comply with VAWA, OHFA requires owners/management agents of projects with LIHTC funding to follow the HUD 2022 VAWA Final Rule when implementing VAWA Rule protections for their tenants. Further information on VAWA may be found in [OHFA's Policy on the VAWA](#) and may be amended at any time.

## **H. Affirmative Fair Housing Marketing Plans**

Affirmative Fair Housing Marketing Plans (AFHMPs) and affirmative marketing procedures are required for all projects receiving funding through one or more of OHFA's multifamily housing programs, including but not limited to LIHTC, HOME, OHTF, and/or NHTF funds, and any recipients of federal funds, such as Section 8, 202, 236, BMIR projects, or United States Department of Agriculture (USDA)/Rural Development Section 515. Projects receiving any of the aforementioned funding sources are required to have AFHMPs. Federal regulations for affirmative fair marketing are in 24 C.F.R. Part 200, Subpart M.

Information and guidance related to completing AFHMPs may be found on OHFA's [Compliance Policies webpage](#) under "Affirmative Fair Housing Marketing" and also here [Affirmative Fair Housing Marketing Plan Guidance](#) that may be amended at any time. A project's AFHMP must be submitted to OHFA's Office of Compliance for approval. For projects allocated OHFA funding on or after 2021, the AFHMP must be approved by OHFA prior to issuance of Form 8609.

## **I. Be knowledgeable about:**

Owners are expected to know and maintain records regarding:

- Beginning and ending dates of the credit periods, compliance periods, and extended use periods
- Year credit was first claimed
- Placed-in-service dates for all buildings
- BIN and address of each building in the project
- Minimum set-aside election applicable to a project (20/50, 40/60, or average income)
- Applicable fraction for each building
- Applicable income and rent restriction for each unit
- If buildings are considered separate projects or part of a multibuilding project
- Any restrictions required in the final application and extended use agreement, including required amenities, services, design features, and special target populations

The items previously listed may be found in the final application, the extended use agreement, and/or the Form 8609(s) for a project. To ensure compliance, it is important that management agents have copies of the documents and are familiar with the terms defined within them.

## **J. Fair-housing Requirements**

Owners shall comply with all requirements of the federal Fair Housing Act as codified in 42 U.S.C. Chapter 45, Ohio Revised Code Section 4112, and local fair-housing requirements as each may be amended. Owners shall ensure a project does not discriminate, as defined by 42 U.S.C. §3604, against any person because of sexual orientation or gender identity or expression. Also see 24 C.F.R. Part 100, Subpart H for the Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act. Additionally, OHFA directly and affirmatively seeks to promote the Olmstead and Americans with Disabilities Act (ADA) integration principles through its policies and funded projects.

## **K. Tenant Selection Plans**

Owners will adopt Tenant Selection Plans (TSPs) allowing individuals with criminal records to access LIHTC housing while ensuring the safety of all tenants. Further information may be found in [OHFA's Tenant Selection Plan Guidelines](#) that may be amended at any time.

## **L. Comply with the terms of the initial and final applications and extended use agreement.**

In addition to meeting rent and income restrictions, this obligation includes providing the agreed upon services, amenities, design features, and any special population targeting throughout the extended use period. OHFA will monitor for compliance with these elections.

## **M. Report to OHFA any material changes to the project.**

Changes in owners and/or management companies, sale/foreclosure of a project, and reporting units offline that occur after a project has placed in service must be submitted to OHFA's Division of Asset Management.

For more information, visit OHFA's [Asset Management website](#).

## **N. Report tenant events and submitting Annual Owner Certifications.**

### **1. Annual Owner Certification of Compliance/OHFA's Database System**

Under penalty of perjury, owners must annually certify compliance with OHFA, for each year of the compliance and extended use periods. The Annual Owner Certification of Compliance is due on or before March 1 of each year and certifies information for the preceding 12-month period. The report covers the period from January 1 to December 31 of each year and is due to OHFA by the close of business March 1 of the next calendar year. A complete submission includes the owner certification and finalization of tenant events in OHFA's database system. A submission is not complete until the owners/agents complete the finalization process by selecting "Finalize Year" in the database system.

### **2. Train onsite personnel.**

Owners must ensure that onsite property management agents know, understand, and comply with all applicable federal and state rules, regulations, and policies governing the project, including all elections made in the final application, Form 8609(s), and extended use agreement.

### **3. Notify OHFA of any noncompliance issues.**

If owners determine that a unit, building, or entire project is out of compliance with program requirements, OHFA should be notified immediately.

Noncompliance issues identified and corrected by owners prior to notification of an upcoming file monitoring or inspection by OHFA will not be reported to the IRS. Owners must keep documentation outlining: the nature of noncompliance issues, dates noncompliance issues were discovered, dates noncompliance issues were corrected, and descriptions and proof of the actions taken to correct the noncompliance issues. An OHFA monitoring/inspection notification letter is considered by the IRS to be a "bright line date." Once a notification letter has been sent, any noncompliance issues corrected after the date of the letter are still subject to being reported to the IRS via Form 8823.

**Example:** A household was initially income qualified and moved into a unit on January 1, 2022. The maximum allowable LIHTC gross rent is \$500. At the time of recertification on January 1, 2023, property management agents increased rent to the market rate of \$1,000.

During an internal audit dated February 1, 2023, owners/management agents noticed that the unit was out of compliance, because the rent charged exceeds the maximum LIHTC rent limit. On February 1, 2023, owners/management agents immediately corrected the noncompliance issue, notified OHFA of the issue, and documented the file with an explanation of the noncompliance issue, the date it was corrected, and a summary of the actions taken to correct the noncompliance issue. On June 21, 2023, OHFA notified the owners of an upcoming compliance audit. Because the noncompliance issue was discovered, reported, and corrected by owners prior to the notice of OHFA's upcoming compliance review, OHFA will not report the noncompliance issue to the IRS.

#### **4. Provide all pertinent property information to the management agents or any subsequent owners.**

To ensure compliance, owners must provide management agents with copies of at least the following documents: the final application for rental housing financing, the recorded extended use agreement, the carryover agreement, Form 8609 for each building, and tenant files.

If there is a change in management companies, owners are responsible for providing all information and previous tenant files to the new management company. If there is a change in ownership, the existing/previous owners are responsible for providing all award documentation and previous tenant files to the new owners.

#### **5. Submit annual financial information for LIHTC projects.**

Owners of LIHTC projects must annually submit property financial information for OHFA review, specifically to the Division of Asset Management. Owners are required to submit periodic financial information, including internally prepared and/or independently audited financial statements and other property-level information. Related questions should be sent to [assetmanagement@ohiohome.org](mailto:assetmanagement@ohiohome.org).

#### **6. Demonstrate “due diligence.”**

Owners are ultimately responsible for compliance and proper administration of the LIHTC program and all award requirements. OHFA expects all owners/management agents to demonstrate “due diligence,” hereby defined as appropriate, voluntary efforts to remain in compliance with all applicable federal and state rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Page 3-4 of the 8823 Guide states that due diligence requires the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (such as internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

OHFA adds that due diligence also includes keeping up to date with OHFA requirements. These are all examples of voluntary efforts that owners/management agents can take to remain in compliance.



# Appendix D:

# **Compliance Regulations**

# Rules Governing the Eligibility of Particular Residential Units

## Empty Units

Vacant units that have never been occupied (i.e., “empty units”) cannot be counted as low-income units but must be included in the total unit count for purposes of determining the applicable fraction. The transfer of existing tenants to empty units is not allowed for purposes of meeting the minimum set-aside or applicable fraction.

## Vacant Unit(s) Rule

Vacant units formerly occupied by qualified low-income households may continue to be treated as occupied by a qualified low-income household for purposes of the minimum set-aside and applicable fraction requirements (as well as for determining qualified basis) provided that reasonable attempts were or are being made to rent the units (or the next available units of comparable or smaller size) to income-qualified households before any units in a project were or will be rented to nonqualified households. Management agents must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

The definition of “reasonable attempts to rent tax-credit units” may differ per project. Per Revenue Ruling 2004-82: “What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances, and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective tenants would affect what is considered reasonable.”

Units cannot be left permanently vacant and still satisfy the requirements of the LIHTC program. Additionally, vacant units must remain suitable for occupancy and cannot be cannibalized for parts. OHFA reserves the right to question vacancies that are noted during a physical inspection, file review, or Annual Owner Certification review, especially when there is a high quantity of vacancies or when units have been vacant for longer than 60 days. Owners or managers must be able to document attempts to rent vacant units to eligible tenants.

## 140% Rule/Next Available Unit Rule (NAUR)

### **General Rule**

Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an “over-income unit.”

If the income of the occupants of a qualifying unit increases to more than 140% of the federal minimum set-aside (i.e., more than 140% of the 50% limit for 20/50 projects or more than 140% of the 60% limit for 40/60 projects) due to either an increase in income or a decrease in the area median gross income subsequent to the initial income qualification, the unit may continue to be counted as a low-income unit as long as the following criteria are met:

- ⇒ The unit continues to be rent restricted at the state set-aside.
- ⇒ The next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

If the income of the occupants of a qualifying unit increases over the 140% limit and if any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the limit, then the qualifying unit will no longer qualify as a low-income unit and the building is out of compliance with the Next Available Unit Rule (NAUR). The determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the household's income and the qualifying income for the location, rather than only on the date the household initially occupied the unit. In projects containing more than one low-income building, the NAUR applies separately to each building in the project.

