Missouri HOTMA Manual issued 12/18/2023

and

Missouri LIHTC Compliance Manual issued 7/1/2023.

The HOTMA Manual amends information in the Compliance Manual effective 1/1/2024

HOTMA Manual

December 18, 2023

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PREFACE

MHDC and its monitoring staff are committed to working closely with owners, management agents, and onsite personnel to assist them in meeting their compliance responsibilities. Please note, however, that this manual is to be used only as a supplement to compliance with Housing Opportunities Through Modernization Act of 2016 (HOTMA) and all other applicable laws and rules. This manual should not be considered a complete guide to HOTMA compliance. The responsibility for compliance with federal program regulations lies with the owner. This manual is produced for use by MHDC Program participants in Missouri, and to be used in conjunction with applicable program rules and Regulatory/Restriction Agreements. Because of the complexity of regulations and the necessity to consider their applicability to specific circumstances, owners are strongly encouraged to seek competent, professional legal and accounting advice regarding compliance issues. MHDC's obligation to monitor for compliance with the requirements of applicable Programs does not make MHDC or its subcontractors liable for the owner's noncompliance.

The publication of this manual is for convenience only. Asset Management Manuals and Reference Guides may be updated from time to time due to regulation or improvements. Your use or reliance upon any of the provisions or forms contained herein does not, expressly, or impliedly, directly, or indirectly, suggest, represent, or warrant that your property will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. The Missouri Housing Development Commission and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants as MHDC will not make authoritative interpretations of the federal law. Employees and officers of MHDC are not liable for any adverse consequences to taxpayers and/or investors as a result of programmatic noncompliance with federal laws.

INTRODUCTION

HOTMA extensively changes how HUD calculates income for a property. This involves both periodic income and income calculated from assets. HUD published the Final rule officially in the Federal Register in February 2023. HOTMA covers Sec. 102 ["Income reviews"], Sec.103 ["Limitation on public housing tenancy for over-income families," effective March 16, 2023], and Sec. 104 ["Limitation on eligibility for assistance based on assets," effective January 1, 2024]. Title I of HOTMA contains 14 sections that affect the public housing and Section 8 rental assistance programs (*Section 8 PBRA (including RAD), Section 202/811 Project Rental Assistance Contract (PRAC), 202/8, 202/162 PAC, Senior Rental Preservation Assistance Contract (SPRAC), and Section 811 Project Rental Assistance (PRA)*). **LIHTC, HOME, and NHTF are affected by HOTMA Section 102 provisions, effective January 1, 2024.** MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF. *HUD HOTMA reference can be found at: https://www.hud.gov/program_offices/housing/mfh/hotma.*

COMPLIANCE TRAINING REQUIREMENTS

Compliance monitoring is administered by the MHDC Asset Management Department. Questions regarding compliance issues should be directed to compliance staff at (314) 877-1350 or (816) 759-6600. For additional information on the responsibilities of MHDC and the responsibilities of the property owner/agent, refer to the MHDC LIHTC and HOME manuals, Regulatory Agreement(s), and applicable MHDC Developer's Guide.

All property owners and management agents are required to attend ongoing Compliance Training, and training is to be updated at least every two years from the last training. The owner must ensure that the onsite management knows, understands, and complies with all applicable federal and state rules, regulations, and policies governing the property. MHDC encourages the owner to make certain that the property's management and compliance personnel are familiar with all MHDC program compliance manuals and forms and information on the MHDC website.

MHDC strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. It is suggested that staff attend a

Fair Housing and Equal Opportunity training at least once every calendar year. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws.

The effectiveness of the training will be measured during site inspections and in looking at the success of the property and or management portfolio overall. Participation in training is mandatory and MHDC compliance staff may, at their discretion, mandate additional trainings for those management personnel/companies that Exhibit trends in noncompliance, are issued non-corrected 8823s, and/or otherwise demonstrate a need for basic or advanced compliance training.

MHDC HOTMA APPLICABILITY CHART

	HOME	NHTF	LIHTC
Net Family Assets Definition (5 5.603)	**Yes**, MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	**Yes**, MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	**Yes,** MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.
Annual Income Definition (§ 5.609(a))	**Yes**, MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	**Yes**, MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	**Yes,** MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.
Annual Income Exclusions (5 5.609(b))	**Yes**, MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	**Yes**, MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.	**Yes,** MHDC refers to HUD Section 8 income definitions and guidelines for LIHTC, HOME, and NHTF.
Annual Income Calculation & Reexaminations (§ 5.609(c))	**No**, unless household in unit is receiving federal or state project-based rental subsidy or the participating jurisdiction accepts income determination under a federal tenant-based rental assistance program assisting a household. **See MHDC Program Compliance Manuals regarding Qualifying and Certifying Residents & Section 8 Assistance.*	**No**, unless household in unit is receiving federal or state project-based rental subsidy or under a federal tenant-based rental assistance program assisting a household.	**No**
Adjusted Income Mandatory Deductions (§ 5.611(a))	**Yes**, if a household is over-income and rent is based on adjusted income or when adjusted-income-based rents apply to low HOME units where the household is receiving project-based federal rental subsidy.	**No**, unless household in unit is receiving federal or state project-based rental subsidy or under a federal tenant-based rental assistance program assisting a household.	**No**
Adjusted Income Additional Deductions (§ 5.611(b))	**Yes**, if a household is over-income and rent is based on adjusted income at HOME properties without LIHTC funding.	**No**, unless household in unit is receiving federal or state project-based rental subsidy or under a federal tenant-based rental assistance program assisting a household.	
Adjusted Income Financial Hardship Exemptions (5 5.611(c))	**Yes**, if the participating jurisdiction elects to do so, if the household in the unit is receiving federal or state project-based rental subsidy, or the participating jurisdiction accepts income determination under a federal tenant-based rental assistance program assisting a household. **See MHDC Program Compliance Manuals regarding Qualifying and Certifying Residents & Section 8 Assistance.*	**No**, unless household in unit is receiving federal or state project-based rental subsidy or under a federal tenant-based rental assistance program assisting a household.	**No**
Restrictions on No Eligibility of Households with Assets Over $100,000 or who Own a Home (§ 5.618)	**No**	**No**	**No**
*Table format courtesy of Costello Consulting.			
Note: MHDC implements the HOTMA provisions, effective January 1, 2024, with the exception that MHDC will continue to use anticipated income to be received during the 12 months from the effective date of the certification, to determine a household's eligibility. Reference: Treas. Reg. 1.42-5 (B) (vii); 8823 Guide 1-2; https://www.hud.gov/program_offices/housing/mfh/hotm; Federal Register/Vol.88,No.30/Tuesday, February 14, 2023/Rules and Regulations 9601.			

CHAPTER 1: INCOME ELIGIBILITY

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income. Some circumstances present more than the usual challenges to estimating anticipated income. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. (HUD Handbook 4350.3)

Recertifications: MHDC implements the HOTMA provisions, effective January 1, 2024, with the exception that MHDC will continue to use anticipated income to be received during the 12 months from the effective date of the recertification. For further reference on MHDC LIHTC and HOME recertification requirements, see the MHDC LIHTC Manual and MHDC HOME Manual at www.mhdc.com.

**Owner/Agents are urged to consult with their own attorneys, accountants, and tax consultants as MHDC will not make authoritative interpretations of the federal law. Employees and officers of MHDC are not liable for any adverse consequences to taxpayers and/or investors as a result of programmatic non-compliance with federal laws.*

See **HUD Notice H 2023-10** for additional reference, charts, and examples as it relates to HOTMA; Income and Assets.

1.1 HOTMA Income Terms

24 CFR §5.100 [2024]

Earned Income | "Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits."

Unearned Income | "Unearned income means any annual income, as calculated under § 5.609, that is not earned income."

24 CFR §5.603 [2024]

Day Laborer | "An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future."

Independent Contractor | "An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor the payer has the right to control or direct only the result of the work and not what will be done and how it will be done."

24 CFR § 5.609(b)(24) [2024]

These workers' income from these activities, although potentially sporadic, does not fit HUD's definition of "non-recurring" and is therefore counted as income.

Foster Adult & Child | "Foster adult. A member of the household who is 18 years of age or older and meets the definition of a foster adult ***under State law***. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is *placed with the family by an authorized placement agency* or by judgment, decree, or other order of any court of competent jurisdiction. **Foster child.** A member of the household who meets the definition of a foster child ***under State law***. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction."

24 CFR § 5.609(b)(8) [2024] Federal Register/Vol.88, No.30/Tuesday, February 14,2023/Rules and Regulations 9602

Although used for occupancy bedroom size standards and utility allowance purposes (if applicable), **fosters members are no longer counted as household members for income limit purposes**, **and their income and any**

assets belonging to fosters are also not counted. They are treated "similar to a live-in aide." This reverses several provisions that had been introduced in multiple changes to the HUD Handbook 4350.3 REV-1. This also addresses concerns that foster children living in assisted housing who may be returning home with parents who are also in assisted housing would be counted in two households in violation of dual subsidy prohibitions.

Foster Persons example:

Four (4) Person Household in a 60% LIHTC unit in St. Louis city, Missouri

- *Sebastian; Head of Household, Annual Income $48,000*
- *Maya; Foster Adult, Annual Income $10,000*
- *Louise; Foster Child, No Annual Income*
- *Bethel; Foster Child, Annual Income from SSI $7,240*
  - *Total Household Income $65,240*

Income Limit for a 4-person household $60,300 – Qualified if moved in prior to January 1, 2024.
Income Limit for a 1-person household $42,240 – Unqualified if moved in on or after January 1, 2024 with HOTMA changes.

Foster adults and foster children are members of the household. They will be considered when determining appropriate unit size and utility allowance. Under HOTMA, HUD clarifies that foster adults and foster children are no longer considered members of the assisted family and as such, their income and assets are excluded.

Whose Income is Counted? *(HUD 4350.3 5-6/5-7; HUD 4350.3 Figure 5-2/5-8)*		
Household Member	**Earned Income**	**Unearned Income**
Head, Spouse, Co-head	Yes	Yes
Other Adult Household Member	Yes	Yes
Children (under the age of 18)	No	Yes
Foster Adults and Children	No	No
Full-Time Student (18 & older - not the head, co-head, or spouse)	Yes, up to current dependent deduction	Yes
Temporarily Absent Household Member (HUD 4350.35-6 B./5-9)	Yes	Yes
Permanently Confined Family Members (i.e. living in a hospital or nursing home; HUD 4350.3 5-6 D./5-11)	Household Decision	
Live in Attendant/Guests (non-household member)	No	No

1.2 Annual Income Inclusions and Exclusions

Annual Income Includes (*24 CFR §§ 5.609(a)(l)-(a)(2); and 891.105)*

(1) All amounts, not specifically excluded in paragraph (b) of 24 CFR §5.609, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds $50,000 (HUD will adjust the amount annually per the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

Income Exclusions *(24 CFR § 5.609(b))*

- Irrevocable Trusts or Revocable Trust outside the control of the household:
  - Distributions from the principal or corpus
  - Distributions of income IF distributions are used to pay for the cost of health and medical expenses for a minor.
- Revocable Trust under the control of the 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.
- Income of foster children or foster adults
  - Income and distributions from any Coverdell education savings account (under IRC Section 529 or Section 530) and distributions from, "baby bond" accounts.
  - 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;
  - Loan proceeds
  - Replacement "Gap" Payments under the Uniform Relocation Act
  - 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 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.
- 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.
- Income earned on amounts placed in a family's Family Self Sufficiency Account.
- Earned Income of Dependent Students
  - Amount to be adjusted annually by HUD In accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers.

- Adoption Assistance Payments
  - Amount to be adjusted annually by HUD In accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers.
- Student Financial Assistance
  - Student Financial Assistance has been redefined and exceptions modified. Please section on student financial assistance.
- Trust Accounts
  - Irrevocable Trusts or Revocable Trust outside the control of the household:
    - Distributions from the principal or corpus
    - Distributions of income IF distributions are used to pay for the cost of health and medical expenses for a Minor.
  - Revocable trust under the control of the 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.

      Example of Payments from a Trust: Louise receives periodic income distributions from a non-revocable trust established by their parents. Last year they received $25,000 from the trust. The attorney managing the trust reported that $5,000 of the funds distributed was interest income and $15,000 was principal.

      Only include the $5,500 in interest income when determining annual income. The amount of the distribution that is principal is excluded.
- Fosters

  Change in Treatment of Fosters:
  - All income received by foster children and foster adults is excluded from income.
  - Fosters are not eligible for any expenses or deductions when determining adjusted income.
  - Any assets held by fosters must be excluded from the asset limitation.
  - Foster children and adults must not be included when making the determination of household size for income limit purposes but are included for unit size determinations.
- Non-Cash Contributions (See HUD Notice H 2023-10 Attachment G, G.1 Nonrecurring Income)
  - In-Kind Donations: HOTMA excludes as income any non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.
- Nonrecurring Income, from HUD Notice H 2023-10 (*See 24 CFR §§ 5.609(b)(24); CFR 891.105; and the list of exclusions codified at 24 CFR § 5.609(b)(24) as nonrecurring income (please note that the list is not exhaustive*.):

  Summary: The nonrecurring income exclusion replaces the former exclusion for temporary, nonrecurring, and sporadic income (including gifts), but it provides a narrower definition of excluded income in contrast to the former broad exclusion of temporary, nonrecurring, or sporadic income.
  - Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income, and is excluded from annual income. However, income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under § 5.609(b)(24), even if the source, date, or amount of the income varies.

- Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This does not include unemployment income and other types of periodic 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. For example, an increasing number of cities and states are piloting guaranteed income programs that have discrete beginning and end dates. This income can be excluded as nonrecurring in the final year of the pilot program. *For example*, for an annual reexamination effective 2/1/2024, guaranteed income that will be repeated in the coming year but will end before the next reexamination on 2/1/2025 will be fully excluded from annual income.
- Income amounts excluded under this category may include, but are not limited to, nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities, eviction prevention, security deposits to secure housing, payments for participation in research studies depending on the duration, and general one-time payments received by or on behalf of the family.

- Uniform Relocation Act (URA) Gap Payments (see HUD Notice H 2023-10, G.15 and 24 CFR § 5.609(b)(23))
  - Replacement housing "gap" payments made in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), as implemented by 49 CFR Part 24, are excluded from annual income. However, replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments. Replacement housing "gap" payments should cover a minimum of 42 months of tenancy at the new unit.

24 CFR §5.609(b) [2024]:

Note: **Income types unchanged by HOTMA are** *indicated in italics.*

(1) Any imputed return on an asset when net family assets total ***$50,000 or less*** 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.

Example, Payments from a Trust

John receives periodic income distributions from a non-revocable trust established by their parents. Last year they received $20,000 from the trust. The attorney managing the trust reported that $6,500 of the funds distributed was interest income and $13,500 was principal.

In this example, only include the $6,500 in interest income when determining annual income. The amount of the distribution that is principal is excluded.

(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) **HOTMA made significant changes to the treatment of Student Financial Assistance.** Two significant changes were made:

1. Removed Student Financial Assistance Income Exclusion for Non-Section 8 Households
   i. Under the new regulation, the Section 8 component has been removed from 24 § CFR 5.609;
   ii. meaning, any household receiving student financial assistance, regardless of <u>whether or not</u> subsidy is being received, may need to have student financial assistance included in the household's annual income determination. Further, the new regulation does not include an exception for students who are over the age of 23 with a dependent child or students who are living with their parents.
2. Changed the Definition of "Excess" Student Financial Assistance

<u>Note</u>: For Section 8 Students, in the event that the student is over the age of 23 with a dependent child or the student is living with the parents, financial assistance is excluded.

<u>Student Assistance Type 1:</u> Assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA) or the Bureau of Indian Affairs Student assistance program (BIA)

Any assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA), as amended, is excluded from income. All assistance under the Higher Education Act (HEA) or the Bureau of Indian Affairs Student assistance program (BIA), even amounts in excess of actual covered costs of the student, are excluded from income.

Note: *Below is a list of HEA Title IV programs, 24 CFR 5.609(b)(9)(i). Title IV HEA Assistance refers to any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires to be excluded from a family's income. There may be 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 farm work
- 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*

Example:

HEA Assistance Only

- Actual covered costs: $15,000
- Title IV HEA assistance (i.e., Pell Grant): $20,000
- Other student financial assistance: $0
  Included income: $0

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, exclude the full amount of the assistance received.

<u>Student Assistance Type 2:</u> Other Student Financial Assistance

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. Other student financial assistance, such as scholarships or grants not covered under HEA or BIA; the amount of assistance that is in excess of "actual covered costs'' of the student are included in annual income.

(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

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

(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.

Other Student Financial Assistance Only

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source:

1) Calculate actual covered costs
2) Subtract the total amount of the student's financial assistance from the student's actual covered costs
3) Include any amount of financial assistance in excess of the student's actual covered costs

Example:

- Actual covered costs: $20,000
- Title IV HEA assistance: $0
- Other student financial assistance: $25,000
- Calculation: $25,000 in financial assistance - $20,000 in actual covered costs

Included income: $5,000

BOTH: Title IV HEA assistance AND Other Student Financial Assistance

Combined Assistance: In the event a student has student financial assistance that includes assistance that is covered under the HEA, as well as assistance that is not covered under the HEA, HUD states the following formula must be used in order to determine how much may be excluded when determining income.

When a student receives assistance from both Title IV of the HEA and from other sources:

1) Calculate the actual covered costs
2) Assistance received under Title IV of the HEA is applied to the student's actual covered costs first
3) Then apply the other student financial assistance to any remaining actual covered costs

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the student financial assistance is excluded from income.

To determine the amount to include in annual income (Step 2), the amount permitted to be excluded must be determined first (Step 1).

Step 1: Determine which amount is lower:

- The total amount of scholarships or grants not excluded under the HEA, or
- The amount by which the student's actual covered costs exceeds the HEA assistance.

Step 2: Subtract the amount determined in Step 1 from the amount of the scholarship or Grant not covered under the HEA. This is the amount that must be included in income.

