

2026 COMPLIANCE MANUAL LIHTC | HOME | NHTF

*NOTE: An accessible version of this file is not provided due to its complexity.
More information about this file can be made available upon request.*

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iowafinance.com

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Project Information:

Project Name:

LIHTC

LIHTC Project #:

Minimum Set-aside:

HOME/NHTF

HOME #:

Fixed or Floating (circle one) HOME/NHTF (circle one)

My Property is...

Check which applies:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LIHTC- Only	HOME- Only NHTF	LIHTC with HOME and/or NHTF

See the Chapter 1 header *Multiple Programs* under *Program Backgrounds* for further information on the use of this chart.

Developed by the Iowa Finance Authority with the assistance of



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IFA Manual 2026 Update Summary



Multiple Program Charts

Throughout

- Adjustment for HOME 2025 changes.

“Family” Accurately Used

Throughout

- “Household” has been replaced with the more accurate HUD term “family” in hundreds of cases.

Asset Threshold

Throughout

- References to “\$50,000” have been changed to “the annual asset threshold” or “the annual asset threshold (\$50,000, as adjusted)” to allow for annual adjustments.

HOME Period of Affordability

Page 14 & 15

- Clarification and chart reflecting the HOME 2025 re-definition of the length of the period of affordability to a time set by federal HOME regulation.

The Average Income Test

Page 19

- Clarifies that IFA allows AIT projects to include market units, depending on the year of allocation.

VAWA

Page 28

- The newly revised HUD VAWA forms are mentioned.

Rental Assistance as it Relates to Rent Limits for LIHTC, HOME, and the NHTF

Page 38 - 41

- Coverage of recent changes dictating how rental assistance is handled for all the programs covered by this manual.
- Requirement explained that, for families with Housing Choice Vouchers, the rent explanation from the PHA must be retained in the file.
- The multiprogram chart has been revised to reflect new subsidy rules.

Utility Allowances and HOME

Page 44

- Re-instatement of the PHA estimate UA for HOME is explained.

Fees

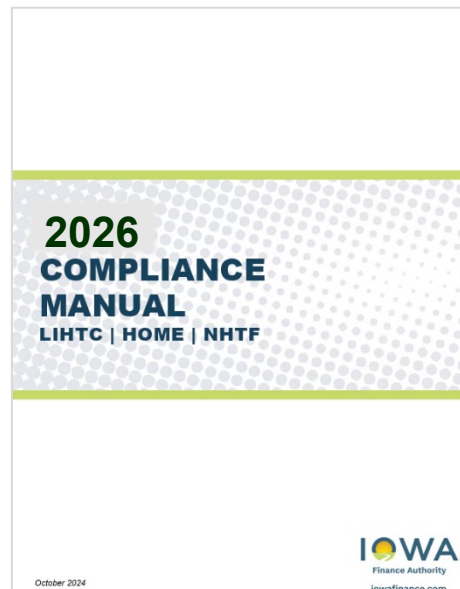
Page 45 - 46

- Community rooms added as an example of facilities at a property where prohibitions against fees apply.
- Further clarification in the fees chart for month-to-month fees and renter’s insurance.

Household and Family

Page 54

- Explanation of the newly important distinction between family and household.



Paystubs**Page 57**

- Adjustment of IFA policy is explained. The LIHTC has minimum requirement to collect at least 2 stubs, while HOME and NHTF retain the regulation 2-month standard.

Asset Self-Certification**Page 59**

- Multiple program chart adjusted to reflect that asset self-certification is allowed for LIHTC, HOME, and the NHTF.

Use of Other Means-Tested Program Determinations of Income**Page 60**

- This new provision, as it applies to LIHTC and HOME, is explained.
- Explanation that this does not apply to the NHTF.

Voucher Holder PHA Verification**Page 60**

- Family Report form name added to the 50058 form number for clarity.

Asset Self-Certification for HOME and NHTF**Page 62**

- Clarification provided that asset self-certification is an option for all certification years for HOME and the NHTF, including move-in and every sixth year of the period of affordability.

Foster Household Members and Student Rules**Page 64**

- Added clarification that current foster members do not qualify a family for the “former foster” member LIHTC full-time student exception.

Non-Governmental Rental Assistance**Page 69**

- Rent assistance from sources other than the state or federal government is unearned income.

Rental Assistance**Page 92**

- Federal or state rental assistance includes Iowa HCBS or refugee resettlement from federal funds.

Student Financial Assistance**Page 94-97**

- Removed references to the former rule treating student financial assistance differently for Section 8 recipients.
- Charts and examples changed.

Jointly Held Assets**Page 100**

- Details added about when jointly held assets may not be an asset for a family.

Trusts and Retirement Accounts**Pages 103 and 108**

- Assets deposited into a family member’s trust or retirement account are not disposed of.

Three Steps to Asset Success**Page 111 - 115**

- Process and examples have been adjusted for clarity. Net family assets, not total NNPP, determine if asset self-certification is acceptable. Adjustments have been made to reflect this.
- Several examples have been adjusted.

HOME Source Documents**Page 121**

- Clarification provided that HOME/NHTF “source documentation” includes self-certification of assets when total net assets do not exceed the annual asset threshold.

Over-Income HOME Rent**Page 129**

- Rent for over-income HOME families is the max LIHTC rent and is not based on adjusted income.

Casualty Loss**Page 140**

- References for IRS guidance on casualty loss provided.

8823 Guide References and NSPIRE**Page 149 and 151**

- 8823 Guide chapter numbers are updated to meet new online format.
- The old UPCS overview has been adjusted to NSPIRE. NSPIRE applied by IFA in 2026.

Forms**Appendices**

- Forms have been removed. The most up-to-date versions are available on the IFA website.

Chapter 1 - Introduction & Program Fundamentals

Introduction

The Iowa Finance Authority (IFA) was established in 1975 to undertake programs to assist in the production of housing for low- and moderate-income residents in the State of Iowa. This manual addresses the requirements for three of those programs, the Low-Income Housing Tax Credit (LIHTC), HOME, and NHTF programs. It is designed to answer questions regarding procedures, rules and regulations that govern housing properties in Iowa. This manual should be a useful resource for owners, developers, management agents, and on-site management personnel. Particular attention is paid to the needs of those doing the work at a site level. Since they carry out much of the owner’s work, these vital personnel are referred to throughout this manual as owners/managers.



While setting out IFA’s requirements under these programs, nothing in this manual should be construed as legal or accounting advice. This manual is to be used only as a supplement to compliance with the laws, regulations, and other guidance from HUD and the IRS. This manual should also not be considered a complete guide to compliance for the programs covered. The responsibility for compliance with these federal programs lies with the owner of the building for which the funding applies. Because of the complexity of federal programs and the need to consider how they apply to specific circumstances, owners are strongly encouraged to seek competent professional legal and accounting advice regarding compliance issues. IFA’s obligation to monitor for program compliance with the requirements of a program does not make IFA or its subcontractors liable for an owner’s noncompliance. Additionally, this guide does not address the tax consequences of noncompliance. Taxpayers are responsible for evaluating the tax consequences of noncompliance with IRC §42.

Program Backgrounds

LIHTC

The Low-Income Housing Tax Credit program was created by Congress as part of the Tax Reform Act of 1986. It is often referred to in abbreviated form as the LIHTC or “tax credit” program. Through the LIHTC program, owners receive a reduction in tax liability in exchange for providing affordable housing. This tax credit is based on how much is invested in the property. The tax credit program is governed by Section 42 of the Internal Revenue Code (§42). The Internal Revenue Service (IRS) administers the program nationwide in conjunction with state housing finance agencies.

The IRS does not directly allocate tax credits to owners or routinely monitor compliance with the LIHTC program. Those tasks are handled on the IRS’ behalf by the state housing agencies. The Iowa Finance Authority (IFA) is recognized as the housing finance agency authorized to monitor compliance for various affordable housing programs, including the LIHTC in the State of Iowa.

Section 42 requires that designated state tax credit agencies provide a procedure for monitoring adherence to compliance with the requirements of the LIHTC program. Guidelines and rules outlined in this manual reflect these requirements.

Tax credits can be involved in new construction of a property, rehabilitation of a property and acquisition of an existing property if it also will undergo rehabilitation after acquisition.

In order to retain the tax credits awarded, a development must do the following: rent to qualified families and prove that they qualify through supporting documentation, keep rents affordable and maintain the property in good repair (often referred to as “decent, safe and sanitary”).

HOME

HOME Investment Partnership Program funds are provided by the Housing and Urban Development (HUD) agency under the HOME Investment Partnership Act, which is found in Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990.

The HOME program is designed to provide affordable housing to lower-income families, expand the capacity of nonprofit housing providers, and strengthen the ability of state and local governments to develop and implement affordable housing strategies to meet local needs.

A primary use of HOME funds is for the acquisition, construction, and rehabilitation of rental housing. All rental housing units funded using HOME must meet affordability and income-targeting requirements as outlined in the HOME Final Rule (24 CFR Part 92). The HOME program designates specific units that are HOME units based on the amount of HOME funding proportionate to the total cost of the project.

Properties that have been developed with HOME funds are required to adhere to specific rules designed to ensure affordability for low and very low-income families throughout a required period of affordability.

Each project will have a specific number of units that will have HOME requirements. Non-HOME units are not affected by HOME rules.

Similar to the IRS with tax credits, HUD does not directly commit HOME funds to a property. These funds are committed and monitored by Participating Jurisdictions (PJs). PJs may be local or state agencies. States often have several local PJs working in the state in addition to a state PJ. IFA is the PJ for the HOME funds committed to the State of Iowa and is responsible for HOME program monitoring and compliance enforcement.

Important: Prior to 2010, state HOME funds were committed and monitored by the agency formerly known as the *Iowa Department of Economic Development (IDED)*. IFA now monitors their past portfolio and commits new HOME funds allocated to the State of Iowa.

HOME guidance found in this manual only applies to projects monitored by IFA. An owner/manager will need to look for guidance from the applicable city or local PJ for HOME funds not committed by IFA or IDIED.

NHTF

The National Housing Trust Fund (NHTF) is an affordable housing production program that complements existing Federal, state, and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-income and very low-income families, including homeless families. Funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation. All NHTF assisted units are required to have a minimum 30-year period of affordability.

Multiple Programs

Many of the rules are the same for the LIHTC, HOME and/or NHTF programs. When that is the case, it is easy to apply the rules if you have multiple programs. However, when there are differences between the programs, we at times must apply a different approach to properties with LIHTC, HOME and/or NHTF alone as compared to those with multiple programs. In order to assist the reader in determining which approach applies, you can complete the checklist on the inside front cover. Check the boxes appropriate to your property. If you have more than one project, you may want to create a checklist for each and add it to your manual.

When key issues arise relating to LIHTC/HOME/NHTF units in this manual, we will address them with callouts. The box you checked for your property will help you to identify which approach to take.

Example

Number of HOME units at a property

A project has 50 units. If half of a project's costs are paid for with HOME funds, at least 25 of the units will be designated HOME units.

My Property is... Check which applies:			My Property is... Check which applies:			My Property is... Check which applies:		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LIHTC-Only	HOME-Only	LIHTC with HOME and/or NHTF	LIHTC-Only	HOME-Only	LIHTC with HOME and/or NHTF	LIHTC-Only	HOME-Only	LIHTC with HOME and/or NHTF
For LIHTC-Only Properties			For HOME-Only Properties and/or NHTF Units			For LIHTC Properties with HOME and/or NHTF Units		

Specific regulatory requirements are included under each section.

MEMORY AID:

Can you remember the basic compliance requirements for affordable housing?

If you can remember "IRS", you can!

To comply with affordable housing programs we must:	This involves:
<ol style="list-style-type: none"> 1. RENT TO QUALIFIED HOUSEHOLDS 2. KEEP RENTS AFFORDABLE 3. KEEP THE PROPERTY DECENT SAFE AND SANITARY 	<ol style="list-style-type: none"> 1. INCOME LIMITS 2. RENT LIMITS 3. SAFE & SANITARY

Regulatory Agreements

A regulatory agreement is a contract between an owner of multifamily real estate and a LIHTC, HOME, or NHTF agency. The owner agrees to "give up" some of their land use rights in exchange for participating in a federal program. The restrictions are documented in this contract and recorded in the public record. If the property is sold during the term of the agreement, generally the restrictions continue with the land and apply to the new owner.

The purpose of a regulatory agreement is to require that the property provide affordable housing to low-income families by limiting the maximum rent that can be charged for a unit and by requiring that some or all of the units are made available only to families with incomes below designated income limits. Physical condition standards are imposed as well as other covenants with IFA.

LIHTC Agreements

In the State of Iowa, the LIHTC Regulatory Agreement is called the *Land Use Restriction Agreement* (LURA). IFA prepares the LURA prior to the issuance of IRS form 8609 which signals the official allocation of credits. The LURA must be recorded before the end of the year in which tax credits are claimed.

In order to successfully manage a tax credit property, the LURA should be used as reference for important compliance information.

HOME Agreements

Like the LIHTC LURA, the HOME Regulatory Agreement in Iowa is titled *IFA HOME Investment Partnerships (HOME) Program Contract*. This manual will abbreviate this as *HOME Contract*. New HOME projects committed funds by IFA will have covenants and restrictions recorded. These covenants are also part of the *HOME Contract*.

NHTF Agreements

Like HOME, the NHTF Regulatory Agreement in Iowa is titled *IFA National Housing Trust Fund Program Rental Contract*. This manual will abbreviate this as *NHTF Contract*. New NHTF projects committed funds by IFA will have covenants and restrictions recorded. These covenants are also part of the *NHTF Contract*.

Items to Highlight on an IFA Regulatory Agreement

Note: Current for 2024. Some variation may occur for older or future agreements

LIHTC LURA	
LIHTC Compliance Item	LURA Section
Non-profit organization status Topic discussed in this Manual Chapter 4	Introduction
Minimum set-aside Chapters 1 & 2	Section 5(a)
State agency covenant income and rent limits Chapters 1, 2 & 4	Section 5(b)
Minimum required applicable fractions Chapter 1	Exhibit B
Deep Rent Skewing Election Chapters 1 & 4	Section 5(a)
Length of extended use period Chapter 1	Section 3(b)
Amenities and/or resident services promised	Exhibit C

HOME/NHTF Contract	
HOME/NHTF Compliance Item	HOME/NHTF Contract Exhibit A Section
Length of the Period of Affordability Topic discussed in this Manual Chapter 1	Header to the Exhibit
Number of HOME/NHTF units required Chapter 1	"Unit Characteristics"
Required High-HOME and Low-HOME unit mix Chapters 1, 2 & 4	"HOME Unit Mix" charts: "Initial" & "Throughout the Period of Affordability"
The property's fixed or floating HOME/NHTF designation Chapters 1 & 4	"Unit Characteristics"
Population targeting requirements (when applicable)	"Customer Characteristics" (HOME) "Income and population targeting" (NHTF)

Supplemental Information: Tax Credit Calculations

Most tax credit managers never actually calculate the amount of tax credits that are claimed for their property, so we will not spend a great deal of time in this manual discussing that topic. In case you are curious, however, we will provide an overview.

The Tax Credit Formula:
Eligible Basis x Applicable Fraction = Qualified Basis
Qualified Basis x Applicable Credit Percentage = Annual Tax Credit

Credits are claimed for each building based on how much money is spent on the building. The term used by the tax credit program to describe this amount of money is the **eligible basis**.

The allowable expenses that were spent on the building at Shady Oaks Apartments totaled \$1,000,000.

Now that we know how much was spent on the construction of the building, we need to determine how much of this money went to provide housing for low-income families. This is done by calculating the percentage of the units in the building that are tax credit qualified units. The term used to describe this percentage is the **applicable fraction**. If the units are different sizes, the percentage of units will be calculated based on the number of units and the square footage of those units. The lower resulting percentage will be used when claiming tax credits.

The building has 10 units of differing sizes with a total of 8,000 square feet. 6 of the units are LIHTC and represent 4,000 square feet. The 4 non-LIHTC units thus also represent 4,000. Calculations: the unit fraction is 6/10 (60%). The square footage fraction is 4,000/8,000 (50%). The lower 50% is the applicable fraction.

Now that we know how much was spent on the construction of the building and how much of the building is housing low-income families, we can calculate how much money is represented by the low-income units. This is the **qualified basis**.

Calculation: \$1,000,000 X 50% = \$500,000 qualified basis

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

*Calculation: \$500,000 X 9% = \$45,000 annual tax credits
 X 10 years = \$450,000 credits claimed total*

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

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

The most important factor in the credit calculation relating to a site manager’s daily routine is the *applicable fraction*. Keeping units in the applicable fraction is accomplished by keeping them in compliance with LIHTC rules. This includes renting to qualified families, keeping rents affordable and maintaining the property in a decent safe and sanitary manner. These are major parts of the job of site staff and those who support them. The *eligible basis* is also important. Parts of the building included in eligible basis are subject to rules prohibiting the charging of fees beyond rent (see the Chapter 2 section on *Fees*). Also, removing features included in eligible basis in effect lowers the value of the property and has a negative impact on the tax credit calculation. This should be avoided.

Employee Units

LIHTC

Properties with a unit occupied by a full-time employee who is not income qualified may treat the unit as having the same status as a “common area” if the property requires the manager to live on-site. For the unit to meet the requirements of being designated a common area, the unit must benefit all rental units in the property and the employee occupying the unit must be full-time at the property. In addition to full-time managers, this can also apply to full-time maintenance and security staff. Charging rent to an employee does not disqualify a unit as an employee unit.

Please note that, for this rule, the term “full-time” is not necessarily related to the number of hours worked. For instance, an employee does not have to work 40 hours per week to be considered full-time. Full-time is defined as a substantial amount of time and will be based on the specific needs of the property. Factors to consider include the number of units managed

and the duties the full-time employee performs—such as being on call during non-business hours and weekends for emergencies.

In most cases, an employee unit designation will occur when a property is established. In situations where an employee unit was not designated initially, the owner/manager must contact their IFA Compliance Officer in order to ensure that the implementation of an employee unit will not create compliance conflicts. If there is a need to change the currently assigned employee unit to another unit, the owner/manager must contact their IFA Compliance Officer to ensure that compliance is maintained.

IFA Suggests

When requesting that an existing LIHTC unit be converted to an employee unit, create a job description for the employees in employee units that will delineate their responsibilities, and the number of hours expected to be worked. Clarify if they are a program-qualified family or not and the rents they pay. This will help demonstrate a need for the employee unit at the project.

Example
Employee units and the applicable fraction

In a building consisting of 100 units, 99 units are occupied by low-income tenants and one unit is occupied by a full-time staff member. The applicable fraction would be:

99/99 or 100%
(Not 99/100 or 99%)

To prevent the loss of credits, the employee unit is excluded from the applicable fraction.

In some cases, an owner might wish to convert an existing employee unit into a rental unit. Because the unit was previously considered “common area” it must be converted into an LIHTC unit and occupied by an income qualified family. IFA must be notified in the event that this situation occurs so we can update the number of LIHTC units in our records.

HOME

HOME units are not employee units, unless they are housing HOME-eligible site employees, and the rents charged are HOME appropriate.

Per the 2013 HOME regulation, for 100% HOME projects one HOME unit may be subsequently converted to an on-site manager’s unit after project completion if the PJ determines that the conversion will contribute to the stability or effectiveness of the housing. The costs of the unit, however, will not be eligible for HOME funding. IFA must be consulted before implementing any employee unit at existing HOME properties as any change in the number of HOME-assisted units could result in a re-evaluation of the initial cost allocation and HOME funds might need to be repaid to IFA.

Model Units

Model units are generally utilized during a project’s lease-up period to show prospective tenants the amenities of the project’s units. A fixed model unit must be included in the eligible basis and included in the denominator of the building’s applicable fraction; however, it cannot be included in the numerator of the applicable fraction unless rented to a low-income family.

Property Milestones

LIHTC Placed In-Service

When a building is ready for its intended purpose, the IRS considers it to be placed in-service, and leasing can begin. For new construction and adaptive reuse projects, this generally happens when certificates of occupancy are issued that allow an owner to legally rent units. For credits based on the acquisition of a building that is already inhabitable, the placed in-service date is the date that the building is purchased. Rehabilitation credits are placed in-service when enough money is spent to get the eligible basis on which the credits will be claimed. In many cases, tax credits can be claimed for units occupied by LIHTC-qualified families starting the first full month after the building is placed in-service (see Chapter 5 for further details on acquisition/rehab credits).

LIHTC Credit Deferral

Once a building is placed in-service, the owner may choose to start claiming credits that year, or they may choose to claim credits the next year. Claiming the later year is called *deferring* credits. The decision to defer credits is generally made when a building is not LIHTC-occupied to the level needed to support the planned tax credits by the end of the year that a building is placed in-service.

When credits are deferred, families that were LIHTC qualified, moved in, and are in place at the start of the Credit Period can be used to claim credits. However, if they moved in more than 120 days prior to the start of credits and the project has non-LIHTC units (*mixed-use*), then a test (*See the Safe Harbor Rule in Chapter 6*) must be run to determine if the Available Unit Rule is triggered because any of the families have since had increases of income to over the 140% level (see Chapter 4 for further details on the AUR). The “test” consists of confirming with the family that sources and amounts of anticipated

income included on the *Tenant Income Certification* (TIC) form are still current. The TIC is a required IFA form. If additional sources or amounts of income are identified, a copy of the TIC will be updated based on documentation that the family supplies, such as paystubs. In this situation, it is not necessary to complete third-party verifications. If the family is over-income based on current income limits, the Available Unit Rule is applied to the next available unit. As with all families that were qualified at move-in but have future increases in income, their housing is not in jeopardy. The income test does not establish a new recertification cycle. Future recertifications will continue to be based on the initial qualification date for the family.

EXAMPLE

When an owner may choose to defer

A building has a target goal of 100% LIHTC units. It is placed in service on October 2nd, 2016. By the end of the year, 53 of the 100 units (all the same size) have been qualified. The owner must choose either to claim credits in 2016 (settling for 53%) or deferring to 2017, hoping to get to the 100% by the end of that year. Whatever the case, by the end of the second year, credits will have to begin.

When an owner is not likely to defer

A 75 unit building has a target goal of 100% LIHTC units. The building is placed in service on April 5, 2016. By December 31st, 2016, all 75 units have been qualified. Since the target has been met by the end of the first year that the building was placed in service there is no need to defer credits to the following year; all credits would most likely be claimed in 2016.

Example

When income testing is required

A LIHTC building with non-LIHTC units is placed in-service on **03/13/2019**.

Credits are deferred to start on **01/01/2020**. The following facts apply to the LIHTC move-ins.

Unit 101 MI date 03/15/2019

Unit 102 MI date 08/01/2019

Unit 103 MI date 10/10/2019

Unit 104 MI date 11/01/2019

Unit 105 MI date 12/08/2019

In December 2019, an income test needs to be conducted for families in units with certifications older than 120 days.

Units 101 and 102 will need to be tested. Units 103, 104 and 105 moved in within 120 days of the start of credits and will not need to be tested. If the tested units exceed 140% of the income limit, the next non-LIHTC unit to be available after 01/01/2020 will need to be rented to a LIHTC family until the AUR is satisfied. All units will be fully recertified by the anniversaries of their move-in.

Owner/managers of projects that are 100% LIHTC always intend to rent the next available unit to LIHTC families and so income testing is not required for these projects unless they also chose the Deep Rent Skew election on Form 8609.

LIHTC Periods

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

1. Credit Period
2. Compliance Period
3. Extended Use Period

Credit Period

The LIHTC provides a tax credit that is generally claimed for 10 years. This is the time frame in which a tax credit is generally claimed against a taxpayer's federal income tax. It starts the first taxable year that credits are claimed and continues nine additional years for a total of 10 years.

Compliance Period

The Compliance Period continues an additional five years after the end of the Credit Period. Therefore, it also starts with the first year of the Credit Period, but it goes to the end of the fourteenth year, for a total of 15 years. During this time, the IRS monitors the property through the 8823 forms submitted by IFA and expects compliance with all federal LIHTC requirements (see Chapter 6 of this manual for more information on compliance monitoring).

Extended Use Period

For properties allocated credits after January 1, 1990, after the Compliance Period there must be AT LEAST an additional 15-year commitment to housing low-income persons with affordable rents. The total 30 (or more) years is called the Extended Use Period. As with the other periods, the Extended Use Period begins with the first-year credits are claimed. It then continues at least 29 additional years. After the Compliance Period, the IRS will no longer monitor for compliance. Credits will also not be recaptured for noncompliance that occurs after the Compliance Period. IFA, however, will ensure that the compliance criteria agreed to by the owner in the LURA are met during the entire Extended Use Period and will impose penalties, as necessary.

The LURA, as mentioned earlier in this chapter, is a deed that reflects the Extended Use Agreement with the state.

Caution!

120 days is not 4 months!

The 120 day timeframe applies to several LIHTC rules. Be sure to count the days, as 120 days is rarely 4 months.

120 day timeframes apply to:

- Income testing when credits are deferred (see Chapter 1).
- The lifespan of verifications (Chapter 3).
- Timeframe to certify in-place families at an LIHTC acquisition/rehab (Chapter 6).

Example

Determining the end of LIHTC periods

First year of the Credit Period	2016
End of the Credit Period	2025 (2016 + 9 years for a total of 10 years)
End of Compliance Period	2030 (2016 + 14 years for a total of 15 years)
End of Extended Use Period (min.)	2045 (2016 + 29 years for a minimum total of 30 years)

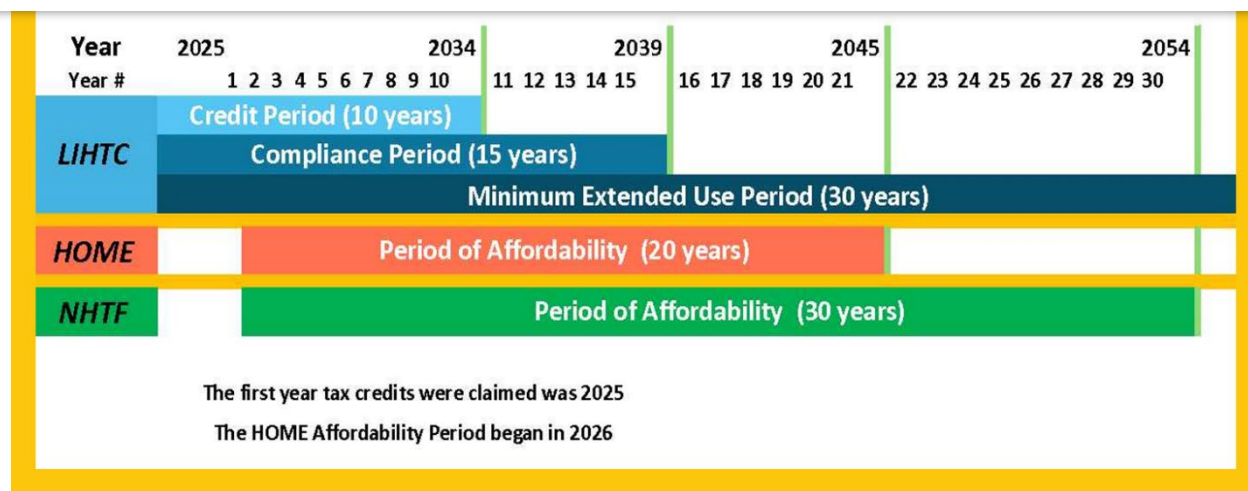
HOME and NHTF Periods of Affordability

The period of affordability is the length of time that a HOME- and NHTF-assisted project must meet the requirements of the HOME and NHTF programs. The period of affordability is like the LIHTC Compliance Period in that the owner must comply with HOME/NHTF Program requirements including rent limits, tenant income limits, tenant lease protections, affirmative marketing, and property standards. Depending on the type of HOME project and the amount of the HOME investment, the period of affordability can be different lengths of time. Most IFA projects have a 20-year HOME period of affordability. After the 2025 HOME regulation revision became effective, the HOME period of affordability for new projects is a set period dictated in the regulation, and most will be 20 years. The HOME Contract or your IFA Compliance Officer can clarify the period of affordability commitment for a specific HOME project. The NHTF carries a full 30 year period of affordability.

Note: For LIHTC projects with HOME funds, the first year of the period of affordability most likely is not the same as the first year of the Credit Period (see example below).

Example

Overlapping time periods an LIHTC with HOME and/or NHTF project



HOME Period of Affordability by Expenditure (starting in 2025)	
Rental Housing Activity Amount [per unit]	Minimum Period of Affordability [years]
Under \$25,000 rehab	5
\$25,000 to \$50,000 rehab	10
Over \$50,000 rehab or rehab involving refinancing]	15
New construction or acquisition of newly constructed housing	20

The NHTF period of affordability is 30 years with total recapture if noncompliance occurs at any point in the period of affordability.

LIHTC Minimum Set-Aside

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

HOW THE MINIMUM SET-ASIDE WORKS

The diagram illustrates the process of selecting a minimum set-aside (MSA) on IRS Form 8609. It starts with the 'Allocation of Credit' section, specifically line 10(c) 'Elect minimum set-aside requirement (section 42(g)) (see instructions):'. Three options are listed: 20-50, 40-60, and Average income. Arrows point from each option to a corresponding box detailing its requirements:

- 20-50:** 20% of units, minimum, must be LIHTC. 50% is the income and rent limit for ALL LIHTC units.
- 40-60:** 40% of units, minimum, must be LIHTC. 60% is the income and rent limit for ALL LIHTC units.
- Average income:** 40% of units, minimum, must meet the owner-assigned designation for each unit. 60% is the average income and rent limit designation for ALL LIHTC units, which may be 20-80% (in even 10% increments).

The diagram also shows the 'Certification' section of the form, which must be completed by building owners with respect to the first year of the credit period.

Once the project has been allocated an LIHTC award, the minimum set-aside election cannot be changed as this election is reflected in both the project’s Carry-Over Agreement and the recorded LURA. Please

note that, as the name indicates, the MSA requirements are *minimums* only. Most projects have more than the minimum number of required LIHTC units and may have more restrictive income limits on some units. The LURA for the property may require that you meet additional income and rent limits restrictions and/or an additional number of low-income units.

In order to determine how the minimum set-aside is met for your project, you must understand how the minimum set-aside is to be calculated. Each building in a project will receive its own Form 8609. Unless otherwise elected on Form 8609, each building in a project will be treated as its own entity/project. Line 8b reads, “Are you treating this building as part of a multiple building project for purposes of section 42?” The owner can choose to group buildings that are within the same allocation into one entity/project or divide them into separate entities/projects by selecting “yes” on line 8b by attaching a separate document that identifies which buildings should be included as part of the multiple building election.

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

- All buildings in the project are treated as one entry/project for LIHTC compliance and calculation purposes (See example A below).
- All buildings in the project are treated as separate entities/projects for LIHTC compliance and calculation purposes.
- Buildings can be any combination of the above options, where some of the buildings are treated as one entity/project and some buildings are treated as separate entities/projects.

Answering “no” on line 8b on Form 8609 in a multiple building project indicates that even though each building was part of the same tax credit allocation, they are viewed by the IRS as being at least two separate entities/projects for purposes of LIHTC compliance and allocation purposes (See Example B below).

There are several compliance issues that are affected by this election including how the minimum set-aside is met, unit transfers between buildings and calculating income limits that will be discussed throughout the manual.

EXAMPLE A:
The MSA at a multi-building project

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

3 BINs, 33 Units Each
Total 99 Units
40/60 MSA

$99 \times .40 = 39.6$
40 Units must be LIHTC

BLDG A

BLDG B

BLDG C

EXAMPLE B:
The MSA at single-building projects

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

3 BINs, 33 Units Each
Total 99 Units
40/60 MSA

$33 \times .40 = 13.2$
14 LIHTC per BIN
TOTAL OF 42

BLDG A

BLDG B

BLDG C

EXAMPLE C:
The MSA at a multi-building Average Income project that is 100% LIHTC

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

**2 BINs, 15 Units Each
Total 30 Units
Average Income MSA**

**All LIHTC unit designations
must average 60% or less**

$[4 \times 30\%] + [4 \times 40\%] + [2 \times 50\%] + [10 \times 60\%] + [4 \times 70\%] + [6 \times 80\%] \div 30 = 58\%$

**30 X .40 = 12
12 units must meet their
designation for the project
to meet the MSA**

BLDG A		BLDG B	
30%	60%	30%	60%
30%	60%	30%	60%
40%	70%	40%	70%
40%	70%	40%	70%
50%	80%	50%	80%
60%	80%	60%	80%
60%	80%	60%	80%
60%		60%	

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

Note: A three-building development may be: 1) one project 2) a two-building project and a single building project, or 3) three single-building projects, depending on the multi-building elections on form 8609 8(b). This election is important and relates to the selection of income limits (see Chapter 2), unit transfers (Chapter 4) and other compliance rules.

Special Average Income Test Rules

Per Treasury Regulation 1.42-19, a project (as defined by Form 8609 Line 8b) with an Average Income Minimum Set-Aside Election meets the Minimum Set-Aside test if at least 40% of the total units in the project constitute a “qualified group of units.” To be considered a “qualified group of units”:

1. Each unit in the group must be a low-income unit- i.e., must be occupied by an eligible family, must be properly rent-restricted, and must be suitable for occupancy; and
2. The average of the imputed income limitations for all units in the group must not exceed 60% AMI. Possible imputed income and rent limit designations under the Average Income Test are 20%, 30%, 40%, 50%, 60%, 70%, or 80% AMI. Other designations are not allowed. A project is not required to have units designated at all of these various limits, as long as the average imputed income limitation for the designations that are selected for the qualified group are at or below 60% AMI.

The owner must designate units at the various imputed income and rent limits in order to demonstrate that the unit mix will result in a qualifying group of units that meets the Minimum Set-Aside test. The average is calculated based on the AMI designation of the unit, not on the actual income of the family residing in the unit. For example, if a unit is designated as a 60% AMI unit and the family moving into the unit is at 54% AMI, for purposes of calculating the average this unit is considered 60% AMI.

To be included in a building's Applicable Fraction, a unit must (1) be in that particular building and (2) be part of the qualified group of units for the project. The average income must be met on a project-level, not on a building-by-building basis.

IFA has established the following policies for the Average Income Test:

- AMI designations are allowed to float between units within the project (i.e., a particular unit is not locked into a specific AMI level), but the total unit mix must be maintained as agreed upon in the Application and as recorded in the Land Use Restrictive Covenants Agreement (LURA). The number of units agreed upon for each AMI level must be maintained if noted in the LURA.
- IFA will consider the owner to have "designated" a unit based on the AMI level being (1) recorded on the Tenant Income Certification form in the file and (2) reported through IFA's online reporting system (CP) as part of the Annual Owner Certification of Compliance.
- If a current qualified tenant transfers to another vacant unit in the project, the units swap AMI designations.
- The income and rent restriction on a unit must match. For example, a unit considered to be 40% AMI must be rented to a family at or below the 40% AMI income limit and gross rent must be at or below the 40% AMI rent limit.
- IFA does not impose any special rules on recertification requirements based on an Average Income election. A 100% tax credit project that has elected Average Income is still exempt from full income recertifications unless the project has agency covenants where individual units meeting state covenants are required to be recertified.
- If a project requires recertification and the family's income has increased at time of recertification, IFA will continue to use the AMI level the family initially qualified under at time of move-in to calculate the Average Income Test, as long as the unit remains restricted at that rent level. Please note that projects with agency covenants, the state available unit rule applies.

The unit is not "redesignated" due to income increases at recertification.

For example, a family had income at move-in under the 40% income limit and was treated as a 40% family with a 40% rent restriction. At recertification, the family income now exceeds 40% AMI. As long as the unit continues to be rent restricted at the 40% rent limit, IFA will continue to consider this a 40% unit for purposes of calculating the Average Income Test.

Please note that projects with agency covenants, the state available unit rule applies.

- IFA allows Average Income projects to include market rate units depending on the year of the QAP. At least 40% of the units in the project must be tax credit units. Any market rate units are excluded from the average income calculation and are not included in the qualifying group of units. The federal available unit rule also applies to projects with market units.
- IFA will work with owners to allow reasonable corrections to restore compliance with average income requirements. Such corrections may include redesignating units or adding or removing units from the qualifying group of units.

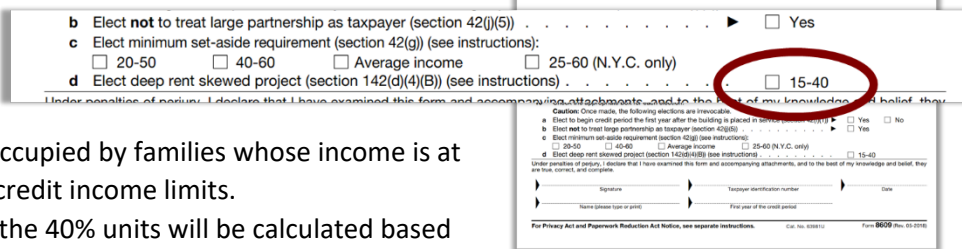
- If an issue is discovered and corrected within the taxable year that the problem occurs, the owner will be allowed to correct the issue to ensure that there is a qualifying group of units and that the Minimum Set-aside test is met by the end of the taxable year.
- If an issue is not discovered and corrected within the taxable year that the problem occurs, any retroactive correction to designations must be made within 180 days of discovery of an issue by the owner or IFA. If discovered by the owner, the issue and suggested correction must be promptly communicated to IFA via email to benefit from this correction period.

Deep Rent Skewed Properties

In addition to the MSA, an owner may choose to commit to even lower limits for some units for the project. This is referred to as a Deep Rent Skewed project. If a project is Deep Rent Skewed, this will be indicated on the 8609, line 10(d).

The following three things are true of a Deep Rent Skewed project:

1. 15% of the low-income units in the property are occupied by families whose income is at or below 40% tax credit income limits.
2. The gross rent for the 40% units will be calculated based on the 40% income limit.
3. The gross rent for the 40% units must not exceed one-half of the gross rent for any non-LIHTC units in the project.



There are further and potentially severe implications that come with the decision to select the Deep Rent Skewed election. Chapter 2 will further discuss the rent requirements and Chapter 4 will cover unique recertification and Available Unit Rule requirements for these projects.

Example

Number of Deep Rent Skewed units at a 100% LIHTC property

Total # of Units: **100**
 Minimum Set-Aside: **40-60**
 Applicable Fraction: **100%**
 # of LIHTC Units: **100 (100% x 100 total units)**

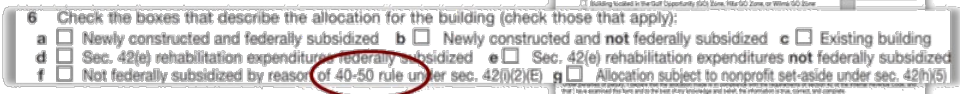
If the Deep Rent Skewed election is made on this property, the election must be applied to the LIHTC units.