As the aforementioned describes, the NAUR is a building rule for tax-credit projects. However, for tax-exempt bond projects that do not also have tax credits, the NAUR is a project rule. For projects with both tax credits and tax-exempt bonds, the NAUR is a building rule.

### **Next Available Unit Rule at Mixed-income Projects**

In mixed-income projects, the NAUR may cause market-rate units to be converted into tax-credit units. Owners must continue renting the next available unit of comparable or smaller size to a tax-credit eligible household until the applicable fraction is restored. Therefore, multiple market-rate units may have to be converted into tax-credit units until the applicable fraction is restored. Remember: the applicable fraction includes both the unit- and floor-space fraction.

Once the applicable fraction is restored (without counting the unit that invoked the NAUR), the over-income unit may then be converted from tax-credit to market-rate status and the rent may be raised as allowed by the language in a tenant's lease.

#### **Example 1: In Compliance**

A building contains 10 units of equal size. Units 1–7 are qualified low-income units, units 8 and 9 are market-rate units, and Unit 10 is a currently vacant market-rate unit. The applicable fraction of the building is 70%.

On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted and therefore the building continues to be in compliance.

Note: If the rent does not remain restricted for this unit then the applicable fraction decreases to 60%. In order to remain in compliance, Unit 10 (the vacant market-rate unit) must be rented to a qualified household to replace Unit 4 as a qualified low-income unit.

On November 1, a qualified household moves into Unit 10, so the current applicable fraction remains 70%. When the lease language allows, Unit 4 may be converted from tax credit to market rate.



### **Example 2: Out of Compliance**

A building contains 10 units of equal size. Units 1–7 are qualified low-income units, Units 8 and 9 are market-rate units, and Unit 10 is currently a vacant market-rate unit. The applicable fraction of the building is 70%.

On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted; therefore, the building continues to be in compliance and the applicable fraction decreases to 60%.

On November 1, a market-rate unit tenant moves into Unit 10. At the time of the move-in, the current applicable fraction was equal to 60%, excluding all over-income units. The market-rate unit tenant moving into Unit 10 is a NAUR violation, and all over-income units (Unit 4) cease to be treated as low-income units. The date of noncompliance is November 1.

### **Next Available Unit Rule at 100% Tax-credit Projects**

Noncompliance with the NAUR can have significant consequences even in 100% LIHTC buildings. If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified tenant, all over-income comparably sized or larger units for which the available unit was a comparable unit within the same building lose their statuses as low-income units and are out of compliance.

However, per page 14-5 of the 8823 Guide, the NAUR is only violated for 100% tax-credit projects if:

1. Management fails to rent a unit to an income-qualified tenant and cannot exhibit due diligence when completing the initial certification; OR
2. Management deliberately rented the unit as a market-rate unit.

If due diligence can be demonstrated, the violation is reported on Form 8823 only as an over-income move-in event, not as an NAUR violation.

### **Next Available Unit Rule for Projects That Have Elected Income Averaging**

For projects that have elected average income minimum set-side, the NAUR is invoked if a tenant's income at recertification exceeds "140% of the greater of 60% of AMI or the designated limit applicable to the unit."

- ⇒ For a unit designated at 20%, 30%, 40%, 50%, or 60% AMI, the NAUR is invoked if a tenant's income at recertification exceeds 140% of the 60% income limit.
- ⇒ For a unit designated at 70% AMI, the NAUR is invoked if a tenant's income at recertification exceeds 140% of the 70% income limit.
- ⇒ For a unit designated at 80% AMI, the NAUR is invoked if a tenant's income at recertification exceeds 140% of the 80% income limit.

Click here to view the [Average Income Policy](#) that may be amended at any time.

## **Unit Transfers within the Same Building**

Effective September 6, 1997, the NAUR was modified to allow residents of LIHTC units to transfer to other units ***within the same building*** without having to requalify for the program. The vacated unit assumes the status that the newly occupied unit had immediately before the transfer (i.e., units swap status). The main implication for this change in regulation is that tenants that are over-income at recertification have the ability to move into different units within the same building without being disqualified from the program.

## **Unit Transfers Outside the Same Building**

Similar to unit transfers within the same building, projects that contain multiple buildings within one project may allow residents of LIHTC units to transfer to other LIHTC units outside of the same building without having to recertify them for the program. However, a transferring tenant's income may not be above the 140% limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it (i.e., units swap status).

**NOTE:** This provision applies only if the owners have selected “Yes” to the question under Part II 8b on the IRS Form 8609, “Is the building part of a multiple building project?”

If the owners have selected “No” to the question under Part II 8b on the IRS Form 8609, “Is the building part of a multiple building project?” then a tenant must be treated as a new move-in if he/she desires to transfer to an LIHTC unit in a different building. All application, certification, and verification procedures must be completed for a transfer, including the execution of new income and asset verifications to determine continued eligibility, a new Tenant Income Certification, and a new lease.

# **Rules Governing the Eligibility of Particular Tenants and Uses**

## **Household Composition**

When determining household size for purposes of implementing the correct income limits, do not include live-in aides, guests, or foster children and foster adults.

- A household has the right to decide whether to include individuals permanently confined to a hospital or nursing home as household members. If individuals are included as household members, their incomes must be certified and included.
- Military members away on active duty are only counted as household members if they are the heads, spouses, or co-heads or if they leave behind spouses or dependent children in the units.
- All other individuals, including temporarily absent family members (e.g., dependents away at school, etc.), unborn children, and children in joint-custody agreements that are in a unit at least 50% of the time must be included in household size for purposes of determining the applicable income limit.

Household composition may change after the initial tenants move into a unit. However, at the time of application, applicants should be asked if there are any expected changes in household composition during the next 12 months. If so, composition and any subsequent changes in estimated incomes should be reflected on the initial Tenant Income Certifications.

If all original members of a household vacate a unit, any remaining members may have to be treated as new move-ins and, if so, their unit would no longer be treated as a qualified unit if the current household's income is above the LIHTC limits.

## Student Status

### **General Rule and Definitions**

Student statuses and household compositions must be monitored carefully. A unit that becomes occupied entirely by full-time students could become a non-qualified household that is no longer tax-credit eligible. This section only defines the tax-credit student-status rule. Other programs (Section 8, RD, and HOME) use the Section 8 student-status rule, which is different. If a project has multiple funding sources, a household must meet both student-status rules to qualify.

For purposes of the LIHTC program, IRC § 151(c)(4) defines, in part, a “student” as an individual who during parts of each of five months (may or may not be consecutive) during a calendar year in which the taxable year for a taxpayer begins is a full-time student (based on the criteria used by the educational institution the student is attending) at an educational organization described in IRC §170(b)(1)(A)(ii). The number of credit hours and the definition of “full time” are defined by the school a student attends.

An “educational organization,” as defined by IRC §170(b)(1)(A)(ii), is an entity that normally maintains a regular faculty and curriculum and has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly held. The term includes elementary schools (kindergarten inclusive), junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. The term does not include on-the-job training courses.

**NOTE:** The “full-time student” definition applies to students taking courses online if they are considered full time by an educational organization.

Households in which all the members are full-time students and do not meet at least one of the five student exceptions are not LIHTC eligible, and units occupied by these households may not be counted as LIHTC units even if the households have incomes that would qualify under the applicable income limits. Reference Section 11 of this manual for information on the student rule.

**NOTE:** A household with an unborn child does not invoke the full-time student rule since at least one household member (i.e., the unborn child) is not a full-time student.

### **Student Status Exceptions**

Owners must count unborn children when determining household sizes and applicable income limits. Owners must obtain a self-certification from a household certifying any pregnancies, and such statements must be placed in the tenants' file. If an unborn child has been self-certified by a household, then it must be included in the household size. Per the HUD Handbook 4350.3 Appendix 3, owners “may not verify further than self-certification.”

Additionally, when determining household size, owners should include children subject to a joint-custody agreement if such children live in a unit at least 50% of the time. However, a child may not be counted in more than one tax-credit unit for household size.

## Units Occupied by Onsite Managers, Maintenance Personnel, or Security

Resident-manager or employee units (including maintenance or security units) may be considered in one of the following ways:

- ⇒ A resident-manager/employee unit could be considered an “exempt unit” (i.e., a special unit within a project that is functionally related to the residential rental units and reasonably required by a project) provided an employee works full time at the project in which he/she lives. The unit would be excluded from the low-income occupancy calculation and could be used by a manager without concern as to the income level of the manager. Previously, if the resident-manager/employee unit is treated as an exempt unit, then no rent can be charged for the unit as this was said to suggest that the manager is not necessary for the project and could be interpreted as the owner charging rent for a facility included in eligible basis. However, in the Audit Technique Guide and a Chief Counsel Advice Memo dated June 2, 2014, the IRS clarified that “charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building does not make the units residential rental units and not facilities reasonably required for the project.” Therefore, rent and utilities can now be charged on exempt units.

In Revenue Ruling 92-61, the Internal Revenue Service includes a unit occupied by a resident manager in a building’s eligible basis but excludes the unit from the applicable fraction for purposes of determining the building’s qualified basis.