HOTMA New Regulation Examples #1-#3; Student **DOES NOT** receive Section 8 Assistance *(Based on examples found in HOTMA Final Regulation):*

***Example 1*:** A student, who <u>does not</u> receive Section 8 assistance, receives the following in student financial assistance:

- $15,000 Scholarship under the HEA
- $5,000 Private Scholarship not covered under HEA

Student's actual covered costs: **$22,000**

<u>Step 1</u>*:* To determine the amount that may be excluded, **use the lower of**:

- The total amount of scholarships or grants <u>not excluded</u> under the HEA ($5,000)
- The amount by which the student's actual covered costs <u>exceeds</u> the HEA assistance ($22,000 - $15,000= $7,000)

<u>Step 2</u>*:* Subtract the excludable amount from the total financial assistance <u>not covered</u> under the HEA. ($5,000- $5,000 = $0)

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

Example 2*:* A student, who <u>does not</u> receive Section 8 assistance, receives the following in student financial assistance:

- $15,000 Scholarship under the HEA
- $5,000 Private Scholarship not covered under HEA

Student's actual covered costs: **$18,000**

<u>Step 1</u>: To determine the amount that may be excluded, use the lower of:

- The total amount of scholarships or grants <u>not excluded</u> under the HEA ($5,000)
- The amount by which the student's actual covered costs <u>exceeds</u> the HEA assistance ($18,000 - $15,000= $3,000)

<u>Step 2</u>: Subtract the excludable amount from the total financial assistance <u>not covered</u> under the HEA. ($5,000- $3,000 = $2,000)

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

Example 3*:* A student, who <u>does not</u> receive Section 8 assistance, receives the following in student financial assistance:

- $25,000 Scholarship under the HEA

Student's actual covered costs: **$18,000**

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

<u>Additional Student Financial Assistance Examples</u>:

Actual covered costs: $24,000
Title IV HEA assistance: $25,000
No remaining actual covered costs
Other student financial assistance: $4,000
Included income: $4,000 in other financial assistance

Actual covered costs: $22,000
Title IV HEA assistance: $15,000
Calculation: $22,000 actual covered costs - $15,000 Title IV HEA assistance=$7,000 remaining
Other student financial assistance: $5,000
Calculation: $5,000 other financial assistance - $7,000 remaining actual covered costs=
Included income: $0

Actual covered costs: $18,000
Title IV HEA assistance: $15,000
Calculation: $18,000 actual covered costs - $15,000 Title IV HEA assistance=$3,000 remaining
Other student financial assistance: $5,000
Calculation: $5,000 other financial assistance - $3,000 remaining=
Included income: $2,000

A household has these forms of student financial assistance.
A Pell Grant (Title IV HEA assistance): $11,000
A scholarship from a local business: $5,000
Covered education expenses are $10,500
ALL of the scholarship is counted as income, as the Title IV HEA 479B assistance covers all of the allowed educational expenses.

A household has these forms of student financial assistance.
A Pell Grant (Title IV HEA assistance): $12,000
A scholarship from a local business: $6,000
Covered education expenses are $15,000
$3000 of the scholarship is counted as income, as the Title IV HEA 479B assistance does not cover all of the allowed educational expenses.

A household pays for its schooling in the following ways.
A scholarship from a local business: $5000
Parents outside the household: $19,000
Covered education expenses are $14,000

All of the scholarship money is EXCLUDED as income because it does not cover the education expenses. However, the contributions by the parent do not qualify as student financial assistance and are COUNTED AS INCOME.

Note: This applies to full-time and part-time.

Note: NHTF does not currently have student rules.

(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 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, *a 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.** *(Note: this previously said "in excess of $480")* **(For Section 8)**
Earned Income of Dependent Full-Time students, Regulation: 24 CFR § 5.609(b)(14)
Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611 is excluded from annual income. Full-time students must be dependent family members for this exclusion to apply. This exclusion does not apply to the head of household, spouse, or co-head. This means that the first $480 of the income earned by dependent full-time students will be included in the family's calculation of annual income.

The dependent deduction will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). See Attachment H in HUD Notice H 2023-10, issued 9/29/2023 *(Notice remains in effect until amended, superseded, or rescinded)*. Full-time dependent students are eligible to receive both the $480 (as adjusted for inflation) dependent deduction and the exclusion described in this paragraph.

(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 part of the Uniform Relocation Act.*

(24) ***Non-recurring income*** *(24 CFR 5.609(b)(24)*, 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.

<u>Non-recurring income includes:</u>

- 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.
    - *The exclusion is "non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization."* ***See 24 CFR § 5.609(b)(24).*** *According to HUD, the exclusion specifies that gifts for holidays, birthdays, or other significant life events or milestones are excluded from income. However, other gifts that are simply provided to the family on a regular and routine basis (e.g., a relative or friend provides a member of the family with cash gifts on a weekly or monthly basis) would be included in income.*
    - ***See comments on the HOTMA Final Rule at Federal Register/Vol. 88, No. 30/Tuesday, February 14, 2023/Rules and Regulations, page 9630.***

- *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. 24 CFR 5.609(b)(26)*

(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.*

Annualizing Partial Year Business Income

(Net Income year to date) x 12 months
Number of months in business during the current year

[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 in 2014 and 2016)

Note: **Provisions updated since the HUD Handbook Exhibit 5-1** *are indicated in italics.*

(a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);

(b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (e.g., employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);

(c) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])

(d) Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

(f) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94– 540, section 6);

(g) The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). *This exclusion does not include proceeds of gaming operations regulated by the Commission;*

(h) *Removed with HOTMA changes effective 2024,* superseded by new student income rules at § 5.609 (b)(9): The new rules create two categories of student financial aid.

The first category, is any assistance that section 479B of the Higher Education Act of 1965, as amended, requires to be excluded from a family's income, referred to here as, "Title IV HEA Assistance." For public housing residents, all assistance in this category must be excluded from income. See the exception for some Housing Choice Voucher participants below in the final section.

The second category is any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education.

Exclusion in both categories apply equally to full and part-time students.

(i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42U.S.C. 3056g))(e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program);

(j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(k) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 25 U.S.C. 1728);

(l) 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);

(m) 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]);*

(n) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

(o) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);

(p) Any allowance paid under the provisions of 38 U.S.C. 1833(c) *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. 1821), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);*

(q) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

(r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(s) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1780(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);

(t) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990(25 U.S.C. 1774f(b));

(u) Deferred amounts from 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));

(v) Compensation received by or on behalf of a Veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;

(w) 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);

(x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(y) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(z) Major disaster and emergency assistance 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 the states, local government, and disaster assistance organizations (42 U.S.C. 5155(d)).

CHAPTER 2: ASSETS

2.1 HOTMA Asset Terms

24 CFR § 5.659 (e)

HOTMA allows for self-certification of assets under $50,000 (adjusted annually for inflation). Imputed asset threshold raised from $5,000 to $50,000 (adjusted annually for inflation). MHDC will allow this for LIHTC, HOME, and NHTF as allowed under HOTMA regulations. Third-party verification of assets is required when net family assets exceed $50,000, adjusted annually by HUD. MHDC will apply this to the LIHTC and HOME/NHTF program, however, please note that this is subject to change if the IRS or HUD CPD issues different guidance in the future. Note: For HUD MFH programs, net family assets must be verified every three years.

Asset values and income can be self-certified at recertification if net family assets do not exceed $50,000. If they do exceed $50,000, the assets values and income are to be verified. If income cannot be verified for a specific asset, it will be imputed (because assets exceed $50,000).

Examples:

100% LIHTC with HOME (or NHTF)

Move-in (year 3 of affordability period)	HOME full asset verification LIHTC self-certification if household combined net assets do not exceed $50,000
Year 4 of the affordability period	HOME self-cert of all income LIHTC income cert is not applicable
Year 5 of the affordability period	HOME self-cert of all income LIHTC income cert is not applicable
Year 6 of the affordability period	HOME full asset verification LIHTC income cert is not applicable
Year 7 of the affordability period	HOME self-cert of all income LIHTC income cert is not applicable
Note: HUD accepts the LIHTC certification for all years and both HOME and LIHTC may use the PHA certification for TBRA households. Additionally, refer to Section 3.3 Recertifications as it relates to the Exhibit U usage.	

Less Than 100% LIHTC *(mixed-use)* **with HOME (or NHTF)**

Move-in (year 3 of affordability period)	HOME full asset verification LIHTC self-certification if household combined net assets do not exceed $50,000
Year 4 of the affordability period	HOME self-certification of all income LIHTC self-certification if household combined net assets do not exceed $50,000
Year 5 of the affordability period	HOME self-certification of all income LIHTC self-certification if household combined net assets do not exceed $50,000
Year 6 of the affordability period	HOME full asset verification LIHTC self-certification if household combined net assets do not exceed $50,000
Year 7 of the affordability period	HOME self-certification of all income LIHTC self-certification if household combined net assets do not exceed $50,000
Note: HUD accepts the LIHTC certification for all years and both HOME and LIHTC may use the PHA certification for TBRA households.	

Note, the owner/agent may not rely on the low-income household's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the household's annual income from assets is higher than the amount represented on the self-certification.

Checking Accounts

HOTMA Implementation Notice H 2023-10, J.5.a: When verification of assets is required, PHAs/MFH Owners are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts including checking accounts. 6-month average is no longer required *(prior to HOTMA implementation, O/As were required to average the balance of six checking account statements to determine the cash value of a checking account).*

24 CFR §92.252(i)(2) [2024] & §92.252(i)(2)

HOTMA denies eligibility to households with assets exceeding $100,000 or who own a home that is suitable for occupancy by the household. Asset Limitation is applicable to the Section 202/8 program. ***These limitations do not apply to HOME, the NHTF, or the LIHTC.*** If a household loses rental assistance from a PBRA or TBRA program that is subject to these limitations, they will still qualify for HOME or NHTF units as long as they continue to qualify under HOME/NHTF rules.

24 CFR §5.100 [2024]

Real Property | "Real property as used in this part has the same meaning as that provided under the law of the State in which the property is located."

Manufactured Homes are treated as real property in some states if affixed to land that the owner of the home also owns. In other states, the land can be rented. Other states simply do not address this issue or treat these as personal property, similar to vehicles. These and similar matters subject to state real property laws will need to be understood by HFAs and owner/agents.

2.2 Asset Inclusions

24 CFR § 5.609 (b) *Net Family Assets [2024]*

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

Examples from HUD Notice H 2023–10 (Necessary vs. Non-Necessary, see HUD Notice H 2023-10; Notice PIH 2023-27, F.4.c; Regulation: 24 CFR § 5.603):

Actual Asset Income from an Asset Excluded from Net Family Assets

Eugene Park owns a checking account with $3,500 that earns 0 percent interest. He also has a savings account with a balance of $10,000 for which he expects to earn $300 in annual interest. Mr. Park has no other assets. Because those assets are classified as non-necessary personal property, and their combined value of $13,500 does not exceed $50,000, the combined value of all non-necessary personal property is excluded from the calculation of net family assets (see paragraph 56 F.4.c of HOTMA Implementation Notice 2023-10). The total value of Eugene Park's net family assets is $0, and $300 is included in annual income.

- Total value of assets: $3,500 + $10,000 = $13,500
- Net family assets: $0.00 (total value of assets is less than $50,000, therefore the value is excluded from net family assets)
- Result: Actual income from assets (must be included in the calculation of annual income for Eugene Park): $300 ($0 from checking account + $300 from savings account).

Calculating Net Family Assets and Actual Asset Income when Net Family Assets Exceed $50,000 (As Adjusted)

Background: Sherry McNeil received a federal tax refund of $1,200 and deposited the refund into her checking account. At the time of her annual reexamination six months later, the account had a balance of $10,000 and earns 0-percent interest. Sherry also owns a stock portfolio with a verified value of $45,000. The stocks earned $405 in cash dividends last year, which Sherry expects to earn again in the coming year.

- Total value of assets: $55,000 ($10,000 + $45,000)
- Net family assets: $53,800 ($55,000 – $1200) (tax refund received in the last 12 months is excluded from net family assets under § 5.603(b)(3)(xi).) Because the total value of Sherry's non-excluded assets exceeds $50,000, this value ($53,800) is included as net family assets and must be confirmed via third-party verification.
- Actual Income from Checking Account: $0 earned ($10,000 x 0 percent)
- Actual Income from Stock Portfolio: $405 earned in dividends last year on $45,000
- Result: Total actual income from assets (must be included in the calculation of annual income for Sherry McNeil): $405 ($0 + $405)

2.3 Disposed Assets

24 CFR § 5.609 (b)(2) ***Net Family Assets [2024]***

In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but *not in a foreclosure or bankruptcy sale*) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

2.4 Imputed Asset Income

§ 5.609(a)(2)

When net family assets are valued over $50,000 (as adjusted by inflation) and actual returns on specific assets cannot be calculated, imputed returns are included in income. All actual returns that can be calculated continue to be included in income. Under the new rule, imputing asset income on an asset is only required when the net family assets exceed **$50,000**, **and only if actual income from all the assets cannot be calculated.**

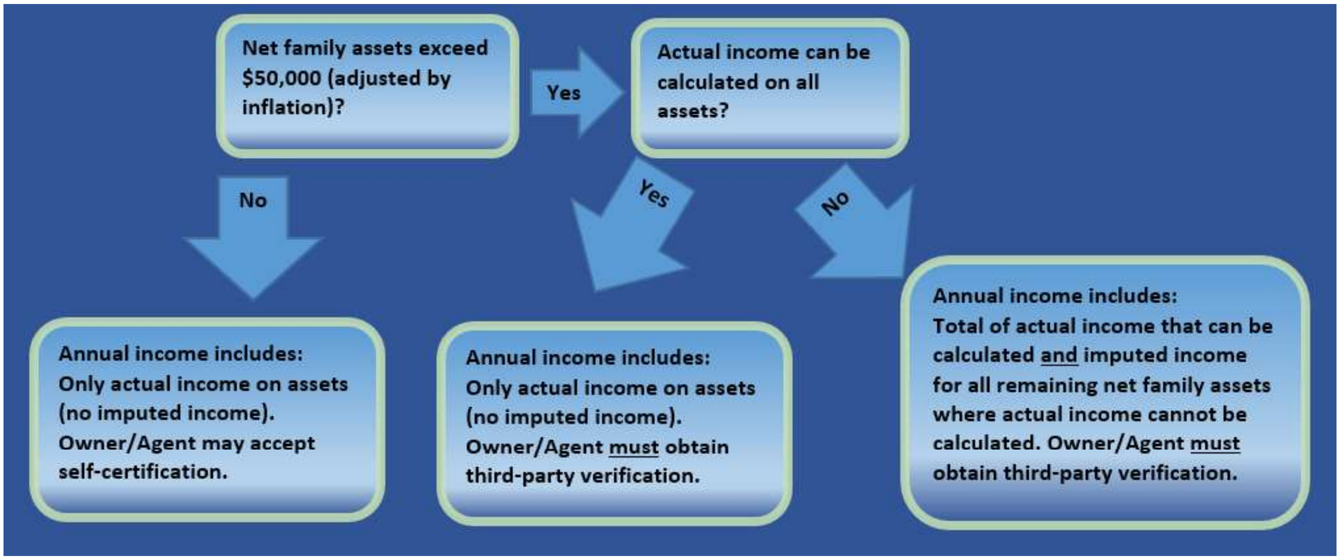
HUD HOTMA Implementation Notice, F.6.b., HUD says that "imputed income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

1. The value of net family assets exceeds $50,000 (as adjusted for inflation);
2. The specific asset is included in net family assets; and
3. Actual asset income cannot be calculated for the specific asset.

"If the actual income from assets can be computed for some assets but not all assets, then PHAs/MFH Owners must add up the actual income from the assets, where actual income can be calculated, then calculate the imputed income for the assets where actual income could not be calculated. After the PHA/MFH owner has calculated both the actual income and imputed income, the housing provider must ***combine both amounts to account for income on net family assets with a combined value of over $50,000***."

"When the family's net family assets ***do not exceed $50,000*** (as adjusted for inflation), imputed income is not calculated. Imputed asset income is never calculated on assets that are excluded from net family assets. When actual income for an asset — which can equal $0 — can be calculated, imputed income is not calculated for that asset."

"PHAs/MFH Owners should not conflate an asset with an actual return of $0 ... with an asset for which an actual return cannot be computed, such as could be the case for some non-financial assets that are items of non-necessary personal property. If the asset is a financial asset and there is no income generated (for example, a bank account with a 0 percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is consistently $0."



Putting it on the Tenant Income Certification, *Example #1 (under $50k)*:

Checking account with no interest: $0 — *Income: $0.00 (actual)*
Savings account with 2% interest rate: $0 — *Income: $150.00 (actual)*
Land with no determined rate of return: $25,000 — *Income: $0 (under $50,000)*
Total of Household Assets: ***$25,000***

Part IV – Income from Assets					
Household Member #	**(F)** Type of Asset	**(G)** Current/Disposed	**(H)** Cash Value of Asset	**(I)** Actual/Imputed	**(J)** Annual Income from Asset
1	Checking	C	$0	A	$0
1	Savings	C	$0	A	$150
1	Land (Real Property)	C	$25,000	n/a	$0
		TOTALS:	**$25,000**		**$150**
			Total Income from Assets (K)	**$150**	

Putting it on the Tenant Income Certification, *Example #2 (over $50k)*:

Checking account with no interest: $18,000 — *Income: $0.00 (actual)*
Savings account with 2% interest rate: $35,000 — *Income: $600.00 (actual)*
Land with no determined rate of return: $25,000 — *Income: $100.00 (imputed)*
Total of Household Assets: ***$78,000***

Part IV – Income from Assets					
Household Member #	**(F)** Type of Asset	**(G)** Current/Disposed	**(H)** Cash Value of Asset	**(I)** Actual/Imputed	**(J)** Annual Income from Asset
1	Checking	C	$18,000	A	$0
1	Savings	C	$35,000	A	$600
1	Land (Real Property)	C	$25,000	I	$100
		TOTALS:	**$78,000**		**$700**
			Total Income from Assets (K)	**$700**	

2.5 Asset Exclusions

24 CFR § 5.609 (b)(3) ***Net Family Assets [2024]***

Excluded from the calculation of net family assets are:

(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)).