Deep Rent Skewed Election: **15-40**
 Minimum # of 40% Skewed Units: **15 (15% x 100 LIHTC units)**

LIHTC units above 40% & below 60%: **85 (100 total LIHTC units -15 Deep Rent Skewed units)**

40-50 Set-Aside

For projects that received their 8609s between 2003 and 2008, HOME and NAHASDA (a HUD Native American Housing program) projects were types of funding that resulted in 4% credits when combined with the LIHTC. There was a special set-aside created that allowed some of these projects to claim 9% tax credits. The set-aside required that 40% of the units in EACH BUILDING be rented to families below the 50% limit. *NOTE:* Rents are not necessarily based on 50% limits and can be charged based on the minimum set-aside limit (See the project’s LURA for further clarification).



It can be determined if this rule applies to a project by checking a building’s 8609, line 6(f), which indicates that the building is subject to the “40-50 rule.”

A change to the law in 2008 eliminated the need for this rule for projects placed in-service from then on. Only tax-exempt bond-funded projects and acquisition credits now trigger 4% credits. However, older HOME and NAHASDA properties that are 9% by virtue of this exception will still need to maintain it.

Vital Note: This is a LIHTC rule, not a HOME rule. Because of some similarities to HOME rules (such as having 50% set-aside units), some managers have allowed the number of very-low units to decrease below 40% in some buildings. HOME units



**Example
40-50 Rule**

In two 10-unit buildings, 4 must be rented in each building to people below the 50% limit to satisfy the 40-50 rule and continue to support full 9% credits.

may float and may require fewer very-low units. If the 40-50 rule is violated, over half of the credits may be disallowed by adjusting the 9% to 4% credits, and the IRS indicates that there may be no way to correct the noncompliance.

Agency Covenants

LIHTC

In addition to the minimum set-aside elected for a property, there may also be additional state set-asides made during the allocation process. It is very important to determine if a property has any additional state income limit and/or rent restrictions, known in Iowa as *agency covenants*.

IFA has numerous agency covenants that may apply in terms of income and/or rent restrictions beyond the minimum set aside election made on Form 8609. If there are additional agency covenants for a property, they are noted in Section 5 of the LURA. In newer projects, there may be further definitions applicable to the agency covenants, such as indicating a certain number of bedrooms at a certain AMI limit (for example two 2-bedrooms at 30%, two 2-bedrooms at 40%).

If additional agency covenants are applicable, they must be maintained throughout the Extended Use Period according to the details outlined in the LURA. These additional agency covenants will be monitored by IFA in a manner much like the federal LIHTC requirements (See Chapter 4 -Other Rules for further details). Noncompliance with these provisions will not be reported to the IRS or put tax credits at risk. However, IFA will issue a *State Notice of Noncompliance* in the case of violations of state covenants

Example

Income Average Test with Agency Covenant Units

In two 20-unit buildings, the owner selected the Average Income election on Form 8609. During allocation, the owner agreed to restrict 6 units to 30% AMI income and rents. The 8b election on Form 8609 states that each of the two buildings is treated as a separate project. While the 30% units are not required to be split between the two buildings, for purposes of meeting each projects' minimum set-aside, care must be taken when filling the other units to ensure that the average in each building is at 60% or less to avoid violating the federal MSA rule.

(see Chapter 6 for further details).

HOME

The HOME program distinguishes between units that have been assisted with HOME funds and units that are not assisted with HOME funds. When HOME funds are committed to a project, the PJ determines the total number and the type of units by bedroom size that will receive HOME funds. Sometimes these restrictions differ from the minimum requirements of the HOME rules. IFA considers these units to be governed by "project rules" not unlike the Agency Covenants found in LIHTC projects. The project rules will include the number of units that are High or Low HOME and will also note if the HOME units are Fixed or Floating units. This information is normally found in Exhibit A of the HOME Regulatory Agreement.

Example
Fixed HOME/NHTF Property

During initial occupancy of a project, Unit 101 is assigned as a HOME (or NHTF) unit. Unit 102 is designated non-HOME (or NHTF). Unit 101 will keep its designation as a HOME (or NHTF) unit for all of the period of affordability. Unit 102 will remain non-HOME (or NHTF).

Example
Floating HOME/NHTF Property

During initial occupancy of a project, unit 201 is assigned as a HOME (or NHTF) unit. If circumstances require, in the future comparable unit #202 can be designated HOME (or NHTF) and #201 can become non-HOME (or NHTF).

High and Low HOME Units

Home projects may have High and Low HOME units. During the period of affordability, owners/managers are required to determine that all residents that will be residing in a HOME unit have a combined family income that does not exceed the applicable HOME limit prior to occupancy. Changes of income may also require changing HOME designations. Owner/managers must also ensure that the rents charged for HOME units do not exceed the applicable HOME rent limit for the unit.

The HOME program uses two specific income limits, very low-income limits and low-income limits. Both types of limits are published by HUD on their website. As a service to its HOME properties, IFA also publishes the HOME income and rent limits.

- **Very low-income limits (VLI)** are 50% of the Area Median Income (AMI). Very low-income families must not exceed the very low-income limits of 50% AMI. These families qualify for Low HOME units.
- **Low-income limits (LI)** are 80% of the AMI. Low-income families must not exceed the low-income limits of 80% AMI. These families qualify for High HOME units.

Low HOME units that house *very low-income* families are subject to Low HOME rent limits. High HOME units that house *low-income* families are subject to High HOME rent limits.

If a HOME property has at least five HOME units, at least 20% of the HOME units must be Low HOME. The remainder can be High HOME. The HOME Contract may require a certain number of units of a specific bedroom size at a certain limit or that a higher number of units be designated as Low HOME units for the entire period of affordability. The required HOME High/Low mix information can generally be found in the HOME Contract (See Exhibit A). If this designation is not clearly indicated in the HOME Contract, consult your IFA Compliance Officer for further assistance.

Fixed or Floating HOME/NHTF Units

Every HOME/NHTF project is either designated as having fixed or floating HOME/NHTF units. Note that NHTF limits are a special Very-Low Income (VLI) limit unique to the NHTF. These may be different than the VLI limits used by the Section 8 and 811 programs.

- **Fixed HOME/NHTF:** HOME/NHTF properties with fixed HOME/NHTF units will have specific HOME/NHTF units that will never have to change their designation to a non-HOME/NHTF unit. They may, however, change from High to Low HOME status (for HOME units). Non-HOME/NHTF units in these projects are never subject to HOME/NHTF restrictions.
- **Floating HOME/NHTF:** A property with floating HOME/NHTF units must maintain a mandated mix of HOME/NHTF units throughout the property, but specific units may switch status. HOME units may change from High to Low HOME and HOME units and non-HOME units may be exchanged as necessary to maintain compliance.

HOME program rules relating to steps to take when family income increases after move-in are particularly sensitive to whether the property is fixed or floating HOME (see Chapter 4 for further details).

As with the mix of High and Low HOME units, the floating/fixed designation can generally be found in the HOME or NHTF Contract for a project. If this designation is not clearly indicated in the HOME or NHTF Contract (See Exhibit A) or if you have any questions about your project's fixed or floating HOME or NHTF status, consult with your IFA Compliance Officer. High and Low units only pertain to the HOME program.

Leases

LIHTC Non-Transience

LIHTC housing is not to be "transitory," or temporary. For this reason, tax credit properties are required to have an initial lease of at least six months for all new move-ins. Of course, the initial term can be more than six months, with a year term being the most common in Iowa. After the initial term, owner/managers are free to apply terms of their choice if no provision of the lease violates LIHTC requirements or Fair Housing law. Other funding programs at LIHTC projects, such as project-based Section 8, often dictate that a specific lease must be used. These leases do not conflict with LIHTC requirements and can be used.

There are exceptions to the six-month lease rule for qualified Single Room Occupancy (SRO) units or if the project was developed for transitional housing. The minimum initial lease term in these special cases is one month. If you have an SRO or transitional housing project, check your LURA or contact your IFA Compliance Officer to ensure that your project is designated in such a way that it can meet one of these exceptions and apply the lesser lease term.

LIHTC Lease Termination

The LIHTC rules prohibit "the eviction or the termination of tenancy (other than for good cause)" of LIHTC residents during the entire Extended Use Period and three years after. This clearly prohibits eviction or termination of tenancy mid-lease without good cause. What about when a lease is up for renewal? Is simply not renewing a lease that has expired "eviction" or "termination of tenancy"? The IRS has clarified that "neither the owner nor the tenant is obligated to renew a lease once it expires" and that nonrenewal of leases does not necessarily equate to "termination of tenancy." [8823 Guide 26-4] If an owner intends to non-renew a lease, they will have to ensure that doing so is acceptable under state law. Iowa Code *Chapter 562A Uniform Residential Landlord and Tenant Law Part II Landlord Remedies* provides guidance to landlords as to what circumstances they are, by Iowa law, able to lawfully

terminate a lease. Feel free to contact your IFA Compliance Officer if you have questions relating to your LIHTC leases. Please be aware, however, that IFA will not be able to give legal advice on federal or state law. Competent counsel should be sought on most questions relating to leasing specifics.

HOME/NHTF Leases

A written lease agreement must be provided for tenants of HOME/NHTF-assisted units. Please note that program service agreements and personal responsibility agreements are not leases. The terms of the lease must be for a minimum of one year unless the tenant and owner agree to a lesser term. However, the terms of the lease can never be less than 30 days.

The HOME and NHTF programs have the same required lease clauses and also prohibit other provisions. In order to ensure HOME/NHTF units meet the leasing provisions, IFA has developed a lease addendum to accompany the owner-developed lease. This is a required form. The IFA *HOME/NHTF Lease Addendum* must be signed by all tenants and management of HOME/NHTF-assisted units and accompany the lease. The only exception to the requirement to use the IFA HOME/NHTF lease addendum is for HUD projects using HUD model leases. These may use the HUD-approved leases without the IFA HOME/NHTF addendum.



Required HOME & NHTF Lease Clauses

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



Prohibited HOME & NHTF Lease Clauses

1. **Agreement to Be Sued:** Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
2. **Treatment of Property:** Agreement by the tenant that the owner may seize or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This provision does not apply to disposition of personal property left by a tenant who has vacated a property. The owner may dispose of personal property in accordance with state law.
3. **Excusing Owner from Responsibility:** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
4. **Waiver of Notice:** Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.

5. **Waiver of Legal Proceedings:** Agreement of the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant can present a defense, or before a court decision on the rights of the parties.
6. **Waiver of a Jury Trial:** Agreement by the tenant to waive any right to a trial by jury.
7. **Waiver of Right to Appeal Court Decision:** Agreement by the tenant to waive the tenant’s right to appeal or to otherwise challenge in court a court decision in connection with the lease.
8. **Tenant Chargeable with the Cost of Legal Actions Regardless of the Outcome:** Agreement by the tenant to pay attorney’s fees or other legal costs, even if the tenant wins in a court proceeding by the owner against the tenant. The tenant may be obligated to pay costs if the tenant loses.
9. **Require Tenants to Accept Supportive Services:** (with an exception for transitional housing residents).

Non-Renewal/Eviction

An owner cannot terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause (see IRS 8823 Guide for examples of good cause). Any termination or refusal to renew must be preceded by not less than 30 days by the owner’s service upon the tenant of a written notice specifying the grounds for the action.

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

Leases

<div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">✓</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">LIHTC-Only</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">HOME-Only</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">LIHTC with HOME and/or NHTF</div>	<div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">LIHTC-Only</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">✓ HOME-Only</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">LIHTC with HOME and/or NHTF</div>	<div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">LIHTC-Only</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">HOME-Only</div> <div style="border: 1px solid #0070C0; padding: 5px; margin-bottom: 5px; display: inline-block; background-color: #0070C0; color: white; border-radius: 5px;">✓ LIHTC with HOME and/or NHTF</div>
<p>For LIHTC-only properties:</p> <p>Term: The initial lease term for new move-ins must be no less than 6 months.</p> <p>Notice of termination: Follow state law when giving notice of termination of tenancy.</p>	<p>For HOME-only properties and NHTF units:</p> <p>Term: The initial HOME or NHTF lease term for new move-ins must be a year unless a lesser term is negotiated. In no case can the initial term be less than 30 days.</p> <p>HOME notice of termination: Notice of termination must never be less than 30 days without good cause.</p> <p>NHTF Notice of termination: Follow state law when giving notice of termination of tenancy.</p>	<p>For LIHTC with HOME and/or NHTF units:</p> <p>Term: The initial lease term for new move-ins must be a year unless a lesser term is negotiated. In no case can the initial term be less than 6 months.</p> <p>HOME notice of termination: Notice of termination must never be less than 30 days without good cause.</p>

Fair Housing

LIHTC, HOME, and NHTF properties must follow fair housing laws, and violation of the Fair Housing Act can result in the loss of tax credits. Credit loss does not occur with an accusation of discrimination under the Fair Housing Act, but rather when there is a final adverse determination by an authoritative agency including HUD, a state or local Fair Housing agency substantially equivalent to HUD or a Federal Court.

If an owner/manager or a resident of Iowa affordable housing suspects a violation of the Fair Housing Act, they should report it to HUD or Iowa's Civil Rights Commission. **IFA cannot handle these legal issues.** Below are several links to various organizations' websites that may be of assistance.

- *The HUD-Fair Housing/Equal Opportunity Office* investigates complaints and helps individuals obtain agreements to resolve complaints and acts as needed to enforce the law. Their website is https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process.
- *The Iowa Civil Rights Commission* provides information on filing a housing complaint. Their website is <https://icrc.iowa.gov>, keyword search "housing discrimination complaint process."
- *HOME, Inc.* a non-profit agency located in Des Moines, also provides free tenant-landlord mediation services. See their website www.homeincdsm.org for further details.

Occupancy Restrictions

Fair housing does not prohibit restrictions or preferences being applied to new residents, as long as these criteria do not violate federally protected classes. General Public Use provisions under the LIHTC program, however, are more restrictive than Fair Housing. LIHTC properties must be available to all. Occupancy restrictions or even preferences cannot be applied for specific groups (for example an employer or trade group such as teachers or police) unless the group fits into one of the three following categories.

1. Persons with special needs.
2. Persons who meet federal or state program requirements.
3. Persons involved in artistic and literary pursuits.

Affirmative Fair Housing Marketing Plan (AFHMP)

The purpose of affirmative marketing is to reach those least likely to apply and meet fair housing requirements. The practice of affirmative marketing includes the development of marketing procedures to attract applicants from all protected classes.

While affirmative marketing is not a requirement of the LIHTC program, an approved AFHMP is required for all HOME and NHTF properties and for LIHTC properties allocated credits in 2009 or later. Properties older than 2009 may develop a plan, but do not need to submit the AFHMP to IFA for approval.

The most recent version of the HUD Form 935.2a *Affirmative Fair Housing Marketing Plan (AFHMP) – Multifamily Housing* must be used. This form is designed to help the owner/manager use Census Bureau data to determine percentages of persons who live in your community who may be in a protected class. The Plan then helps examine the makeup of residents of the property based on the same classes. This helps identify and develop a plan to reach out to those unlikely to apply. For IFA properties subject to the AFHMP requirement, this form must be submitted to IFA for approval during the process of developing the property. Updates are required every five years and must be submitted to your IFA Compliance Officer.

IFA NOTE:

All properties are required to market to Persons with Disabilities in addition to other populations that exist in the housing area.

VAWA 2022

The Violence Against Women Act of 1994 (VAWA) is a United States federal law that provides funding, and rules designed to investigate and prosecute violent crimes and to protect victims of such crimes.

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

The 2013 reauthorization greatly expanded the housing programs covered by the Act to include LIHTC and HOME-funded housing. Final guidance was released by HUD in the Federal Register (Vol. 81, No. 221) on November 16, 2016. This guidance has been incorporated in the following pages.

With the 2022 reauthorization, HUD was instructed to set up a Violence Prevention Office with a Violence Against Women Act Director. The law also requires HUD and the Department of Justice to enforce VAWA consistent with, and in a manner that provides the same rights and remedies as those provided for the Fair Housing Act. The NHTF was officially added to the list of VAWA-covered properties in 2022. Any future federal affordable housing programs that control incomes and rents to benefit low income families will be automatically covered under VAWA. HUD updated the VAWA forms discussed below in 2025 with the exception of the lease addendum.

Despite its name, VAWA protects both male and female victims.

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

The second provision requires that leases be bifurcated, allowing eviction or termination of assistance for the perpetrator of the violent crime while retaining the victim. Remaining members of the family are given a chance to qualify for the housing they reside in. If they do not qualify without the perpetrator, then they must be given a reasonable time to find other housing or to establish eligibility under another covered housing program.

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

HUD Guidance Effective December 16, 2016

Four new forms were created to implement the new VAWA requirements.

Appendix A: HUD 5380 Notice of Occupancy Rights under the Violence Against Women Act

The HUD 5380 form provides information to the applicant or tenant of their rights under the VAWA. This form replaces the HUD-91066 form that has been required by IFA since 2015. It is initially to be provided to applicants and families as follows:

- At move-in, if their move-in date was after 12/16/2016 *or*
- During the family's annual recertification or lease renewal process or
- With the execution of the Student Status certification for 100% LIHTC projects with no agency covenants and when no recertification is required.

NOTE: When the owner/manager is considering taking a negative action against a family, the family must be given the HUD 5380 Notice of Occupancy Rights under the Violence Against Women Act. For example, a negative action might include instances when an application is denied, or if assistance is denied for properties with rental assistance, if rental assistance is terminated or when notifying of eviction. This allows victims to disclose that the reasons for the negative action may be related to the applicant or resident being a victim of violence.

Appendix C: HUD 5382 Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking and Alternate Documentation

The HUD 5382 form must be provided to the applicant or tenant at the time that you distribute the HUD-5380.

- The form may be completed by the applicant or tenant seeking to invoke their VAWA rights or someone doing so on their behalf.
- The form states that the family member may be asked (*but not required*) to provide third-party documentation if doing so potentially puts them at risk of further violence.
- This form must be used "as is" and care must be taken that the most current version is being used.

Appendix D: HUD-5383 Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The HUD-5383 form is to be distributed to and completed by any family member who is seeking an emergency transfer while residing in your project.

HUD advised that the owner/manager MAY require tenants to provide a written emergency transfer request. You may also accept other written or oral requests for a transfer. IFA suggests that this policy be made clear in your tenant selection plan and applied consistently.

You MAY ask for, but MAY NOT require third-party documentation if they refuse or do not have the documentation; the form lists a variety of acceptable documentation. The form advises the tenant that they only need to provide documentation if it is safe for them to do so.

Appendix B: HUD 5381 Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking

All properties were to have developed and implemented a model Emergency Transfer Plan by June 14, 2017, using the HUD 5381 as a model. The plan allows victims to transfer to another available and safe unit assisted under a covered program. The tenant must expressly request the transfer and reasonable confidentiality measures must be incorporated to prevent the perpetrator from discovering the location of the new unit. Situations where a transfer would be allowed might include:

- The tenant reasonably believes that they are threatened with imminent harm of further violence if they remain in their current unit.
- A sexual assault occurred on the premises within 90 days prior to the request for transfer.

The plan must establish recordkeeping and reporting requirements. Documentation relating to a victim must be maintained in confidence and may not be entered into any shared database or disclosed to any other entity. Exceptions are applicable if:

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

Caution!

VAWA and Tax Credit Loss

Lack of compliance with VAWA is **not** grounds for loss of tax credits. However, there have been violations of victims' rights under VAWA that HUD has determined to **also** be discrimination under the Fair Housing Act as gender, race, or national origin discrimination. If HUD finds a VAWA violation to also violate Fair Housing, then credits are at risk.

HUD 91067 Lease Addendum

The existing HUD 91067 is to be utilized until an updated document is released by HUD.

- The lease addendum must be signed by all adult family members that are required to sign the lease agreement according to your management policy.
- The lease addendum must also be signed with the same frequency as your other lease addendums. Each adult must sign a separate VAWA lease addendum. It is a good practice to review this policy with your tenants annually during the lease renewal process.

Acknowledgment of Receipt of HUD Forms 5380 and 5382

Each adult family member must be given IFA Form Acknowledgement of Receipt of HUD Forms 5380 and 5382 at move-in. An attempt must be made to obtain the signature of the appropriate family members and the management representative to indicate their receipt of the VAWA forms.

When Combining Programs

This manual addresses issues that an owner/manager will meet when combining LIHTC with HOME or NHTF funds. However, properties in Iowa commonly have additional programs or funding sources such as HUD or Rural Development. When there are two or more programs combined, ensuring that the pieces fit can seem like a puzzle. It is important to understand all the rules for each program at a

property in order to start seeing the pattern and to complete the puzzle. There are several possible ways that rules from different programs will relate to one another at a property. These include:

1. There is no corresponding rule.

Example

One program has a rule that the other does not

Example 1: HUD housing programs (like Section 8) have citizenship requirements: The LIHTC, HOME, and NHTF programs do not have explicit citizenship requirements and do not object to the application of citizenship standards if they are required by your HUD program.

2. Programs adjust by design.

Example

One program has a rule that adjusts to another program rule

The LIHTC rules require that tax credit properties with RD or HUD funding use the utility allowances from HUD or RD for LIHTC purposes (see this Manual Chapter 2).

Response: Use the rules as adjusted.

3. There are corresponding rules:
 - A. There are corresponding rules between the programs, and one is simply more restrictive than the other.

Example**One program has a more restrictive rule**

Some program income limits are higher than others (see Chapter 2).

(A family that moves in under the 50% income limit imposed by one program is also below the 60% limit that may apply to another program.)

HUD Section 8, Section 811, and the NHTF - Use of 30% Income and Rent limits:

Although HUD publishes both 30% and 80% (*low-income*) limits, these are rounded in a way that may be inconsistent with LIHTC use. It is also important to know that, by statute, HUD's *extremely low-income* limit (ELI), although often referred to as 30% limits, can be as low as the 30% area median income but could be higher based on the poverty level in the area. There is a cap at 50% area median income (also known as *very low-income*) for Section 8 ELI limits. HUD Section 8 has income targeting requirements that require forty percent (40%) of all anticipated new move-ins each year to be at ELI limits. The NHTF and Section 811 limits are also ELI, but the NHTF is also potentially different than the Section 8/811 version of the ELI. The Section 8/811 version is capped at the 50% limit and the NHTF is not.

Additionally, the RD program uses the 80% *low-income* HUD limits as well as "moderate-income" to units by adding \$5,500 to the 80% AMI. Care should be taken when combining RD with an Average Income LIHTC project as using the 80% or *moderate-income* RD designations in LIHTC 80% units would trigger noncompliance with the LIHTC program.

Response: The most restrictive rule that satisfies both programs is applied.

B. There are corresponding rules that are different, each is applied independently.**Example****Both programs have different, but not conflicting, rules**

Example 1: HUD, RD, and HOME all have student rules that are completely different from the LIHTC student rules (see Chapter 3).

Example 2: In Iowa, tax exempt bonds have the same minimum set-aside options as pre-2018 tax credit projects did; 20-50 and 40-60. Unlike the LIHTC MSA election, which interacts with the applicable fraction to determine the level of credits to be claimed, bond properties only must house the requisite percentage of units (20-50 or 40-60) to retain their tax-exempt status.

Bond projects do not have the Average Income MSA option added in 2018 which means that the bond MSA may not coincide with the tax credit MSA. If a bond project selects the Average Income Test option on Form 8609, the owner/manager will have to watch carefully to ensure that, *at a minimum*, at least the minimum number of units will be below the 60% MTSP limits.

To illustrate: Sarasota Villa's, a tax-exempt bond project, elected the 40-60 MSA at allocation. The project consists of 10 units in one building. However, the owner determines that they will elect the Average Income Test at the property to take advantage of the higher rents the project would be able to achieve with the higher 70-80% families.

To meet their Bond requirements, at least 4 of the 10 units must be rented to families at 60% or less in order to meet their minimum set-aside requirement.

If the project designates 2 units at 80%, 1 unit at 70%, 2 units at 60%, 1 unit at 40% and 1 unit at 30%, and the remaining 3 units as market rate, 7 of the 10 units are designated as LIHTC and their average income percentage is 60% thus satisfying both the bond and the LIHTC requirements.

Response: BOTH sets of rules must be applied independently for families that want to move into a project with tax credits and any of these other funding sources.

4. The rules conflict.

In a situation where rules conflict, it is imperative to talk to all the important players (the owner, investors, IFA, other regulators) to establish if an approach can satisfy all parties. Ultimately, it is the owner who chooses to integrate the different programs; they will have to decide which program violation represents the greatest risk and therefore which action to take.

It is generally beyond the scope of this guide to discuss any programs other than the LIHTC, HOME, and NHTF. However, to assist in putting the pieces together for owner/managers with other programs, we have included a "Combined Programs" research tool as an attachment to this manual. This provides a summary of several important rules that are applicable to HUD Multifamily, Rural Development, tax exempt-bond, LIHTC, HOME and NHTF programs. It also provides references to federal guidance for further understanding of each rule. This will go a long way in helping an owner/manager to decide how the program rules should interact.

Chapter 2- Income Limits & Rents

A very important aspect of determining if families are eligible for affordable housing is ensuring that they have family income that is at or below income limits. These limits differ by program.

Source of Limit Data

HUD publishes median income information for each Iowa county or metropolitan statistical area in the state annually. HUD metropolitan statistical areas are metropolitan areas that may include multiple counties in one "area." HUD's metropolitan statistical area is abbreviated *MSA* but is not to be confused, based on context, with the Minimum Set-Aside for a project, which is also abbreviated *MSA* at times by the IRS (see Chapter 1 for a discussion of Minimum Set-Asides). To avoid confusion in this chapter, we will spell out *minimum set aside* in all cases.

LIHTC (along with tax-exempt bond) program income limits are referred to as Multifamily Tax Subsidy Program (MTSP) limits.

EXAMPLE

An IFA printout with features to assist with selecting LIHTC limits

County

If HERA Special limits apply, they will be listed (for projects placed in service in 2008 or earlier).

MTSP Limits
When HERA special limits do not apply.

LIHTC income and rent limit options

140% limits for the Available Unit Rule
Apply:
140% of the 50% limit for 20-50 projects.
140% of the 60% for 40-60 properties and Average Income 20% - 60% designations as well as 140% of 70% or 80%, respectively.

Income Limits and Maximum Rents

ADAIR MEDIAN INCOME (AMI) 65,400

MTSP - Income Limits by Household Size---Placed in Service AFTER 12/31/2008

	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
20%	9,720	11,120	12,500	13,880	15,000	16,120	17,220	18,340
30%	14,580	16,680	18,750	20,820	22,500	24,180	25,830	27,510
40%	19,440	22,240	25,000	27,760	30,000	32,240	34,440	36,680
50%	24,300	27,800	31,250	34,700	37,500	40,300	43,050	45,850
60%	29,160	33,360	37,500	41,640	45,000	48,360	51,660	55,020
70%	34,020	38,920	43,750	48,580	52,500	56,420	60,270	64,190
80%	38,880	44,480	50,000	55,520	60,000	64,480	68,880	73,360

Rents

	0 Bdrm.	1 Bdrm.	2 Bdrm.	3 Bdrm.	4 Bdrm.	5 Bdrm.
20%	243	260	312	361	403	444
30%	364	390	468	541	604	666
40%	486	521	625	722	806	889
50%	607	651	781	902	1,007	1,111
60%	729	781	937	1,083	1,209	1,333
70%	850	911	1,093	1,263	1,410	1,555
80%	972	1,042	1,250	1,444	1,612	1,778

140% of Income Limit (To be used during recertification only)*

	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
50%	34,020	38,920	43,750	48,580	52,500	56,420	60,270	64,190
60%	40,824	46,704	52,500	58,296	63,000	67,704	72,324	77,028
70%	47,628	54,488	61,250	68,012	73,500	78,988	84,378	89,866
80%	54,432	62,272	70,000	77,728	84,000	90,272	96,432	102,704

*Please note that the 50% limits are to be used only on projects that elected the 20/50 minimum set-aside on Form 8609

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HOME and NHTF limits are also published by HUD but are calculated slightly differently and are referred to as Area Median Income (AMI) limits. HUD publishes separate tables for income and rent limits for the HOME and NHTF programs. These tables provide HOME High and Low HOME income and rent limits as well as NHTF income and rent limits.

All sets of limits can be found on HUD websites. As a service to our partners, IFA also publishes program limits on our website. These include federal and agency covenant income and rent set-asides as well as 140% limits for the LIHTC Available Unit Rule.

LIHTC: Calculating Limits

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

1. MTSP Income Limits 20% through 80%

- Select the limits based on the property's minimum set-aside, which includes the average income test.

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

- These limits can only be applied to projects that had at least one building in the project placed in-service prior to 01/01/09.
- Not all MSAs or counties in Iowa have projects that are eligible to use the HERA special limits. If the HERA limits are not listed in the datasets for the project's MSA or county income limits, the project is not eligible. Also, counties with HERA special limits may change from year to year so it is best not to assume that if you had HERA special limits one year that you will automatically have them the next (or vice versa).

LIHTC Code allows for some rural counties with exceptionally low income limits to use a higher *national nonmetropolitan* average limit for LIHTC properties that are not funded with tax-exempt bonds. This option has not historically applied to Iowa. If this ever changes, IFA will publish instructional notices on how to apply this special limit.

Since 2008, LIHTC limits are subject to a process called "*hold harmless*". This process is beneficial to projects where income limits might fluctuate from year to year and helps the project to achieve economic stability. Hold harmless is a term that HUD uses to describe a situation where, once a project is placed in-service, it never has to decrease the limits that it uses from year to year. For purposes of this rule, a project "placed in-service" when the first building in the project places in-service. "Project" is defined by the 8609 8(b) multi-building election (see Chapter 1, *Minimum Set-Aside* for further information on the 8(b) election).

Example

Holding harmless LIHTC limits

2016

A property, Sunny Acres, places in-service in 2016 and uses the 2016 income limits.

2017

The published limits for the area go down. Sunny Acres continues to use the 2016 limits.

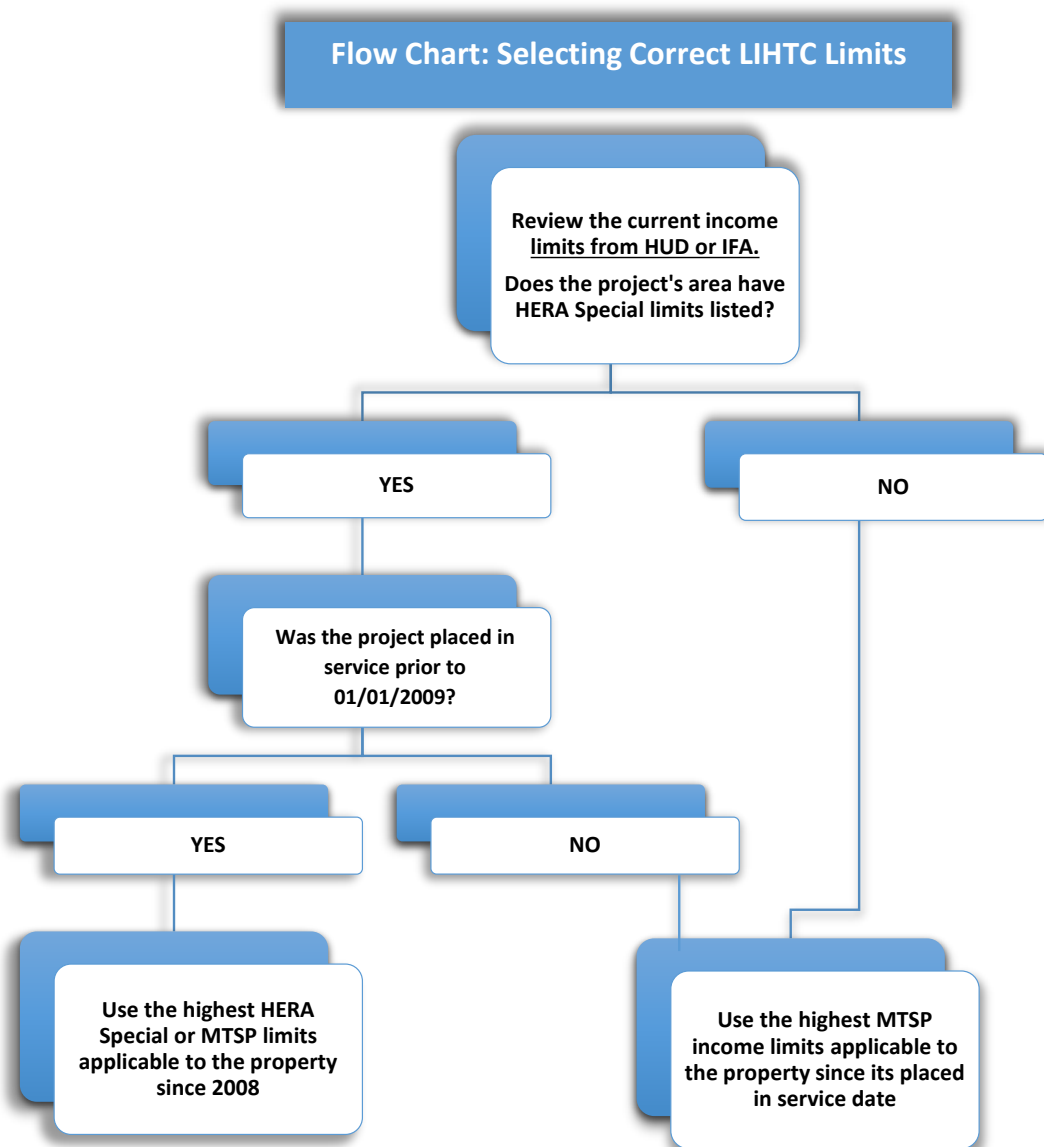
A property next to Sunny Acres, Shady Lawns, places in-service in 2017. They must use the 2017 limits, which are lower than the limits allowable to the older Sunny Acres.

2018

In 2018, limits continue to decrease. Sunny Acres will hold harmless at 2016 levels and Shady Lawns will hold harmless at the 2017 limits.

2019

In 2019, the income limits go up and exceed the 2016 limits. Both projects will now use the 2019 limits and hold harmless to those limits.



Rent Limit Calculations

The total of tenant rent and applicable utility allowance is compared to the LIHTC rent limits. Most LIHTC personnel do not need to calculate the rent limits. For the few that have this job, we are including information on how these are calculated here.

Rent limits are based on bedroom size. They are 30% of the income limit figured as if there are 1.5 people per bedroom.

EXAMPLE:

Calculating Rent Limits

Sample 60% MTSP Limits (for examples below)

1 person – \$21,180, 2 person – \$24,180, 3 person – \$27,240, 4 person - \$30,240

Annual Rent Limits for Units with an Even Number of Bedrooms	Annual Rent Limits for Units with an Odd Number of Bedrooms
2 bedroom	1 bedroom
3 person income limit X 30%	1.5 person income limit X 30%
$\$27,240 \times 30\% = \$8,172$	Since $1 + 2 \div 2 = 1.5$, the 1 person income limit + the 2 person income limit $\div 2 =$ the 1.5 person limit $\$21,180 + \$24,180 \div 2 = \$22,680$ $\times 30\% = \$6,804$
Annual rent limits are finally converted to monthly amounts by dividing by 12 (if cents are rounded, round DOWN, not up).	
$\$8,172 \div 12 = \681 2 BR rent	$\$6,804 \div 12 = \567 1 BR rent

Example

Deep Rent Skewed Maximum Rents

Non-LIHTC rent for units of comparable size	\$800
Scenario #1	
Deep-rent skewed units gross rent	\$425
Maximum allowable rent	\$400 (max rent is less than ½ non-LIHTC rent)
Scenario #2	
Deep-rent skewed units gross rent	\$325
Maximum allowable rent	\$325 (max rent is less than ½ non-LIHTC rent)

Deep Skewed Rents

As discussed in Chapter 1, Deep Rent Skewed projects have at least 15% of the LIHTC units set aside at 40% income limits. The skewed units must also have gross rent based on the 40% limits. For skewed projects with non-LIHTC units, the gross rent amounts for each 40% unit cannot exceed one-half of the

gross rent for the non-LIHTC units of comparable size in the development. Projects that are 100% LIHTC do not have non-LIHTC units, so the limits are effectively always based on the 40% set aside for these projects.

LIHTC Families with Federal Tenant- or Project-Based Rental Assistance

Total rents charged to tenants that receive federal project- or tenant-based rental assistance subsidy are not required to be the same as the rents charged to other tenants for comparable LIHTC units in the project and the LIHTC limits do not apply to these families. For instance, under rules governing the Housing Choice Voucher (HCV) program, it is the local payment standard that should dictate what the Public Housing Authority (PHA) that issues the Voucher will pay for a unit, not the LIHTC rents for the property. Owners/managers are free to request the full standard for the area for LIHTC units, and the tenants pay their share, even if it exceeds the usual LIHTC rent limit.

HOME: High and Low

The total of tenant rent and the applicable utility allowance are compared to the HOME rent limits. After 2025, this **excludes** any tenant- or project-based rental subsidy the family receives where the family pays 30% of adjusted income or 10% of annual income. In this regard, the LIHTC and HOME programs now treat subsidy the same and allow for the tenants to pay their portion of the rent, and the owner to collect the full subsidy, even if the amounts of either exceed the HOME rent limits.

NHTF Note | Although the NHTF program only has one limit type, it includes **tenant-based subsidy** when determining compliance with the rent rules. It does, however, allow owners to **collect full subsidy for project-based** rental assistance.

HOME Set-Aside Overview

Low HOME		High Home
<ul style="list-style-type: none"> • Income Limit = 50% AMI (very-low) • Rent limit = Low HOME limit 	<p>Tenant rent +</p> <p><u>Utility allowance</u></p> <p>= HOME Rent</p>	<ul style="list-style-type: none"> • Income Limit = 80% AMI (low)* • Rent limit = High HOME limit
<p>Properties with 5 or more HOME units must have at least 20% of the HOME unit designated as Low HOME.</p>		

Example

Special Rent Rule for HOME and NHTF Project-Based Subsidy

In the following scenario the difference between a tenant in a HOME unit with project- or tenant-based subsidy, or NHTF unit with project-based subsidy and an NHTF family with tenant-based assistance, makes a big difference in how their subsidy could affect a project’s income stream.

A HOME property accepts families with tenant-based Section 8 Housing Choice Vouchers (HCVs) paid by the local Public Housing Authority (PHA). The project has the following applicable 1-bedroom apartment rents:

NHTF rent	\$ 450
Low HOME rent	\$ 688
High HOME rent is	\$ 733
Payment standard the PHA will pay for HCVs in the area	\$1,090

Vera moved into a High HOME unit. She pays \$800, based on 30% of her income. Her Section 8 HCV assistance pays the rest of the rent up to the local standard for 1 BR units (\$290). Because she is in a HOME unit and pays rent based on 30% of adjusted income, the owner is allowed by the HOME rules to collect the \$1,090 full tenant rent and subsidy from Vera and the PHA. Note: this is true whether the unit is Low or High HOME and for tenant- or project-based rental assistance. It is also true for NHTF units with project-based rental assistance.