OR

- ⇒ The manager/employee unit could be treated as a tax-credit rental unit that would then be included in the low-income occupancy percentage calculation for an LIHTC building. The income level of the manager and the effective rent charged would affect the low-income occupancy percentage calculation for the building (i.e., the employee must be income qualified and the unit rent restricted). In this instance, the unit would be included in eligible basis and in the applicable fraction.

Owners must get OHFA’s approval to have an employee, security, or maintenance unit by submitting [PC-E28 Notification of Employee Unit\(s\)](#) to [OHFAprojectchanges@ohiohome.org](mailto:OHFAprojectchanges@ohiohome.org).

## Live-in Care Attendants (Live-in Aides)

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly or near-elderly persons or persons with disabilities. To qualify as a live-in care attendant, an individual:

- ✓ Must be determined to be essential to the care and wellbeing of a tenant
- ✓ Must not be financially obligated to support a tenant, and
- ✓ Must certify that he/she would not be living in a unit, except to provide necessary supportive services. Family members, including spouses, may qualify as live-in aides if they meet the criteria. A live-in care attendant is not counted as a household member for purposes of determining the applicable income limits, the income of the attendant is not counted as part of the total household income, and he/she does not need to be listed on the TIC.

If a qualified tenant vacates a unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in a unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the LIHTC program.

## **Non-transient Occupancy**

Under program requirements, a unit is not LIHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is fewer than six months. To avoid noncompliance for transient occupancy, there must be an initial lease term of at least six months on all LIHTC units. The six-month requirement may include free rental periods. Succeeding leases are not subject to minimum lease periods.

A unit is in compliance as long as an initial lease is signed for a term of at least six months regardless of whether or not the tenants actually remain in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of transitional housing for homeless individuals and for single-room occupancy (SRO) units. The following types of housing are exempt from the six-month minimum lease period:

1. Certain transitional housing for the homeless may be considered used other than on a transient basis provided a rental unit contains sleeping accommodations, a kitchen, and bathroom facilities and is located in a building;
2. SRO units, which permit the sharing of kitchen, bathroom, and dining facilities, are not treated as used on a transient basis merely because they are rented on a month-by-month basis.

## **Home-based Business/Office in a Unit**

A tenant may use a LIHTC unit to conduct a home-based business as long as he/she is income qualified for a unit, and the unit is his/her primary place of residence. The 8823 Guide states on page 4-13:

“A low-income tenant may use a portion of a low-income 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 have applied for (and not have been rejected), be granted (and still have in effect) or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law.”

## **Foster Children/Foster Adults**

Per HOTMA, foster children and foster adults living in a unit are not considered household members for purposes of determining income limits. Their income and asset sources are not treated as household income. However, they should be considered when determining the appropriate size unit for a household. In this way, foster children and foster adults are treated “similar to live-in aides.”

# Nondiscrimination

## Fair Housing: Protected Classes and Affirmative Marketing Requirements

### **Protected Classes and Prohibited Activities**

Owners/Management agents shall not discriminate in the provision of housing based on race, color, sex, national origin, religion, familial status, or disability (i.e., the seven protected classes under the Fair Housing Act). “Nondiscrimination” means that owners/management agents cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person’s inclusion in a protected class. Owners may not engage in steering, segregation, false denial of availability, denial of access to services or amenities, discriminatory advertising, or retaliation against individuals that make fair housing complaints.

### **Required Actions - Affirmative Fair Housing Marketing Plan**

All LIHTC projects must create and implement an Affirmative Fair Housing Marketing Plan (AFHMP). In addition, AFHMPs must be evaluated at least once every five years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the U.S. Department of Housing and Urban Development (HUD). For further information, reference Section 3 of this manual and OHFA’s [Affirmative Fair Housing Marketing Plan Guidance](#) that may be amended at any time.

## Fair Housing: Reasonable Accommodations and Modifications

The Fair Housing Act requires owners to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. For purposes of the Fair Housing Act, someone with a “disability” is defined as a person who has/is:

- A physical or mental impairment that substantially limits one or more of a person’s major life activities; or
- A record of having such an impairment; or
- Regarded as having such an impairment, but such term does not include current, illegal use of, or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

Owners/Management agents may verify a disability only to the extent necessary to document that an applicant/a tenant has a need for a requested accommodation. Owners/Management agents may not require applicants/tenants to provide access to confidential medical records or submit to physical examinations. Owners/Management agents may not specifically ask about or verify the extent of a disability.

The verification form used must be signed by an applicant/a tenant to authorize release of such information and should request that the source identify:

- ⇒ Whether an applicant meets the definition of “disabled” as provided above; and
- ⇒ Whether a requested accommodation or modification relates to a person’s specific needs.

Receipt of Social Security disability payments is adequate verification of an individual’s disability status, but the correlation between a disability and a requested accommodation or modification may still need verified.

## **Reasonable Accommodations and Assistance Animals**

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, owners must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of a providers' operations.

When a reasonable accommodation will result in an undue financial burden, owners/management agents must provide all other accommodations up to the point at which further accommodations will result in the undue financial burden. For more information on reasonable accommodations, refer to the HUD and U.S. Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released on May 17, 2004.

## **Reasonable Modifications**

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, owners/management agents must allow a reasonable modification at the expense of a tenant. However, if the changes needed by a tenant are ones that should have already been included in a unit or common space in order to comply with design and construction accessibility standards, then owners will be responsible for paying for the modifications. For more information on reasonable modifications, refer to the HUD and DOJ Joint Statement "Reasonable Modifications Under the Fair Housing Act" released on March 5, 2008 (available in Appendix G).

While the Fair Housing Act allows owners to pass on costs of reasonable modifications to tenants, Section 504 of the Rehabilitation Act of 1973, which applies to housing that receives federal assistance, requires housing providers to pay for reasonable modifications unless providing them would be an undue financial and administrative burden or result in a fundamental alteration of a program. While the tax-credit program is not considered federal assistance for this purpose, tax-credit projects receiving other federal assistance through programs, including but not limited to HOME, NHTF, NSP, Project-based Section 8 Vouchers, or Section 811 Project Rental Assistance, are covered by Section 504 so the rule applies.

## **General Public Use**

LIHTC units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (e.g., persons experiencing homelessness, persons with disabilities, older persons, etc.). The preferences, however, must not violate fair housing or any other antidiscrimination policies and must be documented in a project's written tenant selection plan. Per changes under HERA, artist housing is a permissible exception under general public use.

Any residential unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home (providing significant services other than housing), dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not considered for use by the general public and is therefore not an eligible LIHTC unit.

If a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for tax credits.

Furthermore, owners cannot refuse to accept a prospective tenant based solely on the fact that an applicant holds a Section 8 Housing Choice Voucher or receives similar rental assistance.

Violations of general public use and/or fair housing laws are reportable to the IRS via Form 8823. Depending on the nature of a violation, a noncompliance may be determined at a unit, building, or project level. Any unit found in violation of general public use and/or fair housing laws will fail to be considered a qualified low-income unit for purposes of determining the applicable fraction.

## **General Occupancy Guidelines and Household Sizes**

There are no current LIHTC requirements governing minimum or maximum household sizes for particular units. However, owners/management agents must comply with all applicable local laws, regulations, and/or financing requirements (e.g., if HUD or Rural Development, use HUD or RD regulations). OHFA advises all owners/management agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements must be incorporated into a project's written tenant selection plan. Management agents should be aware of occupancy standards set by federal laws, state laws, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal codes that may establish a maximum or minimum number of persons per unit.

## **Violence Against Women Reauthorization Act of 2013 and 2022 (VAWA)**

The 2013 reauthorization of the Violence Against Women Act (VAWA) expanded the act's coverage to include LIHTC projects. The 2022 reauthorization of VAWA provides that the secretary of HUD and the U.S. attorney general shall implement VAWA enforcement in a manner consistent with fair housing enforcement.

### **Prohibited Denial/Termination**

No applicant for or tenant of LIHTC housing may be denied admission to, denied assistance under, terminated from participation in, or evicted from housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

### **Lease Terms**

Owners/Management agents must ensure that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- ✓ A serious or repeated violation of a lease by a victim or threatened victim of such incident; or
- ✓ Good cause for terminating the assistance, tenancy, or occupancy rights to housing of a victim of such incident.

### **Termination Based on Criminal Activity and Bifurcation of Lease**

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of a tenant, any guest, or other person under the control of a tenant. If a tenant or an affiliated individual of a tenant is a victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.



With this said, owners/management agents may bifurcate a lease for housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of said housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. Owners/Managers must provide any remaining tenants with an opportunity to establish eligibility and/or reasonable time to find new housing.

### **Confidentiality of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

Owners must ensure that any information, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, submitted to their staff shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that a disclosure is:

- ✓ Requested or consented to by the individual in writing.
- ✓ Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- ✓ Otherwise required by applicable law.

### **Required Notices**

HUD has developed and may amend at any time notices of the rights of individuals under VAWA, including the right to confidentiality and the limits thereof. Owners/Management agents agree to ensure that the notices are utilized and disseminated at a project as directed by HUD and/or OHFA. See following item No. 7 for information on required forms.