(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.

Additional Research | Types of retirement accounts recognized by the IRS [IRS.gov](IRS.gov)

- Individual Retirement Arrangements (IRAs)
- Roth IRAs
- 401(k) Plans
- SIMPLE 401(k) Plans
- 403(b) Plans
- SEP Plans (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
- SIMPLE IRA Plans (Savings Incentive Match Plans for Employees)
- SARSEP Plans (Salary Reduction Simplified Employee Pension)

Under HOTMA, accounts that the IRS recognizes as retirement accounts will not be counted as assets. As they are not assets, we will not count any income from them either. However, once the holder of the account starts taking out payments, the withdrawals will be counted as income. At that point, it will be the same as we currently handle these accounts, with periodic withdrawals being income and the balance not representing an asset.

<u>Retirement Accounts 2023 vs. 2024</u>

IRA, 401(k), Keogh Accounts, Retirement Accounts, Pension Funds, and Annuities
4350.3 5-6 P, 5-6 L 2, 5-7 G 2 & Exhibit 5-2 A 5 to A 6

Since REV-1 of the HUD handbook was released, each of the four changes has adjusted how retirement accounts are handled. In general, "these are included when the holder has access to the funds, even though a penalty may be assessed." "This would include any accounts the applicant can withdraw without retiring or terminating employment." Change 4 introduced an exception, however. "If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset."

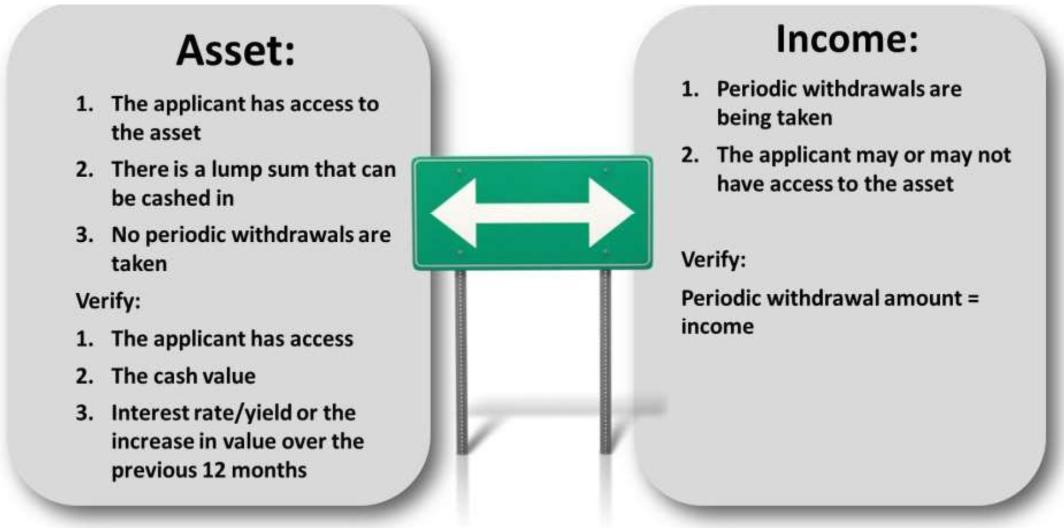


**Image Courtesy of Costello Compliance*

(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.
For HUD Section 8 purposes, this can be addressed if a household is close to the $100,000 asset limitation **(this does not apply to LIHTC, HOME, or NHTF)**.

<u>Trusts</u>

24 CFR § 5.609 (b)(4) *Net Family Assets [2024]*

In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset, and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

CHAPTER 3: ADDITIONAL REQUIREMENTS AND REFERENCE

3.1 Use of Other Program Determination of Income

24 CFR §5.609(c)

The PHA or owner may determine the family's income prior to the application of any deductions applied following §5.611 based on income determinations made within the previous 12-month period for purposes of the following means-tested forms of Federal public assistance:

(A) **TANF |** The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).

(B) **Medicaid** (42 U.S.C. 1396 et seq.).

(C) **SNAP |** The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.).

(D) **EITC |** The Earned Income Tax Credit (26 U.S.C. 32).

(E) **LIHTC |** The Low-Income Housing Credit (26 U.S.C. 42).

(F) **WIC |** The Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786).

(G) **SSI |** Supplemental Security Income (42 U.S.C. 1381 et seq.).

(H) Other programs administered by the Secretary.

(I) Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding.

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

3.2 Verification of Other Program Determinations

24 CFR §(c)(3)(ii) [2024]

If a PHA or owner intends to use the annual income determination made by an administrator for allowable forms of federal means-tested public assistance, the PHA or owner must obtain it using the appropriate third-party verification. The verification must indicate the tenant's family size and composition and state the amount of the family's annual income. The verification must also meet all HUD requirements related to the length of time that is permitted before the third-party verification is considered out-of-date and is no longer an eligible source of income verification.

If the appropriate third-party verification is unavailable, or if the family disputes the determination made for purposes of the other form of federal means-tested public assistance, the PHA or owner must calculate annual income per HUD's usual anticipated income rules.

3.3 Recertifications

Projects that are 100% LIHTC

Effective July 31, 2008, with the passing of the Housing and Economic Recovery Act (a.k.a. HERA or H.R.3221), 100% tax credit properties are no longer required to certify after year 3. MHDC will exempt the third-year annual income recertification requirement for 100% tax credit properties **<u>with prior approval only</u>**. MHDC reserves the right to require full certification at 100% tax credit properties. See MHDC LIHTC Manual for additional reference. Refer to Chapter 4 of the MHDC LIHTC Manual. The Program Compliance Administrator will determine whether or not the property is 100% LIHTC and able to use the Exhibit U. Properties approved to use the Exhibit U must still obtain verifications of household income and assets at move-in, and the following year. However, the household must still continue to annually complete a TIC to verify household composition and each household must continue to complete a student status certification if there is a change in student status. This must be done on the annual recertification date for the household.

Projects that are less than 100% LIHTC

If a property is not 100% LIHTC, then the annual income recertification and third-party verification is required when applicable. If there is one market unit in the property, or if a staff unit is treated as a market unit, then all units in the property must be recertified/income verified annually.

See MHDC HOME Manual and MHDC LIHTC Manual for additional reference on recertification requirements (www.mhdc.com).

Aligning LIHTC with HOME and NHTF Determinations of Income

HOME and NHTF units must use income determinations of PBRA. TBRA PHA determinations **MUST** be used for NHTF units. **See MHDC LIHTC Manual, Chapter 4, Part 4.2 B, 8. *Residents receiving Section 8 assistance***. Once the owner receives the HUD Form 50058 or 50059, no other verifications of income are required. However, verifications for other Section 42 eligibility requirements such as student status, and the tax credit Tenant Income Certification (TIC) form, etc., must still be completed and placed in the household's file.

In the case of a resident receiving housing assistance payments under the Section 8 Program, the third-party income verification requirement is satisfied if the Public Housing Authority (PHA) provides a statement to the building owner certifying that the household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code. *Treas. Reg. (b)(1)(vii).* The only documents that will be acceptable from the Public Housing Authority are HUD Form 50058 and HUD Form 50059.

Note: The "every-sixth-year" verification cycle in HOME will not apply to these households, as the PHA or other subsidy program will be verifying income annually, reducing the burden on the owner/agent. Once income is determined by the PHA, the owner/agent will simply apply the over-income HOME rules when applicable.

3.4 HOME & NHTF

Definitions, 24 CFR §93.2 [2024], §5.603, 5.403, and 5.100

HOTMA makes the definitions of the following terms the same as for other HUD Multifamily programs:

- Foster Adult
- Foster Child
- Full-Time Student
- Live-in Aide
- Net Family Assets

HOME Specifics

Income Determinations

24 CFR § 92.203(a) [2024]

Project-Based Rental Assistance (PBRA). Rental assistance income determinations by a state or federal rental assistance program **MUST** be used for HOME purposes if the assistance is project-based.

- *HOME rules limiting subsidy to the HOME rent for high HOME units still apply.*
- *If the owner uses other means-tested program income determinations, the MHDC will accept these.*

Tenant-Based Rental Assistance (TBRA). Rental assistance income determinations by a federal rental assistance program (such as a Housing Choice Voucher) **MAY** be used for HOME purposes if the assistance is tenant-based (TBRA) and the PJ has this in their policies.

- *HOME rules limiting subsidy to the HOME rent for high HOME units still apply.*
- *If the PHA uses means-tested program income determinations (MHDC allows PHA determinations), MHDC will accept these alternative methods.*

Rental Assistance Payments are not Income.
§ 92.203 (e)(1) [2024]
"For families living in HOME-assisted rental housing units, any rental assistance provided to the family under a federal tenant-based rental assistance program or any federal or state project-based rental subsidy provided to the HOME rental housing unit shall not be counted as tenant income for purposes of determining annual income."
LIHTC: Note that subsidy payments should not be counted as income is self-evident for subsidy programs. However, this clarifies HUD's stance excluding these types of federal or state rental assistance for non-subsidy programs (like HOME). This provides a rationale for LIHTC owner/agents to continue to exclude government subsidy payments.

NHTF Specifics

Income Determinations

§ 93.151(a) [2024]

Project-Based Rental Assistance (PBRA). Rental assistance income determinations by a state or federal rental assistance program **MUST** be used for NHTF purposes if the assistance is project-based.

- *If the owner uses other means-tested program income determinations, the NHTF grantee must accept these.*
- *The NHTF continues to be allowed to use the rent calculation (and full subsidy) as per PBRA programs.*

Tenant-Based Rental Assistance (TBRA). Rental assistance income determinations by a federal rental assistance program (such as a Housing Choice Voucher) **MUST** be used for NHTF purposes.

- *If the PHA uses means-tested program income determinations, the NHTF grantee must accept these alternative methods.*
- *NHTF rent subsidy limit rules for TBRA still apply.*

Verification for HOME & NHTF

HOME and NHTF still require that income is verified using two months of source documents (i.e., Paystubs) at the initial determination and self-certification for other years, except every sixth year of the affordability period.

HOTMA still generally requires that the owner gather two months of wage history if the owner is certifying the household for HOME eligibility. However, there are times when HOTMA would allow the owner to use other income determinations (and the methods of verification used for the other programs). In the case of PBRA-assisted households, the owner will use the income determination relevant to the PBRA program. For TBRA income determinations, the owner will use the PHA certification to verify the income. Finally, if the owner/agent uses the LIHTC determination for project-based income purposes, LIHTC processes and verification may be used.

See 24 CFR § 92.203(a)(1) & (2) and § 5.609(c)(3)

If the PJ or grantee is required (or in the case of HOME and TBRA, chooses) to use income determinations for a rental assistance program, then the sixth-year requirement does not apply. **24 CFR §92.203(b)(iii) & §93.151(d)(3) [2024]**

If using a PHA or other administrators' determination of income, the owner must secure a statement from the assistance provider. *"The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit."*

> **Note:** *Although not stated in the new NHTF rule, we assume that the requirement for the NHTF should be the "extremely low or very-low" limit for units to which the NHTF applies. These are the limits applicable to the NHTF, depending on the funding year.*

Applicability of Adjusted Income

§ 92.252(i)(2) [2024]

HOME may use adjusted income when calculating rental assistance for HOME TBRA or when a household goes "over-income" at a HOME property that is not using LIHTC funding and household rent is based on adjusted income.

NHTF "over-income" rules do not require recalculation of rent, so adjusted income does not apply.

Earned income Disregard

24 CFR § 5.617(a)(c) & (f) [2024] and § 960.255(b)

Public housing and HOME shared a program rule designed to encourage employment that allowed certain households to phase in new employment income over 24 months. This is called the Earned Income Disregard (EID). With HOTMA, Congress removed the EID, so HUD will remove the EID upon the 1/1/2024 effective date of the final rule. However, to minimize disruption to persons already benefiting from a phase-in period, HUD determined that if a family is receiving a disallowance of an increase in annual income per the EID on the effective date, participants should be able to benefit from EID for the full 24 months. Therefore, the final rule retains the regulations for EID for this period. However, the EID will be available only to families that are eligible for and participating in the EID program on the effective date of the final rule. No new families may be added, and all use of the EID will cease no later than 1/1/2026.

Adjustments to Mandatory Deductions

When calculating rent for HUD programs, certain deductions are taken. Among other deductions, this includes an elderly household deduction and a deduction for each dependent in the household. Through 2023 these were $400 and $480, respectively. Starting in 2024, the elderly household allowance will go up to $525. The dependent deduction will remain $480, but both deductions will be evaluated each year and adjusted for income from 2025 on. This is not relevant to LIHTC or NHTF units, which do not use adjusted income, and very rarely for HOME, which only uses adjusted income for over-income households in non-LIHTC HOME units. However, these adjustments will also be reflected in two *income* calculations. These are 1) the amount counted annually for adoption assistance payments received by a household and 2) the earned income counted for adult full-time student dependents of a household. These will be limited to the dependent deduction.

3.5 Verifications

Treas. Reg. §1.42-5 (b) (1)(vii); 8823 Guide 4-7; IRS Newsletter 54; Implementation Notice J.5.a.; Implementation Notice Table J2

Treasury regulations require that taxpayers maintain "documentation to support each low-income tenant's income certification." For example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit.

Note: If MHDC has a required form, that must be the first method of verification, as directed. Upfront Income Verification (UIV) (e.g., The Work Number, web-based state benefits systems, etc.) is acceptable in place of the MHDC Employment Verification form (Exhibit C), for employment verification. EIV cannot be used for LIHTC purposes. Owners must document in the tenant file the reason why third-party verification was not available, when applicable.

With HOTMA, HUD has implemented a new order of preference for verifications, as listed below, in their Verification Hierarchy Table J2. The Verification Hierarchy table describes verification documentation from most acceptable to least acceptable. A description of each verification technique and additional guidance follows Table J2 below.

<u>Verification Hierarchy Table J2</u> *(HUD HOTMA Joint Implementation Notice H 2023–10 & PIH 2023–27)*

Table J2: Verification Hierarchy		
Level	**Verification Technique**	**Ranking/Order of Acceptability**
6	Upfront Income Verification (UIV), using HUD's Enterprise Income Verification (EIV) system. ***Note:*** EIV cannot be used for LIHTC purposes.	**Highest** • PHAs/MFH Owners must pull the EIV Income Report for each family at every Annual Reexamination. • EIV may be used as the sole verification of Social Security income. • EIV income information may be used to calculate other types of annual income when family agrees. See Level 4 for more information.
5	Upfront Income Verification (UIV) using non-EIV system (e.g., The Work Number, web-based state benefits systems, etc.). ***Note:*** EIV cannot be used for LIHTC purposes.	**Highest** • *Examples:* The Work Number (an automated verification system), state government databases, web-based state benefits systems, etc.
4	Written, third-party verification from the source, also known as "tenant-provided verification" (provided by the tenant) **OR** EIV + Self-Certification PHAs/MFH Owners can choose either option when both are available to verify income. PHAs/MFH Owners must use written, third-party verification when the income type is not available in EIV (e.g., self-employment, Go Fund Me accounts, general public assistance, Veterans Administration benefits, welfare benefit letters and/or printouts, and unemployment benefit notices, pay stubs, payroll summary reports, employer notices/letters of hire/termination, SSA benefit verification letters, bank statements, child support payment stubs, etc.). ***Note:*** EIV cannot be used for LIHTC purposes.	**High** • Written, third-party verification is used when tenant disputes EIV-reported employment and income information. • The EIV Income Report may be used to verify and calculate income if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information from EIV. • An original or authentic document generated by a third-party source dated within 120 days of the date received by the PHA/MFH Owner. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. • When necessary, the Owner should follow up directly with the third-party source to obtain necessary verification of information.
3	Written, Third-Party Verification Form (provided directly by the third-party). Use if Level 5 or Level 4 verification is not available.	**Medium** • Use if Level 5 or Level 4 verification is not available or is rejected by the PHA/MFH Owner and when the applicant or tenant is unable to provide acceptable documentation. • May substitute Level 2 for written, third-party verification form, only completing one of the two forms of verification before moving to self-certification.
2	Oral Third-Party Verification	**Medium** • This verification method is commonly used when the independent source does not respond to the Owner's faxed, mailed, or e-mailed request for information in a reasonable time frame (e.g., 10 business days).
1	Self-Certification (not third-party verification)	**Low** • Use as a last resort when unable to obtain any type of third-party verification or if specifically permitted, such as to determine actual income from assets when the family certifies that net family assets do not exceed $50,000.

Please note: The management agent should give the applicant or resident the opportunity to explain any significant differences between the amounts reported on the application or other file documents and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the resident file on a clarification form or self-affidavit. Clarification is required whenever there is information in a file that is unclear. MHDC does not outline all of the specific instances or reasons of why clarification may be needed. By definition, clarification means to make a situation more comprehensible and is the responsibility of the owner/agent.

Fixed Income

For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

Pay Stubs

Owners are required to obtain a minimum of two current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay stubs are not available, the Owner should determine income based on the information from a traditional written, third-party verification form or the best available information.

Income Tax Returns

Returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (such as the tax preparer's transmittal receipt, a summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

Checking Accounts

When verification of assets is required, Owners are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts. HOTMA Implementation Notice J.5.a.

Worker's Compensation

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation continue to be included in annual income. HOTMA Implementation Notice G.6.

Alimony and Child Support

Those who are entitled to child support or alimony are no longer required to pursue the full court-ordered amount. Only amounts actually received for alimony or child support are counted. HOTMA Implementation Notice F.1

Work Number and other upfront income verification (UIV) databases.

Verification through the Work Number and other upfront income verification databases are now the most preferred verification option (Level 5). HOTMA Implementation Notice J2.

PHA Verifications

The allowance to verify income for a tenant who also has subsidy from the PHA (through public housing or a Housing Voucher) is also referred to as 'using the income determination" of the PHA. PHAs are included with other "means-tested" programs, under the category "other programs administered by the Secretary" IRS Reg 1.42-5 (b) (1) (vii). The provision to use PHA verification is also applicable under LIHTC regulations and will be required for HOME and NHTF units with PBRA and NHTF units with TBRA (vouchers). Allowing PHA verification for HOME and NHTF, allows alignment with all HUD programs and the LIHTC.