Special Rule for NHTF Tenant-Based Subsidy...

Cole moved into an NHTF unit at the project. He is also assisted by an HCV. He pays \$160, based on 30% of his adjusted income. The owner/manager must only request and receive \$290 from the PHA, so that the total does not exceed the NHTF limit of \$450. They cannot collect the full rent standard for the area, as they would for LIHTC or HOME units, or NHTF units with project-based rental assistance.

Note: The above rule changed with the 2025 HOME Final Rule. Prior to that, HOME rent limits capped the amount of rental assistance that could be collected for most HOME units, like the way it still works for NHTF and tenant-based subsidy.

Total rents charged to tenants that receive tenant-based subsidy are not required to be the same as the rents charged to other tenants for comparable HOME units. Under rules governing the HCV program, it is the local standard that should dictate what the PHA will pay for the units, not the HOME rents for the property. Owners/managers are free to request the full standard for the area for HOME units, but not for NHTF units.

HOME/NHTF Rent Approval Process

HOME and NHTF regulations require that the PJ review and approve rents each year for units without rental assistance (as explained above). IFA is responsible for approving rents in all HOME/NHTF-assisted units funded through the program currently being administered by IFA. This is done to ensure that non-subsidized rents comply with the HOME/NHTF rent limits and do not result in undue increases from the previous year that would be difficult for low-income families. Decreases in HOME/NHTF limits may also necessitate a change in HOME/NHTF rents; therefore, a review of rents by IFA of all HOME/NHTF projects is required annually.

General Guidelines:

- All properties must report on the IFA required form *HOME/NHTF Rent Approval Worksheet* anticipated rents for their project and indicate whether they are requesting an increase, reporting rent decreases, or are making no changes to their current rent schedules.
- If, in addition to HOME/NHTF, the project is also either a Section 8 Project-Based project or an RD project, anticipated rents must still be reported to IFA. The most recent rent approval documentation from RD or HUD must be submitted with the worksheet. For families with Housing Choice Vouchers, the rent explanation from the PHA must be retained in the file.
- Decreases resulting from lower HOME/NHTF rent limits or increases in utility allowances must be processed immediately and no later than the effective date listed on the HOME/NHTF Rent Limit documentation from HUD. Any delay in implementing a rent decrease will require repayment to the tenant of the overcharged amounts and the project will be out of compliance until such time as the rents are repaid.
- The *HOME/NHTF Rent Approval Worksheet* will be due to IFA ***within 45 days*** after the release of the HOME/NHTF income and rent limits to minimize the number of projects having to make mid-year adjustments when limits decrease. An email notice will be sent to all owner/management contacts when the limits have been released and all related documents posted on the IFA compliance web page.
- The effective date of a proposed rent increase must be at least one year from the effective date of the property's last approved rent increase. IFA's Certification Portal will track rent increase effective dates so that we can confirm that rent increases were approved.
- A notice to residents of management's *intention* to submit a rent increase to IFA for approval must be made available to all families in HOME/NHTF units at least 15 days prior to submitting the rent increase to IFA for approval. This notice does not need to include your proposed rent amounts; it may serve as a heads-up to your residents that you are intending to request an increase which allows them a chance to talk with management prior to submission of your request for an increase.

Note: Any requests for rental increases received after the 45-day period will be automatically denied. Additionally, any project that does not submit the HOME/NHTF Rent Approval Worksheet will be issued a State Notice of Noncompliance which will remain uncorrected until IFA receives the required form.

**Example
Rents and UAs**

If the maximum gross rent on a unit is \$450 and the tenant pays utilities with a utility allowance of \$66 per month, the maximum rent chargeable to the tenant is:

\$384
(\$450 - \$66)

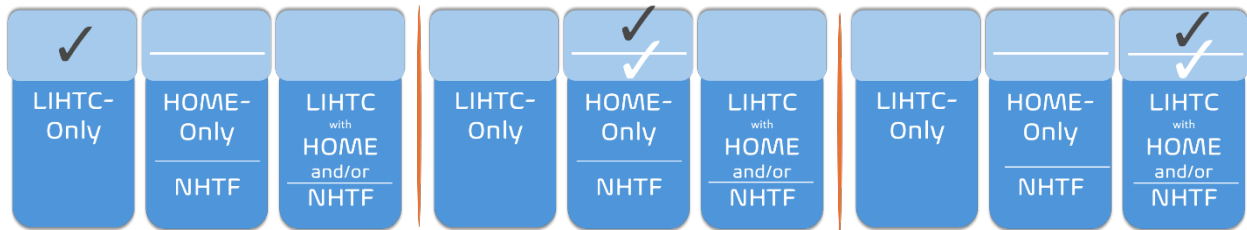
Example

The 2024 HOME High/Low and NHTF Rent & Income Limits were released April 29, 2024, with a June 1, 2024, effective date. The new limits can be implemented immediately, but no later than June 1st.

On April 29, 2024, IFA sends a notice to all owners/managers of the release of the new limit and advises that the HOME Rent Approval Worksheet is due no later than July 15, 2024.

Shady Oaks has budgeted for a rent increase of \$10 for their 1-bedroom units. The proposed rent falls within the allowable limit. The manager sends all tenants a notice on June 30th that a rent increase is being proposed and then submits their HOME/NHTF Rent Approval Worksheet to IFA on July 1st. IFA approves their rent increase on July 20th.

Gross Rent Limits



For LIHTC-only properties:

LIHTC limits apply.

Rent subsidy payments are not included in the rent calculation. Owners may collect the full payment standard for the subsidy and tenants may pay their share, even if this exceeds the LIHTC limits.

For HOME-only properties and NHTF units:

High and Low HOME and NHTF limits apply.

Rent subsidy payments are not included in the rent calculation. Owners may collect the full payment standard for the subsidy and tenants may pay their share, even if this exceeds the HOME limits. However, NHTF units with tenant based rental assistance limit subsidy and tenant payments to the NHTF limit.

For LIHTC properties with HOME and/or NHTF units:

The lower of LIHTC, HOME, or NHTF limits apply. Generally, the HOME or NHTF limits will be lower.

Rent subsidy payments are not included in the rent calculation. Owners may collect the full payment standard for the subsidy and tenants may pay their share, even if this exceeds the limits, except for tenant-based rental assistance for NHTF units, which limit tenant rent and rental assistance to the NHTF limits.

Utility Allowances

In theory, what families pay for rent and utilities must be kept at or below the maximum rent limits. In actual practice, it is impossible to know what utility usage will be for most situations, and the amounts change from month to month. To deal with this, LIHTC, HOME, and NHTF units where residents pay any utilities out of their pockets must have utility cost estimates assigned to units. These are called *utility allowances* (UAs). Utilities paid by residents commonly include electricity, water, sewer, oil, gas, and trash. Telephone, cable TV and internet costs which are not required as part of tenancy are considered optional items and are therefore excluded from the utility allowance. The rent that a tenant pays plus the utility allowance must not exceed the rent limits. For HOME units, tenant-based subsidy payments and project-based subsidy for High HOME units are also included when calculating gross rent. This is also true for tenant-based subsidy and NHTF units (see *HOME: High and Low* section).

When all utilities are included in the family's gross rent payment and the project pays utilities, the utility allowance is zero.

UA Methodologies

The IRS has offered several alternatives for calculating UAs for the Low-Income Housing Tax Credit program, as the following will discuss. The IRS and IFA do not recognize Ratio Utility Billing System ("*RUBS*") as an acceptable method for determining utility allowance. *RUBS* cannot be used when determining how a project arrives at the UAs for LIHTC, HOME or NHTF projects in Iowa.

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

a. RD regulated buildings

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

b. HUD regulated buildings

If a building does not have RD funding (see above) and is regulated by HUD and a UA is calculated each year as part of the HUD budget, the HUD project-based UA will apply. **This also includes HOME projects.**

c. PHA estimate

Residents who have a Housing Choice Voucher have a UA that is calculated by a Public Housing Authority (PHA) as part of the Voucher rent calculation. This UA must be used for Voucher holders. Additionally, the utility allowance estimates from any local PHA that provides Vouchers to the property can be used for all units at a property without RD or HUD funding. If used, these estimates must be updated within 90 days of their effective date.

IFA Suggests

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

If a project is not RD or HUD regulated, and the owner does not use a PHA estimate, then the following options are available in Iowa.

If any of the following are gathered when determining UAs for any given year, the new UAs must be used at the project for the entire year.

2. Estimate from a local utility company

An estimate may be obtained by an interested party which includes the owner/manager or a tenant. The interested party will receive a cost estimate in writing from a utility company in the same geographic area for a unit of similar size and construction. If the property is in an area that is served by multiple utility providers, the interested party can obtain a written estimate from just one utility company that offers services to the project even if multiple utility companies can provide the same utility service to the property. The initiating party must retain the original documentation used to obtain the estimate and make copies available to IFA, tenants, and other interested parties.

3. HUD Utility Schedule Model (HUSM)

The HUD Utility Schedule Model (HUSM) UA is designed by engineers and HUD for use by LIHTC and HOME properties. The HUSM produces a UA that is accurate but does not involve getting a ton of resident utility bills or crunching endless numbers. The HUSM has been an option for tax credit properties since 2009 and one of the few allowed options for properties with HOME commitments after August of 2013. This model can be found at the HUDuser.org website, keyword search "Utility Schedule Model." When completing the Model, the property's utility rate information and the Model's zip code function must be entered to access the location and heating degree data to calculate the estimate. Rates used must not be older than the rates in place 60 days prior to the date the utility allowance was calculated. Training provided by the Iowa Finance Authority and Costello University for IFA HOME properties will provide the framework that you need to accurately enter data into the HUSM and get results acceptable to IFA. For more information, contact your IFA Compliance Officer.

4. Energy Consumption Model

The final alternative option is to retain the services of a qualified professional to calculate the allowances based on an energy consumption model. This model must take into consideration specific factors, including but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The professional retained must be a properly licensed engineer or a qualified professional approved by IFA and may not be related to the building owner within the meaning of Section 267(b) or 707(b) of the Internal Revenue Code.

The use of the energy consumption model is limited to the building's consumption data for the 12-month period ending no earlier than 60 days prior to the date the utility allowance will change. For newly constructed or rehabbed buildings with less than 12 months of consumption data, consumption data for the 12-month period for similarly sized and constructed units in the geographical area in which the building is located will be used. Utility rates must be the rates in place 60 days prior to the date the allowance will change.

Additional UA Considerations

If the utility allowances increase, it may change the out-of-pocket rent owner/managers can charge their families, especially if the maximum allowable rent did not keep pace. If it turns out that the actual out-

of-pocket rent must be decreased to remain in compliance, owner/managers must be sure the affected families begin paying the new rent no later than the end of the 90-day period applicable to the UA method being used. When consideration is being given to which UA to use, the following should be kept in mind.

- Utility allowance Information is to be provided annually along with other IFA-required annual reporting information by March 1 of each year for existing projects. Newly placed in-service projects must submit their information by April 1st of the first year.
- Projects that are using methods 2-4 above must submit to IFA and their tenants their proposed UAs 90 days prior to the UA being implemented. IFA will acknowledge receipt of your documentation and review it for compliance with IRS regulations. You will be contacted if IFA requires further information within the 90-day period allowed by IRS regulation. An owner must entertain tenant comments during this same period. If you are not informed of any issues by IFA, the new UA may be implemented at the end of the 90 days.
- IFA requires that one UA methodology be used per property. This means that different methods may not be used for different utilities at the same property.
- Owner/managers can change the estimate options used for calculating utility allowances from one review to the next with IFA's approval.
- Any costs associated with obtaining utility allowance estimates are the responsibility of the owner unless the utility company estimate is chosen. Then, unless otherwise agreed upon by the parties involved, the costs are the responsibility of the party requesting the estimate.
- Utility allowances must be reviewed annually to ensure the estimates approximate what the families are paying. However, if the property has just been placed in-service, owner/managers are not required to review the utility allowances until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year, whichever is earlier. Except for the PHA-provided estimates, review of calculations need only take place one time per year even if known rate fluctuations occur (for concerns with updates on the PHA estimate, see above). However, if the owner/manager chooses to review them more frequently, they may if they follow the proper procedures.
- Owner/managers must retain any supporting determination data. Failure to retain adequate data that will allow IFA to conclude accurate allowances were used in the rent computation will result in noncompliance.

HOME UAs

IFA, as the PJ, will offer a UA HUSM Model training, for free, for one person per management company. Please contact your IFA Compliance Officer if you would like assistance. Otherwise, the management company can create their own HUSM model by visiting <http://www.huduser.gov/portal/resources/utilallowance.html>.

HOME rules were revised in 2025 and **allow the PHA estimate UAs**, which were prohibited for many HOME properties from 2013 to 2025.

Fees

Non-Optional Fees

Any non-optional fees charged to tenants as a condition of their occupancy must be included in the gross rent amount and detailed in the lease.

Charging application/screening fees is acceptable if the fees are reasonable and comply with state and local laws. The fees assessed are for the purpose of reimbursing owners for the actual average out-of-pocket costs incurred when screening reports, not to make a profit, nor to discourage applicants or tenants from applying to a project or requesting a service or reasonable accommodation.

For instance, the average costs to run credit and criminal background checks are an allowable basis for an application fee but charging an excessive fee to discourage families from requesting a unit transfer is not allowed.

Optional Fees

Optional fees may be charged for services available at a property, provided that the service is not a condition of occupancy and reasonable alternatives to the service(s) are provided free of charge.

It is not required to include one-time refundable security deposits or pet deposits in the gross rent. These deposits are allowable provided they are reasonable and comply with state and local laws.

(See table below for additional details.)

Fees Not Permitted

When owner/managers charge residents fees that are not permitted under Section 42, the resulting rents are likely to be above the allowable rent limit. Examples of fees that are not permitted may include:

- Fees for the use of resident facilities (such as community rooms, parking areas, or recreational facilities) when the cost of the facilities was included in the project's tax credit eligible basis.
- Fees charged to tenants as a condition of their occupancy, when the fees are in addition to the gross rents (such as fees for month-to-month tenancy, or one-time washer/dryer hookup fees).
- Fees for the standard "turnover" of a unit to make it rent-ready or decorating fees. See the discussion of Normal Wear and Tear below for more information.

If it is determined that a LIHTC resident has been overcharged rent or inappropriate fees at any point within a calendar year, the following will occur:

1. The owner will be required to refund the excess rent amount to the resident for all months affected, and
2. The IRS may disallow tax credits on the affected unit for the taxable year that rent was overcharged.
3. The earliest an LIHTC unit that was overcharged rent will be considered back into compliance is the start of the following tax year provided the unit is rent restricted under the applicable program rent requirements.

Fee Type	Acceptable	Not Acceptable	Notes
Application fees	X		Must not exceed the average out-of-pocket costs to run background checks.
Unit transfer fees	X		Must not exceed the average out-of-pocket costs to process a unit transfer and may not include expenses to make a unit “rent ready.”
Month-to-month tenancy fee		X	The IRS considers this a non-optional fee even if the tenant is given the option to sign a long-term lease. It cannot be considered an optional fee and must be included in gross rent.
Security deposits	X		Security deposits must be fully refundable if the unit is left clean and does not have damage beyond normal wear and tear.
Renter’s Insurance	X		Only acceptable if made optional and not a condition of tenancy. If required, then it must be included in gross rent.
Pet deposits	X		Assistance animals that help a person with a disability do not qualify as pets and are not legally subject to deposits. However, actual costs to repair damage caused by assistance animals beyond wear and tear may be charged.
Fee to pay for third-party verification		X	If there is a cost for verification, the owner may use source documentation supplied by the family. If they choose to require verification that costs money, the owner must bear the cost. NOTE: This is not to be confused with fees for recouping actual costs for processing applications (see application fees).
Coin-operated laundry machines	X		If the room is accessible to all residents and the machines are not in eligible basis.
Community room usage fee		X	A deposit may be charged if it is fully refundable if the room is left clean and undamaged.
Fee Type	Acceptable	Not Acceptable	Notes

<p>Parking fees</p>	<p>X</p>	<p>Only acceptable for LIHTC projects if the parking lot is not in eligible basis. Assigned parking is not acceptable to IFA.</p>
<p>Late rent fees</p>	<p>X</p>	<p>Per Iowa statute:</p> <ul style="list-style-type: none"> • When rent is \$700 or less a month the fee may be no more than \$12 per day (up to \$60 per month). • When rent exceeds \$700 a month the fee may be no more than \$20 per day (up to \$100 per month). <p>Note: This may be subject to adjustment. Confirm current levels at Iowa Code Chapter 562A.</p>
<p>Penalty fees (for example lockout or key loss)</p>	<p>X</p>	<p>May be charged if the rates are explicitly spelled out in writing (in-house rules, or lease).</p>
<p>Maintenance completed by the owner that is normally required to be completed by the family (such as removing furniture).</p>	<p>X</p>	<p>May be charged if the rates are explicitly spelled out in writing (in-house rules, or lease).</p>
<p>Make-ready fees (cleaning, turnaround, preparation, decorating, mandatory carpet cleaning)</p>	<p>X</p>	<p>Only costs beyond normal wear-and-tear may be charged. Helpful hint: pictures are very effective in documenting the state a unit was left in and demonstrating damage beyond normal wear and tear. (See the next page for further information.)</p>
<p>Lease breakage fee</p>	<p>X</p>	<p>Charging a lease breakage fee as a contingency does not make a lease transient. This is true even if the tenant breaks the lease less than six months after moving in, as long as the initial term of the lease was at least six months.</p>
<p>Reservation Fee (Holding Fee)</p>	<p>X</p>	<p>Charging an applicant, a reservation (or holding fee) to reserve a unit for an applicant until they move in is not allowed under any circumstances.</p>

HUD has provided the below guidance on what is normal wear and tear, and what is not. Although not all-inclusive, the list is helpful in establishing housing policy. This guidance is found in the HUD 4350.3 Appendix 5-C.

Normal Wear and Tear

Normal costs of turning over an apartment after a tenant vacates cannot be charged to the former tenant or the next tenant. The costs an owner incurs for the basic cleaning and repairing of such items necessary to make a unit ready for occupancy by the next tenant are part of the costs of doing business. The following is a list of items typically attributable to routine use or “normal wear and tear.”

- Fading, peeling, or cracked paint
- Slightly torn or faded wallpaper
- Small chips in plaster
- Nail holes, pinholes, or cracks in wall
- Door sticking from humidity
- Cracked windowpane from faulty foundation or building settling
- Floors needing a coat of varnish
- Carpet faded or worn thin from walking
- Loose grouting and bathroom tiles
- Worn or scratched enamel in old bathtubs, sinks, or toilets
- Rusty shower rod
- Partially clogged sinks caused by aging pipes
- Dirty or faded lamps or window shades

Note: Periodic or routine updates to the property i.e., flooring, etc. may not be charged to any tenant.

Tenant Damage

Tenant damages usually require more extensive repair, and at greater cost than, “normal wear and tear” and are often the results of a tenant’s abuse or negligence that is beyond normal wear and tear.

- Gaping holes in walls or plaster
- Drawings, crayon markings, or wallpaper that the owner did not approve
- Seriously damaged or ruined wallpaper
- Chipped or gouged wood floors
- Doors ripped off hinges
- Broken windows
- Missing fixtures
- Holes in the ceiling from removed fixtures
- Holes, stains, or burns in the carpet
- Missing or cracked bathroom tiles
- Chipped and broken enamel in bathtubs and sinks
- Clogged or damaged toilet from improper use
- Missing or bent shower rods
- Torn, stained, or missing lamp and window shades

HOME and NHTF Fees

Owner/managers must receive written approval of their fee schedules from IFA prior to charging any mandatory fee or surcharge to tenants in HOME- or NHTF-assisted units. Generally, all mandatory periodic fees must be deducted from the HOME or NHTF rent limit to determine the maximum rent that can be charged.

IFA is required to ensure that fees do not create an undue burden on low-income families and that the charges are reasonable and customary for the area in which the project is located.

If it is determined that a HOME or NHTF resident has been overcharged rent or inappropriate fees at any point within a calendar year, the owner will be required to refund the excess rent amount to the resident for all months affected and the unit will remain out of compliance until this has been corrected.

Chapter 3 - Qualifying Families

For units to remain compliant, they must be occupied by eligible families. If the vacant unit rule is followed (see Chapter 4) and each family is LIHTC qualified at move-in and throughout tenancy, benefits will continue to flow through vacancies and subsequent residents.

After initial certification, a family's income may increase without implication to their tenancy. The Available Unit Rule obligates the owner/manager to take certain actions if the family income exceeds 140% of the maximum income limit in the future (80% for HOME or the NHTF limit for NHTF units), but this does not ever include evicting the over-income family (see Chapter 4 for more details on increases of income). The only eligibility issue that will continually put the family at risk for continued tenancy is their LIHTC and/or HOME student status.

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

Application Processing and Tenant Selection Policies

In general, there are certain steps that are taken to ensure that a family qualifies for an affordable housing program. Owner/managers may take the steps in a slightly different order (per their well-documented policies), but each must be done prior to completion of the certification process. Below are the basic steps to qualify a family to occupy a program unit.

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

Upon starting the certification process, all adult (age 18+ or emancipated minor except live-in aides and foster adults) family members should be interviewed. The basics of the housing programs at the property should be explained. Some suggested topics are:

- For low income, rent-restricted units there are maximum income limits that apply.
- The anticipated income of all adult persons occupying the unit must be verified and this information must be included on the IFA Application.
- Eligibility will continue to be reviewed on an annual basis through recertification. This includes income and student status recertification, as applicable to the project (see Chapter 4).

It is important to ask only questions related to eligibility and screening criteria. Reasonable and fair-housing-compliant screening criteria are allowed. Common examples of screening criteria include credit checks, criminal background, and income minimums.

The IFA Application must be completed by each adult family member. This applies to married couples as well as other adults living in the unit. These family members must complete their individual *IFA Application* in its entirety, leaving no blank spaces. Adults with minor dependents in the unit must include their children when answering the questions. The *IFA Application* must be signed and dated.

Property/Management Rules (House Rules)

An owner/manager will have clearly spelled out expectations for residents of a property that are beyond the regulatory requirements covered in this manual. These are commonly called *property rules* or *house rules*. Generally, each family is provided with a copy of these rules and acknowledges receipt of them at move-in.

Any changes to the rules are also communicated prior to the changes being implemented. The family's receipt of the changes must also be documented in the tenant file. Although the rules may be as extensive as necessary, they must not conflict with any regulatory compliance provisions of the housing programs or the Fair Housing Act. To ensure that there are no such conflicts, IFA will review a property's house rules when conducting monitoring duties if provided.

Tenant Selection Plan

To ensure that everyone who applies is treated fairly, and to make sure that program requirements are covered, owner/managers must adopt a written Tenant Selection Plan (TSP) which will be reviewed by IFA when conducting monitoring duties. IFA has provided sample templates on the IFA website under the heading "Other Forms" for you as a starting point. The callout box, *Tenant Selection Policy Guidance*, below is an outline of required and suggested topics. These are based on best-practice guidance in a HUD Handbook. For topics covered in this manual, chapter references are included.

IFA Suggests

When a manager completes the Application for a family member as a reasonable accommodation, the manager should read every question (providing explanation as necessary) and record the response. The individual should also sign an affidavit that the form is complete and accurate.

Tenant Selection Policy Guidance

Based on HUD Handbook 4350.3 - Figure 4-2

Required Topics

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

Recommended Topics

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

File Organization

To maintain compliance, owner/managers must practice good organizational skills. This includes the order that the paperwork is arranged in a file. Neat and consistent files also help regulatory audits to go more smoothly. For these reasons, IFA strongly suggests the following file order as best practice.

Initial move-in

- TIC form
- IFA Application
- Income Verification(s)
- Asset Verification(s)
- Move-In Lease
- Move-in Lease addendums (as applicable)
- VAWA Acknowledgement
- Student Status Certification form(s)
- Student Status Verification (*if applicable*)
- Certification of Zero Income (if applicable)
- Self-Certification of Student Financial Assistance (*if applicable*)
- Asset Self-Certification, if applicable (LIHTC only or during HOME self-certification years)
- Consent to Release Forms (blanket release forms will not be accepted)

Recertification

Most recent recertification documents only
100% LIHTC (without HOME)

- *Most recent Student Status Certification* form and related verifications

Mixed-use LIHTC projects, mixed-income LIHTC units, HOME and NHTF recertifications

- TIC form
- IFA Application
- Income Verification(s)
- Asset Verification(s)
- Move-In Lease
- Move-in Lease addendums (as applicable)
- VAWA Acknowledgement (*if not obtained at initial move-in*)
- Student Status Certification form(s)
- Student Status Verification (*if applicable*)
- Certification of Zero Income (*if applicable*)
- Asset Self-Certification, if applicable (LIHTC only or during HOME/NHTF self-certification years)
- Consent to Release Forms (blanket release forms will not be accepted)

Determining Family and Household Size

“Household” vs. “Family.” HUD considers a “household” to include all persons who are legal residents (including fosters and live-in attendant/aides), while “families” are members counted for income limit purposes. This distinction is crucial for many HUD rules, primarily relating to expenses and allowances. As the term “family” is often believed to imply that persons must be related by blood or marriage, it is important to understand that the HUD definition of family is not that limited. As heads and co-heads of household are responsible for everyone in the unit, family and non-family members, HUD retains the terms head and co-head of household. In other contexts, such as VAWA, Fair Housing, and with leases, all members of the household may be covered by a rule. The few times that fosters or live-in attendant/aides relate to passages herein, the context will make the meaning of the term “household” clear, or the difference will be explained. Older HUD or IRS guidance may not be as clear on this distinction and use older household/family terminology. This manual has retained the old language when quoting agencies directly.

Income limits are based on the number of members in a family. Family members include all persons who occupy the unit as their primary residence.

Besides the obvious members, family members may also include:

- Children under joint custody who will be **in the unit at least 50% of the time**.
- Children of the family that are away in foster care who will be returning to the unit.
- Dependent students away at school.
- Members **temporarily** in a hospital or nursing home.
- Children being adopted.
- Any person on active military duty who leaves a spouse or dependent in the unit (see below for an exception in the case of dependents of military personnel). Note: If they are not the head, co-head or spouse of the head and do not leave a spouse or dependent in the unit, family members who leave the unit for active military duty are removed from the family.
- A future spouse or roommate.
- Unborn children.

Unborn children can be verified only through self-certification from the expecting mother. No further documentation is allowable. If the added unborn child is crucial to eligibility, miscarriages after move-in will not affect the initial qualification as long as the appropriate self-certification establishing the pregnancy was in the file at the time of move-in.

When determining family size for income limit purposes, we must exclude the following non-family household members, even though they live in the unit:

- Live-in attendants/aides for the disabled, when verified as necessary with a knowledgeable third party.
- Foster child/adult.
- Children under joint custody who will be **in the unit less than 50% of the time**.
- Temporary visitors and/or guests.

A live-in attendant/aide or foster child/adult may be counted when determining unit size.

Occupancy standards (that is the number of bedrooms assigned) do include these people, as they are legal residents. The time that a “guest” can stay before the family must report them to management and add them to the family should be clearly spelled out in the lease or house rules.

When a family member is **permanently** confined to a hospital or nursing home, the remaining family members have the right to decide whether to count the confined family member (and their income) or not.

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

HUD and IRS guidance urges some leniency when it comes to those absent in the military with a dependent child in a unit. For example, it may be determined that a military member and their child are not family members when grandparents are temporarily caring for their grandchild while the parent is on active duty, even though the military member’s dependent is in the unit as non-family household members. As another example, the income of a guardian that is temporarily in a unit to care for the children of a head of household who is on active duty may be excluded. Note that this only applies to dependents. A situation where a member who is residing in a unit has a spouse on active duty will require that the absent spouse be included.

It is important to document the reason for the exclusion of members, such as live-in aides, fosters, those permanently confined to a care facility, incarcerated individuals, spouses who reside outside the country or absent military members who leave dependents in a unit.

**Example
Family size**

June Picant is living with her parents (the head and co-head of the household). June is staying there while her husband, Stu, is on active duty in the military. June has a sister, May, who is a full-time student dependent of their parents. May is away at university, so she is only in the unit on holidays. May has a daughter who is subject to joint custody and is in the unit every weekend but spends the weekdays with her father. How many people live in this unit for income limit purposes?

June’s parents (head and co-head)	2
June	1
Stu (on active duty with a spouse the unit)	1
May (dependent daughter of head)	1

May’s daughter is not counted, as she is in the unit less than 50% of the time. Five total are included in the family size.

Changes in Family Size

When adding members to the family after initial move-in, verify and add the new member's income to the rest of the family's income as was verified on the family's most recent *Tenant Income Certification* (TIC). The new family member must also complete other paperwork required of new move-ins, including a *Student Status Certification* and the *IFA Application*. Apply the Available Unit Rule if the new additional income puts them over the 140% limit (see the section in Chapter 4 regarding the Available Unit Rule).

When subtracting family members, wait until the next recertification date and simply reflect the smaller family on the TIC at that time.

Original members are the family members that were included on the family certification at move-in. If all original family members vacate a unit, the remaining member(s) added after the initial family moved in will need to qualify as a new family at that time, unless one of the following applies:

1. The family entirely qualified under the income limit in effect at any point after adding the new person.
2. The person individually income-qualified at move-in using the one-person income limit.

Example

Adding a new member

Shelly moves into a unit in 2014 when her income was \$24,000. This was \$1,000 below the income limit. In 2016, her brother John passes the property's usual background checks and moves into the unit with his sister. His income is verified to be \$27,000.

The manager knows that first they need to test for the Available Unit Rule. Since the project is not 100% LIHTC and subject to income recertification, the manager adds John's income to Shelly's most recently certified income (now \$26,000) on a copy of her recertification TIC from 8 month prior. This results in a total of \$53,000 and puts the family over the 140% limit for a two-person family. The AUR is triggered, and an eligible family must be moved into the next available unit in the building Shelly lives in. The manager realizes that John is personally above the income limit for one person when he moves in (which is still \$25,000), and that he will NOT qualify in the future if Shelly ever moves out because he would not have qualified if he had entered the property by himself in 2016. This will hold true unless:

- **At a future recertification, Shelly and John together are below the income limit.**
- **John is below the income limit when Shelly leaves the unit.**

Example
Subtracting a family member

Candace and her cousin Marie apply to Desert Palms Apartments, a mixed-use property. Candace self-certifies that she is pregnant, so the family is certified as a three-person family. Five months later the pregnancy ends in a miscarriage. It is not necessary to recertify the remaining family members. If the income of the remaining family members exceeds 140% of the current income limit at the next recertification, the Available Unit Rule would be applied.

Verification

Student status, income, some assets, and other crucial eligibility items must be verified through documents prepared by knowledgeable third parties. IFA looks for the following methods of verification:

1. For employment (all forms of employment verification must be within 120 days of the effective date):

IFA no longer requires that both a verification of employment form and paystubs be gathered. One consistent method is sufficient, following the priority order below.

1. Information obtained from the well-known service *Work Number* or other database documentation. HUD calls this Upfront Income Verification (UIV). ***This also meets the HOME /NHTF requirement.*** There is a cost to owner/managers to use some forms of UIV, including the Work Number. Owners/managers are not required to pay for the Work Number, but they are encouraged to consider using the service when feasible, though it is costly. Quicker applications and less vacancy loss are often benefits that more than recoup the cost. Of course, not all employers work with the Work Number, so even if an owner/manager uses Work Number verification, it will not work for all applicants/tenants.
2. At least two recent and consecutive pay stubs (**but covering at least two months for projects with HOME and NHTF units**), Leave and Earnings Statements (LES) for military pay, or other payroll summary reports ***supplied by the family***. If an applicant does not yet have two consecutive paystubs (or two months for HOME/NHTF) because they have recently started a new job, you must thoroughly document the file explaining the situation or use another form of verification.
3. If the above is not available or insufficient, an acceptance letter of employment from the Employer or a verification of employment form may be completed by the employer.
4. The IFA Notarized Affidavit of Income form should only be used in the rare instance of the inability to obtain third-party documentation.

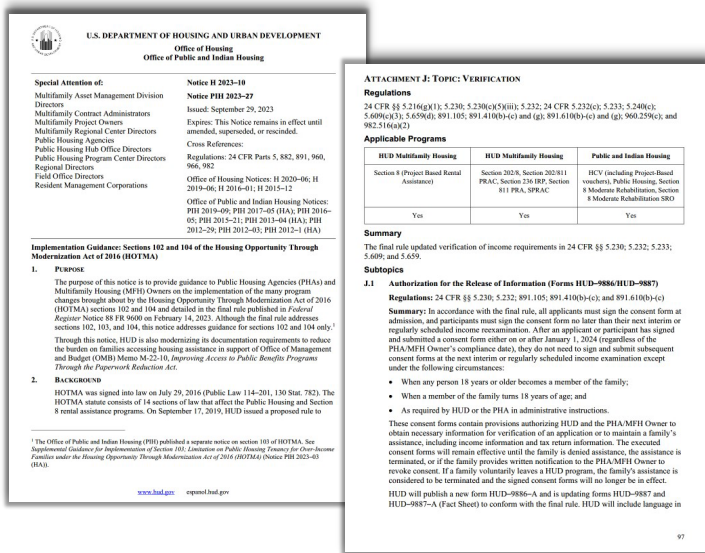
2. For other income sources:

1. Social security benefit letters, unemployment letters, bank, or other asset statements that supply current balance and income, and similar documentation ***supplied by the family***. NOTE: For fixed income sources (benefit income that only changes with a COLA each year) the most recent benefit letter covering the year that the certification is effective can be used all year – even if older than 120 days.

- If the above options are not available or are insufficient, verification forms completed by a third party may be used.

HUD has produced a document (*HUD Notice 2023-10, Joint HOTMA Implementation Guidance, Attachment J, as adjusted*) that can be used for LIHTC and HOME as a list of best practices relating to what forms of verification are allowed. This document can be used until such time as the HUD Handbook 4350.3 is updated. We have included this document at the end of this manual.

IFA Suggests
A “date received” stamp is extremely helpful in establishing when paperwork was received.



Please note: HUD has a database system of income verification called Enterprise Income Verification (EIV). EIV is only available to HUD properties and reports that EIV generates cannot be shared with IFA Compliance Officers. Any reference to EIV or Forms-9887 in *HUD Notice 2023-10* does not apply to programs covered in this manual.

Except where noted above, verification must be received no longer than 120 days prior to the effective date of the certification that the verification supports.

Worksheet
Required number of paystubs
[HOME/NHTF]

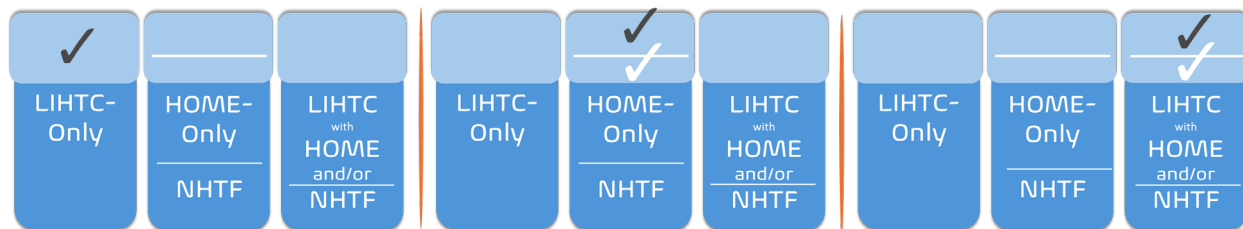
Pay wage cycle:	# of stubs to cover
	2 months:
Weekly	9
Bi-weekly	5
Semi-monthly	4
Monthly	2

The most recent annual benefit letter for social security, pensions, and other fixed-income sources that only change annually with a COLA can be used to verify those income sources, even if they are older than 120 days.) This does not apply to SSI, which can change during a year. SSI verification must be verified within 120 days.

**Example
Inadequate Verification**

A beneficiary of a trust applies for a unit. The beneficiary has access to the balance in the trust and can withdraw amounts “as needed,” but state that they are not aware of the value of the trust. They do not get any statements or other documentation prepared by a third party related to the trust. During the follow-up attempt to verify the asset, the person responsible for administering the trust will not reveal any information about the balance. There is insufficient data to determine family income. The family is ineligible because of inadequate available verification.

Verification



For LIHTC-only Properties:

PHA Verification: the PHA may be used to verify income as a third-party for voucher-holding families at move-in and at recertifications, as long as it is within 12-months of the move-in/effective date.

Assets: If not using the PHA verification or other means-tested determinations of income, if the cash value of family assets does not exceed the annual asset threshold (\$50,000, as adjusted), the family may complete the IFA *Asset Self-Certification form* instead of 3rd-party verification both at initial move-in and at recertification (if required).

For HOME only Properties and NHTF Units:

PHA Verification: the PHA determination of income may be used for voucher holding families in HOME units and **must** be used for NHTF units at move-in and recertifications.

Assets: If not using the PHA verification or other means-tested determinations of income, the IFA *Asset Self-Certification form* may be used instead of third-party verification if assets do not exceed the annual asset threshold.

For LIHTC Properties with HOME or NHTF Units:

PHA Verification: the PHA **may (must for NHTF)** be used to verify income as a third-party for voucher-holding families at move-in and at recertifications, as long as it is within 12-months of the move-in/effective date.

Assets: If not using the PHA verification or other means-tested determinations of income, the IFA *Asset Self-Certification form* may be used instead of third-party verification if assets do not exceed the annual asset threshold.

Voucher-Holders

LIHTC/HOME

LIHTC and HOME units **may** use PHA verification at move-in when full verification is required. If a family has rental assistance through a Section 8 voucher and documentation is received from the PHA stating the family's composition and income, the documentation is considered third-party verification. The HUD Family Report (form 50058) certification form may be used as verification of income for the LIHTC and/or HOME income certification. It may also serve as the TIC. It is the gross income that is used before any adjustments that the PHA may make before rent is calculated (see Chapter 4 for further details on HOME/NHTF recertification). If it is not possible to obtain the Family Report (form 50058) from the family, a signed statement from the PHA indicating the names of all family members and the family's gross annual income may also be used as verification of income.

When a Housing Choice Voucher holding family has their income verified by the PHA, this sufficiently verifies student financial assistance *income*. PHA verification, however, does not address LIHTC or HOME *student eligibility*. Separate student eligibility verification must still be obtained.

NHTF

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

Other Means-Tested Program Determinations of Family Income for the LIHTC and HOME

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

- Temporary Assistance for Needy Families (**TANF**). This is the FIP Program in Iowa.
- Medicaid.
- The Supplemental Nutrition Assistance Program (**SNAP**).
- The Earned Income Tax Credit (**EITC**).
- The Low-Income Housing Credit (**LIHTC**).
- The Special Supplemental Nutrition Program for Women, Infants, and Children (**WIC**).
- Supplemental Security Income (**SSI**).
- Other programs administered by HUD.
- Other means-tested forms of Federal public assistance for which HUD has established a memorandum of understanding.