### **Emergency Transfer**

HUD has developed and may amend at any time guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit.

### **Required Forms**

OHFA mandates the use of the following VAWA forms for all LIHTC developments:

**HUD 5380: Notice of Occupancy Rights Under VAWA** — Must be provided along with a copy of the **HUD 5382** at the following times:

- ✓ At the time of initial admission
- ✓ At the time of denial of tenancy
- ✓ When termination/eviction notices are sent

**HUD 5381: Model Emergency Transfer Plan** — Owners must create a model plan specific to each project. The plan must be made available for review by tenants and OHFA.

**Nonretaliation Provisions (Added in VAWA Reauthorization of 2022)**

Owners/Management agents may not discriminate against persons because they have opposed any act or practice made unlawful by VAWA or testified, assisted, or participated in any VAWA-related matters.

**Noncoercion Provisions (Added in VAWA Reauthorization Act of 2022)**

Owners/Management agents may not coerce, intimidate, threaten, interfere with, or retaliate against any persons who exercise VAWA protections, assist other persons in exercising their VAWA protections, or participate in VAWA investigations or enforcement activities.

**Protection to Report Crimes from Home (Added in VAWA Reauthorization Act of 2022)**

Owners/Management agents, tenants, guests, and applicants have the right to seek law enforcement or emergency assistance on their behalves or on behalf of other persons seeking assistance and shall not be penalized based on such requests for assistance or their statuses as victims of criminal activity. Prohibited penalties include actual or threatened:

- Assessment of monetary or criminal penalties, fines, or fees
- Eviction
- Refusal to rent or renew tenancy
- Refusal to issue occupancy permit or landlord permit
- Closure of a property or designation of a property as a nuisance or similarly negative designation

For further information on VAWA, see [OHFA's Policy on the Violence Against Women Act](#) that may be amended at any time.

## **Housing for Older Persons**

The Housing for Older Persons Act of 1995 (HOPA) exempts certain types of “housing for older persons” from the Fair Housing Act’s prohibitions against discrimination based on familial status. Therefore, tax-credit projects may be designated as housing for older persons (as defined in a project’s final application and recorded in the extended use agreement) in one of the following ways and not be in violation of the Fair Housing Act:

1. 100% of units are restricted for households in which **all** members are age 62 or older (See 24 CFR Part 100.303.).
2. At least 80% of units in an entire development not affected by the 8609 definition of “project” are occupied by households in which **at least one** member is age 55 or older. The remaining 20% of units may also be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restrictions; however, owners must ensure that at least 80% of units remain occupied by households that meet the age definition. The determination is left up to owners. The policy elected by owners in regard to the remaining 20% of units must be implemented equally for all applicants and placed in writing as part of a project’s Tenant Selection Plan. In addition, the remaining

portion of units not counted for purposes of meeting the 80% requirement may not be segregated within a community or facility.

3. HUD has noted that phrases, such as “adult living,” “adult community,” or similar statements, should not be used to market projects that fall under the 80% at age 55 or older requirement. Rather, the project should be more specifically advertised as senior housing for households in which at least one household member is 55 years of age or older. Moreover, owners may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the elderly occupancy requirements of 80% of units.

## **Suitable for Occupancy**

### **General Requirements and Recordkeeping**

In addition to being rent restricted and occupied by qualified households, all tax-credit units and buildings must be “functionally adequate, operable, and free of health and safety hazards.” Owners/Management agents must annually certify that all units and buildings in a tax-credit project meet the standard. If any health, safety, or building code inspections result in a notice of violation, it must be disclosed. Original reports/notices of violations must be maintained as part of the owners’ recordkeeping, and copies must be submitted to OHFA along with the Annual Owner Certification of Compliance.

Vacant units must also be suitable for occupancy and cannot be “cannibalized” for parts. Because owners are responsible for maintaining all tax-credit units in a manner that is suitable for occupancy at all times, the cost of preparing vacant units for occupancy cannot be passed onto tenants or applicants. During the inspection process, an OHFA auditor may ask to inspect a mix of both occupied and vacant units.

Tax-credit units that are not suitable for occupancy at the end of a taxable year are not considered qualified units and cause a deduction in applicable fraction (and thus qualified basis).

Projects must meet the NSPIRE standards established by HUD. NSPIRE requires an inspection of the following inspectable areas: unit, inside, and outside.

### **Casualty Loss**

#### **Definition**

A casualty loss is defined by the IRS as “damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual” (IRS Publication 547 and Publication 584). Page 6-5 of the 8823 Guide defines the terms as follows:

- Sudden event: “one that is swift, not gradual or progressive”
- Unexpected event: “one that is ordinarily unanticipated and unintended.”
- Unusual event: “one that is not a day-to-day occurrence and that is not typical”

This explicitly does not include “property damage,” which is “if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent or was progressive deterioration such as damage caused by termites.”

## **Reporting Requirements**

Owners who experience a casualty loss must immediately report a unit offline to OHFA's Asset Management Division by submitting [PC-E56 Notification of Unit\(s\) Offline](#). Once a unit is back online, owners must submit [PC-E57 Notification of Unit\(s\) Online](#).

## **Effect of Casualty Loss on Credits**

Generally, the amount of credits that may be claimed is determined as of the close of each taxable year. Credits are only determined monthly during the first year of the credit period. Therefore, if a building is damaged by a casualty loss event and fully restored within the same taxable year, the IRS has stated that there will be no recapture or loss of credits as long as one of the following criteria are met:

1. The restored units are occupied by the end of the taxable year.
2. Owners have initiated what the IRS refers to as "continual and certifiable measures" to rent restored vacant units.

Although recapture will not occur if units are restored to suitable conditions within a reasonable period, credits cannot be claimed during the time units are not suitable for occupancy.

## **NSPIRE Affirmative Habitability Requirements**

Reference Appendix E.



# Appendix E:

# **NSPIRE Protocol**

OHFA uses HUD’s NSPIRE protocols for all physical inspections/audits. An overview of NSPIRE is as follows:

#### Old Mantra:

“Decent, safe, sanitary, and in good repair”

#### New Mantra:

“Functionally adequate, operable, and free of health and safety hazards”

#### Priorities

- Function + safety, especially within units
- Deemphasize appearance/cosmetic issues and tenant property

**Three-areas Protocol** = Unit, Inside (e.g., common areas, building systems), Outside (e.g., building site/exterior, components, such as fencing)

NSPIRE is **NOT** concerned with:

- Overgrown vegetation that is not a tripping or accessibility hazard
- Holes/Dents/Dings that do not pose safety or functional issues
- Tenant items that block egress

Owners/management agents must ensure they are in compliance with all issued HUD NSPIRE guidance, which is [found here](#).

## Health and Safety Severity Levels

Severity Level	Description	Correction Period
<b>Life-Threatening</b>	The Life-Threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death to a resident.	24 hours
<b>Severe</b>	The Severe category includes deficiencies that, if evident in the home or on the property, present a high risk of permanent disability, or serious injury or illness, to a resident; or the physical security or safety of a resident or their property would be seriously compromised.	24 hours HCV 30 days
<b>Moderate</b>	The Moderate Health and Safety category includes deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit; cause temporary harm; or if left untreated, cause or worsen a chronic condition that may have long- lasting adverse health effects; or that the physical security or safety of a resident or their property could be compromised.	30 days
<b>Low</b>	Deficiencies critical to habitability but not presenting a substantive health or safety risk to resident.	60 days HCV Pass

# Smoke Detectors

A new federal mandate on smoke detectors was issued and must be implemented by December 29, 2024. All smoke detectors will be required to be hardwired OR of the sealed 10-year battery type. If any smoke detectors need to be updated to be compliant with this new mandate, read

- [Public and Federally Assisted Housing Fire Safety Act of 2022](#)
- [NSPIRE Standard - Smoke Alarm](#)

Owners/Management agents should consider a couple of things:

- ⇒ There must be one smoke detector on each level of a building and unit.
- ⇒ Smoke detectors are required inside each bedroom and outside each sleeping area. If the bedrooms are confined to one hallway, only one smoke detector is required in the hallway.
- ⇒ Remember that carbon monoxide (CO) detectors are also required for both new and existing buildings. Refer to the [Ohio Department of Commerce's Carbon Monoxide Detectors in New and Existing Buildings](#).
- ⇒ Keep a tracking log for each unit as to when compliant smoke/CO detectors are installed.

## Placement Requirements

1. Smoke alarms should be installed high on walls or ceilings.
  - ▶ If mounted on ceilings, then they must be greater than four inches from walls.
  - ▶ If mounted on walls, then the top edges of the smoke alarms cannot be closer than four inches or greater than 12 inches from ceilings.
2. Smoke alarms should be installed at least 10 feet from cooking appliances.
3. Smoke alarms should not be:
  - a. Installed near windows, doors, or ducts where drafts might interfere with their operation
  - b. Painted or have decorative stickers

On June 11, 2024, HUD's Real Estate Assessment Center (REAC) clarified two specific elements of the smoke alarm standard:

- Smoke alarms should be installed at least 10 feet from a cooking appliance.
- Smoke alarms should not be installed near windows, doors, or ducts where drafts might interfere with their operation.

Both elements were previously indicated as enforceable but should have been interpreted as **recommendations**. In short, OHFA will not cite these two elements as deficiencies.