RESOURCES

MHDC Website
www.mhdc.com

HOTMA Resources (hud.gov):
https://www.hud.gov/program_offices/public_indian_housing/hotmaresources

HOTMA Pre and Post HOTMA Regulatory Citation Matrix (hud.gov):
https://www.hud.gov/sites/dfiles/PIH/documents/HOTMA_Pre_and_Post_HOTMA_Regulatory_Citation_Matrix.pdf

Missouri Housing Development Commission

MHDC

Low-Income Housing Tax Credit Program Compliance Manual

July 1, 2023

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OUR MISSION

Missouri Housing Development Commission is dedicated to strengthening communities and the lives of Missourians through the financing, development, and preservation of affordable housing.

PREFACE

This manual is a reference guide for the compliance monitoring of the Section 42 Low Income Housing Tax Credit (LIHTC) Program in Missouri. It is designed to answer questions regarding procedures, rules, and regulations that govern LIHTC properties. It provides guidance with respect to the Missouri Housing Development Commission's (MHDC's) administration of monitoring for compliance under Section 42 of the Internal Revenue Code of 1986 and the Treasury Regulations there under (the "Code") for tax credits allocated by MHDC to rental properties throughout the state of Missouri.

MHDC and its monitoring staff are committed to working closely with owners, management agents, and onsite personnel to assist them in meeting their compliance responsibilities. Please note, however, that this manual is to be used only as a supplement to compliance with the Code and all other applicable laws and rules. This manual should not be considered a complete guide to LIHTC compliance. The responsibility for compliance with federal program regulations lies with the owner of the building for which the Low-Income Housing Tax Credit is allowable. This manual is produced for use by LIHTC Program participants in Missouri to be used in conjunction with the tax credit program rules and Land Use Restriction Agreement (LURA).

Because of the complexity of LIHTC regulations and the necessity to consider their applicability to specific circumstances, owners are strongly encouraged to seek competent, professional legal and accounting advice regarding compliance issues. MHDC's obligation to monitor for compliance with the requirements of the Code does not make MHDC or its subcontractors liable for the owner's noncompliance.

The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly, or impliedly, directly, or indirectly, suggest, represent, or warrant that your property will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. The Missouri Housing Development Commission and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants as MHDC will not make authoritative interpretations of the federal law. Employees and officers of MHDC are not liable for any adverse consequences to taxpayers and/or investors as a result of programmatic non-compliance with federal laws.

Compliance monitoring is administered by the MHDC Asset Management Department. Questions regarding compliance issues should be directed to compliance staff at (314) 877-1350 or (816) 759-6600.

CHAPTER 1 – INTRODUCTION

Part 1.1 - Background of the Low-Income Housing Tax Credit Program

In 1986, Congress enacted the Tax Reform Act, also known as the Low-Income Housing Tax Credit (LIHTC) Program. This program provides incentives for the investment of private capital in the purchase of affordable rental housing. The LIHTC reduces the federal tax liability of property owners in exchange for the acquisition, rehabilitation, or construction of affordable rental housing units that will remain income and rent restricted over a long period of time.

The amount of LIHTC allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements. The LIHTC is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). The Missouri Housing Development Commission (MHDC) is the designated "housing credit agency" to allocate and administer the LIHTC Program for the entire state of Missouri, pursuant to Section 42 of the Code. Each state develops a Qualified Allocation Plan ("QAP"), which establishes the guidelines and procedures for the acceptance, scoring, and competitive ranking of applications and for the administration of the LIHTC Program. The Missouri QAP is developed to be relevant to state housing needs and consistent with state housing priorities.

Part 1.2 - Contents and Summary

Section 42 of the Code requires that each state's Qualified Allocation Plan provides a procedure that the agency will follow in notifying the Internal Revenue Service (IRS) of any noncompliance with the provisions of Section 42 of which it becomes aware. This provision became effective on January 1, 1992.

Final regulations developed by the IRS and published on September 2, 1992, and January 14, 2000, outline minimum requirements for owner record keeping and reporting, state credit agency monitoring and inspecting, and reporting to the IRS instances of noncompliance. Missouri's compliance monitoring plan follows final IRS regulations, as well as the recommendations of the National Council of State Housing Agencies (NCSHA), guidance issued by the IRS in the Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised October 2009* (commonly referred to as the "8823 Guide" revised January 2011), and the income rules found in Chapter 5 of HUD Handbook 4350.3. The current edition of the Compliance Manual is applicable to all owners of all buildings which have ever claimed the Low-Income Housing Tax Credit in Missouri since the inception of the program in 1987.

Part 1.3 - Compliance Period

Once allocated by the housing credit agency, Low Income Housing Tax Credits can be claimed annually over a ten (10) year period (the "Credit Period") beginning either in the year the building is placed-in-service or the following year, depending on which option is elected by the owner via IRS Form 8609. Properties must, however, remain in compliance for a minimum of fifteen (15) years (the "Compliance Period"). Additionally, owners who agreed in their Land Use Restriction Agreement (LURA) to have longer compliance periods will be bound for the length of time specified.

A. Compliance Period for Credit Allocations after December 31, 1989

Properties receiving a credit allocation after December 31, 1989, will have entered into a Declaration of Extended Low-Income Housing Commitment with the Missouri Housing Development Commission (MHDC) at the time the final allocation of credit was issued via IRS Form 8609. These Properties must comply with eligibility requirements for an “Extended Use Period.” The Extended Use Period is either an additional fifteen (15) years beyond the fifteen (15) year Compliance Period [a total of thirty (30) years], or the date specified in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

B. Compliance Period for Credit Allocations for 1987 through 1989 Only

Properties receiving a credit allocation prior to January 1, 1990, did not enter into an Extended Use Agreement, and therefore only have a fifteen (15) year Compliance Period. However, any building in such a property that received an additional allocation of credit after December 31, 1989, must comply with eligibility requirements in effect beginning January 1, 1990, and will be bound by a Declaration of Extended Low-Income Housing Commitment (per Revenue Ruling 92-79).

PLEASE NOTE

From 1986 to 1989, federal law required developers to maintain these affordability provisions for at least 15 years. Beginning in 1990, however, new LIHTC properties were required to preserve affordability for 30 years. This is a federally mandated program requirement.

The LIHTC program requires a minimum affordability period of 30 years (i.e., a 15-year compliance period and subsequent 15-year extended use period). It is a federally mandated 30-year affordability period regardless to whether the original owner elects anything in addition to the 15-year initial compliance period in the LURA.

MHDC began filing clarification statements on all the older deals because owners were confused and believed they only had to maintain the property as affordable and in the program for 15 years.

CHAPTER 2 – RESPONSIBILITIES

The entities/persons involved in the compliance of the LIHTC Program are MHDC, MHDC Asset Management, the property owner, and the management company/agent. The various responsibilities for these entities/ persons are set forth below:

Part 2.1 - Responsibilities of MHDC

The Missouri Housing Development Commission (MHDC) allocates tax credits and administers the LIHTC program for the state of Missouri.

Part 2.2 - Responsibilities of the MHDC Asset Management Department

The MHDC Asset Management Department is responsible for compliance monitoring of properties that receive LIHTC Program funding. This department performs the following functions:

A. Issue IRS Form 8609 (Low-Income Housing Certification)

An IRS Form 8609 is prepared by MHDC for each building in the Property. Part I of the Form is completed by MHDC and then sent to the owner when the property is placed-in-service, and all required documentation is received by MHDC. The owner must complete Part II of Form 8609 in the first taxable year for which the credit is claimed.

B. Provide LIHTC Program compliance manuals and related materials.

C. Provide LIHTC Program compliance monitoring staff to serve as a point-of-contact for information for owners, developers, and management agents.

The MHDC website contains FAQ pages on various topics and is also an excellent resource for answering questions.

D. Conduct File Monitoring and Physical Unit Inspections

Generally, MHDC will perform a file review for each Property within two (2) years of the last building being placed-in-service and at least every three (3) years thereafter. Owners of the selected properties will be required to provide detailed information on resident income and rent for at least 20% or more of the low-income units in the property. Information to be reviewed will include, but is not limited to, the annual Tenant Income Certifications (TICs), the documentation received to support those certifications (i.e., income and asset verifications), and rent and utility allowance records. Owners must provide organized resident files to MHDC with documentation in chronological order prior to inspection. MHDC also retains the right to perform a physical inspection of any low-income building and/or unit at any time during the Compliance and Extended Use Periods, with or without notice to the owner.

If a property has other funding (i.e., HOME, AHAP, etc.) a different inspection schedule will be followed.

E. Notify owners of non-compliance

MHDC will notify owners when the property is found to be out of compliance with Section 42 rules and regulations and/or MHDC requirements, including submission of reports or other requested information.

F. Notify IRS and Owner of Noncompliance

MHDC will notify the IRS and property owners if the property is found to be out of compliance with Section 42 of the Internal Revenue Code following inspection. Reportable non-compliance includes, but is not limited to physical deficiencies as well as late, incomplete, or missing submissions of reports, tenant income certifications and verifications, and rent records.

MHDC is required to file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Non-Compliance" with the IRS no later than forty-five (45) days after the end of the Correction Period (as described above, including extensions) and no earlier than the end of the Correction Period, whether or not the noncompliance or failure to certify is corrected. MHDC must identify on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. MHDC will not provide documentation (i.e., copies of Form 8823, Form 8609, etc.) for specific properties to anyone other than the ownership entity. If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the owner of record. If a building is entirely out of compliance and will not be in compliance at any time in the future, MHDC will report it on an IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance. See Chapter 6 for additional information on the 8823 processes.

i. If the property is out of compliance, a penalty could apply to all units in the property. Penalties include: Noncompliance fees paid to MHDC;

ii. Notification to IRS via Form 8823;

iii. Disallowance of the credit for the entire year in which the noncompliance occurs;

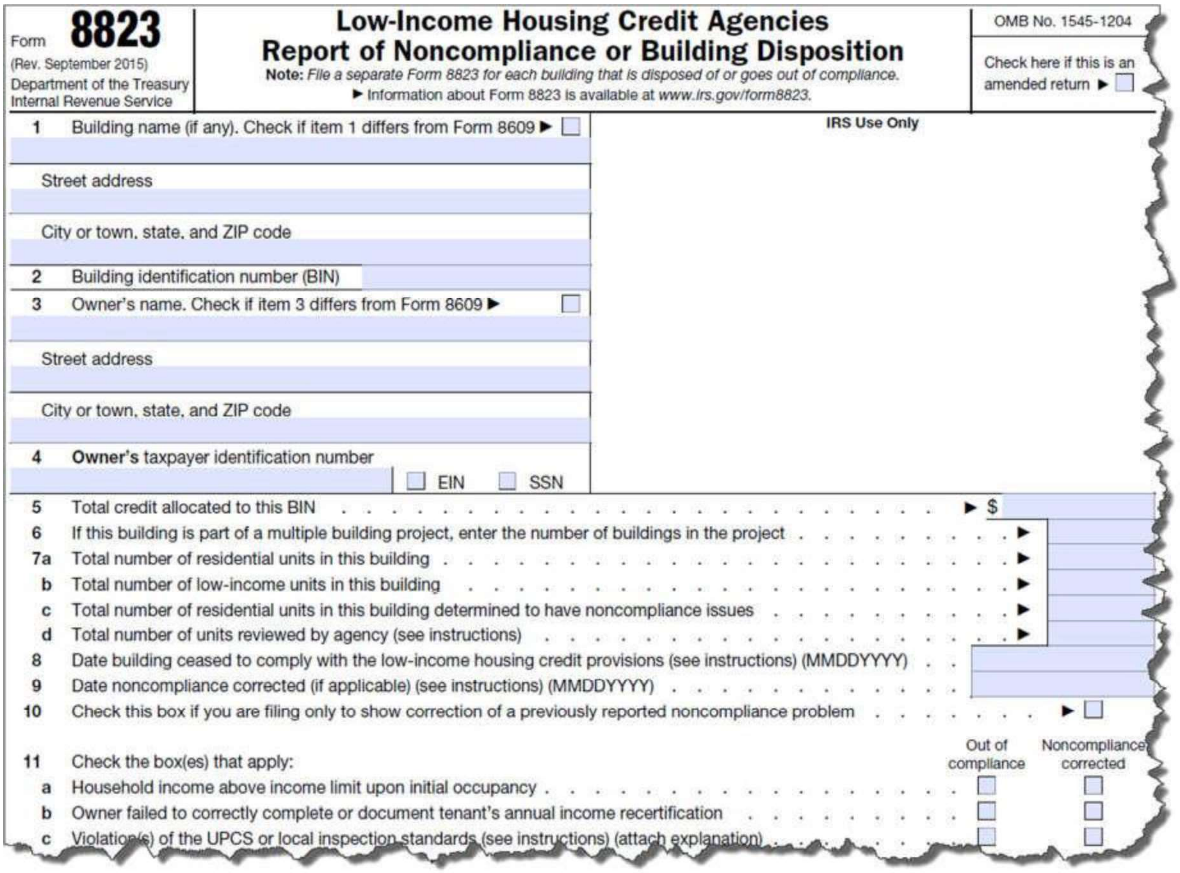
iv. Recapture of the accelerated portion of the credit for prior years;

v. Assessment of interest for the recapture year and previous years;

vi. Rejection of future LIHTC reservation applications;

vii. Repayment of rent overages; and/or

viii. Mandatory attendance at an MHDC sponsored compliance training.



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

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

Note: *File a separate Form 8823 for each building that is disposed of or goes out of compliance.*

▶ Information about Form 8823 is available at *www.irs.gov/form8823.*

OMB No. 1545-1204

Check here if this is an amended return ▶ ☐

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

		Out of compliance	Noncompliance corrected
11	Check the box(es) that apply:		
a	Household income above income limit upon initial occupancy	☐	☐
b	Owner failed to correctly complete or document tenant's annual income recertification	☐	☐
c	Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	☐	☐

G. Record Retention

MHDC will ensure that property certifications and other records are retained for the applicable record retention period.

PLEASE NOTE

MHDC will only release information regarding IRS Form 8823, 8609, etc. to the property owner of record as these forms contain sensitive data.

Part 2.3 - Responsibilities of the Property Owner

Each owner has chosen to utilize the Low-Income Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the owner that will benefit low-income residents. The owner must also certify annually (more often during lease up) that all LIHTC program requirements have been met. Any violation of program requirements could result in the loss of credit allocated. The responsibilities of Property owners include, but are not limited to:

A. Leasing LIHTC Units to Section 42 Eligible Residents

The owner must manage the property in accordance with the LIHTC regulations and all additional requirements agreed to during the allocation process for the duration of the compliance period. This includes continuous compliance with regard to income and rent restrictions and student status detailed in the initial application. Any violation of the requirements could result in default of a loan and suspension of further utilization of MHDC resources.

B. Charging no more than the Maximum MHDC Approved Rents (including utilities)

The owner is responsible for ensuring that the resident is charged no more than the maximum MHDC approved rent (including utilities). These approved rents are listed in the AMRS program. Any overcharges of rents must be refunded to the resident.

C. Maintaining the property in habitable condition

The owner is responsible for ensuring that the property is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is a reportable act of noncompliance. The owner guarantees that all units are suitable for occupancy by meeting Uniform Physical Condition Standards (UPCS) requirements, local health, safety and building codes are taken into account, and that the on-site management team complies with all applicable rules, regulations and policies which govern the property. This includes the following policies and regulations pertaining to lead-based paint and asbestos disclosure and/or remediation where required.

D. Complying with IRS & MHDC record-keeping requirements

See part 7.5 Record Keeping and 7.6 Record Retention.

E. Attending Missouri's LIHTC Compliance Workshop or other LIHTC training at least once every two (2) years and Training on-site personnel.

All property owners and management agents are required to attend Compliance Training prior to the issuance of an IRS Form 8609. Form 8609 will not be issued to a property owner who has not met the compliance training requirement. In addition, all new managers are immediately required to attend compliance training, with ongoing training to be updated at least every two years from the last training.

The owner must ensure that the onsite management knows, understands, and complies with all applicable federal and state rules, regulations, and policies governing the property. MHDC encourages the owner to make certain that the property's management and compliance personnel are familiar with all MHDC program compliance manuals and forms and information on the MHDC website.

MHDC strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. It is suggested that staff attend a Fair Housing and Equal Opportunity training at least once every calendar year. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws.

In-house training must be approved by MHDC. If training is to be conducted in-house by an "Employer Trainer" (an employee of the owner/management company who will provide training to other staff), the owner or management agent must submit to MHDC both a resume that supports the trainer's qualifications and the training curriculum to be considered and approved by MHDC in advance of conducting the training session. The Employer Trainer must issue certificates of completion to attendees to be retained on file as evidence of completion and must be available upon request.

If an external source conducts training, the person or entity must not be an identity-of-interest party to the ownership or management company. The third-party training provider must issue certificates of completion to attendees to be retained on file as evidence of completion and available upon request.

Both types of training must provide specific skills and knowledge necessary for operating a successful tax credit or other program. The curriculum below outlines key skills and information owners, property managers and site staff will need:

- ✓ An Overview of The Low-Income Housing Tax Credit Program
- ✓ An Overview of The HOME Program
- ✓ The Next Available Unit Rule
- ✓ The Unit Vacancy Rule
- ✓ Monitoring Procedures
- ✓ Compliance Reporting
- ✓ The Applicable Fraction
- ✓ The Student Rule
- ✓ How to Qualify a Unit
- ✓ Income Calculation and Verification
- ✓ Physical Inspections
- ✓ Fair Housing
- ✓ Mandatory Compliance Period
- ✓ Extended Use Period
- ✓ Annual Certifications
- ✓ Resident File Maintenance

The above curriculum may be conveyed in a lecture or on-line training format. There is no hourly requirement.

The effectiveness of the training will be measured during site inspections and in looking at the success of the property and or management portfolio overall. Participation in training is mandatory and MHDC compliance staff may, at their discretion, mandate additional trainings for those management personnel/companies that:

1. Exhibit trends in noncompliance;
2. Are issued non-corrected 8823s; or
3. Otherwise demonstrate a need for basic or advanced compliance training.