- Other Federal benefit determinations made in other forms of means-tested Federal public assistance that HUD determines to have comparable reliability and announces through the Federal Register.

Verification. If an owner/manager of an LIHTC or HOME property uses the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information using third-party documentation. The third-party documentation must state the family size, must be for the entire family (that is, the family members listed in the documentation must match the owner's records of who resides in the unit), and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using this safe harbor to verify a family's income, owners/agents will neither further inquire about a family's net family assets, nor about the income earned from those assets.

The safe harbor third-party verification may be in the form of an award letter from the relevant federal program and must show that the family's income determination was made in the previous 12 months. The verification will be considered acceptable if the documentation meets the criteria that the income determination was made ***within the 12 months prior to the receipt of the verification*** by the owner/manager. This satisfies all verification date requirements for the safe harbor income determinations. The safe harbor documentation will be considered acceptable if any of the following dates fall into the 12 months before the receipt of the documentation by the owner/manager:

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

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

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

Family Assets not Exceeding the Annual Asset Threshold (\$50,000, as adjusted)

HOTMA Update 2024! When the cash value of a family’s assets does not exceed the annual asset threshold (\$50,000, as adjusted), third-party verification of assets is not required, and self-certification is allowed. The family is required to complete an *Asset Self-Certification* indicating that total net family assets do not exceed the annual asset threshold.

LIHTC

When the total net (*cash*) value of all family assets does not exceed the annual asset threshold (\$50,000, as adjusted), third-party verification of assets is not required. The family is required to complete the IFA form *Asset Self-Certification* indicating net family assets are at the annual asset threshold or under. This required form can be found on the IFA website.

The family’s declared income from assets on the *Asset Self-Certification* must be included in the calculation of annual income. If it is determined that the income from assets declared by the family is not reasonable, it is management’s responsibility to obtain third-party documentation of the assets. For instance, if a family declares no assets, but pays an application fee with a personal check, the *Asset Self-Certification* is incorrect as a checking account is considered an asset.

HOME/NHTF

For the HOME and NHTF programs, the *Asset Self-Certification* form may be used for all years when an owner/manager is conducting full certifications, including at move in and every 6th year of the period of affordability. If a project is required to obtain third-party verification for a unit due to participation in other housing programs, such as Section 8 or Rural Development, the use of the *Asset Self-Certification* form is not necessary.

Students

LIHTC

The IRS Code prohibits tax credit projects from being used as dormitories. Generally, families made up entirely of full-time students do not qualify. When determining eligibility, the owner/manager should start with the question:

“Are ALL family members (including minors) full-time or part-time students?” Note: fosters and live-in aides non-family household members are not considered for this rule.

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

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

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

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

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

Verification

Student status should be determined with the initial application interview prior to move-in. IFA's form *Student Status Certification* is a required form. It asks the correct questions to determine if the family is made up of full-time students, and which exception (if any) they may meet. Based on this family Certification, further verification that the family meets an exception must be gathered. If one individual is attending school part-time and everyone else is a full-time student, student status must be verified with the school for the part-time student. The school will define what constitutes "full-time." Student status must also be addressed annually and verified, as necessary.

Exceptions

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

1. Any of the adult family members are married and entitled to file a joint tax return.

Verification required: copy of joint tax return or marriage certificate.

2. An adult member is a single parent with a minor child in the unit, the adult is not a tax dependent of any third party, and the child is not claimed as a tax dependent by anyone other than one of their parents (even if the other parent is not in the unit).

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

3. The family includes a member who receives welfare assistance in the form of Family Investment Program (FIP – the federal TANF program), federal foster care, or adoption assistance payments under Title IV of the Social Security Act.

Verification: FIP, foster care, or adoption assistance award letter.

Example

Five-month student rule

In November of this year, a single applicant applied to live in a tax credit unit. Although no longer in school, she finished school on May 15th of this year and was a full-time student all year until graduation. If she wants to move in on December 1st, will this family be considered a FT Student family?

Yes

When will she no longer be considered a full-time student?

January 1st of the next year

4. The family includes a member who formerly received foster care assistance (that means they were a foster child or adult – it does not apply to current foster non-family household members).

Verification: Foster paperwork from the placing welfare agency.

5. The family contains a member who gets assistance from the Job Training Partnership Act (JTPA) or similar programs such as General Education Diploma (GED) or High School Equivalency Test (HiSET). (NOTE: The “Workforce Investment Act,” then the “Workforce Innovation and Opportunity Act” replaced JTPA).

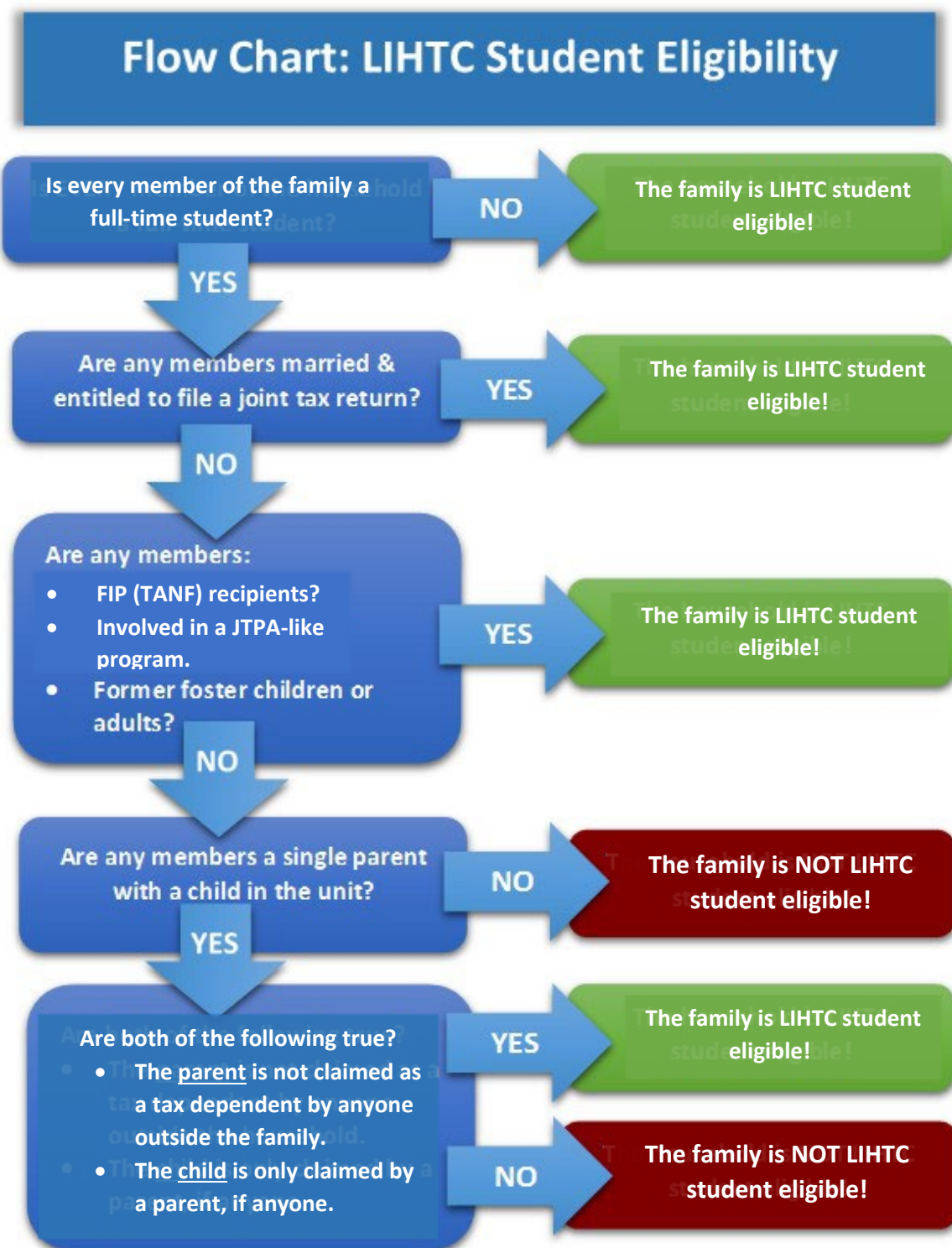
Verification: to identify JTPA-similar programs that are not part of the Workforce Act programs, verification from the administrator of the program must establish that the program:

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

JTPA as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994. Sec. 2

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

IFA does not require determination of student status for properties in the last 15 years of the Extended Use Period. Properties with HOME funds will still need to follow the HOME student rules until the end of the project’s HOME period of affordability.



HOME

The HOME program also has a student rule. The program adopted the Section 8 student rules in a 2013 HOME regulation revision. Section 8 student eligibility rules are very different from the LIHTC rules.

Section 8 student rules focus on individual students rather than entire families. They are designed to prevent any family containing a person who may be a tax dependent of parents outside the family from getting assisted housing. Understanding this premise should help the owner/manager to understand some aspects of the rule. For instance, this is why the age of 23 (the last year a student can be a tax dependent in most cases) occurs in the rule. One ineligible student disqualifies a family from qualifying for a HOME unit. IFA's form *Student Status Certification* is a required form to help establish HOME student eligibility. It asks the correct questions to determine if the family has any full- or part-time students that may trigger the rule, and which exception (if any) they may meet. Student status must be examined prior to move-in and at each recertification during the HOME period of affordability. Eligibility for an exception must be documented for each potentially ineligible student member of a family. To determine eligibility for HOME occupancy, an individual adult student, full-time or part-time at an institute of higher learning must be one of the following:

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

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

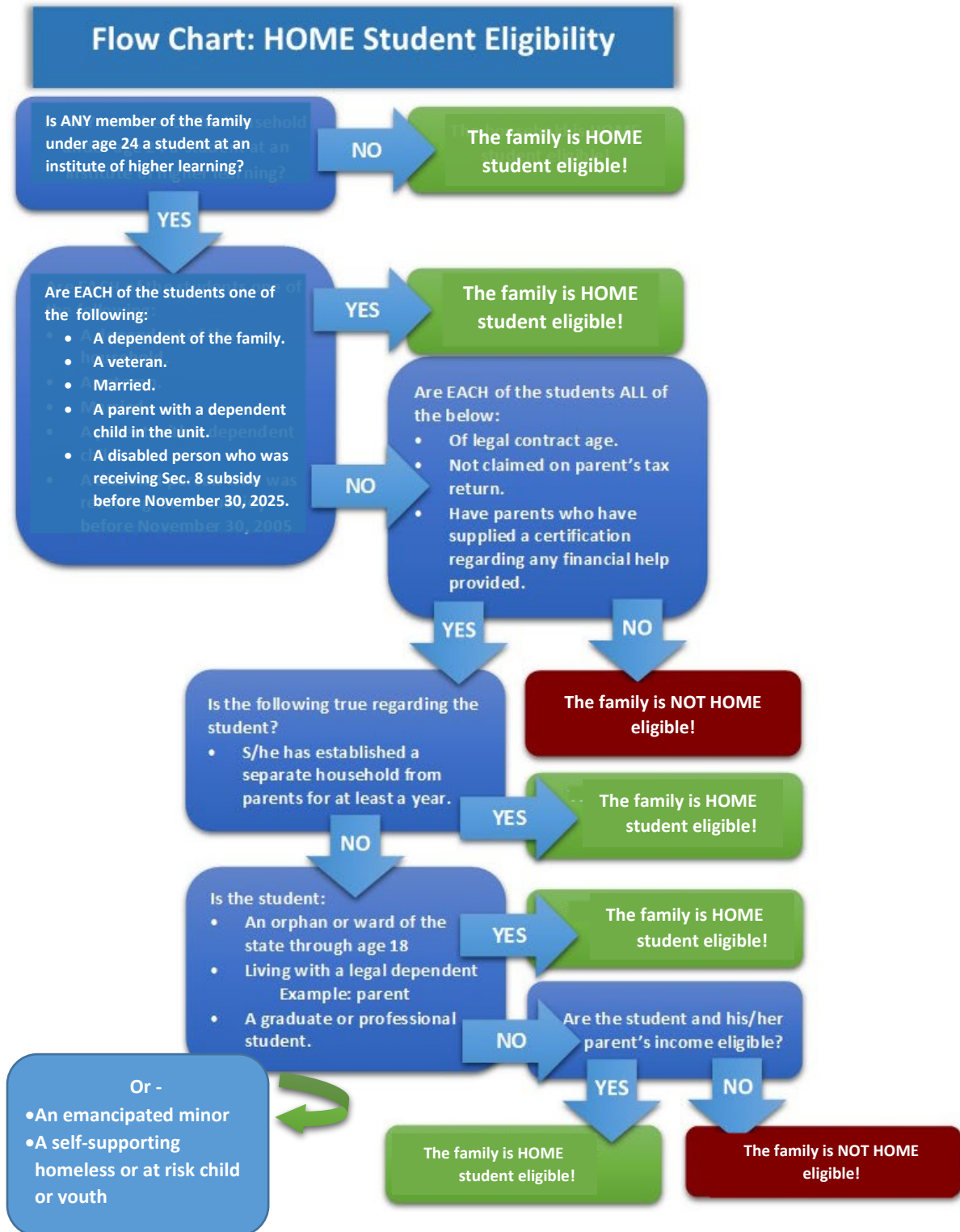
1. Must be of legal contract age under state law AND
2. Have established a household separate from parents or guardians for at least one year

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

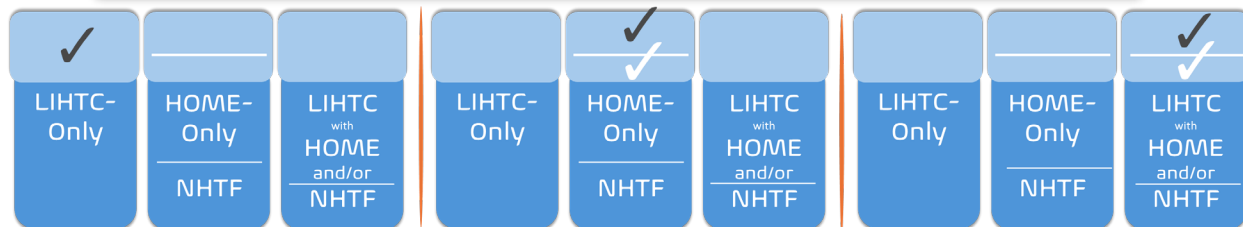
- At least 24 years old by December 31 of the current year
 - A veteran of the U.S. Armed Forces
 - Have legal dependents other than a spouse (i.e., an elderly dependent parent)
 - A graduate or professional student
 - Married
 - Is an emancipated minor or was one before they became an adult
 - Is or was an orphan or a ward of the State or in foster care at any point since age 13
 - Been established this school year to be an unaccompanied homeless child or youth and self-supporting as defined by:
 - The McKinney-Vento Act,
 - Runaway and Homeless Youth Act or
 - A financial aid administrator.
1. If the student meets the U.S. Dept. of Education definition of Independence, above, the student qualifies. If not, they must not be claimed as a dependent by parents or legal guardians pursuant to IRS Regulations; AND
 2. The parents must provide signed certification if financial support will be provided.

If none of the above applies, the student must demonstrate that they are income qualified AND that the student's parents or guardian, individually or jointly, are at or below the low-income limits (80% AMI). Finally, student eligibility status must be examined at each recertification.

Special Note | NHTF and Students
 Unlike most other affordable housing, there are no student restrictions on NHTF units.



Student Status



For LIHTC-only Properties:

Apply LIHTC student rules

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

For HOME only Properties and NHTF Units:

Apply HOME student rules

A family that contains an ineligible student will be treated as “over-income,” but their tenancy is not terminated.

NOTE: There is no student rule for NHTF units.

For LIHTC Properties with HOME and/or NHTF Units:

Apply BOTH rules to LI units.

Violations of the LIHTC rule result in termination of tenancy. Violation of the HOME rule does not. Floating HOME units may change designations to make a non-LIHTC unit HOME, if available. For fixed HOME, the owner/manager will need to decide which program’s non-compliance represents the greatest risk to the project.

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

Sporadic and Periodic Income

Renting to qualified families is a major component of meeting affordable housing requirements (see the “Memory Aid” in Chapter 1). Along with student status, income eligibility establishes if a family is “qualified.” HUD is the dominant government housing agency in the country. When various housing program rules have been established relating to how family income is calculated, the government often borrows from pre-existing HUD rules. This is true of the LIHTC, HOME, and NHTF programs as each utilizes the Section 8 HUD method of determining annual income. The good news here is that this makes the rest of this chapter essentially identical for all three programs!

Annual income, as defined by HUD, is the amount of income that is used to determine a family’s eligibility for LIHTC, HOME and NHTF housing. Annual income includes all amounts, monetary or not,

that go to or are received by any family member and amounts anticipated to be received from sources outside the family during the 12-month period following income certification. Annual income includes all amounts that are not specifically excluded by regulation. HUD regulation 24 CFR 5.609 (b) provides a complete list of exclusions.

Anticipated income includes any raises, new jobs, or any other income reasonably expected and verifiable to be received within the next twelve months, based on information supplied by the family. Paystubs, for example, do NOT provide raise information. If the family does not anticipate a raise, the owner may use the paystubs to calculate annual income without further inquiry.

For the purpose of determining whose income we count, annual income is comprised of three broad types of income:

Earned income

Employment, self-employment & military pay.

Unearned income

Income that is not earned income, such as benefit income, rent assistance from sources other than the state or federal government, alimony/child support & gift income.

Asset income

Unless specifically indicated in this chapter, annual income includes gross EARNED income, before any deductions, that are anticipated to be received by all adult (non-dependent) members of the family. UNEARNED and ASSET income of all members (adult and dependent) are also counted. Income from live-in aides, foster adults, and foster children is entirely excluded. Whether no income or very limited earned income is received by a dependent, it must be shown and counted towards the family’s combined income. See the chart below for specifics.

At times, a minor member of the family who is age 17 at the time of certification will be turning 18 during the year. These cases will need to be examined closely. If the 17-year-old has any earned income,

Note

Gross or Net Income?

In almost all cases, annual income includes GROSS income, before any deductions. However, there are several cases where NET income is used per HUD rules. Below is a list of some of these cases. Further details on each can be found in the discussion of *Sporadic and Periodic Income* later in the chapter.

1. **Social security:**
 - a. Delayed benefits
 - b. Adjustments for prior overpayments
 - c. Amounts split by court order
2. **Self-employment**
3. **Rental income** when real estate rentals are a person’s primary source of income.
4. **Military Hostile Fire Payments**
5. **Nonrecurring income**
 - a. Amounts specifically excluded by reg as nonrecurring.
 - b. Amounts that will end during the upcoming year and not repeat in future years.
6. **Income from assets** (for instance, NET rental income from real estate that is not a person’s primary source of income)

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

it will need to be verified, and the annual income prorated for the portion of the year that they will be an adult. If the owner/manager determines that the dependent will continue to be a dependent because they will still be a full-time student, only the amount of the dependent deduction of their earned income will be prorated for the remainder of the year that they are anticipated to be an adult dependent full-time student.

How do we Count Family Members' Income?

Members	Earned Income	Unearned & Asset Income
Head, Spouse, Co-Head	YES	YES
Other Adult	YES	YES
Dependents		
- Child Under 18	NO	YES
- Adult Full-time Student (Not Head, Spouse, Co-Head)	YES YES (up to the dependent deduction) *	YES
Temporarily Absent Member	YES	YES
Permanently Living in a Hospital or Nursing Home	Family Decision – Only counted if included in the <i>family</i>	Family Decision – Only counted if included in the <i>family</i>
Non-Members		
Live-in Attendant	NO	NO
Foster Adult	*NO	***NO
Foster Child	NO	*NO
Guest****	NO	NO

* Changed by HOTMA from a permanent \$480
 ** Changed by HOTMA from "household" members
 *** Changed by HOTMA from "YES" to "NO"
 **** The term "guest" identifying a temporary resident should be defined in the lease and must not be of long duration.

Example

Dependent Income: Taye

16-year-old Taye is a dependent of his mother, who is the head of household and a widow. He makes \$16,000 a year working for a local fast-food restaurant. He also receives \$6,000 annual gross social security benefits from his deceased father. He puts his earnings and benefit money into a savings account, which is anticipated to generate \$100 a year in interest. He is the sole owner of the account. The dependent deduction that year was \$480.

The manager determines that his income contribution to the family is \$480 (the first \$480 of his benefit income). Is this correct?

NO

Wages (earned income from a minor is not counted)	\$ 0
Social Security (unearned Income of a minor is counted in full)	\$6,000
Asset Income (counted in full)	<u>\$ 100</u>
Total	\$6,100

Five years later, 21-year-old Taye is an adult full-time student and is still considered a dependent of his mother because of his student status. He now makes \$21,000 a year working for the restaurant. He also receives \$7,000 annual social security gross benefits from his deceased father. He puts his earnings and benefit money into a savings account, which is anticipated to generate \$300 a year in interest. He is the sole owner of the account. The dependent deduction that year was \$480.

The manager determines that his income contribution to the family is \$7,780. Is this correct?

YES

Wages (earned income for an adult dependent is limited to \$480)	\$ 480
Social Security (Unearned Income is counted in full)	\$7,000
Asset Income (counted in full)	<u>\$ 300</u>
Total	\$7,780

Example

Dependent Income: John and Phillip

John is the head of household. He works a job with a total anticipated income of \$24,000. His spouse, Phillip, is an adult full-time student. He also works a full-time job with an anticipated annual income of \$36,000. The dependent deduction that year was \$480.

The manager determines that the family income is \$24,480 (John’s job + \$480 from the adult full-time student, Phillip). Is this correct?

NO

Wages (earned income for John)	\$24,000
Wages (earned income for Phillip)	<u>\$36,000</u>
Total	\$60,000

Note: Spouses and co-head full-time students are not eligible to be counted as dependents, so both family members must have their earned income counted in full.

Zero Income

Before we continue the discussion of how we calculate income, we will discuss what to do when there is an absence of income.

If a family’s income cannot be based on current income information due to the family reporting little to zero income, income fluctuates or is sporadic, income may be determined based on actual amounts received or earned within the last twelve months. This should not be used if it is verifiably inaccurate. For instance, if a person had a job with sporadic income in the last twelve months, but they no longer have that job, counting the sporadic income would be inaccurate.

The IFA *Certification of Zero Income* form is required for any family member claiming zero income. This form will help an owner/manager determine if the family has any income that must be counted that the family may not have revealed in other documentation. For instance, the form asks how a person is meeting their rent and other expenses. **Pay very close attention to this section of the form. If it is not filled out in its entirety, the form will be considered incomplete, and the unit considered out of compliance.** This section often reveals that other family members are paying the bills with already-verified income, gift income from persons or organizations outside of the family, or that the person intends to use their assets to meet their needs. The unit will remain out of compliance until the completed form is received by IFA.

If an applicant intends to use only saved assets to pay expenses, the following steps must be taken:

- The family member must complete the *Certification of Zero Income* form, ensuring that it includes a statement indicating the intention of utilizing saved assets to meet financial needs.
- Obtain verification of the asset(s) listed.

Definitions

HUD does not provide definitions for the terms periodic and sporadic, although the terms are used throughout HUD guidance. With HOTMA, both are counted as income. Only “nonrecurring” income is excluded and explicitly defined by HUD. For IFA purposes, the following definitions will be used.

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

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

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

Overview: Sporadic and Periodic Income

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

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

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

Examples**Nonrecurring Income | Workers' Comp Year One**

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

\$0 Workers' Compensation is excluded from income.

Nonrecurring Income | Workers' Comp Year Two

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

\$0 Workers' Compensation is excluded from income.

Nonrecurring Income | Employer Out of Business

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

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

Nonrecurring Income | Sporadic Contractor

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

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

Example

Nonrecurring Income | Research Stipend

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

2024 | The owner/manager includes this as income because the amounts will be received through the next annual recertification on 7/01/2025.

2025 | The income will end on 12/31/2025, so the owner/manager will exclude the income received after the 7/01/2025 recertification.

Annual Adjustment Factors

After HOTMA, several factors affecting income calculations will change annually. Most of these will be adjusted for inflation based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). This is the same factor used to determine social security COLAs. The one exception is the passbook savings rate, which will be adjusted based on an average of recent FDIC national average passbook savings rates. The factors that will affect LIHTC and HOME income calculations are listed below. This manual will refer to these factors with the amount at the outset of HOTMA, then “as adjusted.” For instance, “non-necessary personal property that does not exceed the annual asset threshold (\$50,000, as adjusted), is excluded.” That means that the amount will be different depending on the year involved.

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

Factor	Pre-HOTMA	At start of HOTMA [2024]
Passbook savings rate	.06%	.4%
Threshold to impute asset income	\$5,000	\$50,000
Threshold to self-certify asset value and income	\$5,000	\$50,000
Threshold where non-necessary personal property is excluded.	N/A	\$50,000
Annual dependent deduction	\$480	\$480

- Not used directly for LIHTC/HOME, but does set these limits:
 - Earned income for adult full-time student dependents
 - Adoption assistance payments

Annual Income Does Not Include...

HUD excludes 28 types of income at 24 CFR §5.609(b). These are listed below, quoted word for word from the regulation (except where there is a “Note.” More details are provided in the sections that follow.

Note | Income types unchanged by HOTMA are indicated in this font.

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

- For an **irrevocable trust or a revocable trust outside the control of the family** or household excluded from the definition of net family assets in the HUD regulation § 5.603(b)
 - A. Distributions of the principal or corpus of the trust; and
 - B. Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.
- For a **revocable trust under the control of the family** or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) *Earned income of children under 18 years of age.*

(4) *Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.*

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers’ compensation.

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

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

(8) *Income of a live-in aide, foster child, or foster adult as defined in §5.403 and §5.603, respectively.*

(9) **Student Assistance Type 1** | Any assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA), as amended, is excluded from income.

Student Assistance Type 2 | Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) **Student financial assistance means** a grant or scholarship received from—

- (1) The Federal government
- (2) A State, Tribe, or local government

- (3) A private foundation registered as a 501(c)(3) nonprofit
- (4) A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a public benefit corporation, or nonprofit entity), or
- (5) An institution of higher education.

(B) Student financial assistance does not include—

- (1) Any assistance that is excluded pursuant to the HEA Title IV, 479B (see above)
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to the HEA Title IV 479B)
- (3) **Gifts, including gifts from family or friends, or**
- (4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or the HEA 479B (see above), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(C) Student financial assistance must be expressly:

- (1) for tuition, books, room and board, or other fees required and charged to a student by the educational institution
- (2) to assist a student with the costs of higher education, or
- (3) to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

(D) Student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance.

(E) When the student is also receiving assistance excluded under HEA Title IV 479B (see above) the amount of student financial assistance that must be counted is determined by adding the HEA 479 B assistance to the other assistance.

- (1) If the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual covered costs, all of the other assistance is counted as income.
- (2) If the amount of HEA 479B assistance excluded above is less than the actual covered costs, the amount of assistance that is considered student financial assistance is the amount by which the actual covered costs exceed both types of student assistance.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by Federal, State, or local government.

Note | According to HUD, baby bonds are “money held in trust by the government for children until they are adults.” These “are being authorized in various States and localities in an effort to combat the wealth gap and address systemic poverty.”

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

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

Note | PASS is an SSI provision to help individuals with disabilities return to work.

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

(14) Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

Note | (14) & (15) will be \$480 through 2024 but will be indexed for inflation annually starting in 2025.

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(19) *Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit.* Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

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

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 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.

(23) Replacement housing “gap” payments made in accordance with 49 CFR part 24 that offset increased out-of-pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing “gap” payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing “gap” payments.

Note | “Gap” payments are payments made to persons who are displaced by a federally funded program under the Uniform Relocation Act.

(24) **Nonrecurring income**, which is income **that will not be repeated in the coming year** based on information provided by the family. **Income received as an independent contractor, day laborer, or seasonal worker is not excluded** from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

- Payments from the U.S. Census Bureau for employment (relating to the decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.
- Direct Federal or State payments intended for economic stimulus or recovery.
- Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.
- Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.
- ***Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.***

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

Note | FSS is a program that enables HUD-assisted families to increase their earned income and reduce dependency on welfare assistance and rental subsidies. Goals are set that a family must work toward to graduate from the program. An interest-bearing escrow account is established by the PHA for each participating family. Any increases in the family's rent as a result of increased earned income during the family's participation in the program result in a credit to the family's escrow account. Once a family graduates from the program, they may access the escrow and use it for any purpose.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

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

But Wait! There's More... [See (22) above] Excluded are "amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary." The list will include, at a minimum, updates made by HUD since the publication of Exhibit 5-1 in the 2013 Change 4 to the HUD Handbook 4350.3. Below is this updated list.

24 CFR 5.609(b) and (c) (updated on 1/31/2024) | Other Federal Exclusions (2024)

(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 childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (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 fund.

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 & 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 family from payments made under the Emergency Rental Assistance Program under the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021.

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

HUD Says Employment Income is...

“The full amount, before any payroll deductions, of wages salaries, overtime pay, commissions, fees, tips, bonuses, and compensation,” for all adults.

When annualizing employment income, the frequency of pay should be determined first. Once the frequency of each pay period is determined, the calculations on the worksheet to the left should be applied to determine annual income.

For temporary employment, day laborers, or seasonal workers, multiply by the number of periods expected to work over the next 12 months from the date of certification.

When a family member’s wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, owners/managers must use the gross amount of the income, before the reduction, to determine a family’s annual income.

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

When RANGES are provided by the employer on items such as the number of hours, an average should be used. For instance, if the employer anticipates that a person will work 36-40 hours a week, an average of 38 should be used in the calculation.

At times verification will indicate that a change is anticipated to the rate of pay within the next 12 months. See the example below demonstrating a calculation when such a change is expected.

Example
A change in anticipated employment

A family lists on their application that their employer has informed them of a raise that will occur six weeks after the family will move in. This is verified with the employer and the raise used when calculating income based on their paystubs, which indicate an average of 40 hours a week. The manager performs the following calculation:

Hourly rate at move-in	\$7.50 per hour
Rate after 6 weeks	\$8.00 per hour
6 weeks x 40 hours x \$7.50 =	\$ 1,800
46 weeks x 40 hours x \$8.00 =	\$14,720
Annual Income	= \$16,520

Important lessons from the above:

1. **Calculations must always start with the move-in date.** When calculating a raise, care should be taken to be sure that the date of move-in is the starting point, not the date that the manager is calculating the income.
2. **Check your assumptions.** By looking at the assumptions in **red** above, the manager can see that the assumed total of weeks is 52, and thus correct. If 6 and 47 weeks were used (total of 53) or 5 and 46 (51), for instance, the math results will be incorrect.

In addition to the above calculations, annualize the year-to-date (YTD) amounts listed on the most recent pay stub or verification. IFA has observed that owner/managers have developed different calculation methodologies for annualizing YTD. IFA does not require a specific methodology, as long as the owner/manager is consistent with the method used. It is necessary to pay close attention to the date of hire, as this can affect the calculation.

The highest total income (between year-to-date and hourly) calculation should be used after examining income from all reasonable perspectives *unless* it can be clearly verified that a lower calculation is a better estimate of income. If the highest figure results in the income limit being exceeded when other calculations indicate the family may qualify, it is best practice to obtain further clarification from the employer.

Example
A Sample YTD Annualization Method

1. Determine the year-to-date beginning and end dates. Calculate the number of days YTD.
2. Divide the number of days YTD by 7 to determine the number of weeks YTD.
3. Divide the amount paid YTD by the number of weeks worked YTD.
4. Multiply by 52 weeks or the actual number of weeks expected to be worked within the next 12 months.

According to the employment verification:

YTD start date:	December 28
YTD end date:	February 28
Total pay YTD:	\$ 7,040

- | | |
|--------------------------|---|
| 1. Number of days YTD: | (Dec) 4 days + (Jan) 31 days + (Feb) 28 days = 63 days |
| 2. Number of weeks YTD: | 63 ÷ 7 = 9 |
| 3. Average pay per week: | \$ 7,040 ÷ 9 = \$ 782.22 |
| 4. Annualized YTD: | \$ 782.22 x 52 = \$ 40,675.54 |

Example
Gross employment income

A member of a religious order, as part of their vows, commits their employment income to their church. Is the employment income counted, even though they do not receive the money?

YES

There are many deductions that a person may choose to have taken from their employment income. HUD is clear that gross income before these deductions are taken is counted.

Example
Semi-monthly vs. bi-weekly pay

Ashton Way Apartments is a property that has a one-person income limit of \$25,000. Donna applies to live there and has a job making \$1,000 per semi-monthly pay cycle.

At the same time, Kya also applies. She is employed and is making \$1,000 bi-weekly.

	Qualified?
Donna: \$1000 x 24= \$ 24,000	YES
Kya: \$1000 x 26= \$ 26,000	NO

HUD Says Self-Employment Income is...

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

This is a specific time that NET income is used and includes when a person owns a business or is a contract laborer. Annualize self-employment based on information collected from the following documents, in order of preference (as applicable):

- Previous year’s Tax Return Form 1040 with Schedule(s):
 - **C** for business income
 - **E** for rental property income
 - **F** for farm income.
- Financial Statement(s) of the business (such as monthly profit/loss or income statements).
- Signed statement by the business owner.

A completed Schedule **C** (or **E** or **F**) for the current year so far, with supporting documentation required to establish YTD income. Multiply out to annualize.

Many people with self-employment income claim that they do not make enough to file taxes even though self-employed individuals are required to file tax returns even if they are reporting a net loss. However, IFA does not require management to enforce tax filing for self-employed individuals and alternative documentation can be used (as above).

Question: Can a resident use their unit for business purposes? A family member wants to do bookkeeping in one of the bedrooms in her unit. What if she claims business use of the unit on her tax returns?

Answer: For a tax credit project the answer is, yes. A family member may run a business out of a unit, if it remains their primary residence, even if they claim part of the unit on their taxes.

For a HOME project, information contained in the HUD 4350.3 Rev-1 Chg-4 in Chapter 6-9, discusses tenant’s conducting “incidental business,” such as computer work, limited babysitting, etc. within their unit as allowed and goes on to outline rules that should be contained in the properties House Rules to govern the usage of a unit that may also be used for incidental business purposes. IFA should be consulted if there is any question about whether a proposed “business” being run in a HOME unit would be considered incidental (secondary to use as a residence), or primary use in nature.

Things to watch for on a Schedule C

Note: line numbers may change from year to year

Make sure that the last year’s tax return represents a full year’s income; otherwise you will need to annualize. (Line item H)

H	If you started or acquired this business during 2012, check here . . .
----------	--

Make sure to include any wages or contract labor listed on the schedule C that owner paid to him or herself or any other household member. (Line items 11 and 26)

11	Contract labor (see instructions)	11	
-----------	-----------------------------------	-----------	--

26	Wages (less employment credits)	26	
-----------	---------------------------------	-----------	--

Make sure that if depreciation is listed, clarification is obtained to demonstrate what method of depreciation was applied. If an accelerated depreciation method was used, the household must provide an accountant’s calculation of depreciation using the straight-line method. The net income should then be determined using the expense based on the straight-line method. (Line item 13)

13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	
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31	Net profit or (loss). Subtract line 30 from line 29.
	• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule S (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, li

If net business income is negative, income is zero. It does not offset other household income. (Line item 31)

Example
Self-employment: Business losses

John started a new business January 1st of last year. Tax returns show a loss of \$5,004 last year. It is anticipated to do similarly this year. John’s wife has employment income anticipated to total \$34,560. They have no other income. What is the total anticipated family income?

John’s self-employment	\$ 0
John’s wife	<u>\$34,560</u>
Total	\$34,560

Note: net business losses do not offset other family income.

Example
Self-employment: Partial year business income

Susan and Charlene own a business that began July 1st of last year. Their last year’s taxes show a total gross income for the year of \$5,000, and net income of \$4,000. The business is anticipated to do similarly this year. What is the anticipated income for a certification this year?

\$4,000 (net income from half of last year) x 2 =
\$8,000

Income Statement

Name: Ellie's Creations

Time Period: January 1, 2019 through March 31, 2019

Financial Statements in U.S. Dollars

Revenue	
Gross Sales	\$ 12,000
Less: Sales Returns and Allowances	
Net Sales	\$ 12,000
Cost of Goods Sold	
Beginning Inventory	\$ 3,000
Add: Purchases	\$ 100
Freight-in	
Direct Labor	
Indirect Expenses	\$ 500
Inventory Available	\$ 3,600
Less: Ending Inventory	
Cost of Goods Sold	\$ 3,600
Gross Profit (Loss)	\$ 8,400
Expenses	
Advertising	\$ 60
Licenses and Fees	\$ 100
Miscellaneous	\$ 100
Supplies	\$ 600
Vehicle Expenses	\$ 200
Wages	\$ 5,000
Total Expenses	\$ 6,060
Net Operating Income	\$ 2,340
Net Income (Loss)	\$ 2,340

Example

Self-employment: New business

Ellie applies to Alpine Manor and reports that she receives social security but also has started a new business creating high end custom artwork. She has not yet filed her income taxes but has created an income statement in order to apply for a small business loan.

In addition to her monthly SS payment of \$760, she was able to pay herself a quarterly salary and reported net income in the amount of \$2,340 for the quarter.

Her income calculation would be:

Social Security	\$760 x 12	\$ 9,120
Salary	\$5,000 x 4	\$20,000
Net Income	\$2,340 x 4	<u>\$ 9,360</u>
Total		\$38,480

HUD Says Social Security & Other Benefit Income is...

The full amount of... income received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of sporadic or periodic receipts.

Keep the following guidelines in mind when it comes to social security income. (SS) and supplemental security income (SSI) benefits:

- Count gross amounts BEFORE Medicare or any garnishments are taken out.
- Delayed SS and SSI payments are not counted as income (this also applies to VA benefits).
- Count AFTER adjustments for past overpayments (also applies to FIP (TANF) and unemployment benefits).
- Be aware of the Cost-of-Living Adjustment (COLA) which will be announced each year (although there may not always be an increase given). This is typically announced in October, and a person begins receiving it either December 1st of the current year or January 1st of the upcoming year. Once the COLA is announced, income for SS recipients who have recently been approved, but have not moved in, will need to have their income eligibility re-examined to ensure that they are still income eligible.

In cases where state or local government, social security, or private pension income is split due to divorce, only count the net payment received.

Annuities may be either income (periodic payments) or an asset. Use the following guidelines to determine how to count an annuity:

- If there is no “lump sum” that can be cashed in, with periodic payments as the only option, it is income.
- If the family can cash in the lump sum amount of the annuity, then it is an asset (see asset section for further details).