## Carbon Monoxide Alarms

Carbon monoxide alarms are required when:

- ⇒ Units or buildings contain fuel-burning appliances or fireplaces
- ⇒ Bedrooms or bathrooms attached to bedrooms contain fuel-burning appliances or fireplaces or have adjacent spaces from which byproducts of combustion gases can flow
- ⇒ Units or bedrooms are served by a forced-air furnace located elsewhere
- ⇒ Units or bedrooms are located one story or fewer above or below attached private garages that do not have natural ventilation or are enclosed and do not have ventilation systems for vehicle exhaust
- ✓ **CO detectors/alarms must be installed within each bedroom or in the immediate vicinity of each bedroom.**

## GFCI Standards

- Ground-fault circuit interrupter (GFCI) outlets or breakers are not visibly damaged but the test or reset buttons are inoperable.
- Unprotected outlets are present within six feet of water sources (i.e., unit, inside, or outside).
- ✓ **Classified as life-threatening = 24-hour correction period**
- The requirement that all outlets within 6 feet of water sources must be GFCI protected does not apply in the following circumstances:
  - ▶ An outlet dedicated to a major appliance (e.g., water heater, HVAC, refrigerator, washing machine, dishwasher, garbage disposal, appliance that is wall mounted or installed within a cabinet, etc.) — A “dedicated outlet” is a receptacle outlet that is only capable of serving one specific appliance.
  - ▶ An outlet below a countertop and within an enclosed cabinet regardless of its distance from water sources



# Affirmative Habitability Requirements

## Inspectable Area = Unit

1. Hot and cold running water in both bathroom(s) and kitchen, including adequate source of safe drinking water in the bathroom(s) and kitchen
2. Bathroom or sanitary facility that is in proper operating condition and usable in privacy that contains a sink, a bathtub or shower, and flushable toilet
3. At least one battery-operated or hard-wired smoke detector
  - a. On each level of a unit
  - b. Inside each bedroom
  - c. Within 21 feet of any door to a bedroom measured along a path of travel
  - d. Where a smoke detector installed outside a bedroom is separated from an adjacent area by a door, must also be installed on the living area side of the door
4. Living room and kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area
5. For units with Housing Choice Vouchers or Project-based Vouchers, at least one bedroom or living/sleeping room for each two persons in a household
6. Must meet carbon monoxide detection standards established through the [Federal Register Notice](#).
7. Two working outlets or one working outlet and a permanent light within all habitable rooms
8. GFCI-protected outlets within 6 feet of water sources.
9. A permanently installed heating source — Units may not contain unvented space heaters that burn gas, oil, or kerosene.
10. A guardrail when there is an elevated working surface drop-off of 30 inches or more measured vertically
11. Permanently mounted light fixture in kitchen and each bathroom

## Inspectable Area = Inside

1. At least one battery-operated or hard-wired smoke detector on each level
2. Must meet carbon monoxide detection standards established through the [Federal Register Notice](#).
3. GFCI-protected outlets within 6 feet of water sources
4. A guardrail when there is an elevated walking surface drop-off of 30 inches or more measured vertically
5. Permanently mounted light fixtures in any kitchens and each bathroom
6. A permanently installed heating source — Buildings may not contain unvented space heaters that burn gas, oil, or kerosene.

## **Inspectable Area = Outside**

1. GFCI-protected outlets within 6 feet of water sources
2. A guardrail when there is an elevated walking surface drop-off of 30 inches or more measured vertically

Further information is found in US Housing Consultants [free manual](#).



# Appendix F:

# **Glossary**

**100% Tax-credit Project:**

A project in which all units are low-income housing tax credit (LIHTC) qualified units (i.e., There are no market rate units.)

**140% Rule:**

If upon recertification, a low-income tenant's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside provided that the unit continues to be rent restricted and the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

**20%/50% Test:**

This test is one of the minimum set-aside options. 20% or more of the residential units must be rented to households with gross annual incomes of 50% or less of the area median income adjusted for family size.

**240-day Window:**

For acquisition/rehabilitation projects, owners/management agents may certify tenants as LIHTC eligible up to 120 days prior to the date of acquisition (using the current income limits) or up to 120 days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition.

**40%/60% Test:**

This test is one of the minimum set-aside options. 40% or more of the residential units must be rented to tenants with gross annual incomes of 60% or less of the area median income adjusted for family size.

**8609:**

See Form 8609; section 4 of this manual

**8823:**

See Form 8823.

**8823 Guide:**

See Form 8823.

**Adjusted Basis:**

The cost basis of a building adjusted for capital improvements minus allowable depreciation

**Affirmative Fair Housing Marketing Plan (AFHMP):**

(Also referred to as the Affirmative Marketing Plan)

A plan in which owners/management agents of a project confirm that they are following fair housing regulations and making efforts to market the project to those groups determined to be least likely to otherwise apply for residency.

**Allowable Fee:**

This is a fee that may be charged to tax-credit tenants. An allowable fee may or may not have to be included in the gross rent calculation depending on whether the fee is for a service that is optional or mandatory.

**Annual Household Income:**

The combined anticipated gross annual income of all persons who intend to reside in a unit

**Annual Income:**

Total anticipated income to be received by a tenant from all sources, including assets, for the next 12 months

**Annual Income Recertification:**

Document by which tenants recertify their incomes for the purpose of determining whether the tenants will be considered low-income according to the provisions of the LIHTC program

**Applicable Credit Percentage:**

Although credits are commonly described as 9% and 4% credits, these percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month. 4% credits are for acquisition and tax-exempt bond-financed projects. 9% credits are for new construction and rehabilitation credits not involving tax-exempt bonds.

**Applicable Fraction:**

This is the portion of a building that is occupied by low-income households. The applicable fraction is the lesser of:

1. The unit fraction defined as the ratio of the number of low-income units to the total number of units in a building or
2. The floor-space fraction defined as the ratio of the total floor space of the low-income units to the total floor space of all units in a building. Therefore, the applicable fraction for a building is the lesser of either the unit fraction or the floor space fraction.

**Applicant:**

A prospective tenant who has applied for rental at a project

**Application:**

Completed by a person or family seeking rental of a unit in a project, the application form should solicit sufficient information to determine an applicant's eligibility and compliance with federal and OHFA guidelines.

**Area Median Income (AMI):**

The median income for a specific county as published by HUD

**American Recovery and Reinvestment Act of 2009 (ARRA):**

The American Recovery and Reinvestment Act of 2009 created the Section 1602 and TCAP programs

**American Recovery and Reinvestment Act of 2009 (ARRA) Programs:**

Section 1602 and TCAP

**Asset Income:**

Amount of money received by a household from items of value as defined in HUD Handbook 4350.3

**Assets:**

Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household

**Assistance Animal:**

An animal that assists an individual with a disability includes service animals and support animals. These animals are not treated as pets but rather as reasonable accommodations under fair housing laws.

**Available Unit:**

A unit that is available is vacant and not under any contractual agreement between owners and prospective tenants. A unit is not available if an applicant has already signed a lease but has not yet moved into a unit.

**Average Income:**

The average income is one of the minimum set-aside options. At least 40% of units must constitute a qualified group in which the average imputed income limitation does not exceed 60% AMI.

**Bifurcation of Lease:**

This is the act of amending a lease to remove some household members while keeping others on a lease. A bifurcation of lease may be required under VAWA to remove a tenant who engages in criminal activity related to domestic violence, dating violence, sexual assault, or stalking without removing or otherwise penalizing the victim(s) of such activity.

**Cash Value of Asset:**

The market value of an asset minus the reasonable expenses incurred to convert the asset to cash

**Casualty Loss:**

This is the loss of a unit due to fire, natural disaster, or other similar circumstance. A casualty loss is defined by the IRS as "damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual."

**Certification Year:**

The 12-month time period beginning on the date a unit is first occupied and each 12-month period commencing on the same date thereafter

**Comparable Unit:**

A unit of the same size and number of bedrooms with similar amenities and features as another unit

**Compliance:**

The act of meeting the requirements and conditions specified under the law and the LIHTC program requirements

**Compliance Period:**

A project's first 15 taxable years during which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance

**Correction Period:**

A reasonable time as determined by the authority for owners to correct any violation(s) resulting from noncompliance

**Cost of Living Adjustment (COLA):**

Cost of living adjustment increase for Social Security as announced by the Social Security Administration

**Credit:**

Rental housing tax credit as authorized by Section 42 of the Internal Revenue Code

**Credit Period:**

The period of 10 taxable years during which credit may be claimed beginning with:

- ⇒ The taxable year a building is placed in service; or
- ⇒ The election of the taxpayer (per Form 8609 Line 10a) the following year but only if a building is a qualified low-income building as of the close of the first year of such building and remains qualified throughout succeeding years

**Current Anticipated Income:**

Gross anticipated income, including asset income, for the next 12 months as of the date of occupancy or recertification

**Date of Acquisition:**

The date on which a building is acquired through purchase

**Day Laborer:**

This is an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future. Income earned by such does not meet HUD's definition of "nonrecurring" and must be counted as income.

**Decontrol Period:**

This is the three-year period following the termination of an extended use agreement (either through qualified contract release or foreclosure) during which tenant protections apply to all existing low-income households. The protections include a prohibition against eviction, except for good cause, and increases in gross rent, except as allowable under Section 42.