Properties with staff responsible for day-to-day operations such as qualifying households who have not completed program training that satisfies MHDC's training requirements will be placed in noncompliant status.

F. Requesting approval for any change in ownership or management of the property

The owner must request MHDC approval of any material changes in ownership or management. No changes in management or ownership can be made without prior written approval of MHDC. The owner must ensure that a duly executed management certification and management entity profile is in force at all times. No changes to the management certification can be implemented without prior written approval of MHDC. The owner must also certify that the property is being managed in accordance with all applicable federal, state, and local fair housing laws.

If there is an approved change in management companies, the owner is responsible for providing all information and previous resident files to the new management company. The failure of the outgoing management company to cooperate in an orderly transition of files may be considered an act of noncompliance for the outgoing management company.

Any management change that takes place prior to MHDC approval will not be paid management fees and will be subject to reversal if not approved by MHDC. The owner must submit a cover letter requesting the change along with completed Exhibits A-2, J or J-1, L and the AFHMP.

If property has HUD funding, the owner must submit copy of HUD approved management certification, AFHMP and HUD Form 2530 along with MHDC completed Exhibits J or J-1 and L.

G. Notifying MHDC of any interest change, contact change or owner representative change

The owner must request MHDC approval prior to transfer of ownership or transfer of ownership interest. Once approved, the owner must submit a completed Exhibit L Property Information Sheet and/or an Exhibit J Authorized Representative Designation. The deadline for year-end requests for a Transfer of Physical Assets (TPA) is November 1. Requests not received by November 1 are not guaranteed processing by December 31. For additional information on the TPA review process and requirements, please visit MHDC's website.

H. Reporting resident activity and submitting Annual Owner Certifications

The owner of any building(s)/property(s) that has claimed or plans to claim Low Income Housing Tax Credits must annually certify to MHDC, under penalty of perjury, for each year of the Compliance Period, via Certification Portal (CP).

All tax credit assisted properties are required to enter resident events using the Certification Portal (CP) system.

Resident events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status. Resident events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. HUD requires all household member data be completed including items such as race, ethnicity, disability, etc. Owners are required to input all of this information and if the resident declines to self-identify, please note this as well. Do not leave this information blank or enter "other."

Additional reporting requirements include providing MHDC with the annual certification of continuing program compliance through Certification Portal (CP) in accordance with the seasonal reporting schedule, and must submit the annual certification (Exhibit A) signed by the owner, by the last day of the month following the CP submission due date.

SEASONAL REPORTING SCHEDULE			
Placed-In- Service Date	***Activity Period Covered***	***CP Report Due Date***	***Exhibit A & K Due Date***
1990, 1991, 1992, 1993, 2006, 2010, 2014, 2018, 2022, 2026, 2030, 2034, 2038, 2042	April 1 – March 31	April 15	April 30
1994, 1995, 1996, 1997, 2007, 2011, 2015, 2019, 2023, 2027, 2031, 2035, 2039, 2043	July 1 – June 30	July 15	July 31
1998, 1999, 2000, 2001, 2008, 2012, 2016, 2020, 2024, 2028, 2032, 2036, 2040, 2044	October 1 – September 30	October 15	October 31
2002, 2003, 2004, 2005, 2009, 2013, 2017, 2021, 2025, 2029, 2033, 2037, 2041, 2045	January 1 – December 31	January 15	January 31

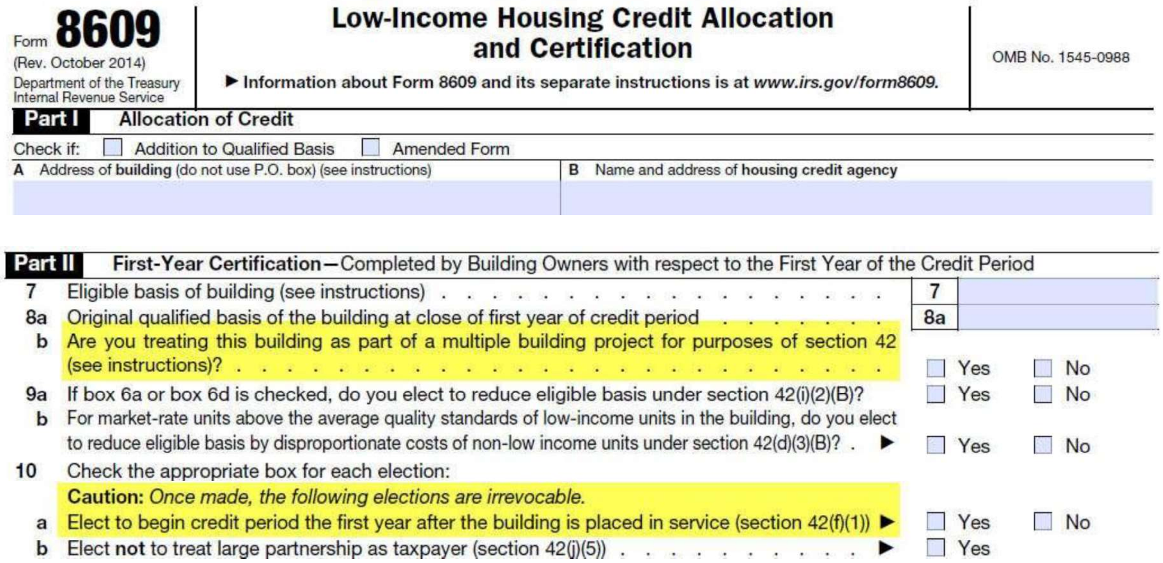
The link to the CP site is https://CP.mhdc.com.
The link to the CP manual is http://www.mhdc.com/program_compliance/LIHTC/CP-form-docs.htm.

I. Submit IRS Form 8609 (Low-Income Housing Certification) to MHDC

The owner must complete Part II of Form 8609 in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the form must be sent to the MHDC Asset Management Department in St. Louis, to the attention of Compliance Support, within 90 days after the end of the first year of the credit period. The original is sent to the IRS with the owner's personal, partnership, or corporate tax returns in the first taxable year in which the credit is claimed.

MHDC will not issue an IRS Form 8609 for each year of the Compliance Period. Therefore, before signing and dating Part II of the Form 8609, the owner should make copies of it. Owners are strongly encouraged to consult with their legal and/or tax advisors for advice on completing and filing IRS tax forms. MHDC will not give legal or tax advice on the filing or completion of any tax forms.

The issuance of the IRS Form 8609 begins the compliance monitoring period. The owner elections on this form are important as they are irrevocable. Line 8b defines the property as a property consisting of more than one building or a property where each building is a property. Line 10a defines when the credit period begins.



Form **8609** (Rev. October 2014) Department of the Treasury Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

► Information about Form 8609 and its separate instructions is at *www.irs.gov/form8609.*

OMB No. 1545-0988

Part I **Allocation of Credit**

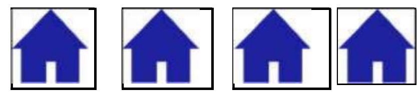
Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions) | B Name and address of **housing credit agency**

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

7	Eligible basis of building (see instructions)	7	
8a	Original qualified basis of the building at close of first year of credit period	8a	
b	Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐ Yes	☐ No
9a	If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?	☐ Yes	☐ No
b	For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(d)(3)(B)? ►	☐ Yes	☐ No
10	Check the appropriate box for each election: **Caution:** *Once made, the following elections are irrevocable.*		
a	Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ►	☐ Yes	☐ No
b	Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) ►	☐ Yes	

Multiple Building Property



Each Building = 1 Property

To enable MHDC to determine when a property has reached the end of the compliance period, MHDC must be provided with a completed, signed copy of IRS Form 8609 as executed by the owner and filed with the IRS. If a completed IRS Form 8609 cannot be provided, MHDC will require the property to remain in the program through December 31 of the 16th year from the date the final building was placed-in-service. Failure to provide the form as required constitutes noncompliance and may result in the issuance of an IRS Form 8823. A copy of the *First Year* Certification Part II of IRS Form 8609, as executed by the owner and filed with the IRS must be provided to MHDC, **within 90 days after the end of the first year of the credit period.**

J. Submit Missouri Eligibility Statement (MOST) Form to MHDC

The owner of a tax credit property must submit an eligibility statement known as the Missouri Eligibility Statement (MOST). The MOST is required for all properties that received an allocation of State credits. The owner must complete and submit the Missouri MOST to MHDC when the IRS Form 8609 is submitted the first year. Thereafter, an executed copy of the MOST must be submitted annually by March 1 for the duration of the credit period.

K. Submit Affirmative Fair Housing Marketing Plan (AFHMP)

The owner must submit the Affirmative Fair Housing Marketing Plan (AFHMP) to MHDC. The AFHMP should be reviewed annually by the owner to ensure the information is still accurate but at a minimum it must be reviewed and updated every five years as necessary to ensure compliance with HUD's Affirmative Fair Housing Marketing Regulations at 24 CFR 200.620.

The plan must be revised whenever a substantial change takes place, or the local Consolidated Plan is updated. If an owner makes changes to the plan, he/she must submit a revised plan to HUD for approval. If there are no changes to the plan, then the owner needs to document project records to indicate that the AFHMP was reviewed but no changes were necessary.

L. Maintain copies of regulatory documents

The owner must maintain copies, on site, of all regulatory documents (LURA, compliance manuals, Rent Schedules [MHDC Schedule II, HUD Form 92458, RD approved rents, etc.]) necessary for the successful management of the property.

M. Provide MHDC an annual operating budget and annual financial statement

The owner must provide MHDC an annual operating budget and annual financial statement.
For properties of 13 or more units, audited annual financial statements must be submitted to MHDC no later than March 31 of the following year. For properties with 12 units or less, MHDC will accept the submission of an annual certified compilation report in lieu of the audited annual financial statement. This report must be submitted to MHDC no later than March 31 of the following year.

All properties must submit to MHDC a proposed operating budget for the upcoming year. The budget must be received by MHDC no later than November 15 of each year. The required budget format is available on the MHDC website (www.mhdc.com).

The information should be directed to the **Accounting Department, in the St. Louis office** of MHDC with *'Annual Financial Statement'* or '*Proposed Operating Budget'* clearly indicated on the front of the package.

N. Notifying MHDC of any noncompliance issues

If the owner and/or management agent determines that a unit, building, or an entire property is out of compliance with LIHTC program requirements, MHDC should be notified immediately. The owner and/or management agent must formulate a plan to bring the property back into compliance and advise MHDC in writing of such a plan. Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by MHDC need not be reported to the IRS by MHDC.

O. Notifying MHDC of receivership

The owner must inform MHDC immediately if the property goes into receivership. The receivership documentation must be submitted to MHDC as well as completed Exhibits J (Authorized Representative Designation) and L (Property Information Sheet). Otherwise, the expectations for the properties' compliance do not change in this process.

P. Casualty Loss

The owner that experiences a loss of unit due to fire, natural disaster, or other circumstance must inform MHDC immediately and submit a plan that sets a timeframe for reconstruction/replacement.

MHDC must report the loss and replacement of the units to the Internal Revenue Service (IRS) (Treasury Regulation 1.42-5(a). If the units have not been fully replaced, MHDC will attach a copy of the owner's plan and timeframe for replacement to its report. Once all units have been replaced, MHDC will then report the replacement of the lost units.

Per IRC 42 Guide CCA 200912012, if a building is damaged by casualty and fully restored and rented to qualified households within the same taxable year, the IRS has stated that there will be no recapture or loss of credits. Therefore, the owner of a building damaged by casualty should act quickly to remedy the issue.

Q. Change in Eligible Basis

The owner must inform MHDC of any change in the eligible basis (as defined in IRC 42(d)) of any building in the property. The nature of the change must be reported as well. For example, if a common area has become a commercial space, or if a fee is now charged for a tenant facility formerly provided without charge.

Part 2.4 - Responsibilities of the Management Company & Onsite Personnel

The management company/agent and all onsite personnel are responsible for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units to residents should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures, including Section 42 regulations and Fair Housing laws. It is also important that the management company provide information, as needed, to MHDC and submit all required reports and documentation in a timely manner.

A duly executed management certification approval and management plan is required to be in place at the onset of leasing activity and updated as needed throughout the affordability period. All management companies must complete a management certification regardless of when they began managing. This includes management companies prior to 2008. No changes to the management certification can be implemented without prior written approval of MHDC.

The management agent must provide necessary and required information to MHDC; including submission of various program compliance reports within specified time frames. Further, if the management agent determines that the property is not in compliance with LIHTC program requirements, the Asset Management department must be notified.

Part 2.5 - Due Diligence

The owner is ultimately responsible for compliance and proper administration of the LIHTC program. MHDC expects all owners, management companies and on-site personnel to demonstrate “due diligence,” hereby defined as the appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

MHDC would add that due diligence includes keeping up to date with MHDC policies by reading the compliance manual, visiting the website, and attending tax credit training. If noncompliance issues are discovered, MHDC will ask the owner/management to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring.

Do This!	**Don’t Do This!**
Request Prior Approval for any ownership or management change. Retain copies of your completed 1st Year Form 8609	Submit Late or Incomplete CP reports. Submit an incomplete Form 8609

CHAPTER 3 – SELECT REGULATIONS

The following section highlights some of the statutory and regulatory provisions directly affecting compliance. However, this is not meant as an exhaustive listing of compliance regulations.

Part 3.1 - Calculating and Claiming Credits

A. The Annual LIHTC Amount

The maximum amount of credit that can be allocated is calculated by multiplying the "Eligible Basis" by an "Applicable Fraction" to ascertain the "Qualified Basis" and then multiplying by the "Applicable Credit Percentage."

QUALIFIED BASIS = Eligible Basis x Applicable Fraction

ANNUAL LIHTC = Qualified Basis x Applicable Credit Percentage (4% or 9%)

The annual credit allocated may not exceed this amount. The credit amount allocated to each building in a property is partially calculated on the following criteria;

1.The Eligible Basis is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). Although the owner apportions the amount of Eligible Basis for each building on its Allocation Certification Request to MHDC, the total Eligible Basis of the property will be limited by the total amount of credit that MHDC actually allocated to the property. In calculating the credit amount for each building, MHDC may adjust the owner's Eligible Basis apportionment per building so as not to exceed the maximum credit amount allocated to the property.

2.The Applicable Fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). This fraction is defined by the Code as the lesser of:

a.The "Unit Fraction": the ratio of low-income units to total units (whether occupied or not) in a building; or

b.The "Floor Space Fraction": the ratio of total floor space of low-income units to total floor space of total units (whether occupied or not) in a building.

B. Placed-in-Service Date

The Placed-in-Service (PIS) date of a building is the date the building is considered suitable for occupancy. Depending on the nature of the property, there could be different Placed-in-Service dates:

a. The acquisition PIS date is the date the owner acquires the property, as long as the building(s) is/are suitable for occupancy.

b. The rehabilitation PIS date *may be* the date the rehabilitation is completed. Owners may select the rehabilitation Placed-in-Service date over a 24-month period if the minimum expenditure test has been met. For the minimum expenditure test, the owner chooses a time over a two-year period when at least the greater of 20% of the adjusted basis or $6,400 per unit is spent.

C. Claiming LIHTC in the Initial Year

The credit is claimed annually for ten (10) years. The Credit Period begins in the year that the building is placed-in-service, or the following year if the owner elects on Form 8609 to defer the Credit Period. During the first year of the Credit Period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first full month in which the property was placed-in-service even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

For example, if a building is PIS on the first day of the month, any units occupied at the end of the month will generate credits. However, if a building is PIS on the second day of the month (or any day after), credits cannot begin until the following month, even if a unit is occupied.

Please note, frequently first year credits are partial, so the remainder is claimed in year eleven (11).

D. Claiming Credits for Acquisition and Rehabilitation Properties

A property awarded tax credits for the acquisition and rehabilitation of an existing building(s) will receive two sets of credits, one for the acquisition and one for the rehabilitation, and will therefore have two Form 8609s for each building. Neither set of credits can be claimed prior to the date of acquisition nor prior to the year in which the rehabilitation expenditure requirements are completed.

Each type of tax credit may have a different placed-in-service (PIS) date. In order for the owner to claim tax credits, the units must be initially occupied by qualified residents. However, the owner is not required to determine two applicable fractions.

Part 3.2 - Minimum Set-Aside Election, Applicable Fraction, 8609 Line 8b, Income and Rent Limits

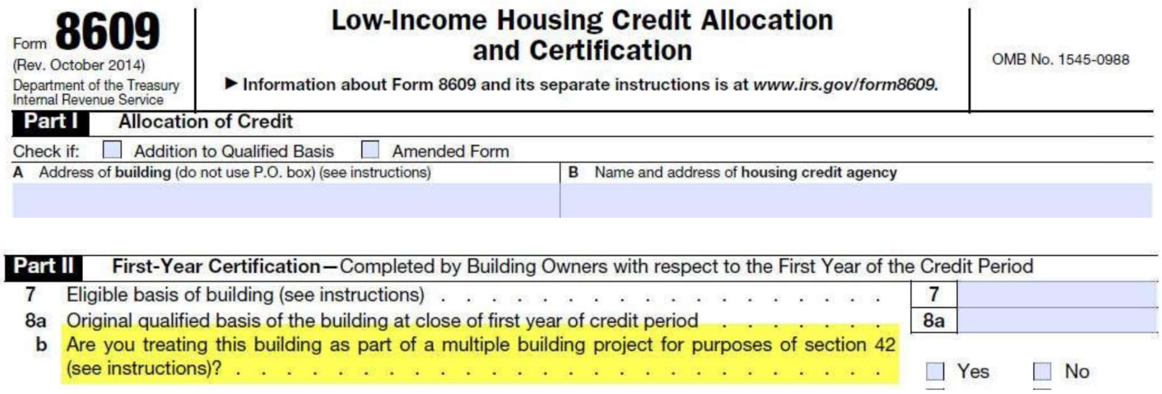
A. Minimum Set-Aside Election

By the time credit is allocated, the owner has elected one of the following Minimum Set-Aside elections on a property basis:

1. "20/50" Election: At least 20% of available rental units in the property must be rented to households with incomes not exceeding 50% of Area Median Income adjusted for household size.