IFA Suggests

1. SS recipients who are applying to move-in between October and November should be warned of the possibility of a COLA adjustment affecting eligibility.
2. Properties subject to income recertification may want to send a letter in early October reminding families that receive SS to bring in their annual awards letter when it comes in the mail so that the manager has it on hand when the family’s recertification will be due later in the year.
3. Educating families on accessing the **SSA.gov** website may be useful. Printouts of benefit summaries can serve as verification.

Example Social Security Income

Adjustment for prior overpayment

The gross payment amount is \$450. However, the actual payment is \$397 due to an adjustment for past overpayment. Count \$397 as the monthly income amount until the adjustment is completed, *at which point the income returns to \$450 for the months remaining in the certification year.*

Delayed benefits

The gross payment is \$490. Of that amount, \$90 is for delayed benefits. Count \$400. *When the delayed benefits are paid out, the payment will drop to \$400, so no adjustment calculation is necessary.*

HUD Says Payments in Lieu of Earnings Income is...

“Payments in lieu of earnings, such as unemployment, disability compensation, ... and severance pay.”

Unemployment compensation may always be extended and is never considered “nonrecurring” income. It is always counted even if it is anticipated to end during the coming year. It must be annualized unless a future job that will replace the unemployment benefits is verified via a third party.

Example

Unemployment Benefit Income

Verification indicates that unemployment benefits are to be paid for 26 weeks at a rate of \$125 per week. No future job has been secured.

$$\$125 \times 52 \text{ weeks} = \$6,500 \text{ per year.}$$

HUD Says Welfare Assistance Income is...

“Welfare assistance received” by the family.

Food stamps are often listed by family members as welfare benefits because they get the benefits from the welfare office. However, food stamps are excluded from income and should not be counted.

Example

Welfare benefit income

Kenneth’s Welfare verification shows a FIP benefit of \$450 a month and food stamps of \$345 monthly. What is Kenneth’s total annual income from welfare?

$$\$450 \times 12 = \$5,400$$

Note: the value of food stamps is not counted.

HUD Says Periodic Allowance Income is...

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

1. Cash and Non-Cash Contributions

ALL periodic cash and non-cash contributions, such as rent and utility payments paid on behalf of the family (but not including excluded federal or state rental assistance, such as Iowa HCBS or refugee resettlement from federal funds) to the family are counted as income except:

- a. Food groceries given to the family (NOT money to buy groceries).
As we will discuss later in this chapter when covering exclusions to income, many sources of food for low-income families are excluded from income per HUD rules. Examples include food stamps, the WIC programs, and meals on wheels. Similarly, periodic contributions of groceries to a family are excluded.
- b. Childcare paid directly to the care provider on behalf of the family.
- c. Non-monetary in-kind donations (such as clothing and toiletries) from a food bank or a similar charitable organization.

2. Alimony and Child Support

HOTMA Update 2024! Annual income includes “all amounts received.” In many cases, alimony and/or child support has been ordered but is not being paid. A family’s child support or alimony income must be based on payments actually received, not the amounts to which the family is entitled by court order.

Example Child support

Bob was court-ordered to receive child support of \$940 a month. His ex-wife has paid sporadic amounts every month, but Bob has not pursued the case through child support enforcement. A printout from the enforcement agency shows the following payments, and the manager calculates income accordingly.

Jan:	\$ 1,004	
Feb:	\$ 450	
Mar:	\$ 450	\$ 3,664 ÷ 6 x 12 = \$ 7,328
Apr:	\$ 200	
May:	\$ 960	
Jun:	\$ 600	
Total	\$3,664	

Example Alimony

Marcia was court-ordered to receive alimony of \$800 a month. Her ex-husband has not been paying his alimony, and Marcia has made no efforts to pursue collection of the arrears. No income is counted.

To provide this information, proof of payment such as a printout from DHS can be gathered. An average of amounts received must be counted.

Example**Cash and non-cash contributions from outside the family**

Kia and her daughter live in a unit. Kia's mother (who is not part of the family) pays Kia's utilities of \$120 a month. She also writes a check to Kia's childcare provider for \$400 a month. Kia's father (also not part of the family) gives Kia \$200 a week in cash that Kia uses to buy groceries and anticipates that he will buy about \$50 a month in clothes for Kia's daughter. How much of the contributions from Kia's parents will be counted as income to Kia?

Utility payment	\$120 x 12 =	\$ 1,440
Money for groceries	\$200 x 52 =	\$10,400
Clothes	\$ 50 x 12 =	<u>\$ 600</u>
Total		\$12,440

Note: Only childcare paid directly to the provider is excluded in this case. Groceries given to the family are not counted as income. However, if money is given, the family has discretion over how the money is used and it is income.

HUD Says Military Pay Income is...

"All regular pay, special pay, and allowances of a member of the Armed Forces, except...the special pay to a family member serving in the Armed Forces who is exposed to hostile fire."

As discussed earlier in this chapter, military family members who are assigned out of town, but who have a spouse in a unit, must be considered temporarily absent and must be counted as part of the family. Their income must also be included. A similar rule applies to dependents, with exceptions.

Example
Military pay

Mary is in the military. She receives a total of \$2,200 a month, **which includes** *hazardous duty* pay (duties deemed more dangerous than others for which the military offers special incentive pay) of \$300. What is her total income from the military for tax credit purposes?

$$\mathbf{\$2,200 \times 12 = \$26,400}$$

Note: Only hostile fire pay is excluded from the types of military allowances, incentives, bonuses, and special pay that are available to service personnel.

HUD Says Student Financial Assistance Income is...

The Section 8-specific student assistance income rule was removed in 2026 appropriations bills. The HOTMA rule now applies to affordable housing families.

HOTMA Update 2024! Before HOTMA, for families not receiving Section 8 assistance, any scholarships or grants were excluded as income while assistance income was counted for Section 8 recipients. HOTMA introduced a new way to calculate student assistance income. However, language in HUD annual appropriations bills for several years presented a different rule for Section 8 recipients. The appropriations language changed in 2026, and now the new HOTMA student assistance rules apply to every other family.

HOME and NHTF. HOTMA Update 2024! For HOME units (with or without LIHTC funding), the same student financial assistance rules apply as the LIHTC.

Student Financial Assistance [HOTMA]

Assistance from section 479B of the Higher Education Act of 1965 (HEA) is excluded from a family's income. Note that assistance from the HEA may be partially counted as student assistance for Section 8 assistance recipients while certain HUD appropriations language exists (see above).

Below is a list of HEA Title IV programs. There may be additional sub-programs:

Grants to Students in Attendance at Institutions of Higher Education

- Federal Pell Grants
- Federal early outreach and student services programs
 - Federal TRIO Programs
 - Gaining Early Awareness and Readiness for Undergraduate Programs
 - Model Program Community Partnership and Counseling Grants
 - National Student Savings Demonstration Program
- Federal supplemental educational opportunity grants
- Leveraging Educational Assistance Partnership program
- Special programs for students whose families are engaged in migrant and seasonal farmwork
- Robert C. Byrd Honors Scholarship Program
- Childcare access means parents in school
- TEACH Grants
- Scholarships for veteran's dependents

Federal Family Education Loan Programs

Federal Work-Study Programs

William D. Ford Federal Direct Loan Program

Federal Perkins Loans

Higher Education Relief Opportunities for Students

Note that the following was added effective July 1, 2024

Section 134 of the Workforce Innovation and Opportunity Act (WIOA).

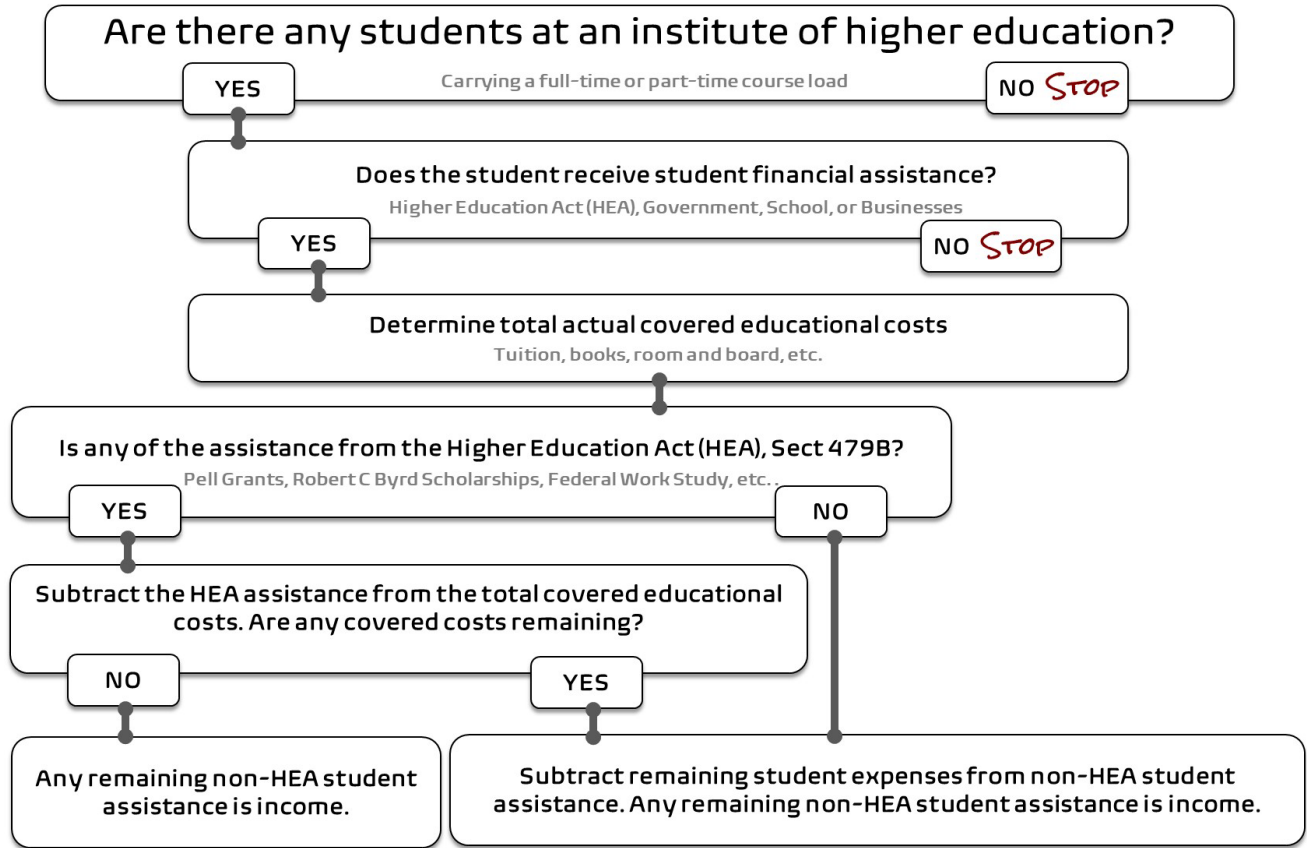
This includes income earned in employment and training programs including workforce investment activities for adults and workers dislocated as a result of permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster that results in mass job dislocation, to assist such adults or workers in obtaining reemployment as soon as possible.

Other non-HEA student assistance for purposes of the HOTMA student assistance rule may come from the Federal government, a State, Tribe, or local government, a private nonprofit foundation, a business, or an institution of higher education. It may be paid directly to the student or the educational institution on the student's behalf. Student financial assistance paid to the student must be verified with the entity responsible for the assistance. **Student assistance does NOT include** financial support provided to the student in the form of a fee for services performed (such as any work-study or teaching fellowship that is not from the HEA of 1965) which is counted as income. It also does not include gifts, including gifts from private sources such as family or friends. **Note that assistance from private sources is counted as student assistance for Section 8 assistance recipients while certain HUD appropriations language exists (see above).**

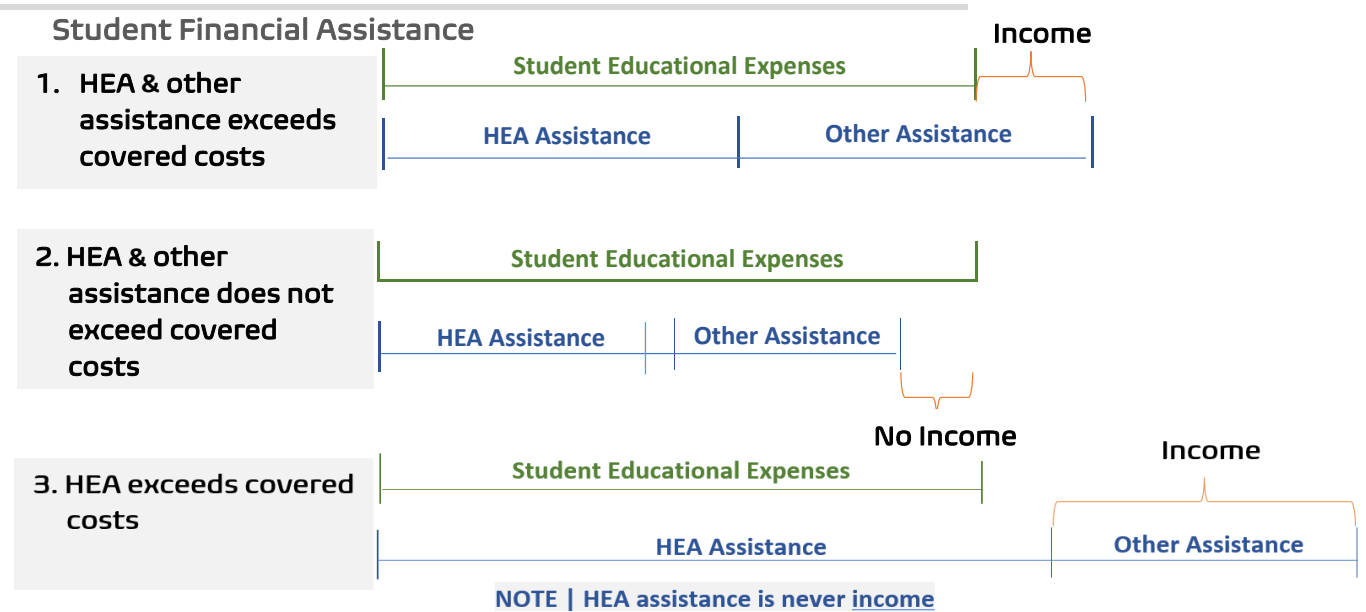
Non-HEA student assistance is excluded to the extent that it covers tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education. It is counted as income if it exceeds these costs.

Important note: although HEA assistance is not counted as income, it is subtracted to covered student expenses FIRST to determine if any remaining assistance exceeds the remainder of the covered costs. If there is an excess, the remaining student assistance is income. See charts on following page for how HEA and other assistance interact and the order that they are subtracted from covered student expenses.

Flow Chart | Student Financial Assistance as Income



Charts



Example**Student Assistance | Education Costs Exceeds Assistance [Student Assistance Chart type 2]**

A student pays for school in the following ways.

A Pell Grant	\$ 10,000
A scholarship from a local business	\$ 6,000
Parents outside the family Paid in semester installments	\$ 20,000
Total covered education costs	\$29,000.

Family income is: \$ 0 student assistance & gift income of \$20,000

Student costs exceed assistance, but the gift income is counted.

Example**Student Assistance | HEA Assistance Exceeds Expenses [Student Assistance Chart type 3]**

A student has the following assistance.

A Pell Grant	\$12,000
A scholarship from a local business	\$ 6,000
Covered education costs	\$10,500

\$6,000 of the scholarship is counted as income.

As the HEA Pell assistance covers the entire covered costs, the entire scholarship is income.

Example**Student Assistance | Expenses Exceed HEA Assistance [Student Assistance Chart type 1]**

A student has these forms of student financial assistance.

A Pell Grant	\$12,000
A scholarship from a local business	\$ 6,000
Covered education costs	\$15,000.

\$3,000 of the scholarship is counted as income.

The HEA Pell assistance and \$3,000 of the scholarship cover the expenses. The remaining \$3,000 is income.

Reminder: as stated earlier in this chapter, when a Housing Choice Voucher holder has their income verified by the PHA, this only serves to verify student financial assistance **income**. PHA verification,

however, does not address LIHTC or HOME student *eligibility*. Separate student eligibility verification must still be obtained.

Income from Assets

HOTMA Update 2024! How assets and asset income are treated has changed in many ways with HOTMA.

There are three types of assets under HOTMA, as shown in the chart below.

Type of Asset	How value is treated	How any income is treated
1. Necessary Personal Property [NPP]	Excluded	Excluded
2. Non-necessary Personal Property (NNPP)		
- If all NNPP totals the annual asset threshold or less	Excluded	Included
- If all NNPP exceeds the annual asset threshold	Included	Included
3. Real Property	Included	Included

Unlike some other government programs, the LIHTC, HOME, and NHTF programs do not set a limit on the value of assets a person can own. Eligibility is only affected by how much *income* a family receives from its assets.

Assets are “Items of value that may be turned into cash.”

An asset has a “market” value and a “total net” or “cash” value.

- The market value is the amount another person would pay to acquire the asset.
- The total net value is the market value less costs to convert to cash.

Necessary vs. Non-Necessary Personal Property

Necessary items of personal property are part of normal life and the use of an apartment. Non-necessary personal property includes financial accounts and luxury items or investments. Determining what is necessary under this rule depends heavily on the use. For instance, a vehicle for daily transport to jobs, school, and appointments is considered *necessary* personal property. On the other hand, vehicles that are recreational (such as RVs or ATVs) or investments (an antique car) are non-necessary.

Examples of necessary and non-necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
<ul style="list-style-type: none"> • 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) 	<ul style="list-style-type: none"> • 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.

NOTE: Actual Income from an asset where there is an interest rate is based on the **market** value. Total net value is used for several asset rule thresholds (as discussed later in this chapter).

If the value of net family assets exceeds the annual asset threshold (\$50,000, as adjusted) and the actual returns from a given asset cannot be calculated, imputed returns on the asset are based on the current savings rate, as determined by HUD yearly.

When relying on statements or other documentation supplied by the family it is important to ensure that the documents provide all necessary information needed to determine both the market and cash value of the asset.

Assets Owned Jointly

If more than one person owns an asset, its value may be pro-rated based on the percentage of ownership. For example, if verification indicates that an asset is jointly owned by two individuals, one who does not live in the unit, typically the full value is counted to the resident of the unit, unless pro-rated ownership of the asset can be verified.

Assets jointly held are excluded if they are inaccessible or cannot be disposed of without the consent of another owner who refuses to comply (such as in cases of domestic violence, property tied up in litigation, or inherited property in dispute).

The above is important to document. Just because a family member has their name on an account does not mean that they truly “own” it. For example, adult children may be on their parent’s checking account for survivorship purposes. To help establish who owns such assets, gather documentation to establish answers to the following questions.

- Who contributed to the asset?
- Who receives the income, if any, from the asset?
- Who pays taxes on the income received?

Example
Jointly held assets

Nick and his spouse, Erin, jointly own a piece of real estate with a value of \$80,000. Nick applies to live at Marble Acres Estates. During the application process, the manager determines that Erin is permanently confined to a nursing home and that Nick has decided not to include Erin as part of the family. Nick cannot provide proof of pro-rated ownership or that he cannot sell the asset without Erin’s permission. What amount should the manager count for the real estate?

\$80,000

Two people jointly own this asset. Without further proof of more specific prorated ownership, the full asset value is counted to the family.

Asset Exclusions... [The 11 Exclusions]

Since HOTMA, HUD rules focus on assets that are excluded. If not on the list of exclusions, an asset is counted. The list of asset exclusions is found in HUD regulation 24 CFR § 5.603, *definition “Net Family Assets.”*

Below is the list of assets that are excluded from the calculation of net family assets:

Note | The asset type unchanged by HOTMA is indicated in this font.

- (1) The value of **necessary items of personal property**.
- (2) The combined value of all **non-necessary items of personal property** if the combined total value does not exceed \$50,000 (adjusted for inflation based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)).

Note | In the HOTMA Joint Implementation Notice 2023-10, Table F1, HUD has provided examples of the difference between “necessary” and “non-necessary” items of personal property from [1] & [2] above. These are listed later in this chapter.

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

- (4) The value of *real property that the family does not have the effective legal authority to sell* in the jurisdiction in which the property is located.
- (5) Any *amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty* owed to a family member arising out of law, *that resulted in a family member being a person with a disability*.
- (6) The value of any *Coverdell education savings account* under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under *section 529* of such Code, the value of any *Achieving a Better Life Experience (ABLE) account* authorized under Section 529A of such Code, and the *value of any “baby bond” account* created, authorized, or funded by Federal, State, or local government.

Note | According to HUD, baby bonds are “money held in trust by the government for children until they are adults.” These “are being authorized in various States and localities in an effort to combat the wealth gap and address systemic poverty.”

- (7) *Interests in Indian trust land.*
- (8) Equity in a manufactured home where the family receives assistance under 24 CFR part 982.
- (9) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982.

Note | The above two provisions relate to Housing Choice Vouchers that assist manufactured and other homeowners.

- (10) Family Self-Sufficiency Accounts.

Note | FSS is a program that enables HUD-assisted families to increase their earned income and reduce dependency on welfare assistance and rental subsidies. Goals are set that a family must work toward to graduate from the program. An interest-bearing escrow account is established by the PHA for each participating family. Any increases in the family’s rent as a result of increased earned income during the family’s participation in the program result in a credit to the family’s escrow account. Once a family graduates from the program, they may access the escrow and use it for any purpose.

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

Note | The HOTMA Joint Implementation Notice 2023-10 F.4.e [as updated in February 2024] instructs us to subtract the value of any tax return that a family has received in the last 12 months from total net assets.

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

HUD Says Cash, Checking & Savings...

“Cash held in savings and checking accounts, safe deposit boxes, debit cards, homes, etc.”

Bank Accounts

For savings and checking accounts, the current balance is used to determine cash value.

Debit Cards

In 2013 the Social Security Administration announced that almost all SS and SSI recipients will either have their benefits directly deposited into their bank account or will receive a “Direct Express Debit Card.” HUD issued guidance on how to handle these cards, but the direction provided relates to ALL accounts where debit cards are the only evidence of an account (including employment, state welfare cash benefits and unemployment benefits distributed on a debit card).

The balance of the debit card is considered an asset. It is to be verified, consistent with existing bank account verification requirements.

The balance can be obtained from:

- An ATM
- Through online account services
- Paper statements

The verification document must identify the account and the account holder. If the total net family non-necessary personal property does not exceed the annual asset threshold (\$50,000, as adjusted), no value will be assigned to any of the non-necessary personal property assets, but any actual income will be added to family income (see the section below on imputing asset income for further details).

If the total net value of all assets exceeds the annual asset threshold, any assets for which income cannot be determined will have income imputed at the current HUD Passbook Rate. The rate can be found in an annual HUD Notice and on the HUD website.

Example

Checking and savings

A family owns a checking account that has a current balance of \$450 and a 6-month average balance of \$1,200. They also own a savings account that has a 6-month average of \$600 and a current balance of \$120. Finally, they own a debit card with a current balance of \$200. If these are the family’s only assets, what is the total value of the accounts?

$$\mathbf{\$450 + \$120 + \$200 = \$770}$$

HUD Says Trusts Under Control of the Family...

“Include the cash value of any trust that is under control” of the family.

Assets may be put into a trust by a person or persons for another person or persons with established terms on how the assets are handled now and in the future. If a family member has created a trust or is the beneficiary of a trust, it may be an asset to them if they have access to a balance. Even if not accessible, the trust may still generate income to the creator or to the beneficiary.

Each trust is different, so in each case it will be important to secure the trust documents or information completed by the administrator of the trust, to establish whether your family members have any access to the trust balance (thus making it an asset) and whether they receive any income from it.

When the creator of a non-revocable trust establishes the trust, it is no longer accessible to them or anyone. It is not a current asset. It is also not considered an asset disposed of for less than fair market value if established to benefit a member of the family in the unit. See the sections below in this chapter on assets disposed of and imputing asset income for further details. If a trust is established that is revocable, it is accessible to someone, but the person(s) in control may not be the beneficiary family. It is who controls the revocable asset, not the fact that it is revocable, that determines if it is an asset to a family.

When an asset is ***under the control*** of the family, they can access the balance and make withdrawals. The trust is counted as an asset and Income is counted as it is generated, like any other asset. Any withdrawals are not counted as income. When a trust is ***outside the control*** of the family, it is not an asset. Any distributions the family receive are income except that 1) any distributions from the principal balance of the trust and 2) any amount distributed to pay the medical expenses of a minor in the family are excluded. **Note:** since HOTMA, all trusts are handled using the above rules, including special needs trusts for persons with disabilities.

Definitions

Trust terminology

When reading trust documents or asking questions of a trust administrator, the following terms will be useful in establishing how to value and count income for the trust:

Revocable

A family has access to the trust and can cash it in or change the terms. The opposite is a *non-revocable* or *irrevocable* trust, which cannot be changed and are generally not accessible to a family.

Creator or grantor

Original owner of the assets that were put into the trust.

Beneficiary

The person that the trust is set up to benefit.

Example**Trust | The Applicant/Tenant is the Trust Beneficiary**

Diego is 19 and applies for a unit. He lists a trust as an asset on his application. The owner/manager secures the trust documentation. Diego is the beneficiary of the trust, which was created by his grandparents. It is worth \$579,000. According to the terms of the trust, he will not have access to any balance of the trust until he reaches age 30. He does receive \$550 a month *from the income generated by the trust* until age 30. What are the asset value and annual income that must be counted for this trust to Diego?

\$0 and \$6,600 (\$550 x 12)

As he has no access to the trust, it is not an asset.

The monthly payments from the trust income are counted.

Example**Trust | The Applicant/Tenant is the Trust Creator**

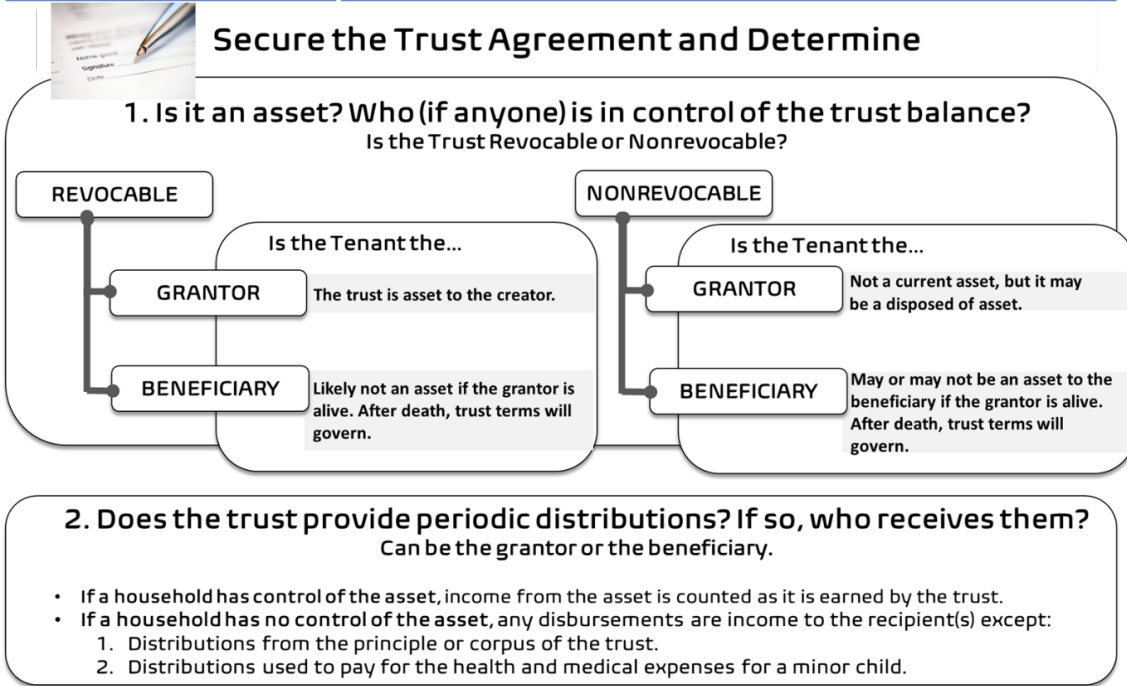
Miquel and Sara are Diego's (from above) grandparents, and they apply for a unit. They also list the trust as an asset on their application. The owner/manager secures the trust documentation. They created the trust 18 months before the anticipated move-in date. The trust is irrevocable and is worth \$579,000. They retained no access to any balance and are not getting any periodic amounts from the trust. What is the asset value that must be counted for Miquel and Sara?

\$579,000

The amount put into an inaccessible trust is counted as a disposed-of asset for 24 months, which continues 6 months after move-in.

Income will be pro-rated and imputed at the current passbook savings rate for 6 months after move-in (see the header on disposed of assets, below).

Flow Chart Trusts



HUD Says Equity in Real Property...

“Equity in rental property or other capital investments. Include the current fair market value less: (a) Any unpaid balance on any loans secured by the property and (b) Reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.)”

Determining the value and income from real estate that a family member owns can be a bit confusing. The chart shown below should help to keep the two straight.

Determining Real Estate:	
<u>Value</u>	<u>Annual Income</u>
Fair Market Value	Annual rental payments
- Outstanding mortgage principal	- Annual mortgage interest payments
- Cost to sell =	- Other allowed expenses* =
Cash Value	Annual Net Income

*: Taxes, insurance, maintenance (or other tax form schedule E costs)

In all cases where real estate is owned, the left side of the chart will apply. The right side of the chart only applies to families that are renting out real estate that they own. Be careful to note that many

expenses are only deductible if rental income is involved. For instance, maintenance costs cannot be deducted from the value of a home for a person who is letting it sit empty. That deduction is only available when determining net income when rent is being received.

HOTMA requires that the state legal definition of real property be used. In Iowa, this definition, as amended, can be found in Iowa Codified Law Chapter 427A.

Real estate value is often verified through a combination of document types. Mortgage statements, tax returns and property tax statements establishing tax assessment based on market value often yield information needed to determine the cash and market values of real estate. The most recent tax return with *Schedule E* (for rental property) or *Schedule F* (farmland) may also be used to establish net income from the property. For further information on the types of items to look for on tax schedules when calculating net income, compare the *Self-Employment* section earlier in this chapter that used the *Schedule C* to establish net income from a business.

Example
Real estate value and income

Darcy owns a home that she is renting out. She receives \$1,600 a month in rent (\$19,200 annually). The market value of the home is \$300,000. She has an outstanding mortgage balance of \$100,000 and monthly mortgage payments of \$1,962. Total interest payments on the mortgage will be \$9,500 in the coming year and principal payments will total \$14,044. If she were to sell the home, a broker determines the costs to be 10% of the market value, or \$30,000. The cost to maintain the home is \$1,004 a month (\$12,048 annually).

Determining Real Estate:			
Value		Annual Income	
\$ 300,000	Fair Market Value	\$ 19,200	Annual rental payments
- \$ 100,000	Outstanding mortgage principal	-\$ 9,500	Mortgage interest
- \$ 30,000	Cost to sell =	-\$ 12,048	Other allowed expenses
\$170,000	Cash Value	(\$2,348)	Annual loss
\$ 0 income is counted			



Question: are mobile homes considered real estate or personal property?

Answer: Per Iowa Code 435.2, property tax rules on manufactured and mobile homes distinguish a difference as to where the “home” is placed; if it is in a mobile home (or manufactured or modular home) park or community then it is not to be assessed or taxed as real estate. If it is outside of such a community, then it is taxed and assessed as real estate. The assumption is that the owner of the “home” must also own the land on which the “home” is affixed (either the home is placed on a foundation or is otherwise no longer “moveable”).

HUD Says Stocks, Bonds, etc....

“Stocks, Bonds, Treasury Bills, Certificates of Deposit, Mutual Funds, and Money Market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested.”

You will notice that this category contains quite a variety of assets. In each case, it is important to determine the market and cash values and the income. The following chart lists how these are established by asset type.

Stock Market Vehicles

(Individual stocks and mutual funds)

Market Value = # of shares owned X price per share

Cash Value = Market Value less costs to sell (commissions)

Actual Income = Annual Dividend X # of shares

CDs and Money Markets

Market Value = Current Balance

Cash Value = Market Value, less fees for withdrawal

Actual Income = Interest rate X Market Value

Savings Bonds

Market Value = Redeemable Value

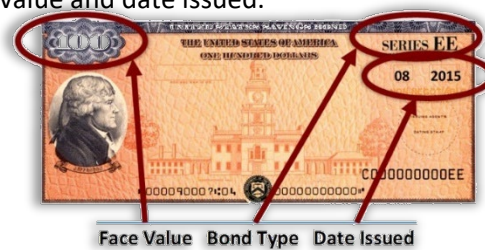
Cash Value = Redeemable Value

Actual Income = Interest rate X Market Value

A great tool to calculate bonds can be found at

www.savingsbonds.gov

You just need a record of the bonds, or the bond type (EE, for example), face value and date issued.



Example
Certificate of deposit

A certificate of deposit has a market value of \$6,140. The penalty for early withdrawal is \$540, resulting in a cash value of \$5,600. The interest rate is 3%. What is the anticipated annual income on the CD?

$$\text{(Market value) } \$6,140 \times 3\% (.03) = \$184.20$$

Example
Stocks

A resident owns 1,034 shares of stock in X-corp. The stock value is \$2.30 per share and the dividend paid is \$.50 semi-annually. What is the market value and income from the stock?

Market value:	1,034 x \$2.30	\$2,378.20
Income:	1,034 x \$.50 x 2	\$1,034.00

HUD Says IRA, 401(k)s, Keoghs...

The value of any account under a retirement plan recognized as such by the Internal Revenue Service are excluded, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals.” Any income these accounts earn is also excluded, until the owner of the account starts taking periodic withdrawals. These withdrawals are income.

HOTMA Update 2024! | Accounts recognized as retirement accounts by the IRS are no longer counted as assets at any point. Periodic distributions or withdrawals, once the person starts taking them, are income. This includes any Required Minimum Distribution (RMD) that a person is required to take upon reaching a certain age. Assets moved to a family member’s retirement account are not disposed of.

Types of retirement accounts recognized by the IRS according to IRS.gov:

- Individual Retirement Arrangements (IRAs)
- Roth IRAs
- 401(k) Plans
- SIMPLE 401(k) Plans
- 403(b) Plans
- SIMPLE IRA Plans (Savings Incentive Match Plans for Employees)
- SEP Plans (Simplified Employee Pension)
- SARSEP Plans (Salary Reduction Simplified Employee Pension)
- Payroll Deduction IRAs
- Profit-Sharing Plans
- Defined Benefit Plans
- Money Purchase Plans
- Employee Stock Ownership Plans (ESOPs)
- Governmental Plans
- 457 Plans
- Multiple Employer Plans

Example**Retirement Account | Periodic Withdrawals**

A 401(k) account that a retired person has full access to has a balance of \$420,000. The resident is withdrawing \$425 monthly from the account.

- 1) Is the account counted as an asset?
- 2) What is the annual income associated with the 401(k)?

1) No. 401(k)s are never assets.

As periodic withdrawals are being made, these are income.

2) \$ 5,100

\$ 425 monthly withdrawals x 12 months. This is listed on the periodic income portion of the TIC, not the asset section.

Example**Retirement Account | RMD**

An IRA account that a retired person has full access to has a balance of \$62,345. The resident has reached an age where they must withdraw a required minimum distribution (RMD) of \$2,619 annually from the account.

- 1) Is the account counted as an asset?
- 2) What is the annual income associated with the 401(k)?

1) No. IRA accounts are never assets.

As periodic withdrawals are being made in the form of the RMD, these are income.

2) \$ 2,619

This is listed on the income portion of the TIC, not the asset section.

HUD Says Whole Life Insurance...

“Cash value of life insurance policies available to the individual before death (e.g. the surrender value of a whole life policy or a universal life policy).”

This does not include *term* life insurance that carries no cash value to the individual before death. Also, be careful not to count the full benefit value of the policy if the person were to die. You want the value that a person could cash in now, which is generally much lower than the benefit value upon death.

Example**Whole v. Term Life Insurance**

Tom has two life insurance policies. One is term life, with a benefit of \$250,000. The second policy is whole life. It also has a death benefit of \$250,000. Its cash value is \$45,000 with an interest rate of 4%. What is the income that will be counted for his life insurance?

$$\mathbf{\$45,000 \times 4\% = \$1,800}$$

The term life insurance is not counted.

HUD Says Lump-sum and One-time Receipts...

“Inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, and personal or property losses), and any other amounts that are not intended as periodic payments.”

These assets are usually verified when they are deposited into another asset (for instance a checking or savings account). Generally, the lump sum is not an asset itself unless it is still an uncashed check. Be careful not to double-count the lump sum where it has been deposited into another account.

If a lump-sum or one-time receipt of an asset occurs and the full amount is not distributed into another verifiable asset, it is important to determine what was done with the asset to ensure that it is not an asset disposed of for less than fair market value (see below for further on that topic). However, amounts used to pay for living expenses or to purchase personal property for the family are allowable and only the remaining value is counted as an asset.

Example

Lump sum one time receipt

A month before moving in, George gets a one-time insurance settlement for \$23,000. The money is put into his savings account (his only asset). Subsequently, the balance of the savings account is verified to be \$27,320. What is the total asset value for the family?

\$27,320

HUD Says Mortgage, Deeds of Trust...

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

Also known as a “contract for deed”, this is a seller-financed mortgage. A family member may be selling real estate on such an arrangement. To verify this asset, an amortization (loan payment) schedule is needed for the mortgage. This will break out each payment, and how much of it is interest and how much is principal. The cash value and market values are the principal balance on the loan at the effective date of the certification. The income is the interest payments that will be received for 12 months from the certification effective date.

Amortization Example

Marvin Finkley is going to move in on February 15th, 2014. He is selling land on a deed of trust reflected in the below amortization schedule.