**Developer:**

Any individual(s) and/or entity that develops or prepares a real estate site for residential use as an LIHTC project

**Development:**

Rental housing project receiving an OHFA allocation

**Disabled (for Fair Housing Act purposes):**

For purposes of the Fair Housing Act, "disability" is defined as a person who:

- Has a physical or mental impairment that substantially limits one or more of such person's major life activities; or
- Has a record of having such an impairment; or
- Is regarded as having such an impairment

Such term does not include current illegal use of or addiction to a controlled substance as defined in Section 102 of the Controlled Substances Act.

**Disposed of Asset:**

An asset disposed for less than fair market value must be counted as a household asset when determining income if the difference between the fair market value and the amount received is greater than \$1,000.

**Due Diligence:**

This is appropriate voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third-party verifications of tenant income, independent audits, and timely recordkeeping. OHFA expects the owners/management agents for all LIHTC projects to demonstrate due diligence.

**Earned Income:**

This includes income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. The earned income of all adult household members is included in the annual household income calculation. The earned income of minors (i.e., household members under age 18) is not included. Earned income includes income of day laborers, independent contractors, and seasonal workers.

**Educational Organization:**

This is an institution that normally maintains a regular faculty and curriculum and has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried out. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. This does not include on-the-job training employers/professional development organizations but does include online educational institutions.

**Effective Date of Tenant Certification:**

This is the date a Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of a household. For annual recertifications, this date must be the anniversary date of a move-in.

**Effective Term of Verification:**

This is a time period not to exceed 120 days. If a tenant has not yet moved in or been recertified after this timeframe, a new written third-party verification must be obtained. A verification document must be dated within the effective term at the time of a tenant's income certification.

**Eligible Basis:**

The eligible basis of a building includes those costs incurred with respect to the construction, rehabilitation, or acquisition of a property minus non-depreciable costs, such as land, and certain other items, such as federal grants, and some soft costs. Defined simply, eligible basis is how much a building costs.

**Eligible Tenant:**

Eligible tenants are current tenants of a unit as long as those tenants are eligible to occupy a unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes tenants whose incomes would not currently qualify under Section 42 but who were qualified at the time of their original occupancy of a unit.

**Emergency Transfer:**

Under VAWA protections, an eligible tenant may be entitled to an emergency transfer to a safe dwelling unit. All projects must create a VAWA Emergency Transfer Plan using HUD's Model VAWA Emergency Transfer Plan.

**Employment Income:**

Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job(s)

**Empty Unit:**

A unit that is designated as a tax-credit unit but has never been occupied by a qualified LIHTC household  
Exempt Manager's Unit:  
See "Manager's Unit."

**Extended Use Agreement:**

This is a written and recorded agreement between OHFA and owners restricting the use of a project during the term of an extended use period. The official document from OHFA is called a Restrictive Covenant Agreement.

**Extended Use Period:**

This is the timeframe that begins the first day of the initial 15-year compliance period during which a building is part of a qualified low-income housing project and ends either 15 years after the close of an initial compliance period or the date specified by OHFA in an extended use agreement — whichever is longer.

**Fair Market Value:**

An amount that represents the true value at which property could be sold on the open market

**First Year of the Credit Period:**

Either the year a building is placed in service, or, at the owner's option, the following year

**Fixed Income Source:**

Fixed income sources are defined by HUD as "periodic payments at reasonably predictable levels." Fixed income sources can be verified using HUD's streamlining rule. Fixed income sources include the following:

- Social Security payments, including Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI);
- Federal, state, local, and private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; and
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

**Floor Space Fraction:**

The fraction consists of the numerator, which is the total floor space of the low-income units in a building, and the denominator, which is the total floor space of the residential rental units, occupied or not), in the building. The floor space fraction is compared to the unit fraction when computing the applicable fraction. The applicable fraction for a building is the lesser of either the unit fraction or the floor space fraction.

**Foreclosure:**

A foreclosure is a legal procedure that occurs when owners default on a loan and lenders take legal action because a property was used as security for a loan. As a result, a property is sold to recover the debt. Alternately, owners may deed a project directly to lenders in a "transaction in lieu of foreclosure" in full or partial satisfaction of a mortgage debt.



**Form 8609:**

This is the IRS form titled “Low-Income Housing Credit Allocation and Certification.” Part I of Form 8609 is completed by OHFA and issued to owners so they may claim credits. Part II of Form 8609 is completed by owners, and the elections made in Part II are important for ongoing compliance. Owners file Form 8609 with the IRS each year of the credit period.

**Form 8823:**

This is the IRS form titled “Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.” Form 8823 is filed by OHFA with the IRS in order to report instances of noncompliance or building disposition.

**Form 8823 Guide:**

This is the common name for the IRS guidebook titled “Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised January 2011.” While the guide is not considered legal authority, it does provide valuable information regarding the state agency’s responsibilities in determining noncompliance and reporting it to the IRS.

**Foster Adult:**

This is an adult, usually with a disability that makes him/her unable to live alone, who is unrelated to a tenant’s family but has been placed in its care. Under HOTMA, foster adults or children are used for occupancy bedroom size standards as “household members.” Foster members are no longer counted as “family members” for income limit purposes and their incomes and any assets are not counted. They are now treated like live-in aides.

**Foster Children:**

Foster children are in the legal guardianship or custody of a state or foster care agency but cared for by foster parents in their homes under a foster care arrangement with a custodial agency. Under HOTMA, foster adults or children are used for occupancy bedroom size standards as “household members.” Foster members are no longer counted as “family members” for income limit purposes and their incomes and any assets are not counted. They are now treated like live-in aides.

**Full-time Student:**

Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five calendar months that may or may not be consecutive during a calendar year. Full-time status is defined by an educational organization at which a student is enrolled.

**Full-time Student Household:**

A household in which all tenants/applicants are full-time students

**Gig Worker**

See Independent Contractor.

**Good-cause Eviction:**

Tax-credit households cannot be evicted or have their tenancies terminated without “good-cause,” which is generally considered material violation of a lease. The actions that constitute good cause for eviction or termination of tenancy must be given to tenants in writing at the time of occupancy, preferably in the lease, as well as in a project’s tenant selection criteria. Exceeding the 140% income limit is not considered good cause for eviction.

**Gross Income:**

See Annual Household Income.

**Gross Rent:**

Gross rent equals the sum of a tenant's paid rent portion plus the utility allowance plus any Non-optional fees. Total gross rent must be at or below the applicable rent limit for a unit to be in compliance.

**Gross Rent Floor:**

This is the lowest rent limit that owners will ever have to charge for a unit. For tax-credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in a project or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in a project or on the reservation letter date. If HUD's published rent limits decrease from year to year, the rent limit for a particular project never has to fall below its gross rent floor.

**Gross Rent Floor Election Date:**

For tax-credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in a project or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in a project or on the reservation letter date.

**Guest:**

Guests are visitors temporarily staying in a tax-credit unit with the consent of a tenant. Guests are not treated as household members when determining household size and the applicable income limit, and their incomes are not included in annual household income calculations.

**Housing and Economic Recovery Act (HERA):**

Congress passed the Housing and Economic Recovery Act on July 30, 2008. Among other things, this legislation added special income and rent limits, the recertification exemption for 100% tax-credit properties, and the foster care student status exemption.

**Household:**

An individual, family, or group of individuals living in a unit

**Housing Opportunity Through Modernization Act of 2016 (HOTMA):**

Housing Opportunity Through Modernization Act of 2016

**Imputed Income from Assets:**

The estimated earnings of assets held by a household using the potential earning rate or passbook rate established by HUD

**Income Limits:**

Published by HUD, maximum incomes are used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction (30%, 40%, 50%, or 60%).

**Independent Contractor:**

This is an individual who qualifies as an independent contractor, instead of an employee, in accordance with the Internal Revenue Code federal income tax requirements and whose earnings are consequently subject to the self-employment tax. Individuals considered "gig workers," such as babysitters, landscapers, rideshare or app-based delivery drivers, and house cleaners, typically fall into the category of independent contractors. Income from such does not meet HUD's definition of "nonrecurring" and must be counted as income.

**Initial Compliance:**

This is the 12-month period starting with the date a building is placed in service. Note: Projects consisting of multiple buildings with phased completion must meet the set-aside requirements on a building-by-building basis with the 12 months commencing with the individual date each building is placed in service.

**Initial Tenant File:**

This is the file for the first household to occupy a unit. Initial tenant files, also called “first-year files,” contain the records for the first year of a credit period and are important for demonstrating that a project was eligible to begin claiming credits. Initial tenant files must be kept for 21 years.

**Initial Compliance Period:**

This is a 15-year period, beginning with the first taxable year in which credit is claimed, during which an appropriate number of units must be marketed and rented to LIHTC-eligible households at restricted rents.

**In-place Household:**

A household that is already occupying a unit at the time of acquisition

**Internal Revenue Service (IRS):**

Internal Revenue Service

**Lease:**

A legal agreement between tenant(s) and owners/management agents, which delineates the terms and conditions of the rental of a unit

**Lease Rent:**

As defined in a lease, this is the actual rent charged to a household by owners. Lease rent is also referred to as “tenant-paid rent.” The tenant-paid rent may never exceed the maximum allowable rent or the applicable HUD-published rent limit.