2. "40/60" Election: At least 40% of available rental units in the property must be rented to households with incomes not exceeding 60% of Area Median Income adjusted for family size.

The Minimum Set-Aside must be met on a property basis (property is defined by the election made by the owner on IRS Form 8609 Part II, Line 8b). Therefore, if each building is its own property, then the Minimum Set-Aside must be met at each building. Once the election of the Minimum Set-Aside is made on IRS Form 8609, it is irrevocable. Thus, the elected Minimum Set-Aside and the corresponding rent and income restrictions apply for the duration of the Compliance Period and Extended Use Period applicable to the property.



Form **8609**
(Rev. October 2014)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Information about Form 8609 and its separate instructions is at *www.irs.gov/form8609.*

OMB No. 1545-0988

Part I **Allocation of Credit**

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)	B Name and address of **housing credit agency**

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

7	Eligible basis of building (see instructions)	7	
8a	Original qualified basis of the building at close of first year of credit period	8a	
b	Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐ Yes ☐ No	

Each Building = 1 Property
Minimum Set Aside Must be met for Each Building

If the property does not meet the Minimum Set-Aside by the end of the first year of the credit period, the property does not qualify as a low-income housing property and the credits that were awarded are lost permanently. The Minimum Set-Aside must be maintained throughout the compliance period and the extended use period. Failure to do so will result in a loss of credits.

B. Applicable Fraction

The Applicable Fraction is the portion of a building that the owner has designated for low-income households to occupy. The Applicable Fraction is the lesser of (a) the ratio of the number of low-income units to the total number of units in the building or (b) the ratio of the total floor space of the low-income units to the total floor space of all units in the building. For a building to remain in compliance, the Applicable Fraction must always be at or above the fraction assigned to that building.

Example: Building A has 6 units. Units 1-3 are 2-bedroom units at 800 ft2 and units 4-6 are 3-bedroom units at 1200 ft2. According to the owner application, the building's Applicable Fraction is 50%. The owner of Building A has rented units 4-6 as market rate units so that he can charge higher market rates for the larger sized units. The owner believes he is in compliance because the unit fraction is 3 out of 6, or 50%. However, the owner must consider the floor space fraction as well as the unit fraction.

In this case, the total square footage of the units is 6000 ft2. The low-income square footage (sum of square footage for units 1-3) is 2400 ft2. 2400 ft2/6000 ft2 gives a fraction of 40%. Since the Applicable Fraction is defined as the lower of the two ratios, the actual Applicable Fraction for this building is 40%. The owner is out of compliance for violating the Applicable Fraction.

REMEMBER THIS

The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction tells the percentage of units and floor space that must be reserved for tax credit households in a specific building.

The Minimum Set-Aside tells the minimum percentage of units that must be set-aside as tax credit units in the entire property (as defined on Form 8609), and the federal income restriction at which these units must be set-aside (50% or 60%).

To be in compliance, a property must meet its Minimum Set-Aside, and each building within that property must meet its Applicable Fraction.

C. 8609 Part II Line 8b: Multiple Building Properties

Part II of the Form 8609 is completed by the owner with respect to the first year of the credit period. Under Part II Line 8b, the owner must answer the question “Are you treating this building as part of a multiple building property for purposes of Section 42?” If the owner elects “yes,” then the building is part of a multiple building property along with the other buildings in the property. If the owner elects “no,” then each building in the property is considered its own property. This election has important compliance implications that affect the property for the duration of the compliance period.

The Minimum Set-Aside election must be met on a property basis. Therefore, if the owner has elected “yes” on Line 8b, then the building is part of a multiple building property, and the Minimum Set-Aside must be met across the entire property. If the owner has elected “no” on Line 8b, then the building is considered its own property and the Minimum Set-Aside must be met within each building.

The Line 8b election also affects unit transfer rules. If the owner has elected “yes” to the multiple building property, then residents may transfer between buildings without having to recertify for the program, as long as the household is not above the 140% limit at their most recent certification. If the owner has elected “no” to the multiple building property, then residents may not transfer between buildings. If a household wants to move to another building, they must be treated as a new move-in and **re-qualified for the program based on current circumstances**.

Because the election made on Part II Line 8b of the Form 8609 is so important for ongoing compliance, it is crucial that the owner and management agents have copies of the 8609s for each building and understand the elections that have been made.

Form **8609**
(Rev. October 2014)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Information about Form 8609 and its separate instructions is at *www.irs.gov/form8609.*

OMB No. 1545-0988

Part I **Allocation of Credit**

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)	B Name and address of **housing credit agency**

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

7	Eligible basis of building (see instructions)	7	
8a	Original qualified basis of the building at close of first year of credit period	8a	
b	Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?	☐ Yes ☐ No	

D. Maximum Income Limits

Income limits for qualifying households depend on the Minimum Set-Aside election the owner has chosen. Qualifying households in Properties operating under the “20/50” election may not have incomes exceeding 50% of Area Median Income adjusted for household size. Qualifying households in Properties operating under the “40/60” election may not have incomes exceeding 60% of Area Median Income adjusted for household size. The owner may have also elected to target a percentage of the units to persons at lower income levels (30% or 40%). The owner must also comply with those additional elections as defined in the LURA.

Income restrictions for these properties are at the federal Minimum Set-Aside elected by the owner (either the “20/50” or “40/60” set-aside).

The U.S. Department of Housing and Urban Development (HUD) publishes Area Median Income (AMI) information for each county in Missouri on an annual basis. Upon receipt of this information, MHDC will post the new annual income limits and corresponding rent limits on its website. This information is provided by MHDC only for the owner’s convenience as a courtesy. **It is the responsibility of the owner, not MHDC, to verify its accuracy.** New limits must be implemented within 45 days of the effective HUD published date.

The 2008 Housing Economic Recovery Act (HERA) established a Hold Harmless policy to avoid jeopardizing the financial feasibility of existing housing properties by maintaining the prior year established income limits and rents when annual income limits decrease.

In 2009, HUD began publishing “HERA Special” income limits for counties impacted by HUD’s “hold-harmless” policy. HERA refers to the Housing and Economic Recovery Act of 2008. Where applicable, the HERA limits may be used by all tax credit properties that placed-in service on or before December 31, 2008. HERA Special income limits and HUD’s hold harmless policy are not the same, they are two different policies.

Note: The limits identified in the MTSP Income Limits tables as "HERA Special" Income Limits are only for use by properties placed in service prior to 1-1-2009 and located in a county that had its rent limits determined under HUD’s hold harmless in 2007 and 2008.

Properties placed in service before January 1, 2009 - these properties are eligible for the HERA Special income limits if they are within a county in which the HERA Special income limits were published by HUD. These properties would then be held harmless at the 2009 HERA Special limit, if the limit was to decrease in 2010.

Properties placed in service after December 31, 2008 and before May 14, 2010 (the effective date of the 2010 income limits) - these properties are not eligible to use the HERA Special income limits, but their rent and income limits are still eligible for the hold-harmless provisions, and can therefore use 2009 income and rent limits if they are higher than the published 2010 limits.

Properties placed in service after May 14, 2010 - these properties must use the current income limits published by HUD. These properties are eligible for hold-harmless provisions under HERA as well, but the floor for their rent and income limits in future years will be the 2010 limits instead of 2009 like properties placed in service earlier.

However, not all counties in Missouri have HERA Special limits. Properties that were placed-in-service in 2009 or later are not eligible to use the HERA Special limits. Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD.

E. Maximum Rent Limits

It is important to understand rent requirements associated with programs. If a property is layered, this becomes more significant as a single unit can meet several program requirements simultaneously if the unit is rented to the stricter standard. Given the complexity of the rules, owners/property managers should seek additional guidance to ensure the rent structures are in compliance with program requirements.

The maximum gross rent is the greatest amount of rent, including a utility allowance for resident-paid utilities (except telephone, cable television, and internet), that can be charged for an LIHTC unit.

Gross Rent = Resident-paid Rent Portion + Utility Allowance + Any Non-optional Charges

The gross rent, including utilities, paid by a tax credit household may not exceed 30% of the imputed income limitation applicable to the unit. The imputed income limitation applicable to a unit is the income limit applicable based on the chosen Minimum-Set-Aside, assuming the number of individuals occupying the unit to be 1.5 persons per bedroom or with regard to zero bedrooms or single room occupancy (SRO), 1 person. These assumptions are used regardless of the actual number of people living in the household.

Example: Income Limits (by household size)

One Person	Two Persons	Three Persons	Four Persons
$10,000	$15,000	$20,000	$25,000

The rent for a two-bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size ($20,000 x 30%) divided by 12 months equals $500 monthly. The $500 amount would be the maximum allowable monthly gross rent regardless of the number of people actually occupying the two-bedroom unit.

Don’t forget to round down if a calculation leads to a rent with any decimals. Never round up if the property rent is at the maximum. For example, if the rent formula calculation is $487.50 for maximum rent, you may charge that amount of rent or less. Do not round up to $488.00.

The maximum rent amounts by bedroom size are published on an annual basis by HUD. Upon receipt of this information, MHDC will post the new maximum rent limits and corresponding rent limits on its website. This information is provided by MHDC only for the owner’s convenience as a courtesy. It is the responsibility of the owner, not MHDC, to verify its accuracy.

F. Gross Rent Floor

Every tax credit property has a “gross rent floor,” defined as the lowest rent limits that will ever be in place for that particular property. If the current year’s HUD published limits drop below the gross rent floor, a property may continue to use the rent limits established within the gross rent floor. It is important to note that there is no floor for income limits. For tax credit properties, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the property or on the allocation date (as elected by the owner). Therefore, when determining the rent limits for a property, the owner should compare the current county limit (or HERA limit if applicable) to the property’s gross rent floor and use the higher of the two. The gross rent floor is a function of the placed in-service date. If a property has several placed in-service dates, the gross rent floor may differ. Because gross rent floors may differ from property to property, it is possible that two properties within the same county, or even two different phases of a property, that have different rent limits for the year.

G. Section 8 Rents and Rental Assistance

Gross rent does not include any rental assistance payments (resident-based or property based) made to the owner to subsidize the residents’ rent, including HUD, Section 8, Rural Development (RD) or any comparable rental assistance program to a unit or its occupants. Gross rent cannot exceed the applicable tax credit rent limit at initial move-in. Only the rent and utilities (if any) paid by the tenant are counted toward the maximum rent of a qualified LIHTC unit. However, the gross rent can later increase above the applicable tax credit rent limit if the resident-paid rent portion increases as a requirement of the rental assistance program (generally rental assistance programs require that the household pays a certain percentage of its income on rent).

An increase in the rent paid by a HUD Section 8 or RD Section 515 tenant to an amount that is greater than the maximum LIHTC rent may not disqualify the LIHTC unit if the rent increase is mandated under the provisions of the Section 8 and/or Section 515 rental assistance programs. The amount of rent paid by the tenant in excess of the LIHTC rent limit is known as the “rent overage.”

Example

	Old		New
Tenant Paid Rent	$300		$325
Tenant Paid Utilities	100		110
Tax Credit Rent Limit	**$400**	**Tax Credit Rent Limit exceeded $435 Tax Credit Rent Overage 35**	

The rent overage is treated as follows:

- **Section 8 Property-Based**

Property-based voucher rents in LIHTC properties can reach normally allowed voucher maximum rent, even if greater than the maximum LIHTC rent otherwise allowed (MHDC allows voucher maximum rent levels to exceed LIHTC rent).

- **RD Section 515**

For properties built before 1991, the rent overage cannot be charged to the tenant, and the owner is responsible to pay the difference.

For properties built in 1991 and later, the rent amount exceeding the LIHTC rent limit can be lected by the owner, but the owner must pay the overage to RD.

H. HOME Rents and Rental Assistance

Under the HOME program, rent may not be raised to the higher limit unless all the following are true **and** the units meeting these criteria are counted as low HOME units:

- The tenant's income is less than 50% of AMI and;
- The tenant pays no more than 30% of adjusted income toward rent and utilities and
- The unit receives a property based rental subsidy.

I. Allowable Fees and Charges

1. General Rule

Customary fees that are normally charged to all residents, such as damage (security) deposits, pet deposits, application fees and/or credit deposits are permissible. However, an eligible resident cannot be charged a fee for the work involved in completing the additional forms of documentation required by the LIHTC Program, such as the TIC and income/asset verification documents. The 8823 Guide makes it clear that refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late fees and fees for prematurely breaking a lease, as long as the fees are clearly defined within the lease) are allowable fees that are not included in the gross rent computation.

2. Condition of Occupancy Rule (Optional Vs. Non-optional Fees)

Any fee that is charged for a service that is a condition of occupancy (i.e., a fee for a service that is non-optional or mandatory) must be included in the gross rent computation when checking rent against the applicable rent limit. Assuming they are truly optional, fees may be charged for elected services or additional amenities (such as pet fees, fees for extra storage units, etc.) and these fees would not be included in the gross rent calculation. Charges for optional services other than housing do not have to be included in gross rent, but they truly must be optional. A service or amenity is considered optional if a resident may opt out of the service or amenity without penalty and continue to live at the property.

Additionally, any services the resident pays for that are provided by the property (whether optional or non-optional) must be listed in the resident's lease with the cost of each individual service clearly listed.

> IRS Notice 89-6 and IRS Revenue Ruling 91-38 in Appendix B. 26 CFR Part 1 and 602 Section 1.42-11 Provision of services:
>
> (a) General rule. The furnishing to residents of services other than housing (whether or not the services are significant) does not prevent the units occupied by the residents from qualifying as a residential rental property eligible for credit under Section 42. However, any charges to low-income residents for services that are not optional generally must be included in gross rent for purposes of Section 42(g).
>
> (b) Services that are optional – (1) General rule. A service is optional if payment for the service is not required as a condition of occupancy.

(3) Required services – (i) General rule. The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to residents by buildings owners.

Accordingly, any other type of fees (regardless of name or characterization) that are charged to the resident for services required as a condition of occupancy, may be charged, but must be included in the calculation of gross rent.

Example: Charges for paying with credit/debit card-optional and not a condition of occupancy.

Some properties may have a credit/debit card machine onsite to allow residents to pay rent in this method. The monthly fee incurred from having a machine onsite can be passed onto the residents as long as it is an optional fee. The fee would be considered optional if the residents have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, the credit/debit machine would be an optional service offered for the residents' convenience.

The amount of the fee for paying with credit/debit card, as well as a list of all accepted alternative methods of payment, must be disclosed to all residents. Furthermore, the fee may not surpass the actual cost incurred from the machine. Management must keep documents showing the actual costs of having the machine onsite and the amount of the fee being charged to residents.

If credit/debit card is the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the credit/debit card machine fees would have to be included as part of the gross monthly rent calculation.

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3. Application Processing Fees-non-optional and a condition of tenancy-must be included in gross rent application fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by management. No amount may be charged in excess of the average expected out-of-pocket cost of processing an application.

4. Mandatory Renter's Insurance-non-optional and a condition of occupancy-must be included in gross rent.

If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation. In this scenario, the owner must obtain an estimate similar to creating a utility allowance, in which the average rates are compared for all of the primary insurance providers in the area. The monthly renter's insurance allowance estimate must be added to the resident-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent.

5. Month-to-month Fees- non-optional and a condition of occupancy-must be included in gross rent.

Although month-to-month fees may seem optional (i.e., the resident could choose to renew the lease for another year), the 8823 Guide clarifies that month-to-month fees are considered non optional fees and are included in gross rent computation.

Page 11-2 states: "Required costs or fees, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and renter's insurance."

6. Amenities and Services Charges for any mandatory amenities and/or services – non optional and a condition of occupancy (such as garages, carports, meals, laundry, renter's insurance, and housekeeping) must be counted as part of the gross rent for LIHTC units.

7. Prohibited Fees

The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

a. Fees for work involved in completing the TIC and other program specific documentation.

b. Fees for preparing a unit for occupancy. The owner is responsible for maintaining all tax credit units in a manner suitable for occupancy at all times. If a resident is to be charged decorating, cleaning, or repair fees, the owner must document the file with photos of the damage to prove that the unit is in condition beyond normal expected wear and tear. Charges cannot exceed the amount actually spent on repair. MHDC will expect to see documentation in the resident file as to the nature of the damage, including photos and receipts for the repair work.

c. Fees for the use of facilities and amenities included in eligible basis. For example, an owner may not charge a resident for the use of a clubhouse, swimming pool, parking areas, etc. if those items are included in eligible basis. Additionally, residents may not be charged a deposit or security fees for the use of common areas included in eligible basis. However, if the facilities are damaged, the responsible resident(s) may be charged fees for repair.

Additionally, any services the resident chooses to pay for that is provided by the property must be listed in the resident's lease with the cost of each individual service clearly listed. Moreover, charges for the use of any facility that is in the property's eligible basis are not permitted. For example, an owner may not charge a resident for the use of a clubhouse or swimming pool if it is included in eligible basis.

J. Violations of the Rent Limit

The 8823 Guide states: "A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis" (Page 11-8). "A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees" (Page 11-9).

Once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the resident is reimbursed for the overcharge. The 8823 Guide states: "Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHTC by rebating excess rent or fees to the affected residents" (Page 11-10).

Therefore, if MHDC discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued at the beginning of the next year, as long as the rent has been properly lowered and is now below the applicable limit.

While refunding the overcharge does not prevent the noncompliance 8823 from being issued, MHDC will still require the owner to reimburse the resident before a corrected 8823 will be issued for the unit. If the owner or management discovers that rent has been overcharged, MHDC should be notified immediately, and the owner should take action to correctly adjust the rent and reimburse the overcharges. Once corrected, it is the property's responsibility to notify Asset Management when the rent has been corrected. MHDC will verify that rent has been corrected.

Remember, rebating overpayments does not cure non-compliance! While it is correct to stop charging the incorrect rent, this does not repair the non-compliance. This is particularly important if the end of a tax year passes with the incorrect rent being charged.

Part 3.3 Utility Allowances

A. General Information

On July 29, 2008 the Internal Revenue Service (IRS) published regulations that change the way rents are adjusted LIHTC properties when residents pay for their own utilities.