1. Circle the value of the asset
2. Circle the amounts to be added to determine income from this asset.

Enter Loan Information in Light Blue Cells Below		Loan Summary	
Name of Loan And/Or Lender	Bailout Bank Inc.	Scheduled Payment Amount (Per Period)	\$1,070.88
Face Value of Loan (Original Amount)	\$86,000.00	Scheduled Number of Payments	120
Annual Interest Rate	8.60%	Actual Number of Payments*	120
Loan Period in Years	10	Loan Payoff Date	10/1/2023
Number of Payments Per Year	12	Total Amount of Extra Payments	\$0.00
Loan Commencement Date	10/1/2013	Total Interest Paid	\$42,505.83
Extra Payment Per Period (If Any)	\$0.00		

Amortization Table								
Payment Number	Payment Date	Beginning Balance	Schedule d Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance
1	11/1/2013	\$86,000.00	\$1,070.88	\$0.00	\$1,070.88	\$454.55	\$616.33	\$85,545.45
2	12/1/2013	\$85,545.45	\$1,070.88	\$0.00	\$1,070.88	\$457.81	\$613.08	\$85,087.65
3	1/1/2014	\$85,087.65	\$1,070.88	\$0.00	\$1,070.88	\$461.09	\$609.79	\$84,626.56
4	2/1/2014	\$84,626.56	\$1,070.88	\$0.00	\$1,070.88	\$464.39	\$606.49	\$84,162.17
5	3/1/2014	\$84,162.17	\$1,070.88	\$0.00	\$1,070.88	\$467.71	\$603.17	\$83,694.45
6	4/1/2014	\$83,694.45	\$1,070.88	\$0.00	\$1,070.88	\$471.05	\$599.81	\$83,223.37
7	5/1/2014	\$83,223.37	\$1,070.88	\$0.00	\$1,070.88	\$474.41	\$596.43	\$82,748.93
8	6/1/2014	\$82,748.93	\$1,070.88	\$0.00	\$1,070.88	\$477.79	\$593.03	\$82,271.08
9	7/1/2014	\$82,271.08	\$1,070.88	\$0.00	\$1,070.88	\$481.19	\$589.61	\$81,789.81
10	8/1/2014	\$81,789.81	\$1,070.88	\$0.00	\$1,070.88	\$484.61	\$586.16	\$81,305.09
11	9/1/2014	\$81,305.09	\$1,070.88	\$0.00	\$1,070.88	\$488.05	\$582.69	\$80,816.00
12	10/1/2014	\$80,816.00	\$1,070.88	\$0.00	\$1,070.88	\$491.51	\$579.19	\$80,322.49
13	11/1/2014	\$80,322.49	\$1,070.88	\$0.00	\$1,070.88	\$495.00	\$575.66	\$79,829.96
14	12/1/2014	\$79,829.96	\$1,070.88	\$0.00	\$1,070.88	\$498.51	\$572.11	\$79,331.21
15	1/1/2015	\$79,331.21	\$1,070.88	\$0.00	\$1,070.88	\$502.04	\$568.54	\$78,828.87
16	2/1/2015	\$78,828.87	\$1,070.88	\$0.00	\$1,070.88	\$505.59	\$564.94	\$78,322.93
17	3/1/2015	\$78,322.93	\$1,070.88	\$0.00	\$1,070.88	\$509.17	\$561.31	\$77,813.36
18	4/1/2015	\$77,813.36	\$1,070.88	\$0.00	\$1,070.88	\$512.77	\$557.66	\$77,300.14

Asset
Balance as of the certification date

Income
Interest payments for 12 months

The Annual Asset Threshold

When calculating assets, there are three rules affected by the annual asset threshold (\$50,000, as adjusted each year for inflation). The first two are based on **total net assets**. The last is limited to the total net value of **non-necessary personal property** (NNPP). These thresholds are:

1. When self-certification of assets is allowed (based on total net assets)
2. When asset income must be imputed (based on total net assets)
3. When non-necessary personal property is excluded (based on total net non-necessary personal property)

Imputing Asset Income

HOTMA Update 2024! Residents in affordable housing with a substantial amount of assets may have some assets that cannot have income calculated. A piece of real property that is not being rented, for instance, does not have income that can otherwise be assigned.

If the total **net (cash)** value of a family’s assets exceeds the annual threshold (\$50,000, as adjusted) imputed income must be calculated for assets that cannot otherwise have income calculated using the current HUD passbook rate. This rate is based on the recent average FDIC passbook interest rate for the

country. This amount will change annually. Imputed asset income is no longer done on total family assets, but rather just on individual assets. The imputed asset income is then added to the income for assets that can be determined to calculate total income from assets. An annual HUD Multi-family Notice issued before September 1 will establish the current passbook rate for the following year.

Three Steps to Asset Success | [Calculating Asset Value and Income for LIHTC, HOME, and NHTF Families](#)

Examine family self-certification of asset values and income collected during the application process.

Identify the three asset types listed:

1] Necessary personal property [NPP] 2] Non-necessary personal property [NNPP] 3] Real property.

Step 1 | [Address NPP & Excluded Assets](#)

Identify and **exclude any necessary personal property or excluded assets** listed by the family.

Step 2 | [Address NNPP](#)

Based on self-certification, determine **if the value of all net non-necessary personal property [NNPP] exceeds the annual asset threshold.**

If yes | List each asset's value and actual income on the TIC.

If no | List each NNPP asset as \$0 on the TIC but include the income for each. How to complete the TIC is subject to state policy. Most state TICs (including IFA's) only list total asset income when net family assets do not exceed the annual threshold and do not require itemized asset values.

Step 3 | [Address Real Property and Imputed Income](#)

Add the value of any real property to the NNPP (as counted in step 2) and determine if total net family assets exceed the annual asset threshold.

Note: If a **federal** tax refund or refundable credit was received in the last 12 months, subtract this amount from the value of net family assets **before** determining the total net family assets and apply the below.

If yes | Verify all asset values and income with 3rd-party documentation.

Impute income on non-financial account assets that have income that cannot otherwise be determined and add it to other asset income.

If no | Use self-certification to verify asset values and income if allowed by company policy. Do not impute asset income on any assets.

Example
Net Family Asset Income 1

A family discloses the following assets.

Asset	Market Value	Net Value	Annual Income
Cars for daily commutes	\$ 34,000	\$ 34,000	\$ 0
Checking (no interest rate)	\$ 120	\$ 120	\$ 0
Certificate of Deposit	\$ 5,320	\$ 3,912	\$ 113
Mutual Fund (no dividend)	\$ 1,212	\$ 998	\$ 0
Real Estate (leased out)	\$ 400,009	\$ 20,234	\$ 1,799
TOTAL	\$ 440,661	\$ 59,264	\$ 1,912

What income is counted for these assets? The applicable passbook savings rate was .4% and the annual asset threshold was \$50,000.

\$1,912

Step 1 | The cars are NPP and are removed from consideration. No other excluded assets are listed.

Step 2 | NNPP totals \$5,030 [\$120 checking + \$3,912 CD + \$998 mutual fund]

NNPP does not exceed \$50,000, so NNPP values are excluded, but any income (\$113 here) is counted.

Step 3 | The total net family assets total \$20,234 (see below).

Total net assets do not exceed the \$50,000 annual asset threshold that year, so no assets have income imputed and added to other income. All assets may be verified with self-certification.

How these assets and income are counted

Asset	Market Value	Net Value	Annual Income
Checking (no interest rate)	\$ 0	\$ 0	\$ 0
Certificate of Deposit	\$ 0	\$ 0	\$ 113
Mutual Fund	\$ 0	\$ 0	\$ 0
Real Estate	\$ 400,009	\$ 20,234	\$ 1,799
TOTAL	\$ 400,009	\$ 20,234	\$ 1,912

Example
Net Family Asset Income 2

A family has the following assets.

Asset	Market Value	Net Value	Annual Income
Checking (no interest)	\$ 620	\$ 620	\$ 0
Real Estate	\$ 290,123	(\$ 4,000) *	\$ 0
TOTAL	\$ 290,743	\$ 620	\$ 0

* The mortgage balance on the property exceeds the market value by \$4,000.

The applicable passbook savings rate was .45% and the annual asset threshold was \$51,600.

What income from assets will be used?

\$0

Since the total net value of assets does not exceed the annual asset threshold, actual income will be used.

Step 1 | No NPP or excluded assets are listed.

Step 2 | NNPP totals \$620 [\$620 checking]

NNPP do not exceed the annual asset threshold, so values are excluded, but any income is counted. In this case, there is no income.

Step 3 | Total net family assets is \$0 (see below).

Total net assets do not exceed the \$51,600 annual asset threshold, so no assets have asset income imputed. All assets may be verified with self-certification.

How these assets and income are counted

Asset	Market Value	Net Value	Annual Income
Checking (no interest)	\$ 0	\$ 0	\$ 0
Real Estate	\$ 290,123	\$ 0	\$ 0
TOTAL	\$ 290,123	\$ 0	\$ 0

Example
Tax Return and Assets

A family has a checking account with a current balance of \$900 and a certificate of deposit worth \$53,367. The checking account has 0% interest and the CD has 1%. Eleven months before the family had a tax return of \$3,100. The annual asset threshold that year was \$52,787.

What is the [1] value of total net family assets and [2] the income from assets? [3] Is imputing asset income necessary?

[1] \$50,267 [\$53,267 – tax return of \$3,100].

[2] \$533.67 [\$53,367 x 1%]

[3] No. While total net family assets exceed the annual asset threshold of \$52,787, an actual income can be calculated on both assets and imputing is not necessary.

Example
Net Family Asset Income 3

A family discloses the following assets.

Asset	Market Value	Net Value	Annual Income
Car for daily commutes	\$ 22,000	\$ 22,000	\$ 0
Checking (no interest rate)	\$ 240	\$ 240	\$ 0
Bonds	\$ 1,230	\$ 1,230	\$ 48
Real Estate (not leased out)	\$ 601,567	\$ 601,567	\$ 0
TOTAL	\$ 625,037	\$ 625,037	\$ 48

What income is counted for these assets? The applicable passbook savings rate was .4% and the annual asset threshold was \$50,000.

\$2,454.27

Step 1 | The car is NPP and is not considered. There are no other excluded assets listed.

Step 2 | NNPP totals \$1,470 [\$240 checking + \$1,230 CD]

NNPP does not exceed the \$50,000 threshold, so values are excluded, but any income (\$48 here) is counted.

Step 3 | Value of net family assets total \$601,567 (see below).

Total net assets exceed the annual asset threshold of \$50,000, so assets that cannot otherwise have income calculated have asset income imputed and added to other income. All assets are verified with 3rd-party documents.

How these assets and income are counted

Asset	Market Value	Net Value	Annual Income
Checking (no interest rate)	\$ 0	\$ 0	\$ 0.00
Bonds	\$ 0	\$ 0	\$ 48.00
Real Estate(not leased out)	\$601,567	\$601,567	\$ 2,406.27 (imputed income)
TOTAL	\$ 601,567	\$601,567	\$2,454.27

Example
Charitable Donations

Emily moved into a unit on 01/01/2024. She had made a charitable donation to a cancer foundation totaling \$340,000 on 06/01/2023.

- a) The value of the disposed of cash must be counted until when?
- b) Assuming a HUD Passbook Rate of .4%, what is the amount of imputed income that was included on their move-in certification?

- a) 06/01/2025.
- b) \$1,360 [$\$ 340,000 \times .4\% (.004)$]

Example
Imputing Income with Disposed Asset

Ryan and Amy moved into a unit on 08/01/2024. They had given a home to their son William on 01/01/2023. The home's cash value was \$210,000. The annual asset threshold was \$50,000.

- a) The owner/manager must count the value of the home as if they still own it until when?
- b) Assuming a HUD Passbook Rate of .4%, what is the amount of imputed income that should be included for the disposed of asset on their move-in certification?

- a) 01/01/2025.
- b) \$ 350.00 [$\$ 210,000 \times .4\% (.004) = \$840 \div 12 \times 5.$]

As the 24-month period ended during the first certification year, the imputed income was prorated for the five months (Aug-Dec) until the asset was no longer counted. Note: because the one asset alone has a net value that exceeds \$50,000, total net family assets also exceed the threshold and asset income will be imputed for all assets that cannot otherwise have income calculated.

Disposed of Assets

It is not the intent of HUD for people to give away their assets in order to qualify for affordable housing units. If a family member gives away assets for substantially less than they were worth, HUD rules require that the portion of the asset that was given away will still be included as a family asset for two years from the time the asset was given away or sold. This rule applies when the difference between the market value and the amount received was more than \$1,000. Assets lost to foreclosure, bankruptcy, divorce or separation settlements are not counted as disposed of assets. The disposed of asset value is the cash value of the asset, less the amounts received.

Example
Internet Fund Account

A family had a GoFundMe account set up on their behalf that they have access to. The fund raised \$23,257.45, which was counted at move-in. At their first recertification, it was determined that during the year they used \$19,455 to pay medical bills and the remainder of the money paid for a vacation.

- a) What is the value of the account at recertification?
- b) Is the \$23,257.45 income?

a) **\$0**

The family paid bills or otherwise spent the cash balance. They did not deliberately sell or give away the asset for less than fair market value.

b) **No. A one-time funding is not income, just an asset.**

Additional fact: During the initial certification, it was discovered that seven months after the \$23,257.45 fund was collected, another GoFundMe was set up to benefit the family, and they also had access to that. It raised \$13,418.00. How is the GoFundMe treated at move-in with this additional information?

The GoFundMe happened more than once in the year prior to move-in. It is not a one-time event and the total \$36,675.45 of both fundings is now anticipated sporadic income counted at move-in. Any unspent value of the funds prior to move-in are also counted as an asset.

Example
Disposed assets

Jane Doe sold a house worth \$89,000 to her daughter for \$10,000. Reasonable realtor and legal fees are determined to be \$1,800. What is the disposed of asset value?

$$\mathbf{\$89,000 - \$1,800 - \$10,000 = \$77,200}$$

Example
Disposed assets

John and Marty moved into a unit at Crystal Caves Townhomes on **01/01/15**. They had given their small farm to their sons on **12/01/14**. The farm's cash value was \$400,000.

The manager must count the value of the farm as if they still owned it until: **12/01/16**.

What is the amount of imputed income that was included on their move-in certification (using the 2015 HUD Passbook Rate of .06%)?

$$\$400,000 \times .06\% (.0006) = \$240$$

Mei and Hiro moved in a month later 01/01/15. They had made a charitable donation to their church totaling \$400,000 on **07/01/13**.

The manager must count the value of the disposed of cash as if they still owned it until: **07/01/15**.

What is the amount of imputed income that was included on their move-in certification (using the 2015 HUD Passbook Rate of .06%)?

$$\$400,000 \times .06\% (.0006) = \$240 \div 12 \times 6 = \$120$$

Note: Unlike the first example, the 24 month period ended during the first certification year, so the imputed income was prorated for the months until the asset is no longer counted.

Tenant Income Certification (TIC)

Once all family composition and income information has been gathered and verified, the information is encapsulated on the *Tenant Income Certification* (TIC). IFA has a TIC that is required for LIHTC, HOME, and NHTF units (with exceptions explained below for persons with subsidy from other programs). All family adults and the owner/manager must sign the TIC. Be sure to download the most current TIC form and instructions on the IFA website.

The TIC:

- Should be typed or completed in pen. Pencil is not acceptable. *If handwritten, it must be legible, or it will be returned for correction.*
- Should never be signed blank. The signature is how the manager and family attest that the information on the form is accurate. Signing a blank TIC is a form of fraud.
- Should always have the signature dated when it is signed. It must never be backdated to match the effective date in cases where the TIC is signed late.
- Any corrections that are necessary (such as math errors resulting in incorrect income totals) should be made by crossing out the incorrect information and adding the correct information. Whiteout does not show what correction was necessary and should never be used. Both the tenant and the manager must initial all changes on the TIC.
- Can reflect the past effective date where a late certification is being created retroactively. However, it must be signed using the current date and include a statement by the signature that the information was “true and accurate as of” the effective date.

Exceptions where the IFA TIC is not required

As explained earlier in this chapter, families receiving Housing Choice Voucher assistance may have their income verified by the PHA providing their voucher at initial move-in or recertification. The certification Family Report (form 50058) produced by the PHA can serve as both the verification of income and TIC during the recertification process only. Similarly, the 50059 certification form for HUD project-based rental assistance (PBRA) programs may be used. Finally, IFA will also allow the Rural Development (RD) TIC form 3560-8 to be used at initial move-in and recertification.

NOTE: The documents from RD and Section 8 must be accompanied by the proper verification of income documentation.

Chapter 4 – Other Rules

Recertification

Not all LIHTC projects require annual income recertification as detailed in the following pages. Projects with HOME or NHTF do have annual recertification requirements. If the project is required to perform an annual recertification of either its LIHTC, HOME, and/or NHTF families, they are to be processed by the anniversary date of the effective date of the most recent Tenant Income Certification. IFA allows an owner/manager to move effective dates to meet other program requirements or for other reasons. The process of recertification is like the initial verification process for new move-ins.

IFA Suggests

Notify residents 90-120 days before their recertification is due. This gives you plenty of time to deal with the issue if the family does not cooperate. In cases of extreme non-cooperation, tenancy can be terminated before federal noncompliance with recertification rules occurs.

LIHTC – 100% Projects

Since 2008, federal law considers income recertification at projects that are 100% LIHTC to be irrelevant as a project will always move in an income-qualified family into a vacant unit. For these projects, only student status needs to be verified annually by the anniversary of the effective date of the most recent certification. Although some state HFAs, investors or syndicators require a full income recertification on the first anniversary of move-in, IFA does not make this a requirement.

Deep Rent Skewed projects, even those that are 100% LIHTC, continue to be subject to full income recertification (see below).

NOTE: Owners/managers need to demonstrate due diligence when moving in all families to make sure that all available units are rented to qualified families. If an ineligible family is moved in and it cannot be demonstrated that due diligence measures were in place the Available Unit Rule is violated and an 8823 will be issued.

LIHTC – Mixed-Use Projects

Recertification at mixed-use projects ensures that a project maintains the appropriate applicable fraction for each building in the project. To comply with federal requirements, full recertification of income and student status must be conducted for each LIHTC family annually for mixed-use projects.

LIHTC – Mixed-Income Projects

At mixed-income 100% LIHTC projects, owners/managers must, at a minimum, recertify those units that are used to satisfy more restrictive state set-asides (for example, 30%, 40% and 50% units) to determine if they

IFA Terms

Mixed-use and mixed income

To differentiate types of LIHTC properties, IFA uses the following terms consistently in this manual in relation to tenant recertifications:

Mixed-use: a project with LIHTC, non-LIHTC (market) units and possibly commercial space.

Mixed-income: a 100% LIHTC project with state covenant set-asides at lower income limits than federally required or a Deep Rent Skewed Project.

continue to meet the state set-aside as determined during allocation.

In some cases, additional units might need to be rented at the state set-aside to replace units that are determined to be over-income in order to satisfy the state covenant. Check your LURA to ensure compliance with this requirement.

Since the election to Deep Rent Skew requires adjusting units to 40% when the AUR is triggered (see the AUR section below), full annual recertification of all low income units will also need to be conducted at Skewed projects.

HOME/NHTF Projects

Full third-party source documentation/verification of income is only required every 6th year of the period of affordability.

In other words, in the 1st, 6th, 12th and 18th year of the HOME period of affordability everyone who has lived in the project that is due for a recertification must be fully recertified using third-party verification or PHA, TBRA, or PBRA documents are acceptable. In the case of assets, source documents include self-certification of assets if total assets do not exceed the annual asset threshold (\$50,000, as adjusted).

Notice that the years to fully recertify are not specific to the length of individual family tenancy, but rather to project-specific years. If you are unsure of where your project is in its period of affordability, please contact your IFA Compliance Officer for assistance.

Example

Recertification at a HOME Project

Period of affordability starts 3/1/2016	3/1/2016 to 2/28/2017
The 1st year of the HOME period of affordability	
	3/1/2017 to 2/28/2018
The 2nd year of the HOME period of affordability	
	3/1/2018 to 2/28/2019
The 3rd year of the HOME period of affordability	
<input type="checkbox"/> 6/1/2018: Rosy moves into a HOME unit with full certification.	3/1/2019 to 2/29/2020
The 4th year of the HOME period of affordability	
<input type="checkbox"/> 6/1/2019: Rosy is recertified using self-certification.	3/1/2020 to 2/28/2021
The 5th year of the HOME period of affordability	
<input type="checkbox"/> 6/1/2020: Rosy is recertified using self-certification. <input type="checkbox"/> 6/1/2020: Betty moves into a HOME unit with full certification.	3/1/2021 to 2/28/2022
The 6th year of the HOME period of affordability	
<input type="checkbox"/> 6/1/2021: Rosy is recertified using full certification. <input type="checkbox"/> 6/1/2021: Betty is recertified using full certification.	

LIHTC/HOME Projects

When programs are combined, the most restrictive recertification cycle will apply. The primary factor in these cases will be if the project is simply 100% LIHTC, mixed-income, or mixed-use (see the “recertification” chart later in this chapter for further details).

Increases of Family Income after Move-In

LIHTC Available Unit Rule

The LIHTC program is designed to let families increase their income without penalty after they move in. However, owner/managers at projects that contain non-LIHTC units are under obligation to rent non-LIHTC units that become vacant to LIHTC families to replace units housing LIHTC families that are “over-income” when recertified. This is called the Available Unit Rule (AUR).

LIHTC – 100% Project

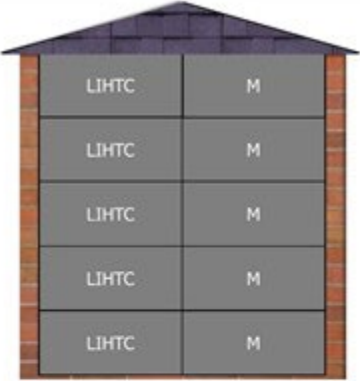
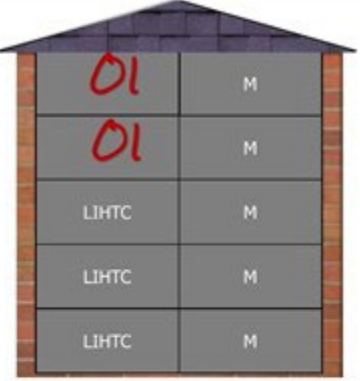
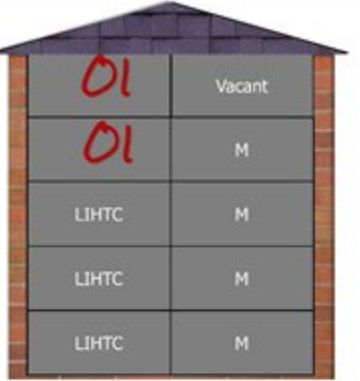
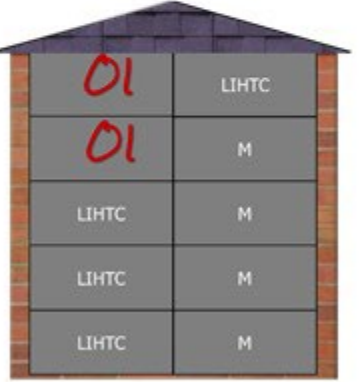
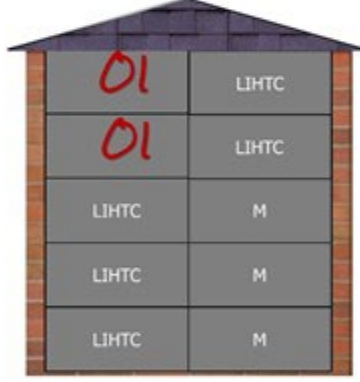
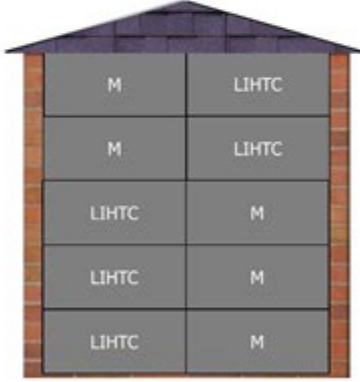
Although for 100% LIHTC projects (unless Deep Rent Skewed –see below), income recertification is not required by IFA, owners/managers must demonstrate due diligence when moving in new families to make sure that all units that become available are rented to qualified families. If an ineligible family is inadvertently moved in, the project must demonstrate due diligence measures are in place that are designed to avoid errors in general when processing files. Lack of due diligence may be indicated by several over-income move-ins, lack of basic verification processes or no dual reviews of tenant files prior to move-in. If the owner/manager cannot demonstrate that good due diligence practices are in place after having moved in an over-income family, they violate the Available Unit Rule which would result in the loss of any such units to noncompliance.

LIHTC – Mixed-Use Projects

“Mixed use” projects are those with any non-LIHTC (market rate) units and/or commercial space. These projects are subject to full income recertification of *all LIHTC units* each year. If a family’s income increases to over 140% of the current qualifying income limit when they are recertified, they become “over-income”. Credits can continue to be claimed on the unit as long as the next available unit (of equal or smaller size) **in the same building** is rented to a qualified family. The goal is to restore the applicable fraction, not counting the over-income family. Over-income units must remain rent restricted until the next available unit(s) are rented and all over-income LIHTC units are replaced. If the rule is violated, all comparable or smaller 140% units are no longer LIHTC for both the building’s applicable fraction & the project’s minimum set-asides. A Unit is no longer “available” if a legally binding agreement is in place prior to the effective date of a family being determined to be over 140%. For instance, if a lease is signed by a non-LIHTC family, but the family has not moved in, the unit is not “available” for purposes of the AUR. It is OK to move in the non-LIHTC family after the over-income recertification is effective. However, any non-LIHTC unit not legally spoken for is subject to the AUR. Once all over-income units are replaced with LIHTC units after following the AUR, the over-income families can be treated as non-LIHTC and can be charged market rents as soon as the lease allows.

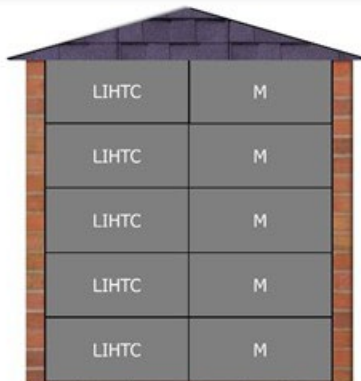
For an example of when the AUR is applied correctly, as well as one when it is violated, see below.

EXAMPLE:
AUR (correctly followed)

 <p>June: Applicable Fraction: $\frac{5}{10}$</p>	 <p>July: two households go over 140% at recertification AUR is triggered</p>	 <p>Aug: A market unit becomes available AUR is in effect</p>
 <p>Sept: An LIHTC household moves in LIHTC unit fraction: $\frac{4}{10}$ (excluding OI units) AUR is still in effect</p>	 <p>Oct: Another market unit comes vacant and is rented to an LIHTC household Applicable Fraction: $\frac{5}{10}$</p>	 <p>As applicable fraction is restored excluding OI units, OI units may be converted to market AUR is satisfied</p>

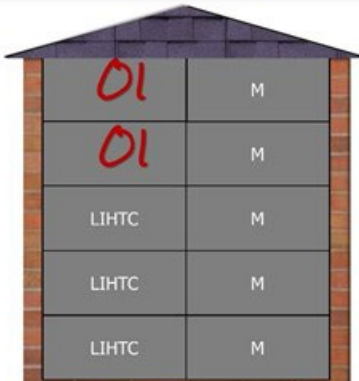
EXAMPLE:

AUR (violated)



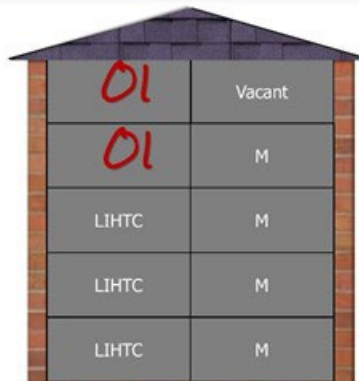
June:

Applicable Fraction: $\frac{5}{10}$



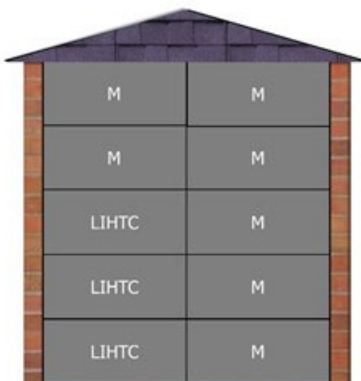
July: two households go over 140% at recertification

AUR is triggered



Aug: A market unit becomes available

AUR is in effect



Sept: A market household moves in

Applicable Fraction: $\frac{3}{10}$

AUR is violated

Note:

For buildings that have an applicable fraction based on square footage, the calculations may be more complex than here presented.

LIHTC – Average Income Test Projects

The Available Unit Rule (AUR) works differently at properties that elected the Average Income test on Form 8609. The **first** difference is the threshold at which the units are considered “over-income.” For the original MSAs, the threshold is reached when a family at recertification exceeds 140% of the current minimum set-aside income limits. Thus, it is 140% of the 50% limits for 20-50 projects or 60% for 40-60

projects. For Average Income projects, the threshold will be 140% of the HIGHER of the 60% limits or the designation for a unit. This means that those units designated between 20% and 60% will use 140% of the 60% limit while units designated at 70% will use 140% of the 70% limit and 80% units will use 140% of the 80% limit applicable to the unit.

The **second** adjustment to the AUR is the care that must be taken to re-designate and re-rent the next available unit at the correct set-aside to satisfy the rule. The action taken will depend on whether the vacant unit is already tax credit or not.

1. If a unit becomes vacant and is a **tax credit** unit while an over-income family is living in a comparable or larger unit in the building, the available vacant unit must be rented to a family at the designation the unit is currently designated at.
2. If a unit becomes vacant and is **market** while an over-income family is living in a comparable or larger unit in the building, the available vacant unit must be re-designated and rented to a family at the designation that the over-income unit is designated at. This replaces the over-income unit in your unit mix.
3. If two units at different set-asides are over-income at recertification and a vacant **market** unit becomes vacant, IFA requires that the vacant unit replaces the designation of the over-income unit that has the lowest designation.
4. If an Average Income Test property is also subject to State agency covenants, the State AUR will also apply (see discussion below)

LIHTC/HOME – State Agency Covenant Projects

As stated earlier in this chapter, units designated to satisfy the State agency covenant set-asides are subject to recertification, even at 100% LIHTC and Average Income Test properties. If any unit designated an agency covenant unit exceeds its designated set-aside at recertification, it is considered “over-income,” and the State Available Unit Rule (State AUR) is invoked. Unlike the federal AUR, the State AUR does not allow the LIHTC family to go up to the 140% limit before triggering the rule. The State AUR requires that the next **comparable** unit in the **project** must be rented to a family eligible at the set-aside that the “over-income” family originally met. For projects with HOME, it is important to know if your agency covenant units are fixed or floating (contact your Compliance Officer with questions). The goal is to restore the mix of units designated in the LURA or the Exhibit A as established during allocation.

Note: Although increases of income alone do not require adjustment to a unit’s Average Income designation, charging the rent appropriate to a State agency covenant after upward adjustment may require changing the unit’s federal Average Income LIHTC designation to a higher level, and the Average Income unit designation mix reassessed to assure an average of no more than 60%.

Example**Average Income Project with Agency Covenants – Invoking the State AUR**

The Aziz family moves into Pleasant Valley Apartments, a 10-unit project containing 40%, 60% and 80% AMI units. At move-in this family qualifies for a 40% unit which also fulfills an agency covenant requirement. At recertification, the family goes from 40% to 60% AMI. This invokes the State Available Unit Rule and requires that the next available unit in the project of comparable or larger size (whether LIHTC or market) be rented to a 40% family. AFTER a new 40% family is qualified and moves into the vacant unit, the Aziz family unit designation would change to a 60% AMI unit, and the higher rent imposed (as their lease allows). This will preserve the average income.

Example**Increase of Income in a Unit designated to satisfy an Agency Covenant**

Blue Skies Apartments is a property with 75 units in three buildings. The project's LURA requires that 15 of the units be rented to families at 30% AMI and the remaining units rented to families at 60% AMI.

Archer moves into a 30% unit. At his second recertification, he is \$200 above the 60% limit and thus exceeds the 30% set-aside for the first time since he moved in. As Archer is not above 140% of the minimum set-aside 60% limit, the federal Available Unit Rule is not triggered, however the state Available Unit Rule has been triggered.

When the next 60% unit that is comparable to Archer's unit becomes available in any building in the project, the unit is leased to a 30% family who pays the appropriate 30% rent. Once Archer's unit is replaced with the new 30% family, his unit is designated as a 60% unit and his rent adjusted when his lease allows.

Fair Market Rents (FMR)

An Owner may agree to the FMR limits as outlined in the project LURA that the rent for all the residential units shall not exceed 100% of the fair market rent as established by HUD. If a unit exceeds this limit, it is to be considered 'over-rent.' The overage must be refunded to the tenant. Documentation must be provided to IFA (copy of refund check and/or letter explaining the refund).

LIHTC – Deep Rent Skewed Projects

The Available Unit Rule works differently at Deep Rent Skewed Projects for several reasons.

- The definition of over-income is 170% of the current income limits rather than 140% as used in projects that are not skewed.
- The election to skew also has the effect of “fixing” LIHTC units in a project. If a project consists of 10 units, and units 1-5 are LIHTC and units 6-10 are non-LIHTC, the non-LIHTC units 6-10 never have to become LIHTC units, even if families are over-income at recertification. This is helpful where non-LIHTC rents are substantially higher than the LIHTC rents and ensures that the non-LIHTC unit rent revenue will remain consistent.

According to §42 (g)(2)(D) of the Code, once a family triggers the AUR at a Deep Rent Skewed project, ALL subsequent LIHTC units that become available must be rented to 40% families until the over 170% family moves out or their income decreases at future recertifications to at or below the 170% mark. This means that the owner may end up with more 40% units than originally planned for with less rent collected.

NOTE: The serious possibility of ending up with some or even most of the LIHTC units ending up at 40% rents should be carefully considered before making the irrevocable election to Deep Rent Skew, especially at 100% LIHTC projects where the benefit of consistent market rents is not a factor.

Example

Increase of Income in a Deep Rent Skewed (DRS) Project

Green Prairie Apartments is a 100% LIHTC property with 40 units. The project 8609 indicates that the DRS election was made which requires that 6 of the units are rented to eligible families at 40% AMI and the remaining units rented at the LIHTC minimum set-aside limit of 60% AMI

Marisol moves into a 40% DRS unit. At recertification, she is \$100 above 170% of the 60% limit and thus is considered an over-income family. Until Marisol moves out or her income drops below 170% of the 60% limit, each vacant unit must be filled with a 40% eligible family.

Marisol will not move out of her unit, and her income has not decreased at her next recertification. Over the course of the next 12 months four vacant 60% units have had to be rented to 40% families. The owner now has 13 units at 40% resulting in a significant loss of rental income.

NHTF Projects – Over-Income Rules

The NHTF over-income rule does not require recalculation of rent as it does for HOME, therefore adjusted income does not apply to NHTF units. When a family in an NHTF unit goes over the NHTF income limit at recertification, they are “over-income.” The required action is determined based on whether the project is fixed or floating NHTF. For a **floating NHTF project**, the next comparable non-NHTF unit must be rented to an NHTF family, and then the over-income NHTF family can be converted to non-NHTF. For a **fixed NHTF project**, the family will remain in temporary non-compliance until they

either go below the income limit at a future annual recertification, or they vacate and are replaced with an NHTF-eligible family.

HOME Projects – Over-Income Rules

When an owner/manager recertifies a HOME family's income, the family's income is considered "over-income" for the HOME Program when:

- The family occupies a Low HOME unit, and the family's income increases above the current very low (50% AMI) income limit but does not increase above the low-income (80% AMI) limit, or
- The family occupies a unit at an agency-designated income limit (an "Agency Covenant"), but does not increase above the low income (80% AMI) limit, or
- The tenant occupies a High or Low HOME unit, and the family income increases over the current HOME Low income (80%) limit for that family size.

When a HOME unit goes over income, the unit and property are in temporary noncompliance with HOME Program requirements. Temporary noncompliance is permissible if the owner/manager takes steps, at the next available opportunity, to restore the property's unit mix. These steps will vary, depending on whether the property has fixed or floating HOME units.

Note: the owner/manager cannot terminate or fail to renew a lease because a family is over-income, but the family's rent may be adjusted according to the HOME rules. Over-income families are protected by the terms of their leases; rent changes go into effect only when the lease permits.

The following chart gives instructions on what to do when a HOME unit goes over income. Note that there are different procedures for fixed and floating HOME units that go over the HUD low (80%) limit.

When Income Increases at HOME Recertification

1. If a Low-HOME family’s income increases above 50% AMI, but remains less than the HUD low (80%) limit:

For all HOME properties:

- The next comparable High-HOME unit must be rented to a very low income (50%) family and re-designated as a Low HOME Unit. When “replaced,” the rent may be increased to the High HOME rent.
- Non-HOME units are not affected.

2. If a Low- or High-HOME family’s income increases above the HUD low (80%) limit OR has become an ineligible student family:

Fixed HOME Properties

- As soon as the lease allows, rent must be raised to 30% of adjusted income, with NO cap. If the family is in violation of the student rule, the income of the parents must be included in the calculation.
- If it is a Low-HOME unit, the next High-HOME unit must be rented to a Low-HOME family.
Note: If the unit is also an LIHTC unit, the rent may be raised to the LIHTC max rent limit applicable based on the project’s LIHTC minimum set-aside and is not based on adjusted income.

Floating HOME Properties

- As soon as the lease allows, rent must be raised to the lower of 30% of adjusted income or market rent. If the family is in violation of the student rule, the income of the parents must be included in the calculation.
- The next available unit in the property must be rented to a HOME-eligible family to restore the original balance of Low/High-HOME set-asides required by the property’s HOME Contract.
- Once “replaced,” the over-income unit may be treated as non-HOME.
Note: If the unit is also an LIHTC unit, the rent may be raised to the LIHTC max rent limit applicable based on the project’s minimum set-aside and is not based on adjusted income.

Monthly rent for non-LIHTC HOME families who are over the 80% limit:

$$\text{Gross Income} - \text{Deductions} = \text{Adjusted Annual Income} \div 12 \times 30\%$$

Adjusted Income-Based Rent (for non-LIHTC over-income HOME families)

Once gross family income is calculated (as discussed in Chapter 3), 5 possible adjustments may be made before rent is determined.

1. Dependent Deduction

This is the dependent deduction (per dependent) annual allowance. A dependent is someone who is:

- Under 18 years of age
- A person with disabilities
- A full-time student of any age

A dependent can never be:

- Head, spouse, or co-head.
- Foster child, a child who is unborn or has not yet joined the family, or a live-in aide.

Documentation must be gathered to prove that an adult is a qualified full-time student if they are to be considered a dependent.

2. Childcare Expense

Anticipated unreimbursed expenses for the care of children (including foster children) under age 13 may be deducted if:

- The expenses enable a family member to work or go to school (part or full-time).
- No adult family member is available to provide care.
- The amount that allows the adult to work must not exceed the income received from the work. Expenses that allow schooling have no limit.

The money cannot be paid to a family member living in the unit and the expenses must reflect reasonable charges. There is no limit on reasonable costs that allow an adult to look for work or attend school. Only the dependent deduction will be allowed annually to enable a qualified adult FT Student (who is not a head, spouse, or co-head) to attend school because that is the amount counted as income. These expenses must be for a child living in the unit.

3. Disability Assistance Expense

Reasonable expenses for auxiliary apparatus or the care of an individual with disabilities in excess of three percent of annual income may be deducted from annual income if the expenses:

- Enable the individual with disabilities or another family member to work;
- Are not reimbursable from insurance or any other source; and
- Do not exceed the amount of income earned by the person who is able to work as a result of the expenses.