**Low-Income Housing Tax Credit (LIHTC):**

Low-Income Housing Tax Credit, also known as “Rental Housing Tax Credit,” as authorized by Section 42 of the Internal Revenue Code

**Live-in Care Attendant/Live-in Aide:**

Live-in aides are persons who reside with one or more elderly, near elderly, or disabled persons. To qualify as live-in care attendants, individuals:

1. Must be deemed essential to the care and wellbeing of a tenant
2. Must not be financially obligated to support a tenant
3. Must certify that they would not be living in the unit, except to provide necessary supportive services.

A live-in care attendant for an LIHTC tenant should not be counted as a household member for purposes of determining applicable income limits, the income of the attendant is not counted as part of the total household income, and the live-in aide should not be listed on the TIC.

**Low-income Household/Tenant:**

Households whose incomes are not more than either 50% or 60% of the median family income for a local area adjusted for family size

**Low-income Unit:**

Any unit in a building if:

4. A unit is rent restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code);
5. The individuals occupying such unit meet the income and student status eligibility limitations applicable under Section 42; and
6. The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

**Management Agent:**

For the purposes of this LIHTC Compliance Manual, management agents collectively refers to the property management company, onsite property management, and compliance personnel.

**Management Company:**

A firm authorized by owners to oversee the operation and management of a project and accept compliance responsibility

**Manager's Unit:**

This is a unit occupied by a full-time tenant manager who is reasonably required for the benefit of a project. If the unit is considered an "exempt" area, a manager does not have to be income qualified. The same rule applies for units reserved for maintenance and/or security staff.

**Market Value of Asset:**

The dollar value of an asset on the open market

**Maximum Allowable Rent:**

Maximum allowable rent, which is the maximum amount that owners are permitted to actually charge for rent, is determined by subtracting the sum of the utility allowance for tenant-paid utilities and fees for any other non-optional charges from the applicable rent limit. Maximum allowable rent may also be referred to as "maximum chargeable rent" or "net rent."

**Median Income:**

Made through statistical methods, median income establishes a middle point for determining income limits. Median income is the amount that divides the distribution into two equal groups: one group having income above the median and one group having income below the median.

**Minimum Set-aside:**

The minimum number of units that owners have elected and set forth in the restrictive covenant to be income and rent restricted

**Mixed-income Project:**

A project with both LIHTC and market-rate units

**Model Unit:**

This is a rental unit set aside to show prospective tenants the desirability of a project's units without disturbing current tenants in occupied units. A model unit's cost can be included in a building's eligible basis and the denominator of an applicable fraction when determining a building's qualified basis.

**Multifamily Tax Subsidy Program (MTSP) Limits:**

The income limits published by HUD specifically for the Multifamily Tax Subsidy Program

**Multiple-building Project:**

A project in which multiple buildings are all considered to be part of one project is a multiple-building project only owners choose "Yes" on Line 8b of Part II of Form 8609.

**National Standards for the Physical Inspections of Real Estate (NSPIRE):**

National Standards for the Physical Inspections of Real Estate

**Next Available Unit Rule (NAUR):**

See 140% Rule.

**Noncompliance:**

The time period that a project, specific building, or unit is ineligible for LIHTC because of failure to satisfy program requirements

**Non-optional Fee:**

A non-optional fee may be charged for services/amenities that are mandatory (i.e., services that are required as a condition of occupancy). A fee may be charged for non-optional services, but it must be included in the gross rent calculation. NOTE: Owners/Management agents may never charge fees for amenities that are included in eligible basis regardless of whether or not a fee is included in the gross rent calculation.

**Ohio Housing Finance Agency (OHFA):**

Ohio Housing Finance Agency

**Optional Fee:**

An optional fee may be charged for an extra service or amenity that is elected by a tenant. If the service or amenity is truly optional (i.e., it is not a condition of occupancy that the tenant accepts the service), then a fee may be charged without being included in the gross rent calculation.

NOTE: Owners/management agents may never charge fees for amenities that are included in eligible basis regardless of whether or not a fee is included in the gross rent calculation.

**Over-income Unit:**

Under § 1.42-15(a), a low-income unit for which the aggregate income of the occupants of a unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an over-income unit.

**Owner:**

Any individual(s), association, corporation, joint venture, or partnership that owns a LIHTC project

**Passbook Rate:**

This is the HUD-approved rate for imputing assets. Under HOTMA, the passbook rate for 2024 is .4%, which is subject to inflation adjusted by HUD.

**Placed-in-service Date (PISD):**

For buildings, this is the date a building is ready and available for its specifically assigned function as set forth on IRS Form 8609. For new construction, the placed-in-service date is generally the date a building receives its certificate of occupancy. For an acquisition, the placed-in-service date is the date of acquisition.

**Public Housing Authority (PHA):**

Public housing authority

**Project:**

A project may be all the buildings in a project or one particular building within a project depending on the election made by owners on Line 8b of Part II of Form 8609. If Line 8b is marked “Yes,” then a building is part of a multiple-building project. If Line 8b is marked “No,” then a building is considered its own project.

**Protected Class:**

A protected class is one of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are: race, color, national origin, religion, sex, disability, and familial status.

**Qualified Allocation Plan (QAP):**

A plan developed and promulgated from time to time by OHFA to set the guidelines and selection criteria by which OHFA allocates tax credits

**Qualified Basis:**

This portion of the eligible basis attributable to low-income rental units is equal to the eligible basis multiplied by the applicable fraction. The amount of the qualified basis is determined annually on the last day of each taxable year.

**Qualified Low-income Building:**

Any building that is part of a qualified low-income housing project at all times during the period beginning on the first day in the compliance period during which the building is part of such a project and ending on the last day of the compliance period with respect to the building (Section 42(c)(2)(A) of the Code)

**Qualified Unit:**

A unit in a qualified low-income building occupied by qualified persons at a qualified rent

**Qualified Group of Units:**

This is a group of units in which all are qualified low-income units, and the average imputed income limitation of the units does not exceed 60% AMI. The concept is used for determining the minimum set-aside test and the applicable fraction for an average income test project.

**Ratio Utility Billing System (RUBS):**

This is a utility billing system in which all units are on one utility meter, instead of separate sub-metering. Utilities paid through a RUBS are not eligible to be included in a utility allowance because the tenants are billed based on a distribution formula, instead of actual consumption. Instead, the amount charged to the tenant for utilities would be treated as a non-optional fee when determining gross rent. An owner would have to cap the RUBS billings so that rents and RUBS charges never exceed the LIHTC max rent in any specific month

**Reasonable Accommodation:**

This is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, owners must allow reasonable accommodations unless doing so will be an undue financial burden or fundamentally alter the nature of a providers' operations.

**Reasonable Modification:**

This is a change to the physical structure of a property when the change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, owners must allow reasonable modifications at the expense of a tenant unless a change is one that should have already been included in order to comply with design and construction accessibility standards in which case owners will be responsible for paying for a modification.

**Recapture:**

This is an increase in owners' tax liability because of a loss in tax credits due to noncompliance with program requirements. Recapture is a return of the accelerated portion of the credits that was claimed during a 10-year credit period.

**Rent Limit:**

The HUD-published maximum amount that can be charged for a tax-credit unit, including utility allowance and any non-optional fees

**Rental Housing Tax Credit (RHTC):**

Also known as Low-Income Housing Tax Credit

**Restrictive Covenant Agreement:**

The extended use agreement between OHFA and owners restricting the use of a project during the term of the LIHTC extended use period

**Seasonal Worker:**

Individuals who are seasonal workers are:

- ⇒ Hired into a short-term position (i.e., for which the customary employment period for the position is six months or fewer) and
- ⇒ employed about the same time each year (such as summer or winter).

Typically, an employer or industry hires individuals to address seasonal demands that arise. Examples include employment linked to holidays, agricultural seasons, seasons in general (e.g., lifeguards, ballpark vendors, snowplow drivers, etc.) Such income does not meet HUD's definition of "nonrecurring" and must be counted as income.

**Second-party Verification:**

See Tenant-provided Document.

**Section 1602:**

Section 1602 allows unsold tax credits to be exchanged for cash. This Tax Credit Exchange Program was created by the American Recovery and Reinvestment Act of 2009 (ARRA).

**Section 42:**

Section 42 of the Internal Revenue Code of 1986, as amended, established the Low-Income Housing Tax Credit Program.



## **Section 8:**

Section 8 of the United States Housing Act of 1937, as amended, provides rental assistance to low-income households.

## **Self-certification:**

Tenants or applicants sign affidavits to clarify information or provide information that cannot be verified through second- or third-party documents.

## **Set-aside:**

Units designated as “set-aside” for a specific population may be used only for the identified population and no other. If qualified tenants in a designated population are not available, units must remain vacant. Tax-credit units will all be set-aside at 30%, 40%, 50%, or 60% rent unless owners use average incomes. There could be an additional set-aside for special needs populations.