The maximum gross rent includes an allowance for resident-paid utilities. Utilities include heating, air conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, cable television, or internet. When utilities are paid directly by the resident (as opposed to being paid by the owner/ property), a utility allowance must be used to determine maximum allowable unit rent. To qualify as part of the utility allowance, the cost of any utility (other than telephone, cable television, or internet) must be paid directly by the resident(s), and not by or through the owner of the building.

If the owner or a third-party separately bills the resident for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance. The utility allowance (for utility costs paid by the resident) must be subtracted from the maximum gross rent to determine the maximum amount of allowable resident-paid rent.

Example: If the maximum gross rent on a unit is $350 and the resident pays utilities with a utility allowance of $66 per month, the maximum rent chargeable to the resident is $284 ($350 minus $66). If all utilities are included in the household's gross rent payment, no utility allowance is required.

B. Sub-metering

Some buildings in qualified low-income housing properties are sub-metered. Sub-metering measures residents' actual utility consumption, and residents pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners retain records of resident utility consumption, and residents receive documentation of utility costs as specified in the lease.

Per IRS Notice 2009-44, utility costs paid by a resident to the owner/property based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the resident for purposes of the LIHTC utility allowance regulations. The notice states: For purposes of § 1.42-10(a) of the utility allowance regulations, utility costs paid by a resident based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the resident, and not by or through the owner of the building.

1.The utility rates charged to residents in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);

2.If building owners (or their agents) charge residents a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under § 42(g)(2). The fee must not exceed an aggregate amount per unit of $5 dollars per month unless State law provides otherwise; and

3.If the costs for sewerage are based on the residents' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the residents' sewerage costs are treated as paid directly by the residents for purposes of the utility allowances regulations.

This notice is effective for utility allowances subject to the effective date in § 1.42-12(a)(4). Consistent with § 1.42-12(a)(4), building owners (or their agents) may rely on this notice for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

C. Approved Utility Allowance Sources

Under these rules, owners can use the following different sources of utility allowances for properties:

Utility Allowances (UA)		References
LIHTC	Projects with RHS or HUD funding use the UA for those programs. There are 5 additional choices for other properties. The UA for voucher holding households is the UA that their rent calculation is based on.	Treas. Reg. 1.42-10, 8823 Guide Chapter 18, 8823 Guide 18-2; IRS Notice 2009-44
HUD	UA for a property is calculated based on HUD policy. HUD projects with no RD involvement, use HUD UA (also used for voucher holders).	N/A
RD	UA for a property is calculated based on RHS policy. Use RD UA (any RD involvement).	N/A
HOME	The PJ establishes a UA. With the 2013 Change in HOME regs, UAs provided by Public Housing Authorities are no longer acceptable. UAs must now be project specific and use the HUD Utility Model or other method based on actual utilities at a property (the utility allowance requirement at §92.252(d) in the HOME Rule is applicable to all rental projects to which HOME funds were committed on or after August 23, 2013).	HOME Guide 3.3D/55 24CFR 92.252 (d) CPD HOME FAQ 11-13, updated May 1, 2020.
BOND	The bond program does not impose rent limits, a utility allowance is irrelevant. The LURA may impose further rent restrictions.	N/A

Additional reference can be found here: http://mhdc.com/program_compliance/accounting/utility_allowances.htm

Other buildings. If a building is neither an RHS-assisted nor a HUD regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent restricted units in the building is determined under the following methods.

a. Estimates provided by state LIHTC allocating agencies (typically state housing finance agencies);

b. Certified engineering studies to estimate utilities (such models can also include water and sewer costs); and

c. Estimates produced by a new HUD utility modeling program.

HUD Utility Schedule Model. An owner can obtain a local utility company estimate for a unit from the HUD Utility Schedule Model found at http://www.huduser.gov/portal/datasets/husm/uam.html. If an owner chooses to utilize the HUD Utility Schedule Model, the following requirements apply:

- The unit must be of similar size and construction for the geographic area;
- If owner is dealing with a deregulated utility service, an estimate must be obtained from only one utility company, even if multiple companies can provide the same utility service to tenant;
- The utility company furnishing the estimate must offer service to the building and should include all component charges for providing the utility service;
- The owner must pay all costs incurred in obtaining the HUD utility schedule model estimate; and
- The model must take into account factors including unit size, building orientation, design and materials, mechanical systems, appliances and building location.
- The estimate should include all component deregulated charges for providing the utility service.

D. Updating Utility Allowances

Properties must submit their Utility Allowance information quarterly through AMRS at amrs.mhdc.com.

Supporting documentation submitted to MHDC regarding the utility allowance calculation methods must be no more than 60 days old. The owner must clearly identify on the supporting documentation which utility allowance calculation method is being utilized. If multiple utility sources are being used, evidence of each source must be provided to MHDC.

Owners must provide any proposed utility allowance to all residents at least 90-days before implementation. During this 90-day period, residents shall be allowed to comment on the proposed utility allowance.

Once any utility allowance is changed, owners must provide a 90-day notice to all residents of such prior to implementation of the new utility allowance. Notice, comment and implementation should not exceed 90 days. When a utility allowance changes, rents must be refigured within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42.

To remain in compliance, owners must utilize the correct and most current utility allowance in order to properly determine unit rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the resident-paid rent portion must be lowered.

Example:

Old Utility Allowance	$ 75	New Utility Allowance	$ 85
Resident paid rent	<u>$475</u>	Resident Paid Rent	<u>$465</u>
Maximum Allowable Rent	$550	Maximum Allowable Rent	$550

Utility allowances need to be reviewed and updated as follows:

- When the rents for a property or building are changed or there is a change in who pays the utilities;
- Within ninety (90) days of an allowance update by MHDC, HUD, Rural Development, the local PHA, or local utility supplier;
- Within ninety (90) days of a change in the applicable allowance (e.g., a resident begins receiving Section 8 rental assistance and the applicable PHA approved utility allowance must now be used for that unit);
- Every quarter for properties or buildings with documentation from a local utility supplier. Properties must provide documentation supporting the use and applicability of local utility allowance.

All reported Utility Allowance methods with supporting documentation must be available for review by MHDC upon request.

Part 3.4 Rules Governing the Eligibility of Particular Residential Units

A. Empty Units

Vacant units that have never been occupied (referred to as "empty units") cannot be counted as "low-income units," but must be included in the "total units" figure for purposes of determining the Applicable Fraction. The transfer of existing residents to empty units is not allowed for purposes of meeting the Minimum Set-Aside or

Applicable Fraction. Such action is considered noncompliance with Section 42 of the Internal Revenue Code and will be reported to the Internal Revenue Service (IRS) via IRS Form 8823.

B. Vacant Unit Rule

Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside and Applicable Fraction requirements (as well as for determining Qualified Basis), provided that reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income-qualified household before any units in the property were or will be rented to a nonqualified household. Management must document that reasonable attempts were made to rent vacant tax credit units **before** renting vacant market rate units.

Units cannot be left permanently vacant and still satisfy the requirements of the LIHTC program. MHDC reserves the right to question vacancies that are noted during a physical inspection, file review, or Annual Owner Certification review, especially when there is a high quantity of vacancies. The owner or manager must be able to document attempts to rent the vacant units to eligible residents.

The Vacant Unit Rule is applied on a property basis.

C. 140% Rule/Next Available Unit Rule

1. General Rule

If the income of the occupants of a qualifying unit increases to more than 140% of the income limit federal Minimum Set-Aside (i.e., more than 140% of the 50% limit for 20/50 properties or more than 140% of the 60% limit for 40/60 properties) , due either to an increase in income or a decrease in the Area Median Gross Income subsequent to the initial income qualification, the unit may continue to be counted as a low-income unit as long as the following criteria is met:

a. the unit continues to be rent-restricted at the state set-aside, and

b. the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

If the income of the occupants of a qualifying unit increases over the 140% limit and if any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the limit, then the qualifying unit will no longer qualify as a low-income unit and the building is out of compliance with the Next Available Unit Rule.

The determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the household's income and the qualifying income for the location, rather than only on the date the household initially occupied the unit.

In properties containing more than one low-income building (non-tax exempt bond financed), the Next Available Unit Rule applies <u>separately to each building in the property</u>. If a tax-exempt bond financed property is also receiving LIHTC and contains more than one building, the Available Unit Rule applies on <u>both the building and property basis</u>. Additionally, the property must maintain all state and federal set-aside requirements.

Please note, a unit is not "available" for purposes of the Available Unit Rule when the unit is not available for rent due to a reservation that is binding under local law. Additionally, when a current resident moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit.

The Next Available Unit Rule is applied on a building basis.

2. Next Available Unit Rule at Mixed-Use

In mixed-use properties, the Next Available Unit Rule may cause market rate units to be converted into tax credit units. The owner must continue renting the next available unit of comparable or smaller size to a tax credit eligible household until the Applicable Fraction is restored. Therefore, multiple market units may have to be converted into tax credit units until the Applicable Fraction is restored (remember the Applicable Fraction includes both the unit and floor space fraction). Once the Applicable Fraction is restored (without counting the unit that invoked the Next Available Unit Rule), the over-income unit may be converted from tax credit to market rate and the rent may be raised as allowed by the language in the resident's lease.

Example 1: A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the residents in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. In order to remain in compliance, Unit 10 (the vacant market rate unit) must be rented to a qualified household to replace Unit 4 as a qualified low-income unit. On November 1, a qualifying household moves into Unit 10, thus the current Applicable Fraction is restored at 70%. When the lease language allows, Unit 4 may convert from tax credit to market rate.

Example 2: A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the residents in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. On November 1, a market rate household moves into Unit 10. At the time of the move in, the current Applicable Fraction was equal to 60%, excluding all over-income units. The market rate unit moving into Unit 10 is a Next Available Unit Rule violation and all over income units (Unit 4) cease to be treated as low-income units. The date of noncompliance is November 1.

3. Next Available Unit Rule at 100% Tax Credit Properties

Noncompliance with the Next Available Unit Rule can have significant consequences even in 100% LIHTC buildings. If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified resident, all over-income comparably sized or larger units for which the available unit was a comparable unit within the same building lose their status as low-income units and are out of compliance with Section 42.

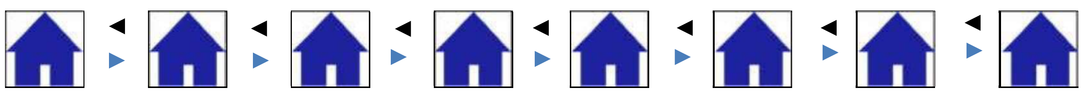
Example 1: A property contains 10 units of equal size. All 10 units are qualified low-income units. The Applicable Fraction of the building is 100%. On September 1, the income of the residents in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the property continues to be in compliance and the Applicable Fraction decreases to 90%. On November 1, a non-qualified household moves into Unit 10, due to an error. At the time of the move-in, the current Applicable Fraction was equal to 90%, excluding all over-income units. The non-qualified household moving into Unit 10 caused a Next Available Unit Rule violation and all over-income units (Units 4 & 10) cease to be treated as low-income units. The Applicable Fraction is now 80% and the date of noncompliance is November 1.

D. Unit Transfer of Existing Residents

It is important to note whether the 8609 indicates the buildings are part of a multiple-building or single building property. If the 8609 indicates it is a multiple-building property, a transfer to a different building within the property during the Compliance Period is allowed. If the owner has elected “yes” to the multiple building property, then residents may transfer between buildings without having to recertify for the program, as long as the household is not above the 140% limit at their most recent certification.

Multiple Building Property = Transfers Allowed

If the 8609 indicates it is not a multiple building property, each building is considered its own property and the household must be qualified as a new household in order to transfer. The transfer would only be allowed if the household can income-qualify at the current AMI.



Each Building=One Property=The Household must be qualified as a New Household to Transfer.

Regardless of whether the property is a multiple or single building property, the transfer of a LIHTC household to a LIHTC unit in a different building requires a full income certification.

When a transfer is permitted, the lease must have an amendment or addendum that reflects the address and the unit in which the resident now resides. The transfer event must be reported in CP, MHDC’s online reporting system. The household’s annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

1. Unit Transfers within the Same Building

Effective September 26, 1997, the Next Available Unit Rule was modified to allow residents of LIHTC units to transfer to other units within the same building without having to re-qualify for the program. The vacated unit assumes the status that the newly occupied unit had immediately before the transfer. This provision applies only to households under leases entered into or renewed after September 26, 1997, and is not retroactive. For prior leases, all transfers, including those within the same building, must have been treated as new move-ins. The main implication for this change in regulation is that households that are over-income at recertification have the ability to move into a different unit within the same building without being disqualified from the program. However, the transfer must be well documented in the resident file and the household’s eligibility must continue to be certified and verified annually. Please note that the Next Available Unit Rule still applies.

2. Unit Transfers outside the Same Building

Properties that contain multiple buildings within one property may allow residents of LIHTC units to transfer to other LIHTC units outside of the same building. MHDC requires that the household be requalified to ensure the household's income does not exceed the 140% limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.

All application, certification, and verification procedures must be completed for the transferring of resident(s), including the execution of new income and asset verifications to determine continued eligibility, a new TIC, and a new lease. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.

Management is not permitted to transfer qualifying residents to non-qualified vacant units (i.e., empty units that have never been occupied by qualified households) in order for the property to meet the Minimum Set-Aside requirements elected at the time of application. Such action is considered noncompliance with Section 42 of the Internal Revenue Code and will be reported to the Internal Revenue Service (IRS) via IRS Form 8823. Transfer fees are permissible if reasonable and the transfer was voluntary and requested by the tenant. MHDC will allow a transfer fee not to exceed $100.00. Transfer fees are not permissible if transfer is due to health and safety needs, reasonable accommodations, or damage to or inhabitability of the unit that is not the fault of the tenant (such as fire, tornado, etc.).

MHDC follows HUD guidance in regards to transfers. The transfer policy based on HUD regulations, guidance, PHA policy decisions and [24 CFR 8.27(b)] state that when a family/resident is initially given an accessible unit, but does not require the accessible features, the PHA may require the family to agree to move to a non-accessible unit when it becomes available. MHDC requires a family/resident move to a non-accessible unit if they have no need of the accessible features and an incoming resident/family does. Management must notify the family/resident that does not need accessible features that they may be asked to move on a non-accessible unit at a future date prior to move-in.

Part 3.5 Select Rules Governing the Eligibility of Residents and Uses

A. Household Composition

Household size determines the maximum allowable income for the LIHTC unit. When determining household size for purposes of implementing the correct income limits, the owner/management should never include the following members: live-in aides, foster children and adults, and guests. The household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a household member. If the individual is included as a household member, his/her income must be certified and included. Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit. All other individuals, including temporarily absent family members (e.g., dependents away at school, etc.), unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, should be included in household size for purposes of determining the applicable income limit, however, a child may not be counted in more than one tax credit unit for household size.

Household composition may change after the initial resident(s) moves into a unit. However, at the time of application an applicant should be asked if there are any expected changes in household composition during the next twelve (12) months. If so, the composition change and any subsequent changes in estimated income should be reflected on the initial TIC. Moreover, if all original members of a household vacate a unit, the remaining members may have to be treated as a new move-in and if so would no longer be treated as a qualified unit if the current household's income is above the Section 42 limits. To determine if at least one of the original members of the household still resides in the unit, household composition information must include the size of the household and the names of all individuals residing in the unit. This information must be gathered annually at recertification and at any time a change in household composition occurs.

B. Live-in Care Attendants

A live-in care attendant (aka a live-in aide) is a person who resides with one or more elderly, near elderly, or disabled persons. A live-in aide is defined as (a) someone determined to be essential to the care and well-being of the resident, (b) must not be financially obligated to support the resident, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services (24 CRF 5.403).

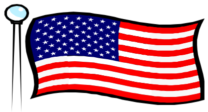
While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) or (c). Additionally, the live-in aide cannot move a spouse, child, or other member into the unit, as doing so would indicate that the aide is living in the unit for reasons other than the care of the resident.

A live-in care attendant for an LIHTC resident should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income. The live-in care attendant should, however, be considered for the purposes of determining the appropriate unit size. The need for a live-in care attendant must be certified with documentation from a medical professional (e.g., a letter from the resident's doctor) and included in the resident file.

If the qualified resident vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified resident and remain in the unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the program. While the live-in care attendant is not considered a household member, he/she is still subject to criminal background checks (as per the resident selection criteria effective at the property) and must comply with all lease and resident house rules. An owner may deny a live-in care attendant that does not pass criminal background checks or evict an attendant who exhibits behavior that is disruptive, illegal, or endangering to other residents, as defined in the resident selection criteria and lease.

C. Foster Children/Adults

HUD Handbook 4350.3 Change 4 states foster children and adults living in a tax credit unit are now considered household members for purposes of determining income limits and unit size. Furthermore, the full amount of income a household receives for the care of foster children and adults is excluded from the calculation of total household income. This rule applies only to payments made through the official foster care relationships with local welfare agencies.



D. Deployment of Military Personnel

Owners are encouraged to be as accommodating as possible in supporting households where people are called to active duty in the Armed Forces. Actions owners can take to accommodate such households include:

- allowing a guardian to move into the unit for a temporary period to provide care for any dependents the activated person leaves in the unit;
- allowing a tenant living in a LIHTC unit to temporarily provide care for any dependents of an activated person, as long as the head and/or co-head continues to serve in active duty (income of the child (e.g., SSI, military benefits) is not counted as income of the person providing the care);
- determining whether it is appropriate to accept a late rental payment;
- allowing the assistance payment and the lease to remain in effect for a reasonable period of time beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940

(50 U.S.C. §§501-591) even though adult members of the military family are temporarily absent from the LIHTC unit.

<u>Do NOT include</u>

Live in aides-a spouse can never be a live in aide

Foster children and adults

Guests

<u>Do include</u>

Individuals permanently confined to a hospital or nursing home (if the household decides to include)

Military members away on active duty if they are the head, spouse, or co-head

Military members away on active duty if they leave behind a spouse or dependent child in the unit.

Temporarily absent family members (e.g., dependents away at school, etc.)