Along with other forms of documentation, to qualify for this deduction the family must identify the individual with a disability on the application.

4. Elderly Family Deduction

A single elderly family deduction applicable to the year is made from annual income for any “elderly family.” To be considered an elderly family, the head of household, spouse or sole member of a family who is a party to the lease must be 62 years of age or older, or an individual with a disability.

5. Health and Medical Expenses

To qualify for this allowance, the head, spouse, or co-head must be at least 62 or disabled. It includes the un-reimbursed health and medical expenses of ALL family members. These expenses support health or prevent or treat specific conditions. It includes all anticipated expenses during the 12 months following certification/recertification that are not reimbursed by an outside source (such as insurance).

The owner may use the ongoing expenses the family paid in the 12 months preceding the certification/recertification to estimate anticipated health and medical expenses.

Once the annual adjusted income is determined, dividing by 12 establishes monthly adjusted income. Monthly adjusted income is then multiplied by 30% to determine rent based on adjusted income. The worksheet below provides a useful tool for determining adjusted income. An owner/manager may develop their own tools.

Sample Format for Calculating Adjusted Income-Based Rent				
Family Member Name	Position in Family	Age	Total Income	Total Expenses

1. Enter Annual Gross Income.
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.
3. Multiply line 2 by the dependent deduction.
4. If a family member is enabled to work or further their education as a result of childcare expenses, enter the unreimbursed annual childcare expenses (reasonable childcare expenses for children under age 13).
5. If the family member was enabled to work as a result of the childcare expenses, enter that family member’s annual employment income.
6. If an amount is reported on Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.
7. If the family qualifies as an elderly and/or disabled family, enter the elderly family deduction.
8. Add Lines 3, 6, and 7.
9. *If this family has no unreimbursed disability assistance or health and medical expenses, subtract Line 8 from Line 1. This is the Adjusted Income for this family without these expenses.*
10. If Line 9 is applicable, divide Line 9 by twelve and multiply by 30%. This is rent based on adjusted income.

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

*****FILL IN LINES 11 THROUGH 20 IF THE FAMILY HAS*****
 UNREIMBURSED DISABILITY ASSISTANCE OR HEALTH AND MEDICAL EXPENSES

11. Enter unreimbursed annual disability assistance expenses.

11.

12. Enter the annual earned income of the family member enabled to work as a result of unreimbursed disability assistance expenses.

12.

13. Enter the lesser of Lines 11 or 12.

13.

14. Enter unreimbursed annual health and medical expenses.

14.

15. Add Lines 13 and 14.

15.

16. Multiply Line 1 by 0.1.

16.

17. Subtract Line 16 from Line 13. If negative, enter 0.

17.

18. Subtract Line 16 from Line 14. If negative, enter 0.

18.

19. Subtract Line 16 from Line 15. If negative, enter 0.

19.

20.

20.

a. If the family reported only unreimbursed disability expenses but no unreimbursed health and medical expenses, add Lines 8 and 17.

a.

b. If the family reported only unreimbursed health and medical expenses but no unreimbursed disability expenses, add Lines 8 and 18.

b.

c. If the family reported both unreimbursed disability expenses and unreimbursed health and medical expenses, add Lines 8 and 19.

c.

21. Subtract either Line 20a, 20b, or 20c from Line 1. This is the Adjusted Income for this family *with* these expenses.

21.

22. If Line 21 is applicable, divide Line 21 by twelve and multiply by 30%. This is rent based on adjusted income.

22.

Example A

Family Member Name	Position in Family	Age	Total Income	Total Expenses
Pearl Henderson	Head	76	\$13,500. The elderly family deduction that year was \$525.	Prescription medication – \$75/month; Medicare deduction – \$38.50/month
Marshall Jones	Grandson	19	No income; fulltime student. Dependent deduction that year was \$480.	Visits to physician – \$120/year

1. Enter Annual Gross Income.

1. **\$13,500**

2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.

2. **1**

3. Multiply line 2 by the dependent deduction.

3. **\$480**

4. If a family member is enabled to work or further their education as a result of childcare expenses, enter the unreimbursed annual childcare expenses (reasonable childcare expenses for children under age 13).

4. **N/A**

5. If the family member was enabled to work as a result of the childcare expenses, enter that family member’s annual employment income.

5. **N/A**

6. If an amount is reported on Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.

6. **\$0**

7. If the family qualifies as an elderly and/or disabled family, enter the elderly family deduction, as adjusted.

7. **\$525**

8. Add Lines 3, 6, and 7.

8. **\$1,005**

9. *If this family has no unreimbursed disability assistance or health and medical expenses, subtract Line 8 from Line 1. This is the Adjusted Income for this family without these expenses.*

9. **N/A**

10. If Line 9 is applicable, divide Line 9 by twelve and multiply by 30%. This is rent based on adjusted income.

10. **N/A**

*****FILL IN LINES 11 THROUGH 20 IF THE FAMILY HAS*****
UNREIMBURSED DISABILITY ASSISTANCE OR HEALTH AND MEDICAL EXPENSES

11. Enter unreimbursed annual disability assistance expenses.	11.	\$0	
12. Enter the annual <u>earned income</u> of the family member enabled to work as a result of unreimbursed disability assistance expenses.	12.	\$0	
13. Enter the lesser of Lines 11 or 12.	13.	\$0	
14. Enter unreimbursed annual health and medical expenses.	14.	\$1,482	
15. Add Lines 13 and 14.	15.	\$1,482	
16. Multiply Line 1 by 0.1.	16.	\$1,350	
17. Subtract Line 16 from Line 13. If negative, enter 0.	17.	\$0	
18. Subtract Line 16 from Line 14. If negative, enter 0.	18.	\$0	
19. Subtract Line 16 from Line 15. If negative, enter 0.	19.	\$132	
20.	20.		
a. If the family reported <u>only</u> unreimbursed disability expenses but <u>no</u> unreimbursed health and medical expenses, add Lines 8 and 17.	a.	N/A	
b. If the family reported <u>only</u> unreimbursed health and medical expenses but <u>no</u> unreimbursed disability expenses, add Lines 8 and 18.	b.	\$1,137	
c. If the family reported <u>both</u> unreimbursed disability expenses <u>and</u> unreimbursed health and medical expenses, add Lines 8 and 19.	c.	N/A	
21. Subtract either Line 20a, 20b, or 20c from Line 1. This is the Adjusted Income for this family <i>with</i> these expenses.	21.	\$12,363	
22. If Line 21 is applicable, divide Line 21 by twelve and multiply by 30%. This is rent based on adjusted income.	22.	\$309	

Example A Notes

Line 2	Marshall is a full-time student, so the family qualifies for one dependent deduction.
Line 4	There are no children under the age of 13.
Lines 5-9	The family qualifies as an elderly family and does have annual unreimbursed health and medical expenses.
Lines 11-15	The family does not have any annual unreimbursed disability assistance expenses (Lines 11-13) but does have annual unreimbursed health and medical expenses $[(\$75/\text{month} \times 12 \text{ months}/\text{year}) + (\$38.50/\text{month} \times 12 \text{ months}/\text{year}) + (\$120/\text{year}) = \$1,482]$. This amount is entered in Line 14.
Line 16	The family can only deduct those unreimbursed health and medical and disability assistance expenses that exceed 10 percent of annual family income.
Lines 17-19	The family deducts 10 percent of its annual income from the total amount of annual unreimbursed health and medical expenses (Line 19).
Lines 20a-20c	The family adds its health and medical expenses deduction (Line 19) to the other deductions (dependent deduction, elderly family deduction) that are summed in Line 8 and enters this total in Line 20b (families reporting health and medical expenses, but no disability assistance expenses).
Line 21	The amount entered in Line 20b (\$1,137) is subtracted from the family's annual income figure in Line 1 (\$13,500), giving it an adjusted income of \$12,363.

Example B

Family Member Name	Position in Family	Age	Total Income	Total Expenses
Clark Griswald	Head	40	\$27,900	Prescription medication – \$75/month
Rusty Griswald	Son	13	No income. Dependent deduction that year was \$480.	Childcare – \$50/week
Audrey Griswald	Daughter	11	No income	Childcare – \$50/week

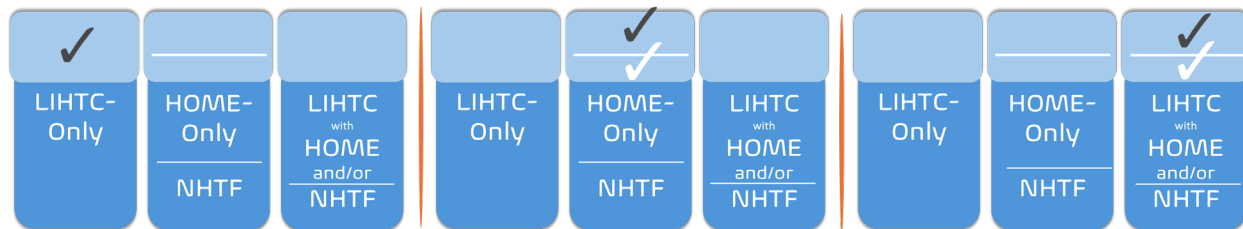
1. Enter Annual Gross Income.
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.
3. Multiply line 2 by the dependent deduction.
4. If a family member is enabled to work or further their education as a result of childcare expenses, enter the unreimbursed annual childcare expenses (reasonable childcare expenses for children under age 13).
5. If the family member was enabled to work as a result of the childcare expenses, enter that family member’s annual employment income.
6. If an amount is reported on Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.
7. If the family qualifies as an elderly and/or disabled family, enter \$525.
8. Add Lines 3, 6, and 7.
9. *If this family has no unreimbursed disability assistance or health and medical expenses, subtract Line 8 from Line 1. This is the Adjusted Income for this family without these expenses.*
10. If Line 9 is applicable, divide Line 9 by twelve and multiply by 30%. This is rent based on adjusted income.

1.	\$27,900
2.	2
3.	\$960
4.	\$2,600
5.	\$27,900
6.	\$2,600
7.	\$0
8.	\$3,560
9.	\$24,340
10.	\$609

Example B Notes

- Line 2 There are two children in the family under the age of 18.
- Lines 4-6 Although the family has childcare expenses for both children, only Audrey’s expenses are eligible for the childcare deduction because only she is under the age of 13. Audrey’s childcare expenses are less than Clark’s annual income and are reported as the family’s childcare expense deduction (Line 6).
- Line 7 The family does not qualify for either the elderly or disabled family deduction of \$525, as adjusted.
- Lines 8-9 The family’s eligible deductions are subtracted from Clark’s annual income. This is the family’s adjusted income (\$24,340). The rest of the chart is not applicable.

Recertification



For LIHTC-only properties:

100% LIHTC: Income recertification is not required. Student status must be verified annually.

100% LIHTC, mixed income: same as above, except that, at a minimum, lower set-aside unit that meets state covenants will need to be fully recertified annually to determine compliance with state covenants. Student Status must be verified annually.

Mixed-use: Full income and student status verification are required each year.

Increases of Income: families are “over-income” when they exceed 140% of the current income limits. The “Available Unit Rule” must be followed to restore the applicable fraction in the building.

For HOME-only properties and NHTF Units:

HOME and NHTF: Full third-party verification is required every 6th year of the period of affordability. Self-certification from the family is required for other years. Student status must be verified annually.

Mixed Income: At a minimum, lower set-aside unit that meets state covenants will need to be fully recertified annually to determine compliance with state covenants.

HOME Increases of income: families are “over-income” when they exceed the 80% “Low income” limit. Rent is calculated based on the family’s adjusted income and further actions are taken depending on if the unit is fixed or floating HOME to restore the mix of HOME units in the project required in the HOME Contract.

NHTF Increases of income: families are “over-income” when they exceed the NHTF “Extremely Low income” limit. Further actions are taken depending on if the unit is fixed or floating HOME to restore the mix of NHTF units in the project required in the NHTF Contract.

For LIHTC Properties with HOME and/or NHTF Units:

100% LIHTC: Full third-party verification is required every 6th year of the HOME or NHTF period of affordability. Self-certification from the family is required for other years. Student Status must be verified annually.

100% LIHTC, mixed-income: same as above, except that, at a minimum, lower set-aside unit that meets state covenants will need to be fully recertified annually to determine compliance with state covenants. Student Status must be verified annually.

Mixed-use: Full income and student status verification are required each year.

HOME/NHTF Increases of income: Families are “over-income” for HOME when they exceed the 80% “Low income” limit and the NHTF when they exceed the NHTF “Extremely Low income” limit. Rent is **NOT** calculated based on the family’s adjusted income, and High HOME or NHTF rents continue to apply. Further actions are taken depending on if the unit is fixed or floating HOME/NHTF to restore the mix of HOME/NHTF units required.

Families are not “over-income” for the LIHTC until they exceed 140% of the current income limits. The “Available Unit Rule” must be followed to restore the applicable fraction in the building.

LIHTC: Vacant Unit Rule

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

Additionally, the following guidelines apply to the VUR:

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

Voucher Holders

Applicants must not be denied solely because they have Section 8 Housing Choice Voucher assistance. However, owner/managers are not required to accept lower rents than they charge for other LIHTC families if the PHA providing the voucher will not pay the full rent. The owner/manager should also deny voucher-holding families who do not meet their tenant selection criteria as delineated in the project’s tenant selection plan.

Unit Transfers

LIHTC

A family that transfers from one unit to another within the same building does not need to re-qualify or be recertified. The two units that are involved in the transfer simply switch status if the family is moving to a non-LIHTC unit. For unit transfers occurring between buildings that are part of the same multi-building project (as defined by the 8609s line 8b), the same rule applies.

***Special note for first-year lease-ups:** A family cannot initially qualify and start tax credits for more than one unit at a time. As with all transfers, when they transfer, the unit they were in and the unit they go to switch status. This means that if they transfer from a unit that they initially qualified to a unit that has never been qualified for credits, the unit they move to is now qualified, but the unit they leave becomes non-qualified starting the date of transfer.*

A resident wanting to move to a building that is **not** part of the same 8609 8(b) multi-building project must qualify as a new low-income resident at the time of transfer through the recertification process.

From a tax credit standpoint, they are moving to another project, even if the buildings are part of the same development.

The only difference between transfers within a building and transfers between buildings is that a family that was over-income (140%) at their most recent recertification may only relocate within the same building. Therefore, management can rely on the most recent recertification of the family to establish that the family is below the 140% limit. For 100% projects not subject to income recertification, transfers are allowed between buildings in the project without income examination.

IFA does not require interim recertifications for residents who request a unit transfer. However, the date of the transfer must be clearly identified in the resident file. If the property is only LIHTC, the owner/manager may maintain the effective date of the move-in for the recertification cycle. The family may continue to be recertified on the anniversary of the original date it moved into the development. It is not required that the effective date be changed to the unit transfer date. This rule does not apply to properties with other funding such as HUD or Rural Development. Many other programs require adjustment to effective dates or interim certifications at transfer. IFA allows these other program rules to be applied at LIHTC projects that are combined with other federal housing programs.

For 100% LIHTC projects not subject to income recertification, student status verification continues to be due on the anniversary date of the original move-in after a transfer occurs.

HOME / NHTF

When a family transfers into a HOME or NHTF unit, the family must be fully certified (treated as a new move-in) to ensure that they meet the appropriate HOME or NHTF set-aside (Low or High HOME or NHTF unit). The effective date of future recertifications will be the date of the anniversary of the initial move-in to the project, not the date of transfer.

Nonprofit Owners of LIHTC Properties

According to LIHTC program rules, no less than 10% of all tax credits allocated each year by IFA must be awarded to qualified nonprofit organizations with an ownership interest in projects. Additionally, the qualified nonprofit organization must materially participate in both the development and operation of their project throughout the 15-year Compliance Period. Not all nonprofit organizations that own projects were allocated credits under the nonprofit set-aside. If a project is part of this set-aside, it will be indicated on IRS Form 8609, Line 6(f) or (g), depending on the year the Form was issued.

Although a nonprofit owner may partner with another for-profit developer or may engage a management company to oversee the daily management of the project, the nonprofit must still have an active and meaningful role in the running of the project. They may not simply consent to their for-profit partner or manager's decisions. The IRS suggests the following guidelines should be used in defining the concept of "Material Participation":

- Material participation is most likely to be established in an activity that constitutes the principal business/activity of the taxpayer.
- Involvement in the actual operations of the activity should occur. That is, the services provided must be integral to the operations of the activity. Simply consenting to someone else's decisions or periodic consultation with respect to general management decisions is not sufficient.
- Participation must be maintained throughout the year. Periodic consultation is not sufficient.
- Regular on-site presence at operations is indicative of material participation.

- Providing services as an independent contractor is not sufficient.

Owners of these projects are required by IFA to submit a *Qualified Nonprofit Certification* form annually as part of the owner certification process. The objective of this certification is to ascertain whether the nonprofit continues to materially participate in the operation of the project as required by the IRS.

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)

Casualty Loss

Unfortunately, natural, or man-made disasters or accidents sometimes damage or destroy LIHTC, HOME or NHTF units, buildings, or whole projects. Should this occur, it is the responsibility of the owner/manager to report casualty losses to IFA using the required *Notice of Building Casualty Loss or Damage Form* **within 30 days** of an incident that results in a unit or building going off-line, accompanied by the plan for reconstruction or replacement. Owners/Managers are responsible for updating IFA monthly until the project is fully restored and asked to submit completed work orders, third party invoices and photos.

For LIHTC projects, a casualty loss invokes no recapture if the unit or building is returned to good condition in a *timely fashion*. Good condition means habitable and suitable for occupancy. Generally, most casualty losses occur on a small scale, the project's credits are not at risk of recapture, and units are rarely out of service for an extended length of time.

For LIHTC projects facing major casualty loss issues resulting from a Presidentially declared major disaster, IRS Revenue Rulings 2014-49 (9% credit projects) and 2014-50 (4% credit projects) provide temporary relief from certain requirements of Section 42 of the IRS Code (the LIHTC Program). The Rulings also provide emergency housing relief for individuals who are displaced by a Major Disaster from their principal residences in certain Major Disaster Areas.

If a building's qualified basis is reduced due to a casualty loss, a building is not subject to recapture if restored within a reasonable period of time, but the building may not claim credits while out of service due to the casualty event. IFA will determine what is reasonable in the case of a Major Disaster, but the extension may not extend beyond the end of the 25th month following the close of the month of the Major Disaster declaration. For example, if a major disaster is declared in August 2018, the deadline for the restoration of qualified basis may extend no longer than September 2020.

Restoration of non-Presidentially declared disaster casualty losses are allowed to be completed within two years following the end of the tax year in which the casualty loss occurs. In most cases, this is a greater time period than the 25 months allowed for a Presidentially declared major disaster. For reference see IRC §42(h) (5) (B). Unlike major disaster losses, tax credits cannot be claimed during the restoration period during non-major disaster-related casualty losses.

IFA must report the loss and replacement of the units to the IRS. Once all units have been restored and/or all repairs have been made to exterior or common spaces and the units are available for occupancy, IFA will issue a corrected Form 8823 or State notice to show the units are back in compliance. If the units or repairs to exterior common spaces has not been completed IFA will issue an uncorrected 8823 to the IRS or a State notice.

Chapter 5 – LIHTC Acquisition/Rehab or Rehab Only

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

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

Generally, the day-to-day compliance operation of acquisition/rehab and rehab-only properties is the same as new construction, with some significant differences. This chapter discusses the key differences from new construction LIHTCs.



Placed in-Service Dates

As we discussed in Chapter 1, the placed in-service (PIS) date for a newly constructed building is the date that a building is deemed ready for its intended purpose – to house people. This is indicated most often by the issuance of a certificate of occupancy. Acquisition/rehab placed in-service dates, however, are a bit more complex. Generally, people are already living at the property, so a building is technically ready the day it is acquired by the new owner. Acquisition and rehab credits also receive separate placed in-service dates. These placed in-service dates are based on:

- **Acquisition:** *PIS is the date of purchase.* Acquisition credits may start as early as the date the building is acquired (placed in-service) but must start the same year as the rehab credits do. If rehab credits are placed in-service in a later year, the acquisition credits are *deferred*. An income test (the Safe Harbor rule) will need to be conducted for families at less than 100% LIHTC projects (see Chapter 1, *Deferral* for more information on the income test).
- **Rehab:** *PIS is based on an expenditure test.* The owner selects a time over a 24-month period when financial thresholds have been met. A sufficient eligible basis must have also been achieved for the planned rehab credits.

Certification Process

There are several different scenarios that may be present in Acquisition Rehab or Rehab-only projects; generally, the certification process remains the same.

- Market rate projects coming in for a first allocation of tax credits
- Existing LIHTC projects coming in for additional tax credits (called resyndication)
- Existing Multi-Family Housing projects that are HUD-funded, Section 8 Project-Based or RD projects coming in for a first allocation of tax credits

Completing Rehabilitation in the Year of Acquisition

Existing families may qualify an LIHTC unit on the date of acquisition. The IRS allows owner/managers up to 120 days before or after the date of acquisition to prove that these families qualify and to establish the unit's effective date as the date of acquisition.

If the owner has access to the residents before acquisition, any certification utilizing all required paperwork that was completed no more than 120 days prior to acquisition can also have an effective date as of acquisition. If the certification of a family that was in place as of acquisition is completed after the 120 days, the effective date is the date the last adult family member signs the TIC form. Certifying families quickly may result in being able to claim the maximum amount of credits possible for each unit.

Once a family is certified after acquisition it is considered a qualified LIHTC family and will not be considered over-income if the family's income increases in the future. If an owner/manager waits until later to certify the family, their income may have increased over the limits, and they will not be considered a qualified family as of the date of acquisition.

Once initial certifications are conducted at acquisition, no recertification is required as of the rehabilitation placed in-service date. The recertification cycle will be based on the initial effective date (date of acquisition for most). New move-ins after acquisition are certified prior to moving in, like any other new family, and have an effective date and recertification cycle as of their move-in date.

Revenue Procedure 2003-82 – The Safe Harbor Rule

When a building's rehabilitation is completed, the year following acquisition, the units occupied by a qualified family may begin to produce a tax credit in January of the year the owner completes the rehabilitation. January 1st is referred to as the "look-back date." The owner wants the existing residents certified as of January of the year they plan to complete the rehabilitation activities.

Revenue Procedure 2003-82 tells owners how to protect their tax credits without needing to replace outdated initial TICs. If a TIC was completed more than 120 days before the start of the credit period, the owner should test the resident's income by using the IFA Self-Certification of Income form certifying to any changes in their income since completing their initial TIC. The test should be completed during the 120 days prior to the start of the credit period. If the resident indicates a change in income, the owner asks for a copy of any documentation showing the change, E.g., a copy of a pay stub, benefit award letter, etc. If the resident's income has risen above 140 percent of their income limit, the owner implements the available unit rule.

Implementing Rev Proc 2003-82 is particularly important in mixed-income projects. In a 100 percent LIHTC project, the owner always rents the next available unit to an LIHTC-qualified resident regardless of what they find when they test a resident's income at the start of the credit period. No resident may be forced to vacate a unit due to an increase in income since completing their initial TIC. The safe harbor rule allows an owner to preserve their tax credits without forcing a resident to move. The IRS has said that a resident's income rising above 140 percent of the income limit is not considered good cause to either refuse to renew their lease or to evict them from their unit.

Existing Leases

For acquisition/rehabs, IFA does not require owner/managers to sign a new lease with an existing resident who has lived in the unit under a lease that had an initial term of at least 6 months.

Note: Acquisition/rehab or rehab-only projects can be complex, and IFA recommends that competent consultation should be sought to ensure that the rules are applied most effectively.

Transfers

Because of complex construction schedules, family transfers are often necessary at rehabs. The unit transfer rules found in Chapter 4 apply to acquisition/rehab as well as new construction projects. At times, an owner may elect to identify an unexpected combination of buildings as “projects” within a rehabbed development. Each building may be designated its own project, or some buildings may be combined into projects while excluding other buildings. It is very important to know what the 8609 8(b) multi-building election is going to be, along with what buildings are included in the project(s) in the rehabbed development, to ensure that it can be accurately determined if transfers between specific buildings in the development will require recertification or not.

Resyndication

After an existing LIHTC property has concluded its initial 15-year Compliance Period, there is an option for the owner to submit a new LIHTC application to IFA to start a new flow of tax credits. This is often referred to as “resyndication.” The resyndication of tax credits is used to purchase and finance the rehab of the existing LIHTC property.

One important feature of resyndication is how existing residents are treated. The IRS considers residents who were qualified under the first set of credits as protected (or “grandfathered in”) during the entire Extended Use Period of the first set of credits. According to the IRS qualified families in an existing LIHTC project that is being rehabbed with new tax credits continue to qualify for the next set of credits without re-certification.

The Average Income Test and Resyndication

When an existing LIHTC project is awarded new credits, the LURA requirements from the first set of tax credits are not extinguished but will be incorporated into the new LURA. In other words, the two LURAs will run concurrently, and the original LURA requirements end when the original LURA expires.

The original minimum set-aside is not replaced by the new one, therefore if an owner elects the Average Income Test with their new set of credits, they will only be able to qualify families below either the 50% or 60% AMI limits until the original LURA has expired. Electing to Income Average would allow the owner the flexibility, once the original LURA has expired, to use the higher 70% and 80% AMI limits in the future.

Warning: Only income qualification is automatic for past-qualified families. Be aware that many states, including Iowa, relax the student rules after the Compliance Period (see Chapter 7). If an owner thinks there is any chance of resyndication, the IRS student rules should continue to be applied to ensure family continued eligibility.

Tenant Files

Even though the IRS does not require previously qualified LIHTC families to be recertified, IFA requires that all existing LIHTC families are certified using the IFA-required forms in place at the time of acquisition. If existing families are over-income at the time of acquisition, the family does not invoke the Available Unit Rule (AUR) or the Unit Transfer Rule (UTR). This is done to ensure that all tenant files are complete and up to date with all current requirements at the time of acquisition.

IFA suggests that the owner/manager maintain the original file establishing eligibility at move-in to provide to the Compliance Officer during an audit if there are any questions or concerns. In many cases, projects have changed management companies and/or ownership and the original file is often missing or deficient. If this is the case, the certification done at acquisition along with any subsequent recertification showing that the family was below the current income limit at the time of acquisition will be sufficient. A uniform file order should be established to help keep tenant files audit ready.

Resyndication causes the site to establish a new placed in-service date as of the acquisition of the first building for purposes of the new credits. This may affect income and rent limits currently in use, as the resyndication starts a new income limit hold harmless point at the new placed in-service date. If the project has been holding harmless at a past year's levels, they will have to adjust to the current, lower, income and rent limits. Since HERA Special income limits only apply to projects that were placed in-service in 2008 or earlier, a resyndication will also eliminate this option for the new credits. Lower income limits may need to be applied to new move-ins after acquisition and rents may need to drop for the project (see Chapter 2 for further details on holding limits harmless and HERA special limits).

The new credits and accompanying covenants do not replace the original covenants found in the original LURA. BOTH must continue to be applied. During the allocation process for the new credits, IFA will ensure that the LURA requirements for both sets of credits are compatible.

Example

Resyndication and existing families

The Millers moved into unit 201 at Shady Pines in 2003. The project was constructed in 1995 and is in its Extended Use Period when awarded new credits during the 2017 allocation cycle.

The Millers are asked to certify using all current required forms being used by the project and IFA.

When recertified, the family was over-income when applying the 2019 MTSP limits currently in use.

Per the IRS, the family remains a qualified family, however the 2019 MTSP rents are lower than the HERA Special Limits that were being used prior to resyndication and the owner will be required to lower the tenant's rent at the time of recertification.

The Uniform Relocation Act (URA)

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

receiving federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

If the displacement of current residents is deemed allowable, some of the URA responsibilities toward displaced families include:

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

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

Because of the major implications of the URA, it is vital to refer to HUD URA guidance long before acquisition to help determine whether the URA covers a program in use at the project and what the implications might be.

Comparison Chart: New Construction v. Acq/Rehab Tax Credits

Rule	New construction	Acq/rehab
Date placed in-service (PIS)	Generally, the building is PIS when certificates of occupancy are received, and new residents can be moved in.	Acquisition: date of acquisition Rehab: Determined by IFA based on an expenditure test conducted during project implementation.
Effective dates of family certifications	When each family moves in. All paperwork must be completed no more than 120 days BEFORE move in.	For families in place at acquisition, the effective date is the acquisition date if the paperwork is completed within 120 days BEFORE or AFTER the acquisition date. New move-ins after acquisition are treated the same as for new construction.
Initial lease term	The initial lease term must be at least six months after move-in and initial qualification.	A new lease is not required to be executed with an existing resident at acquisition who has lived in the unit under a lease that was at least six months in duration.
IRS form 8609	There is one form for each Building	There is one form for acquisition credits and one for rehab credits for each Building. The two 8609s will have different amounts for eligible basis and qualified basis as well as for credit percentages. They will share the same applicable fraction, however.
Tax credit calculations	Each building has an eligible basis, an applicable fraction, and a credit percentage.	Each building has two eligible basis figures (one for acquisition costs and one for rehab costs). The credit percentage will be 4% for the acquisition credits and may be 4% or 9% for the rehab credits, depending on whether the rehab was financed with tax-exempt bonds or not. The applicable fraction is the same for both sets of credits.
Credit deferral	Credits may be claimed the year a building is PIS, or they may be deferred to the following year depending on if the building has met the planned LIHTC occupancy by the end of the year.	As with new construction, deferral may occur because buildings are not qualified by the end of the year the acquisition is PIS. However, they may also be deferred because a rehab is not PIS the same year as the building is acquired. In such cases, the option to defer for <i>both</i> acquisition and rehab credits begins with the year the <i>rehab</i> is PIS.
Building Identification Numbers (BINs)	The building will receive a new BIN.	For resyndication projects only: the original BINs will apply to any later credits.

Chapter 6 – Compliance Monitoring & Noncompliance

Based on tax Code, the IRS has defined specific issues of noncompliance that put tax credits in jeopardy. Owners may agree to additional obligations during the development process with IFA, but these are not Federal noncompliance. IFA monitors both types of noncompliance but only reports federal violations to the IRS on the IRS Form 8823. Though violations of state agency covenants do not constitute a risk to tax credits, IFA will still enforce compliance with all rules that the owner has agreed to. Among other measures, future allocations of credits or other funding available through IFA will be denied to owners of existing projects that do not comply with Federal and/or IFA requirements.

Example

Violation of state v. federal set aside limits

Project Minimum Set-Aside	40-60	MSA income limit: \$ 30,000
Additional state set-aside	50%	IFA set-aside income limit: \$ 25,000

The owner/manager strives to rent to all families at or below the most restrictive \$25,000 limit. However, an error is made, and a state set-aside unit is rented to a family who has anticipated income of \$28,400. The unit is in violation of the IFA covenant, but an 8823 is not turned into the IRS, as the family is in compliance with the Federal income limit based on the MSA. However, a State Notice of Noncompliance will be issued.

Overview of Reporting of Federal Noncompliance

The mechanism used by IFA to report noncompliance to the IRS is Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*. This form lists the major categories of noncompliance per tax Code. It also indicates whether reported noncompliance is corrected.

To provide guidance to state agencies, the IRS has published a Guide entitled *Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide)*. The 8823 Guide addresses what is considered “in and out of compliance” for each federal category used on the form. It also establishes how to correct many compliance issues. IFA accepts and follows almost all provisions of the 8823 Guide. Minor issues where we have adjusted Guide provisions are addressed in this manual. As the 8823 Guide is very effective, IFA will not repeat the Guide’s direction for addressing noncompliance in this manual.

IFA is required to periodically monitor a property’s files and physical buildings for compliance. If noncompliance is discovered, IFA will give a *correction period* to correct what was found. Although it may be shorter, this correction period may not exceed 90 days, unless a special extension is granted by IFA for up to an additional 90 days. See the below section “Owner's Response to Initial Owner’s Report” for details. Once the correction period has expired or the owner has submitted documentation to correct the noted noncompliance, IFA will submit Form 8823 to the IRS for federal noncompliance and

indicate if noncompliance was corrected during the correction period. Further details specifically relating to IFA file audits and site inspections are provided later in this chapter.

Due Diligence

If owner/managers practice due diligence in reviewing their own files, policies and procedures and corrections of errors are made prior to an audit by IFA, the IRS will not be notified of any noncompliance when discovered. This specifically means that, if an owner/manager discovers a noncompliant situation at a property and corrects it before IFA informs the owner/manager that IFA will be conducting an audit of the property, IFA will not report the issue on Form 8823. This makes the date that IFA informs the owner/manager of an upcoming audit a crucial date.

Owners who are diligently monitoring their own compliance because it is the right thing to do, and not just because of the threat of an impending audit, are thus rewarded for their proactive approach.

The IRS requires IFA to examine other evidence of due diligence as it reviews for compliance. Errors may still result in credit loss, but it may minimize the extent or severity of the determination of noncompliance. According to the IRS, additional signs of due diligence should include:

1. Separation of duties
2. Adequate supervision of employees
3. Management oversight and review (internal audits)
4. Third-party verifications of tenant income
5. Independent audits
6. Timely recordkeeping

Definition
“Due Diligence”

“The care that a reasonable person exercises to avoid harm to other persons or their property... reasonable steps taken by a person in order to satisfy a legal requirement.”

Federal vs. State Issues

Federal noncompliance items	State noncompliance items
LIHTC	
The family is above the income limit upon move-in (based on the minimum set-aside income limit(s)). 8823 Guide Chapter IV	The family is above the state set-aside income limit upon move-in (but below the minimum set-aside income limit(s)).
Late or not-completed annual recertification (at properties less than 100% LIHTC or are Deep Rent Skewed). 8823 Guide Chapter V	Late or not-completed annual recertification (at 100% LIHTC, mixed-income properties for units at State covenant set-asides).
Violations of NSPIRE standards. 8823 Guide Chapter VI	Physical deficiencies not covered by UPCS, but that IFA may require to be fixed due to State or local building codes.
Failure to submit complete annual owner’s certification. 8823 Guide Chapter VII	Failure to submit additional state-required reporting.
Changes in eligible basis (for instance charging inappropriate fees or removing amenities) and credit percentage. 8823 Guide Chapter VIII & IX	
Failure to keep the number of units in compliance as required by the minimum set-aside. 8823 Guide Chapter X	
Rents charged over the limit(s) based on the minimum set-aside. 8823 Guide Chapter XI	Rents charged are over state set-aside rents (but below the minimum set-aside).
Project not available to the general public. 8823 Guide Chapters XII & XIII	
Violations of the Available Unit Rule. 8823 Guide Chapter XIV	Failure to move a family in a State covenant unit to a higher income category after an increase of income at recertification and then to re-designate the next comparable unit in the project to the lower income category.
Violations of the Vacant Unit Rule. 8823 Guide Chapter XV	
Failure to execute the LURA by the time credits are claimed. 8823 Guide Chapter XVI	
Units occupied by nonqualified student families. 8823 Guide Chapter XVII	
Utility allowance was calculated incorrectly. 8823 Guide Chapter XVIII	
Owner fails to respond to agency notifications of inspection. 8823 Guide Chapter XIX	
LIHTC units used on a transient basis (initial leases are less than 6 months). 8823 Guide Chapter XX	
Building no longer participating in the LIHTC program. 8823 Guide Chapter XXI	Noncompliance with non-federal requirements listed in the LURA.

HOME and/or NHTF	
The mix of High and Low HOME and/or NHTF units is not maintained.	Note: noncompliance with the HOME or NHTF Contract for a project puts the federal HOME/NHTF funding at risk. The HOME/NHTF programs do not make a Federal-PJ noncompliance distinction.
Lease for HOME/NHTF units fails to meet HOME/NHTF provisions.	
Families over HOME/NHTF limits at move-in.	
Rents charged are above the HOME/NHTF limits (including subsidy).	
Leasing of next unit is incorrect after increases of income.	
Rents calculated incorrectly for families over the 80% or NHTF income limit.	
Noncompliance with non-federal HOME or NHTF Contract provisions.	
A HOME unit contains an ineligible student family.	

Yearly Compliance Reporting Requirements – Owner’s Certificate of Continuing Compliance

LIHTC Code states that the owner of a LIHTC development is required to certify to IFA that, for the preceding 12-month period, the development met the requirements of Section 42 provisions: HOME and NHTF have similar requirements. Owners must report in the form and manner IFA specifies, including completing all applicable Exhibits and utilizing IFA’s online reporting system, Certification Portal (CP), to report tenant-level data for analysis. The owner must certify, under the penalty of perjury, that the information provided is true, accurate, and in compliance with the requirements of LIHTC, HOME and NHTF rules and regulations. Treasury regulations list 12 specific requirements that must be addressed in the Certification to meet LIHTC requirements.

IFA is required to review the *Owners Certification of Continuing Compliance* annually. The owner is considered noncompliant if the Certification is inaccurate, incomplete (or not submitted), or the owner discloses noncompliance with program requirements. Unlike the process followed during a compliance review of a project, the Owner will be notified of their noncompliance upon review of their submission and an 8823 or State Notice of Noncompliance will be issued without a corresponding correction period.

Initial Certifications for newly allocated projects are due April 1st, and subsequent year’s Certifications are due March 1st. For example, if a project is awarded credits in March 2015, the first Certification is due April 1, 2016, even if the project has not yet placed a building in-service or begun claiming credits.

The *Owner’s Certificate of Continuing Compliance* is a required form that is updated and posted in December each year to the IFA website. IFA’s compliance website is updated regularly and should be checked for current LIHTC and HOME reporting policies and requirements.

Failure to submit the Owner’s Certification of Continuing Compliance will result in the issuance of an 8823 or a State Notice of Noncompliance.

For annual reporting of AIT projects, a rent roll will be required. This rent roll should include the following: unit number, square footage, rental rate, average income designation, qualified group of units, move-in date and identification of any units that changed designations in the last year.

Quarterly Compliance Reporting Requirements

The owner is responsible for reporting occupancy to IFA for ALL projects. Occupied units are to be counted on the last day of each month and reported to IFA on a quarterly basis by the 10th of the month following the end of each quarter. IFA requires the use of our Asset Management Portal to report quarterly occupancy information.

If a project also contains HOME/NHTF funds or has an IFA program loan/grant, additional reporting requirements are also in place which may include submitting annual audits, quarterly financials, operating budgets, owner tax returns, or insurance certificates using the Asset Management Portal. All LIHTC projects awarded in 1999 or later are required to submit annual audits using the Asset Management Portal.

Physical Inspection Protocol

IFA may use a contractor to conduct physical inspections and any references to IFA below may mean IFA and/or our contractors.

The IRS has established that LIHTC properties must be maintained in compliance with HUD’s physical standards established by 24 CFR 5.703. These include the National Standards for the Physical Inspection of Real Estate (NSPIRE) used by HUD programs. NSPIRE progressively replaced the old *Uniform Physical Conditions Standards* (UPCS) for covered programs in 2023 and 2024. IFA is expected to adopt NSPIRE in 2026 and will provide updates when in place. HUD has published NSPIRE standards online that identify deficiencies. NSPIRE then defines specific severity codes for physical problems on a scale including “low,” “moderate,” “severe,” and “life-threatening.” NSPIRE heavily focuses on habitability and *Health and Safety* concerns.