## **Special Needs Population:**

Per the set-asides and scoring criteria defined in OHFA's QAP, owners/management agents of a tax-credit project may have committed in writing to set aside a percentage of total units in a project for qualified tenants who meet the state's definition of “special needs population” and must equip each unit to meet a particular person's need(s) at no cost to a tenant. Special needs populations include:

1. Persons with physical or developmental disabilities
2. Persons with mental impairments
3. Single-parent households
4. Victims of domestic violence
5. Children who have been abused
6. Persons with chemical addictions
7. Persons who are experiencing homelessness
8. Elderly persons

## **Single Room Occupancy (SRO):**

Single room occupancy

## **Staff Unit:**

See Manager's Unit.

## **Student:**

Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five calendar months (may or may not be consecutive) during a calendar year with the educational organization at which a student is enrolled defining “full-time status”

## **Sub-metering:**

This is a system for measuring tenants' actual utility consumption. Some buildings in qualified low-income housing projects may be sub-metered. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owners. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on its consumption. Building owners retain records of residents' utility consumption, and tenants receive documentation of utility costs as specified in their leases.

## **Subsequent Credit Allocation:**

A set of rehabilitation credits is allocated to a project that has already completed an original credit period and 15-year compliance period. A project receiving a subsequent credit allocation begins a new 10-year credit period and 15-year compliance period. Existing tenants are grandfathered into the new allocation without being recertified as new move-in events.

## **Tax Credit:**

A tax credit is a dollar-for-dollar reduction in the federal income tax liability of the owners. The tax credit amount is calculated by multiplying the qualified basis by the applicable credit percentage. The credit percentage, which is determined monthly, changes to yield over a 10-year period a credit equal to either 30% or 70% of the present value of the qualified basis of a building. Owners may elect to lock the applicable credit percentage at the time that either a commitment is made by OHFA or an allocation is made.

**Tax Credit Assistance Program (TCAP):**

Created by the American Recovery and Reinvestment Act of 2009 (ARRA), the Tax Credit Assistance Program provided special HOME funding to supplement tax credit projects.

**Tenant:**

Any person occupying a unit.

**Tenant-paid Rent/Total Tenant Payment (TTP):**

Also referred to as the “lease rent,” this is the actual rent charged to households by owners as defined in leases. The tenant-paid rent may never exceed the maximum allowable rent or the applicable HUD-published rent limit.

**Tenant-provided Document:**

Source documentation submitted to management by a tenant or applicant in order to disclose information about income, asset sources, or other eligibility factors is considered an eligible type of third-party verification.

**Tenant/Unit File:**

Complete and accurate records pertaining to each dwelling/unit and containing the application for each tenant, verification of income and assets for each tenant, the annual tenant income certification for a household, utility schedules/allowances, rent records, all leases and lease addenda, etc.

**Third-party Verification:**

This is a verification document submitted to management by a third-party entity to disclose information about the income or asset sources or other eligibility factors of an applicant or tenant. Third-party verifications must be sent to and received directly from a third-party source, not through a tenant or applicant. An example of third-party verification is an employment verification form completed by an employer.

**Transient Use:**

LIHTC units are considered to be in transient use and therefore out of compliance if the initial lease term is fewer than six months.

**Unearned Income:**

Any income that is not considered earned income includes income from assets, pensions, or annuities and benefit sources, such as Social Security or welfare assistance. The total of unearned incomes for all household members regardless of age is included in the calculation of annual household income.

**Unit Fraction:**

The fraction consists of the numerator, which is the number of low-income units in a building, and the denominator, which is the number of residential rental units occupied or not in a building. The unit fraction is compared to the floor space fraction when computing the applicable fraction. The applicable fraction for a building is the lesser of either the unit fraction or the floor space fraction.

**U.S. Department of Housing and Urban Development (HUD):**

U.S. Department of Housing and Urban Development



### **Utility Allowance (UA):**

This is an allowance representing the average monthly cost of tenant-paid utilities for a particular unit's size and type. Utility allowances include costs for heat, electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include costs for telephone, cable television, or internet services. A utility allowance is added to tenant-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit inclusive of utility allowance must be at or below the applicable published rent limit. Acceptable utility allowance methods include:

- ⇒ A utility schedule published by HUD, Rural Development, or a PHA
- ⇒ A letter from a utility company that states the rates (i.e. Estimate)
- ⇒ The HUD Utility Schedule Model
- ⇒ An Engineer's Energy Consumption Model (as calculated by an approved engineer or licensed professional)
- ⇒ A Renewable Energy Source.

The IRS requires that UAs be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146, Section 42 Utility Allowance Regulations Update.

### **Vacant Unit:**

A unit that is currently unoccupied but was formerly occupied by a qualified LIHTC household.

### **Vacant Unit Rule:**

Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by qualified low-income tenants for purposes of the minimum set-aside requirement (as well as for determining qualified basis) provided reasonable attempts were or are being made to rent the units (or the next available units of comparable or smaller size) to income-qualified tenants before any units in a project were or will be rented to nonqualified tenants.

Owners/Management agents must document that reasonable attempts were made to rent vacant tax-credit units before renting vacant market-rate units.

### **Violence Against Women Reauthorization Act of 2022 (VAWA):**

The Violence Against Women Reauthorization Act of 2022 provides protections against housing discrimination for victims of domestic violence, dating violence, sexual assault, or stalking.

### **Verification:**

Information from a second- or third-party source is collected in order to corroborate the accuracy of information about the income, assets, and/or other eligibility factors of applicants or tenants.



## Appendix G:

# **HUD HOTMA Annual Income Updated Guidance**

Annual income does not include amounts that the U.S. Department of Housing and Urban Development (HUD) is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in the exclusions in the HUD regulations apply. **HUD will publish a notice in the Federal Register** to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

Following is the updated list, which HUD published on January 31, 2024.

**Reference: 24 CFR 5.609(b)(22)**

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- (1) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b)). *This exclusion also applies to assets.*
- (2) Payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5044(f)(1), 42 U.S.C. 5058), are excluded from income except that the exclusion shall not apply in the case of such payments when the Chief Executive Officer of the Corporation for National and Community Service appointed under 42 U.S.C. 12651c determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)). *This exclusion also applies to assets.*

**Note | This corrects an exception to payments, including for supportive services and reimbursement of out-of-pocket expenses, for volunteers under the Domestic Volunteer Service Act of 1973.**

- (3) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)). *This exclusion also applies to assets.*
- (4) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 5506). *This exclusion also applies to assets.*
- (5) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f)(1)). *This exclusion also applies to assets.*
- (6) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, section 6). *This exclusion also applies to assets.*
- (7) The first \$2000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands. This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407-1408). *This exclusion also applies to assets.*

- (8) Amounts of student financial assistance funded under title IV of the Higher Education Act of 1965 (20 U.S.C.1070), including awards under Federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu).
- For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327) (as amended)
- (9) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056g).
- (10) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101–201) or any other fund established pursuant to the settlement in In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.). ***This exclusion also applies to assets.***
- (11) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420 section 9(c)). ***This exclusion also applies to assets.***
- (12) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).
- (13) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l)). ***This exclusion also applies to assets.*** Please note: While this income exclusion addresses EITC refund payments for certain HUD programs, the exclusion in 26 U.S.C. 6409 excludes Federal tax refunds more broadly for any Federal program or under any State or local program financed in whole or in part with Federal funds.
- Note | This is a provision that applies only to specific HUD programs.***
- (14) The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is ***excluded from income and assets*** for a period of 12 months from receipt (26 U.S.C. 6409).
- Note | This adds the amount of any refund (or advance payment for a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for 12 months from receipt.***
- (15) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433 section 2). ***This exclusion also applies to assets.***
- (16) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).

- (17) Any allowance paid to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802–05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811–16), and children of certain Korean and Thailand service veterans born with spina bifida (38 U.S.C. 1821–22) is excluded from income and assets (38 U.S.C. 1833(c)).

**Note | *This adds allowance paid to children of certain Thailand service veterans born with spina bifida.***

- (18) Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)). ***This exclusion also applies to assets.***
- (19) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2)).
- (20) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC). ***This also applies to assets.***
- (21) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (Pub. L. 101–503 section 8(b)). ***This exclusion also applies to assets.***
- (22) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. 1437a(b)(4));
- (23) Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. chapter 11 or dependency and indemnity compensation under 38 U.S.C. chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.)

**Note | *This corrects the exclusion of income applicable to programs under the Native American Housing Assistance and Self Determination Act (NAHASDA) to more accurately capture the language of 25 U.S.C. 4103(9). This is a provision that applies only to specific HUD programs.***

- (24) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291 section 101(f)(2)). ***This exclusion also applies to assets.***

- (25) Any amounts in an “individual development account” are **excluded from assets** and any assistance, benefit, or amounts earned by or provided to the individual development account are **excluded from income**, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)).

**Note | This corrects that any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended.**

- (26) Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013–1 and 2013–55 must be **excluded from annual income** unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013–1. The first \$2,000 of per capita payments are also **excluded from assets** unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407).

**Note | This corrects that the first \$2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds.**

- (27) Federal assistance for a major disaster or emergency received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

**This exclusion also applies to assets.**

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

**Note | This adds the value of, distributions from, and certain contributions to Achieving Better Life Experience (ABLE) accounts established under the ABLE Act of 2014.**

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

**Note | This adds assistance received by a household from payments made under the Emergency Rental Assistance Program under the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021.**