The NSPIRE standards can be found at: www.hud.gov by following the links to “REAC Property and Unit Inspections.”

Following is a quick overview of NSPIRE.

NSPIRE is the standard also followed for HUD REAC (Real Estate Assessment Center) inspections. However, LIHTC and HOME inspections do not use the overall scoring for a project that is part of REAC. NSPIRE puts a much stronger emphasis on the physical habitability of units than UPCS did. It also keeps a consistent focus on the health and safety aspects of deficiencies. NSPIRE standards also include timeframes allowed for correction specific to each deficiency.



Inspectable Areas

Whereas UPCS had five inspectable areas, NSPIRE consolidated those into three, 1) “Outside” (the building), 2) “Inside” (the building, but not in units), and 3) “Units.” What NSPIRE considers to be “Outside” was “Site” and “Building Exterior” under UPCS. “Inside” was “Common Areas” and “Building Systems.” The “Units” area remains the same.

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

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



Inspectable Area

Outside

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


- θ Adequate address and signage at the site
- θ Missing handrails and guardrails
- θ Fencing and gates
- θ Grounds
- θ Mailboxes
- θ Project signs
- θ Parking lots/driveways/roads
- θ Play areas and equipment
- θ Refuse disposal
- θ Retaining walls
- θ Storm drainage
- θ Walkways/steps
- θ Doors
- θ FHEO & Uniform Federal Accessibility Standards (UFAS)
- θ Fire escapes
- θ Foundations
- θ Lighting
- θ Roofs
- θ Walls
- θ Windows



Some possible “outside” concerns

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

- ⊖ Back-up lighting fails when tested



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

- ⊖ Missing handrails and guardrails
- ⊖ Domestic water
- ⊖ Electrical systems
- ⊖ Elevators
- ⊖ Emergency power
- ⊖ Fire protection
- ⊖ HVAC
- ⊖ Roof exhaust systems
- ⊖ Sanitary systems
- ⊖ Basements/garages/carports
- ⊖ Closets/utility & mechanical rooms
- ⊖ Community room
- ⊖ Daycare facilities
- ⊖ Halls/corridors/stairs
- ⊖ Kitchens
- ⊖ Laundry rooms
- ⊖ Trash collection areas
- ⊖ Lobbies
- ⊖ Offices
- ⊖ Other community spaces
- ⊖ Patios/porches/balconies
- ⊖ Pools and related structures
- ⊖ Restrooms
- ⊖ Storage facilities



Some possible “inside” concerns

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



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

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



Some possible unit concerns

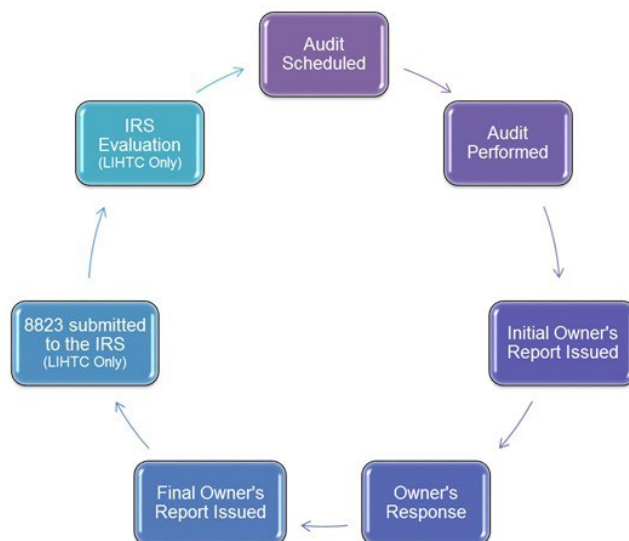
- θ Lack of hot and cold running water
- θ Lack of an adequate source of potable water
- θ Lack of at least one working smoke detector on each level of the unit and in each sleeping area
- θ Missing or inoperable GFCI outlets
- θ Bathrooms that are not in proper operating condition, including being: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

Life-Threatening Health and Safety

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

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

Compliance Review Cycle



Scheduling of the Project Monitoring Visit

IFA (or IFA's contractor) will contact the owner or their designated contact to select a mutually agreed-upon date to conduct the inspection. An information sheet with instructions regarding the file audit portion of your monitoring visit will also be provided.

IFA will issue an 8823 or a State Notice of Noncompliance if an owner/management agent fails to respond to our contractor's request to establish a date for inspection within five days of their third unsuccessful attempt to contact the owner/management agent.

Once the inspection date and time has been scheduled a letter will be issued to confirm the date and time of the monitoring visit. IFA will inform you at this time of the name of your Compliance Officer for this audit.

Preparing for the Monitoring Visit – Project Level Items

Below is a checklist of items that will be reviewed by IFA

- LIHTC -Review of 8609 options and impact on compliance
 - 100% LIHTC vs Mixed-use projects (line 3b)
 - Impact of multi-building election (8b) on compliance monitoring
 - Impact of minimum set-aside (10c)
 - Impact of deep rent skew election (10d)

- LIHTC and/or HOME and/or NHTF -Review of the LURA and impact on compliance
- Review of HOME contract (written agreements) & HOME Compliance Monitoring requirements
 - Total # of HOME and/or units
 - Fixed or Floating units
 - High or Low units
 - Period of affordability start date and end date
- Review Tenant Selection Plan
- Review Property/Management Rules (House Rules)
- Review of Project-Specific LURA requirements
- Site, Building, and Tenant File Preparation
- Use of Mandatory Tenant Forms (as applicable)
 - IFA Application
 - IFA HOME Lease Addendum (HOME)
 - Student Status Certification
 - Student Status Verification (if applicable)
 - TIC -Tenant Income Certification Form
 - *Asset Self-Certification* (LIHTC & HOME during self-certification years)
 - *Certification of Zero Income*
 - *VAWA Forms & Lease Addendum*

Audit Performed

Monitoring Visit – Submission of Project- Level Information & Tenant Files

At the outset of the monitoring visit, IFA (or IFA’s contractor) will provide the property contact with file auditing instructions and a list of the tenant files and units that have been selected for audit.

Per IRS requirements physical inspections and file reviews will be performed by IFA or its authorized representative at least once every three years. Please note that IFA may place a development on a more frequent inspection cycle if observed violations are numerous or severe in nature at the sole discretion of IFA. In projects that also contain HOME or NHTF units, inspection frequency will continue to follow the HOME or NHTF requirements throughout the HOME period of affordability.

- Physical Inspection – a minimum of 4 units chosen at random or a maximum of 20% of the low-income units. Observation of systemic or chronic noncompliance may trigger additional unit inspections.
- File Review - a minimum of 4 units or a maximum of 20% of the low-income units. Observation of systemic or chronic noncompliance may trigger additional file reviews.
- IFA will require that the file submitted matches the unit inspected unless a vacant unit is selected for audit. We will inspect the vacant unit and will review the file of the last family to occupy that unit.

Required documentation must be submitted to IFA within 5 business days of the monitoring visit. These can be transmitted in a variety of ways, as instructed.

Items to be submitted to IFA (electronically) when notified of pending inspection:

PROJECT Documents Required

- ⊖ Tenant Selection Plan
- ⊖ Current rent roll with HOME units designated (if applicable)
- ⊖ Documentation of any filed Fair Housing violations (if applicable)
- ⊖ Known Bed Bug Issue form

TENANT FILE Documents Required

- ⊖ Initial move-in qualification verifications [100% LIHTC projects, HOME, & NHTF].
- ⊖ Recertification qualification verifications [LIHTC mixed-use/mixed-income, HOME, & NHTF]
- ⊖ *Tenant Income Certification (TIC)* form
 - Note: owner may use the cert forms HUD 50058 Family Report or RD 3560-8, if applicable*
- ⊖ Initial signed lease & applicable lease addenda (i.e., VAWA, HOME)
- ⊖ *VAWA Acknowledgement of Receipt of 5380 & 5382*
- ⊖ Completed *IFA Application(s)* (one for each adult)
- ⊖ *Student Status Self-Certification*
- ⊖ Consent to release information (owner developed – no signed blanket forms to be used)
- ⊖ *Certification of Zero Income* (if applicable. One for each adult)
- ⊖ *Asset Self-Certification* form (if applicable. One per family)

Checklist of common issues IFA encounters

- Whiteout used on files. This makes it difficult to determine who made any changes and what the changes were. Any changes or corrections made must be crossed out and initialed by all parties.
- Messy files which are hard to follow. This leads to things being missed and follow-up required by the property (See Chapter 3 – File Order).
- Stale verifications. Documentation must correspond to the move-in date. If verification forms are received AFTER the move-in date or are more than 120 days old this is a finding.
- Using forms not approved by IFA when an IFA-required form is necessary.
- Verification forms must show a date received. This can be hand-written, but IFA prefers a date stamp. A fax or email with date information is also acceptable.
- Not updating utility allowance figures annually, or as available from the local PHA as required.
- Exceeding maximum allowable rent as a result of using incorrect income limits or utility allowances
- In mixed-use projects, failure to rent the next unit available to a tax credit-qualified family when an existing LIHTC family 's income exceeds 140% of the maximum allowable income.

NOTE: IFA may reject any files, or require a larger sample to be submitted, that consistently contains any number of these issues.

Monitoring Visit – Physical Inspection

IFA will:

- Check the property for proper signage to comply with Fair Housing requirements. Appropriate Equal Housing Opportunity (EHO) and handicapped accessible logos on building or project signage along with Fair Housing posters must be displayed in common areas where they can be seen by applicants and tenants.
- Perform physical site inspections covering the entire exterior and common areas of the project and the interiors of a percentage of low-income restricted residential units selected by IFA.

What you need to know:

- In most instances, the physical inspection will take approximately 1 to 2 hours unless a large number of units are being inspected.
- IFA contractors will NOT generally make any determinations concerning compliance but will simply conduct and document the inspection (including photos), note any potential deficiencies, and provide their findings to IFA for their review.
- IFA will be responsible for communicating with you the outcome of this inspection and file review.
 - If any critical violations are noted during the inspection, you will receive a written notice of the violation(s) at the time of inspection and be expected to provide documentation to IFA that the repair work is completed within 72 hours. Failure to do so will result in the issuance of an 8823 or a State Notice of Noncompliance.

Initial Owner's
Report Issued

Issuance of Initial Owner's Report

Issuance of Initial Owner's Report

Within 30 days of the inspection date, an initial owner's report will be issued to the owner, and the designated management company contact.

If the physical inspection was conducted by our designated contractor, the contractor will submit the physical report, photos, and recommendations to IFA for inclusion in one report.

The completed report will be sent to the owner-designated contact. Please ensure that IFA has the most up-to-date contact information. A courtesy copy will also be sent to the management company contact.

The report will detail findings for the project, each building, and all units selected for audit. Findings will be identified as a Section 42 violation, a HOME/NHTF rule violation and/or a LURA-related violation.

- Initial findings will be listed as determined by IFA's review of information received from the project.

- The report may identify administrative or technical issues and recommendations for best practices and changes to improve future management of the project.
- Suggestions may be given to provide the project with corrective actions to remedy noted noncompliance issues.

Owner's Response

Owner's Response to Initial Owner's Report

The owner has 90 days from the date of the initial report to respond to any findings. The owner will submit documentation and/or an explanation to mitigate findings from IFA's initial report.

Example

Work orders signed and dated by maintenance and property management, photographs or written narrative of issues and resolution will suffice as evidence of findings addressed.

IFA may, at our discretion, grant up to an additional 90-day extension (for physical deficiencies only). A formal request must be submitted in writing and received within 60 days of the date the initial report was issued. After the 60-day period, no extension will be granted without the approval of the IFA Asset Management Director.

In the written request the owner/manager must provide details on why an extension is necessary, including estimates of when repairs/file corrections will be made.

Final Owner's Report Issued

Issuance of Final Owners Report

The final report will be issued to the owner within 30 days from the owner's response. It is the owner's responsibility to share this document with their management company if they choose to do so. IFA's role is to determine whether the owner has provided:

- Clarification establishing that the owner was always in compliance.
- Documentation that the issue(s) of noncompliance have been remedied within the correction period (noncompliance corrected).
- No acceptable documentation that the issue(s) of noncompliance have been remedied within the correction period (out of compliance).
- Documentation that the issue(s) of noncompliance has been remedied, but the noncompliance was not corrected until after the end of the correction period (back in compliance).

The Final Report will document:

- Issues that were cited and later determined to have never been out of compliance.
- Both corrected and non-corrected Section 42, HOME, and NHTF issues.
- Both corrected and non-corrected LURA-related issues.

The issuance of this report is the Owner's indication that:

- 8823's will be issued shortly to the IRS for Section 42 findings.
- A separate State Notice of Noncompliance will be issued shortly to the owner detailing HOME, NHTF or LURA-related findings.

8823 Submitted
to the IRS
(LIHTC Only)

An 8823 is Issued for Each BIN or Building

Note: The below does not apply to projects after the initial 15-year Compliance Period. IFA will not submit Form 8823 for these projects but will issue a *State Notice of Noncompliance* per project rather than per building.

- If it is determined that the owner was always in compliance, no 8823 will be issued. IFA will notify the owner that a specific issue is closed, and no Form 8823 will be filed with the IRS.
- If it is determined that the owner either remedied the issue(s) of noncompliance or remains out of compliance, a Form 8823 must be filed with the IRS.

When the 8823 is submitted to the IRS a copy is sent to the owner for their records. It is the owner's responsibility to share this document with their management company if they choose to do so. 8823s are required to be submitted to the IRS within 45 days after the end of the correction period (including any extension granted).

State Notice of Noncompliance (HOME, NHTF & LIHTC)

- For LIHTC projects, this Notice relates to noncompliance with the property's filed Land Use Restrictive Agreement (LURA).
- For HOME and NHTF only projects, this Notice relates to noncompliance with HOME or NHTF rules or with the Regulatory Agreement or Contract.

This Notice will be issued to the owner within 90 days of the end of the correction period only if the project has not corrected reported noncompliance issues. Any noncompliance reported via the State Notice of Noncompliance carries the same weight as those reported to the IRS on Form 8823, especially if the owner wishes to apply for future LIHTC, HOME or NHTF allocation rounds or applies for funds from any other IFA program.

IRS Evaluation
(LIHTC Only)

IRS Actions upon Receipt of Filed 8823

According to the IRS, they take the following steps upon receipt of each 8823 filed by IFA.

1. Noncompliance corrected Forms 8823 are processed at the Philadelphia Service Center (PSC) without contacting the owner.

2. Out of Compliance Forms 8823 are assigned to technicians to prepare owner notification letters. The letters are specific to the type of noncompliance reported and explain that noncompliance may result in the loss and recapture of the tax credit.
3. The taxpayer receives the notification letter.
4. The PSC processes the Forms 8823 and transcribes the information into a database.
5. Forms 8823 are routinely analyzed to determine whether an audit of the owner's tax return is needed. The taxpayer's three latest filed income tax returns and all Forms 8823 filed for the project are analyzed.
6. If it is determined that an audit is warranted, the case file is sent to the appropriate field office for examination.
7. The Taxpayer is notified that an audit has been scheduled.

Possible Owner Actions upon Receipt of an IRS Notification Letter

- The notification letter to the owner instructs the owner to contact IFA to resolve the noncompliance issue(s) reported on the filed Forms 8823.
- If the noncompliance is resolved within three years, a "back in compliance" Form 8823 must be filed with the IRS, and a copy sent to the owner concurrently. Note: Some issues of noncompliance cannot be corrected. Contact your IFA Compliance Officer to see if this applies to your issues.

Correcting Specific State LIHTC Noncompliance

As discussed above, the IRS' 8823 Guide clarifies how to correct noncompliance with federal issues. The provided chart also references chapters in the Guide specific to many common compliance issues. Here we address findings on the chart relating to state covenant issues.

- **A family is above an applicable state agency covenant set-aside income limit upon move-in (but they are below the minimum set-aside income limit).**
To correct the shortage of state set-aside units, the owner/manager should apply one of the following fixes:
 1. Establish if the family's income has decreased since move in and they now qualify.
 2. Identify other in-place families that are currently below the IFA set-aside. Rent may need to be adjusted.
 3. Rent other comparable units to IFA-compliant families until the required state set-aside mix is restored.
- **Late or not-completed annual recertification (at 100% LIHTC properties for units with state set-asides).**
Recertification should be conducted as soon as possible. Possible approaches are:
 1. Perform a recertification using information current to the time the cert is being conducted.
 2. A recertification can be conducted using information retroactive to when the recertification should have been conducted. The cert should be dated as of the date signed with a statement that the recertification is "true and accurate" as of the past effective date. Note: the benefit of this approach is that if family income has gone up since the time the recertification should have been conducted, this may help avoid having to apply state set-aside adjustments until the next recertification is due.
- **Physical deficiencies not covered by UPCS, but that IFA may require to be fixed.**

Address the physical violation and submit proof to IFA, per IFA policy. Note: issues that IFA requires to be addressed will generally become worse with time and eventually become more serious UPCS violations. Addressing them when IFA requires it will help avoid later federal noncompliance.

- **Failure to submit additional state-required reporting.**
Submit the required reporting as soon as possible.
- **Rents charged that are over state set-aside rents (but below the minimum set-aside).**
Adjust rents as soon as possible. Rebate any overcharges.

Note: IFA also requires that federal rents that are overcharged must be rebated to families who overpaid. The project file must be documented, including notification by the owner to the family of the overpayment and the amount to be rebated. This exceeds federal requirements, but it indicates due diligence to IFA.

Some noncompliance is very specific to a situation, property, LURA, HOME, or NHTF Contract. Your Compliance Officer can provide specific advice beyond the scope of this manual.

Correcting Specific HOME Noncompliance

- **Mix of High and Low HOME units not maintained.**
To correct the mix of HOME units, the owner/manager should establish a plan to restore the mix.
 1. For floating HOME projects this can involve identifying in-place HOME and non-HOME residents who meet HOME requirements, renting to newly qualified HOME families or a combination of both approaches.
 2. For fixed HOME, moving HOME families who meet the correct set-asides into HOME units, encouraging voluntary transfers of HOME-qualified families from non-HOME units or a combination of both approaches.
- **Lease for HOME units fails to meet HOME provisions.**
Execute a correct lease and IFA Addendum.
- **Families over HOME limits at move-in.**
 - For floating HOME projects, other comparable units can be designated as HOME.
 - For fixed HOME, providing incentives for the family to voluntarily transfer to a non-HOME unit or to move out. IFA may also authorize changing fixed HOME units in a project.
- **Rents charged are above the HOME limits (including subsidy) or rents are calculated incorrectly for families over the 80% income limits.**
Adjust rents as soon as possible. Rebate any overcharges.
- **Leasing of the next available HOME unit to an unqualified family after a current family exceeds the 80% income limits.**
Fix the HOME mix (as suggested above) depending on if the property is fixed or floating HOME.
- **A HOME unit contains an ineligible student family.**
Treat the family as “over-income” (over the 80% income limit) per the HOME rules relating to increases of income. When charging rent based on adjusted income, include ineligible student parents’ income (see Chapter 4 for a detailed discussion of the HOME over income rule).

Record Retention

LIHTC

Records for each year of the Credit Period (including resident files) must be kept according to the following minimum timeframes:

- **Year 1 of the Credit Period:** At least 6 years beyond the deadline for filing the tax return for the last year of the Compliance Period, for a total of over 21 years.
- **Years 2-15:** 6 years beyond the deadline for filing the tax returns for each year.

IFA and the IRS allow copies of files to be stored electronically. However, extreme caution must be taken to ensure that the files are complete, remain uncorrupted over time and that hardware and software are maintained that can access the electronic files for over 21 years.

HOME & NHTF

HOME records must be kept for 5 years beyond the project's period of affordability. If a project is both LIHTC and HOME, the LIHTC requirements may be more restrictive.

Chapter 7 – Post-Year-15 issues for LIHTC Properties

The phrase, “Post Year-15” is used here to denote the period beyond the Compliance Period (years 1 through 15) which may also be referred to as the Extended Use Period.



The following Post Year-15 Monitoring Procedures apply to Tax Credit developments that have completed the initial 15-year Compliance Period and have an Extended Low-Income Housing Commitment defined in the development’s LURA. The following rules are IFA-specific. Post-Year-15 rules may differ substantially in other states.

These procedures also apply to LIHTC developments that were financed with tax-exempt bonds, provided the bonds are no longer outstanding and the bond Qualified Project Period has expired.

Several procedures change in the compliance monitoring process previously discussed for the initial 15-year Compliance Period. If not specifically addressed in the following pages, procedures will remain the same as used during the initial 15-year Compliance Period.

Managers should carefully track when buildings within a development transition from the Compliance Period to the Post Year-15 or Extended Use Period. Premature implementation of the Post Year-15 compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which IFA will be required to notify the IRS using Form 8823.

After the initial 15-year Compliance Period has expired, there is no tax impact in the event of noncompliance. Therefore, IFA will no longer file IRS Form 8823 with the IRS to report noncompliance. IFA has modified the IRS Form 8823 to serve as a reporting tool reflecting issues of noncompliance with the development’s LURA. This notice, the *State Notice of Noncompliance*, will be issued only after the 90-day correction period and if the development has not taken effective measures to cure all observed LURA noncompliance items.

Important Note: Developments financed with other funding sources, such as HUD, HOME, RD, or tax-exempt bonds that are still outstanding, may continue to be subject to the rules of their respective funding source beyond the LIHTC 15-year Compliance Period. Check with an IFA Compliance Officer and your other programs’ regulatory monitor if you are unsure of the current status of your development in regard to other funding sources.

Initial Income Certification and Recertification Process

The initial *Tenant Income Certification* (TIC) with appropriate verifications (as previously discussed) will be completed only at the time of initial occupancy. Families must continue to have an initial lease term of no less than 6 months.

Annual recertification, with appropriate verifications, will continue to be required for existing families after year 15 of the Compliance Period for mixed-use and Deep Rent Skewed projects and for units with state covenant set-asides at mixed-income 100% LIHTC projects.

Annual Reports

Owners will continue to submit their *Owner Certification of Continuing Compliance* and supporting documentation as well as report tenant-level data through the IFA Certification Portal (CP).

Family Transfers & Available Unit Rule

As during the Compliance Period, families may change units, including moving to a unit in a different building within the development, without the submission of a new family income qualification. Owners should indicate all family transfers in the Annual Report.

The Available Unit Rule will no longer pertain to “comparable or smaller size”, and will apply on a unit basis only, allowing one-for-one unit replacement to maintain building applicable fractions.

Student Status

LIHTC student status rules no longer apply after the Compliance Period. If the project is also a HOME project, it will need to continue to certify student status during the HOME period of affordability.

An important word of caution: If a property will be resyndicated and get more tax credits as a result of rehabilitation, or if that is a possibility, an owner should not discontinue applying the student status rules.

Applicable Fraction and Agency Covenants

After year 15, it is required that the applicable fraction continues to be met the same as before. Agency covenant set-asides do not change Post Year-15. The original income restrictions set forth in the development’s LURA will remain in effect throughout the term of the LURA.

For properties facing extreme financial hardship, an owner may request a change to the LURA that will improve the financial feasibility of the property. Contact your IFA Compliance Officer to discuss the change application and fee. The request will be reviewed by a team at IFA on a case-by-case basis.

Note: IFA cannot grant changes for programs that they do not monitor such as Rural Development or HUD. IFA recommends the owner contact representatives of other funding sources for a determination of the impact on the other program prior to submission of a change request to IFA.

Record Retention

Beginning in year 16, owners must maintain a resident file for the entire term of residency plus one year after the family vacates the unit. Check with an IFA Compliance Officer if you have other funding sources and program rules that may still be in effect.

Compliance Monitoring Visits

Physical inspections and file reviews will be performed by IFA or its authorized representative at least once every 5 years. Please note that IFA may place a development on a more frequent inspection cycle if observed violations are numerous or severe in nature at the sole discretion of IFA. In projects that also contain HOME units, inspection frequency will continue to follow the HOME requirements throughout the HOME period of affordability.

- **Physical Inspection** – a minimum of 4 units chosen at random or a maximum of 20% of the low-income units. Observation of systemic or chronic noncompliance may trigger additional unit inspections.
- **File Review** - a minimum of 4 units or a maximum of 20% of the low-income units. Observation of systemic or chronic noncompliance may trigger additional file reviews.

IFA will randomly select which low-income units and resident records are to be inspected and reviewed by IFA. IFA will continue to provide an owner 30-day advance written notice that an inspection of the building and low-income units or resident record review will occur so that the owner may notify residents of the inspection or assemble resident records for review.

Noncompliance

The same correction period process (90 days from the date of owner notification from IFA) will be used as during the first 15 years; however, IFA will issue the *State Notice of Noncompliance* to owners for uncorrected issues. For systemic or chronic noncompliance, temporary suspension and/or debarment procedures may be implemented.

Qualified Contract Process

In 1989, the requirement was added for Extended Use Periods that lengthened the period of time that LIHTC developments are required to maintain affordability from 15 to 30 years. In an effort to ease the concerns of program participants about the economic viability of maintaining affordability for the longer period, the Code provided an option for owners to exit the program after the end of the initial 15-year Compliance Period by requesting the state allocation agency to assist in finding a purchaser, willing to continue the affordability restrictions, at a “Qualified Contract Price” (QCP).

Even though the program provides owners with the Qualified Contract opt-out provision, many developers in Iowa waived their right to an early opt-out in exchange for additional points in the scoring and allocation process. IFA’s Qualified Contract process applies only to those properties that are eligible for opt-out at some point after year 15 prior to the end of the Extended Use Period. Owners are encouraged to review their applications submitted to IFA when they originally applied for an allocation of credits, as well as the LURA, to determine if and when they are eligible to pursue the opt-out provision. If eligible for early opt-out, owners may request, in writing, that IFA find a buyer for the property using the appropriate procedures, forms and application found on the IFA website. If IFA is unable to find a buyer pursuant to a Qualified Contract after a year, the property may be converted to market rate, provided the property has no other use restrictions (such as subordinate loans, HUD Use Agreements, etc.).

Owners must notify IFA of their desire to sell the property using the current IFA policy found on the IFA website. For developments that consist of more than one building (as evidenced in the development’s 8609(s)), **all buildings** must be in the last year of their initial Compliance Period or after in order to request the Qualified Contract. Qualified Contract requests can be submitted annually in March and in October.

The development and owner must be in compliance with all program requirements to be eligible to apply for the opt-out provision. The Qualified Contract may be suspended or terminated due to any

mortgage defaults or encumbrances on the property or IRS audit or investigation that may adversely affect the sale of the property.

Foreclosure or Deed-in-Lieu

If a property is facing the prospect of either foreclosure or deed-in-lieu due to financial insolvency, IFA will make all efforts to maintain affordability by working with the owner/manager to seek a more positive solution. Please contact the IFA Asset Management Director if your project is facing the likelihood of foreclosure as soon as possible. The chances of obtaining an alternate solution may improve with early intervention.

Chapter 8 - Responsibilities

To provide a conclusion to this manual, this last chapter summarizes many of the topics discussed and how they translate to responsibilities conducted by IFA and owner/managers.

IFA Responsibilities

IFA allocates and administers compliance with the tax credit program for the State of Iowa. Additionally, IFA serves as the Participating Jurisdiction (PJ) for the HOME program funds allocated to the State of Iowa. The primary compliance-related responsibilities of IFA are as follows:



A. Prepare Regulatory Agreement/Restrictive Covenants

For LIHTC projects, IFA will prepare a Land Use Restrictive Agreement (LURA) prior to the issuance of the IRS Form 8609. The LURA is an encumbrance on the property. This document must be recorded before the end of the calendar year in which credits are first claimed.

For HOME or NHTF projects, IFA issues the HOME and/or NHTF Contract and master agreement.

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

When the original recorded LURA is returned to IFA and all fees have been paid, the IRS Form 8609 will be sent to the owner. An IRS Form 8609 is prepared by IFA for each building in the development.

Note: If rehabilitation and acquisition credits are claimed on the same building, the rehabilitation is treated by Section 42 as a separate building. Therefore, the acquisition and rehabilitation will receive separate 8609 forms.

The owner submits the original to the IRS when the owner's personal, partnership, or corporate tax returns are filed for the first taxable year in which the credit is claimed. Refer to the 8609 instructions to determine when and how a copy of the 8609 must be submitted with the tax return.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. IFA cannot provide legal or tax advice on the filing or completion of tax forms.

Part 1 of IRS Form 8609 is prepared and filed by IFA only. If IFA becomes aware that a developer or agent filed a self-prepared 8609 with the IRS, IFA reserves the right to determine that all parties involved are ineligible for future participation in Iowa's LIHTC program for a period of up to five (5) years.

C. Review Annual Owner Certification of Continuing Compliance and other required reporting

IFA maintains and makes available to owner/managers a Certification Portal (CP) and works with third-party vendors to ensure compatibility with management company software. For information on the Annual Owner Certification, see Chapter 6.

D. Conduct On-site Monitoring

IFA is required by the IRS to conduct in-depth, on-site inspections of all buildings in the development. For further information regarding on-site monitoring, see Chapter 6.

E. Notify IRS of Noncompliance

IFA will provide written notification to the owner for items of noncompliance. The correction period will not exceed 90 days from the date of notice of noncompliance. IFA may extend the correction period for up to six months, but only if IFA determines there is good cause for granting the extension. During the 90-day time period (for physical deficiencies only), or the extension thereof, the taxpayer must supply all documentation that verifies the development is back in compliance.

F. Record Retention

IFA will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. IFA will retain records of noncompliance or the failure to certify compliance for six years after its filing IRS Form 8823.

G. Compliance Updates and Training

IFA will provide updates at the *HousingIowa Conference* held annually in September.

H. Possible Future Subcontracting of Functions

Treasury Regulations allow IFA the right to delegate some or all compliance monitoring responsibilities. IFA may in the future decide to retain an agent or private contractor to perform some of the responsibilities listed above. In this event, IFA shall use reasonable diligence to ensure that the agent or private contractor(s) properly perform(s) the delegated monitoring functions. If IFA determines that a third party shall perform monitoring responsibilities, IFA will always retain responsibility for notifying the IRS of any noncompliance of which it becomes aware via Form 8823.



I. Administration and Notification

Information regarding compliance is posted on the IFA website and updated regularly and includes the following:

- Annual Compliance Reporting Requirements & Documentation
- Current Income & Rent Limits (HOME, LIHTC, NHTF, Fair Market)
- Historical Income & Rent Limits (HOME, LIHTC, NHTF, Fair Market)
- Inspection Documents
- Required Forms
- Sample Forms
- Qualified Contract Process documents
- Certification Portal (CP) login & training documentation
- Asset Management Portal (AM)

Program notices, news releases and notices of training opportunities are also posted on the website. Additionally, owners/managers and other interested parties may join the Compliance email listing by signing up on the IFA website. It is the responsibility of the owner/manager and other parties to notify IFA if changes in personnel or email addresses occur by submitting Exhibit F -Compliance Monitoring Information Sheet.

Owner/Manager Responsibilities

The owner has chosen to utilize the LIHTC, HOME or NHTF program to take advantage of the tax and other benefits provided. In exchange for these benefits, the owner must adhere to certain requirements and accept responsibilities.

These responsibilities include, but are not limited to the following:

A. Allocation/Commitment Requirements

In the LIHTC and/or HOME, NHTF application, the owner provides comprehensive development information with evidence of overall economic feasibility. Prior to the issuance of a final allocation of credits and commitment of HOME/NHTF funds, the owner certifies to the total development costs and that all program requirements have been met. Any violation of the program requirements or misinformation represented in the application or certifications could result in the loss of the credit allocation and HOME funding.

B. Project Knowledge

At a minimum, the development owner should be knowledgeable about the following (as applicable):

1. The credit year of the development. (What is the date of allocation?)
2. The date placed in-service for each building. (The placed in-service date is the date of first possible occupancy, not necessarily actual occupancy – generally; this is the date of the certificate of occupancy).
3. If a LIHTC acquisition rehabilitation development:
 - a) Whether residents were required to move out during rehabilitation.
 - b) Whether the building was occupied during the rehabilitation.
 - c) Whether current residents are qualified families.
 - d) Developers must track the relocation of residents during the rehabilitation process sufficient to complete the cost certifications and tax returns.
4. The number of buildings in the development.
5. The Building Identification Number (BIN) for each building in the development.
6. The minimum set-aside and other federal set-asides elected:
 - a) 20-50, 40-60 or Average Income
 - b) Deep Rent Skewing
 - c) 40-50 election for HOME or
 - d) Additional elections made in the application for additional points
7. Developers must track the relocation of residents during the rehabilitation process sufficient to complete the cost certifications and tax returns.
8. The HOME required mix of High and Low HOME units.
9. The HOME fixed or floating designation.
10. The number of NHTF units.
11. The NHTF fixed or floating designation.
12. For each building, the percentage of the residential units and the percentage of residential floor space occupied by qualified residents.
13. The year that credit was first claimed.
14. The first year of the HOME period of affordability.

15. The first year of the NHTF period of affordability.
16. The terms, under which the tax credit reservation or HOME/NHTF Commitment was made, including statutory set-asides, deeper targeting agreements, etc.
17. The terms and conditions stated in the LURA.

C. Proper Administration and Record-Keeping

The owner is responsible for the proper administration of the development, including the Code requirement that resident income and rent records be kept and retained for each building in the development for the Compliance Period.

Owners must maintain the records necessary for IFA to conduct a compliance monitoring review and for the IRS to conduct an audit. Maintain records for the first year of the Credit Period for a minimum of 21 years, and records for all other years in the 15-year Compliance Period for a minimum of 6 years following each year's end. HOME/NHTF records must be kept for a minimum of five years.

The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the buildings that are low-income units.
3. The rent charged for each residential rental unit in the building, supporting documentation, and the applicable utility allowance.
4. The number of occupants in each low-income unit.
5. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, resident name, move-in dates, and move-out dates for all residents, including market-rate residents).
6. The annual income certification of each eligible resident (as applicable).
7. Documentation to support each eligible resident's income certification.
8. The eligible basis and qualified basis of the building at the end of the first year of the Credit Period.
9. The character and use of the nonresidential portion of any building included in the project's eligible basis under Section 42(d) of the code (e.g., resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

D. Maintain a Development File

Owners must maintain a development file that contains all pertinent documents for the development.

IFA retains the right to inspect the development file at any time. The development file must contain:

1. All approved tax credit and HOME applications together with applicable attachments.
2. A recorded copy of the Regulatory Agreement/Restrictive Covenant/LURA/HOME/NHTF Contract.
3. IRS Forms 8609 and 8586 for each building for each year credit is claimed.

4. All applicable documents relating to any other form of housing or finance programs (i.e., HUD Section 8, RHS, etc.).
5. Documentation that the development complies with any statutory set-asides or Qualified Allocation Plan (QAP) requirements.
6. Documentation for each utility allowance update or revision that must occur at least once per year.

E. Maintain a Resident/Unit File for Each Unit in the Development

The resident/unit file requirements are outlined in Chapter 3 of this manual. Files may be paper or electronic, as discussed in Chapter 6.

F. Reporting and Certification Requirements

1. Owners must submit a copy of IRS Form 8609 (Part I & Part II), once signed and dated.
2. Owners must submit and retain copies of the Owner's Annual Certification of Continuing Program Compliance, and related documents, for each year of the Compliance Period and corresponding documentation for the HOME/NHTF period of affordability. Certifications will include the notification of the Local Lead Agency of all vacancies and the use of Iowa's free rental housing locator at www.IowaHousingSearch.org if required by the project's QAP at the time of the award. Initial Certifications are due April 1st, and subsequent year's Certifications are due March 1st.
3. The owner must submit quarterly occupancy information through the IFA Asset Management Portal (AM). The owner is responsible for reporting occupancy on a quarterly basis. Occupied units are counted on the last day of each month and reported to IFA on a quarterly basis by the 10th of the month following the end of each quarter (see further instructions on the IFA Asset Management Portal). An Asset Management Portal guide is on our website.
4. The owner must submit financials (audits preferred) for all LIHTC projects awarded in 1998 or later and any project with HOME/NHTF or Multifamily loans. The owner must submit insurance certificates and other required submissions as shown in the IFA AM based on the IFA funding source.

G. Train On-Site Personnel

It is the owner's responsibility to ensure that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the development.

H. Ensure Proper Maintenance

The owner is responsible to maintain the development in a decent, safe, and sanitary condition. Failure to do so is a reportable act of noncompliance.

I. Administration and Notification

The owner must notify IFA immediately in writing of any anticipated changes in the ownership composition, general partner or managing member, or in the management agent, such as name, address, telephone number, and federal ID#. Depending upon language contained in the LURA, the owner may need to seek IFA's approval prior to the transaction taking place. A careful review of the project's LURA will provide guidance on the course of action that needs to take place.

Upon receipt of a request from the owner IFA will send a packet with instructions and forms or a list of documents that need to be completed and sent to us for approval prior to closing.

The owner is responsible for informing IFA of any event that might affect the development's credit or HOME/NHTF funding throughout all phases of development, rent-up, and operation. This includes the initial phases of construction, the scheduled placed-in-service date and the completion of the development as outlined in the Code. Any delays or omissions in following this process may result in the issuance of an 8823 or a State Notice of Noncompliance and could also potentially void the sale or transaction.

All communications with IFA must include the IFA-assigned development number, and, if appropriate, the affected Building Identification Numbers (BINs).

J. Compliance Training

Training is provided annually in conjunction with the *HousingIowa Conference* and at other times at IFA's discretion.

K. Declaration of Land Use Restrictive Agreement (LURA)

Prior to claiming tax credits, the building owner must record an approved IFA Declaration of Land Use Restrictive Agreement (LURA) which must be in effect as of the end of the tax year credits are claimed.

Management Company and On-Site Personnel Responsibilities

A. General

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

B. Noncompliance

If the management company determines that the development is not in compliance with the LIHTC, HOME, or NHTF program requirements, the management company should correct the noncompliance whenever possible.

Correction of LIHTC noncompliance matters prior to receiving notification from IFA of a pending scheduled file review and physical inspection is demonstration of proper due diligence and is not reportable to the IRS on form 8823.

C. Compliance Training

Management staff must remain up to date on all IRS Code regulations and procedure changes that are published. This may be accomplished through the IRS website, several nationally known LIHTC training providers, IFA's website, and the annual *HousingIowa Conference*.

NOTE: THE ULTIMATE RESPONSIBILITY FOR COMPLIANCE AND PROPER ADMINISTRATION OF THE LIHTC PROGRAM LIES WITH THE OWNER.

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Appendices

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Note on Forms: See the IFA website for the most up-to-date forms