Unborn children or children in the process of being adopted

Children in joint custody agreements in the unit at least 50% of the time

E. Student Status

1. General Rule and Definitions

A household where all members are full-time students is not considered qualified for occupancy in an LIHTC unit. A full-time student is one who is, has, or will be carrying a fulltime subject load or enrolled to attend or is attending an educational institution accredited with a degree or certificate program (including K-12 school-age children) during any portion of five months within the then-current calendar year ("Full-Time Student") (Code §152). The determination as to whether an individual is carrying a full-time subject load is made by the educational institution. The number of credit hours and the definition of full-time are defined by the school the student attends. The owner/management is required to verify in writing whether applicants and/or existing tenants are Full-Time Students. All *adult household members* must complete the LIHTC Certification of Student Eligibility (**Exhibit M**) prior to admission into a LIHTC property.

The full-time student definition does apply to students taking courses online if they are considered to be full-time by the educational organization.

Most households in which all of the members are full-time students are not LIHTC eligible, and units occupied by these households may not be counted as LIHTC units, even if the household has an income that would qualify under the program income limits.

The Student Verification form (**Exhibit F**) must be completed (a portion of the form must be completed by the educational institution). The educational institution is required to give information on the form regarding any financial aid received by the student.

2. Student Status Exemptions

There are five (5) exceptions to the full-time student restriction. Full-time student households that are income eligible and; in which at least one of the household members satisfies one or more of the following conditions can be considered an eligible household. An applicant claiming any of the exemptions must be able to provide documentation of proof. A household comprised entirely of full-time students may not be counted as a qualified household under the LIHTC program unless at least one of the full-time students meets one of the following five (5) exceptions:

i. All household members are full-time students, and such students are married and are entitled to file a joint tax return.

As of September 16, 2013, Revenue Ruling 2013-17, provides guidance for the treatment of same-sex marriages. Specific to IRC §42 and 100% full-time student households, the exception under IRC §42(i)(3)(D)(ii)(II) for students who are married and can file a joint return applies to married same-sex couples as described below. Further, the exception can be applied retroactively to same-sex couples currently occupying low-income units. For example, if a same sex married couple is in the process of being evicted because they are both full-time students and were determined to be ineligible for the exception, then the exception is applied retroactively, and the couple does not violate the requirement that a unit not be occupied entirely by full-time students.

For Federal tax purposes:

- The terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex.

- The Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

- The terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

Required Documentation: Copy of the most recent tax return or the marriage license.

ii. The household consists entirely of single parents and their children, and such parents and children are not tax dependents of another individual, with the exception that the children may be claimed by the absent parent.

Required Documentation: Copy of the most recent tax return.

iii. At least one member of the household receives assistance under Title IV of the Social Security Act [Aid to Families with Dependent Children (AFDC) or Temporary Aid to Needy Families (TANF)]. Food stamps, Social Security, and SSI are not considered exemptions under Title IV.

Required Documentation: Third-party verification of the AFDC or TANF award.

iv. At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act or similar federal, state, or local laws.

Required Documentation: Third-party verification of enrollment.

v. At least one member of the household was previously released from the foster care system. The member claiming to have been a foster child must have been placed into foster care through an official state foster agency. This exemption only applies to eligibility determinations made on or after 7/30/08.

Required Documentation: Third-party verification from the foster care agency or self-affidavit from the resident if third-party verification cannot be obtained.

If at least one member of the household is not a student or is a part-time student, then the household is not considered a full-time student household and is an LIHTC eligible household (if income qualified).

The Full-Time Student Rule does not apply for properties that MHDC Asset Management has determined to have entered the Extended Use Period.

3. Changes in Student Status

Should all members of a previously qualified low-income household become Full-Time Students, the household must meet one of the exemptions set forth above to remain eligible under the LIHTC Program rules. The owner/management agent must verify in writing whether the household meets the exemption claimed. In addition, MHDC requires owners to utilize a lease provision in all LIHTC units requiring residents to notify management of any change in student status during the lease term. If student status changes at any time, the household's tax credit eligibility must be reevaluated. If the household does not qualify for one of the exemptions, the unit is considered non-compliant.

4. Student Financial Assistance

Per Chapter 5 of the HUD Handbook 4350.3, Exhibit 5-1 Income Exclusions, student financial assistance must be counted as part of total household income for households receiving Section 8 rental assistance. However, financial assistance is not included as part of annual household income for tax credit households that do not receive Section 8 rental assistance. For Section 8 recipients, all forms of financial assistance in excess of the cost of tuition (not including cost of books, room and board, and other class fees) are included as income. This includes grants, scholarships, private assistance, educational entitlements, etc. but does not include loans.

There are two exceptions to this rule:

i. The student is over the age of 23 with dependent children; or

ii. The student is living with his or her parents who are receiving Section 8 assistance. If the Section 8 recipient meets one of the previous exceptions, then financial assistance is not included as part of total household income.

Regarding students and the GI Bill, MHDC follows HUD's guidance in this matter. HUD states that amounts received from the GI Bill <u>in excess</u> of tuition and books are countable income for residents receiving Section 8 rental assistance per HUD handbook 4350.3 Chapter 5, Section 56 (D). Therefore, the Basic Allowance for Housing (BAH) benefit is countable income. You must verify how much is received and count when determining the family's income and rent. Remember that students will receive this benefit for only the months the school is attended.

5. Earned Income of Dependent Students

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of $480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income. When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

6. Important Distinctions between Student and Income Eligibility Rules

Student status is treated differently than income eligibility in a number of important ways:

i. While income eligibility is based on anticipated income for the next twelve (12) months, student status eligibility must consider not only if the applicant/resident is or anticipates becoming a student within the next year, but also whether or not that applicant/resident was a student parts of any five (5) months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and backward at student history.

ii. Income verifications are not required at recertification for 100% tax credit properties after the third year; however, those properties must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not student status requirement for recertification.

iii. A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household income qualifies, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into effect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

F. Employee Common Use Units

Owners often elect to provide units for full-time managers, maintenance personnel and/or security personnel ("Common Use Units"). What constitutes "full-time" is not defined by the IRS and, thus, the meaning of "full-time" could vary from property-to-property, depending on the needs of the particular property. Common use units are considered common space and, as such, the owner cannot lect rent on the units and it is not necessary to income-qualify the occupants.

Common use units should be established during the application process but can be designated after the property is Placed-in-Service. The property owner must submit a Common Use Request form (<u>Exhibit P</u>) to MHDC and obtain approval of such from MHDC prior to establishing Common Use Unit(s).

If the employee unit is treated as a tax credit rental unit, the unit should be included in the low income occupancy percentage calculation for the LIHTC building. In this case, the employee must be income qualified and the unit rent restricted.

In Revenue Ruling 92-61, the Internal Revenue Service ruled to include the unit occupied by the resident manager in the building's Eligible Basis but exclude the unit from the Applicable Fraction for purposes of determining the building's Qualified Basis.

Please note that for a unit to be considered a "facility reasonably required for the property," the maintenance personnel must be providing services for the property that could not be properly provided **<u>unless</u>** the employee resides on the property premises. If the employee is not working **full-time on the premises** and is providing the same services at another property without living on-site, the unit the employee is living in would not be considered a "facility reasonably required for the property."

G. Model Units

MHDC recognizes that it may be standard industry practice to utilize a model unit(s), during a property's lease-up period to show prospective residents the desirability of the property's units. The use of a model unit can be a good marketing tool, in respect to the immediate ability to show the unit without disturbing current residents in occupied units. Under IRC §42, a model unit is considered a rental unit and therefore the model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

There are three (3) different ways a property can utilize a model unit:

i. Permanent Model Unit

The model is utilized during the lease-up period, as well as the entire compliance period. If a model unit is never rented as an LIHTC unit, then it should not be included in the numerator of the Applicable Fraction when determining a building's Qualified Basis. However, the costs of the unit should be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

ii. Model Unit->Tax Credit Unit

The model unit is utilized during the lease-up period and is later used as a qualified rental unit and rented to a qualified household. The cost of the unit should be included in the building's Eligible Basis. In the years that the unit was utilized as a model unit, it should be included in the denominator of the Applicable Fraction when determining a building's Qualified Basis; however, it should not be included in the numerator of the Applicable Fraction. Once the unit is rented to a qualified household, the owner should follow the rules outlined in IRC §42(f)(3) for increases in Qualified Basis; i.e.,, the "2/3 Credit Rule".

iii. Tax Credit Unit-> Model Unit

A qualified unit that becomes vacant is utilized as a model unit on a temporary basis. Provided that the unit remains available for rent and is treated like all other qualified units, it may be included in both the numerator and denominator of the Applicable Fraction when determining a building's Qualified Basis. The unit should be listed as "Vacant" on the Annual Owner Certification of Compliance and the Rent Roll, and not listed as a "Model Unit." Furthermore, the property must continue to make reasonable attempts to rent out the vacant unit used as a model unit and must be able to document these efforts.

H. Community Service Facilities

In Revenue Ruling 2003-77, the Internal Revenue Service ruled that Community Service Facilities can be included in a building's Eligible Basis if certain criteria are met, including the requirement that the property must be located within a qualified census tract. The services provided at the facilities can include, but are not limited to: day care, career counseling, literacy training, education, recreation and outpatient clinical health care. Further information on community service facilities is available on page 8-7 of the 8823 Guide.

I. Non-Transient Occupancy

Under program requirements, a unit cannot be LIHTC eligible if it is used on a transient basis. A unit is deemed to be transient if the initial lease term is less than six (6) months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all LIHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period. The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2: "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use." Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time. Federal regulations do allow shorter leases for certain types of housing for homeless individuals.

The following types of housing are exempt from the six (6) month minimum lease period:

1. Single Room Occupancy (SRO) units in properties receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or

2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance; or

3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or

4. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within twenty-four (24) months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

If a property has units set aside in a building for homeless households and/or transitional housing units, those residents must have leases with at least six (6) month terms, unless the building's primary use is described in Exemptions #1-4 above. Tax credit units may never be used as emergency shelters.

J. Home-Based Business / Office in a Unit

A resident may use an LIHTC unit to conduct a home-based business, as long as they are income qualified for the unit and the unit is their primary place of residence. The 8823 Guide states on page 4-13:

"A low-income resident may use a portion of a low-income unit exclusively and on a regular basis as a principle place of business, and claim the associated expenses as tax deductions, as long as the unit is the resident's primary residence. If the resident is providing daycare services, the resident must have applied for (and not have been rejected), be granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law."

K. Special Needs Populations

Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit property may have committed in writing to set aside a percentage of total units to qualified residents who meet the MHDC's definition of "special needs population" and must equip each unit to meet a particular person's need at no cost to the resident.

A person with special needs is a person who is physically, emotionally, or mentally impaired or suffers from mental illness; developmentally disabled; homeless; or a youth aging out of foster care.

A property with a special needs set-aside may not give preference to potential residents based upon having a particular disability or condition to the exclusion of persons with other disabilities or conditions.

A lead referral agency should refer special needs households qualified to lease targeted units and local service agencies should provide a network of services capable of assisting each type of special needs population defined above. A Lead Referral Agency is defined as a service provider agency that will provide tenants and services to the community through compliance period.

During physical and file inspections, the files of those residents who qualify as a special need's population must include documentation to show that the unit is meeting the special needs set aside. Please note, management may not inquire into the specific nature of the special need (for example, management cannot ask the resident details about their disability).

If the special needs units are floating, then the next available unit in the property must be used to house a special needs resident at the designated rent amount in the event there is a special needs rent amount.

If the special needs units are not floating, then there should be an addendum to the lease (signed by the resident) acknowledging that they may be required to move to another unit should the special needs unit be required to house a resident needing the features associated with that unit.

L. Disaster Relief

Owners are encouraged to rent vacant units to disaster-displaced residents for temporary housing. Owners are not, however, required to hold vacant units off the market for disaster displaced residents. In the event of a disaster, refer to www.mhdc.com for specific guidelines and required documentation for placing disaster-displaced residents.

Part 3.6 Fair Housing, General Public Use, and Resident Selection Criteria

A. Fair Housing: Protected Classes and Affirmative Marketing / General Public Use

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, or, sex, national origin, religion, familial status, or disability [the seven (7) protected classes under the Fair Housing Act]. Additionally, owners cannot refuse to accept a prospective resident based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

Nondiscrimination means that owners cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a resident or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owners may not engage in steering, segregation, false denial of availability, or discriminatory advertising.

All LIHTC properties must submit an Affirmative Fair Housing Marketing Plan (AFHMP) to MHDC for approval within one year of the first building being placed-in-service. If a property is layered with HUD funding and HUD is in first position, the AFHMP is to be approved by HUD and a copy of the approved plan must be submitted to MHDC within one year of the first building being placed in service. In addition, Affirmative Fair Housing Marketing Plans must be evaluated at least once every five (5) years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD).

All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. MHDC strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. Staff should attend a Fair Housing and Equal Opportunity training at least once every calendar year.

If at any time during the compliance period it is found that a violation of the Fair Housing Act has occurred at any LIHTC property, the property is out of compliance with Section 42 of the Code and MHDC will report such noncompliance to the IRS via IRS Form 8823.

The Fair Housing Act only addresses dwellings and common areas, while the Americans with Disabilities Act (ADA) covers public areas. Additionally, for "stand alone" tax credit properties, only two out of the three federal fair housing laws apply. These are the Fair Housing Act as amended in 1988 (CFR Part 8) and the Americans with Disabilities Act (ADA). If, however, the tax credit property is blended with another program that has federal assistance, then Section 504 of the Rehabilitation Act of 1973 (CFR Part 100 Et Seq) is also applicable.

For example, if you are managing a tax credit property blended with HUD property-based assistance, then Section 504 also applies. The HOME Program is also considered to be a federal assistance program.

B. Fair Housing: Reasonable Accommodations and Modifications

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations.

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable modification at the expense of the resident. However, if the changes needed by the resident are ones that should have already been included in the unit or common space in order to comply with design and construction accessibility standards, then the owner will be responsible for paying for the modifications.

C. General Public Use

Under program requirements, LIHTC units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (e.g., homeless individuals, persons with disabilities, the elderly, etc.). These preferences, however, must not violate HUD's anti-discrimination policies. Any residential unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not considered for use by the general public and is therefore not an eligible LIHTC unit.

In addition, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. (See Section 1.42-9). The easiest approach to this type of unit is to designate this unit's use in advance.

Please note that for a unit to be considered a "facility reasonably required for the property," the maintenance personnel must be providing services for the property that could not be properly provided **unless** the employee resides on the property premises. If the employee is not working **full-time on the premises** and is providing the same services at another property without living on-site, the unit the employee is living in would not be considered a "facility reasonably required for the property.

Violations of General Public Use and/or Fair Housing are reportable to the IRS via Form 8823. Depending on the nature of the violation, the noncompliance may be determined at the unit, building, or property level. Any unit found in violation of General Public Use and/or Fair Housing will fail to be considered a qualified low-income unit for the purposes of determining the Applicable Fraction.

D. General Occupancy Guidelines/ Household Size

There are no current LIHTC requirements governing minimum or maximum household size for a particular unit. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g., if rural property, use RD regulations). Owners must be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, resident/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

E. Resident Selection Criteria

There are no federal or state tax credit regulations regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these criteria is entirely up to owner/management discretion, so long as the screening criteria are applied equally to all applicants.

Regarding citizenship status, effective January 1, 2009 Missouri implemented Missouri House Bill No. 1549 Section 4- 208-009 1-8. Accordingly, for verification of citizenship status, the immediate use of the following HUD forms are now required for all applicants instituted prior to the initial move in and instituted at recertification for existing tenants. These forms must be completed for each household member. This is a one (1) time form unless the alien status for any household member should change.

- HUD Exhibit 3-4 & 3-7: The Family Summary Sheet and Owner's Summary of Family
- HUD Exhibit 3-5 Declaration Format form
- HUD Exhibit 3-6 Verification consent Form

Because many of these resident selection criteria are left up to the discretion of the owner, it is important for each property to have an established Resident Selection Criteria Policy in writing. This document should be made available to all applicants and residents. At a minimum, a good Resident Selection Criteria Policy should include the following:

- Occupancy standards in effect (how many residents can live in a unit based on size of the unit); -Tax credit program eligibility factors, including income limits and student status eligibility;
- Any minimum income requirements imposed by management;
- Any additional citizenship requirements imposed by management;
- Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application (e.g., do certain criminal charges or a certain credit score automatically disqualify the household?);
- Explanation of the application and waiting list process, including the process through which a resident can appeal a rejection decision;
- Explanation of the transfer policies in effect;
- Breakdown of any special preferences set aside at the property (e.g., units reserved for special needs populations or an elderly restriction on the property) and;
- List of any other relevant items used in considering the household's eligibility for occupancy.

When creating a property's Resident Selection Criteria Policy, the owner must be careful to follow all applicable tax credit eligibility regulations, Fair Housing regulations, and local occupancy standards.

Part 3.7 Tax Credits Properties with HOME-Assisted Units

A tax credit property may also receive HOME funds, resulting in a certain number of units reserved as both tax credit and HOME-assisted units. Units that are both LIHTC and HOME assisted must follow the compliance rules of both programs. As a general rule of thumb, <u>when program compliance regulations differ, the owner should follow the stricter of the two</u>.

The following is a sampling of common issues management may face when combining tax credits with HOME funding. This is not meant as an exhaustive listing.

A. LIHTC with HOME: Rent and Income Limits

1.HOME and LIHTC rent and income limits may be different within the same county for the same year. MHDC releases a separate set of limits for each program. For a unit under both programs, the stricter of the two sets of limits should be used (generally the HOME limits are lower and are thus the stricter). For example, if the HOME rent for a unit is $650 and the tax credit rent for a unit is $750 (before the utility allowances are subtracted for either rent) start at $650 (the HOME rent) and subtract the utility allowance from that amount. Otherwise, the HOME program rent could be out of compliance, and the unit would be ineligible for <u>both</u> programs.

2. Section 42 does not include rental assistance in the gross rent calculation. For HOME assisted units, resident-based rental assistance is included in the gross rent calculation, but property-based rental assistance is not included. For purposes of determining whether a HOME-assisted unit is in compliance with the rent limits, the

sum of the resident-paid rent portion + resident-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME rent limit.

B. LIHTC with HOME: Certifications and Verifications

1. Tax credit properties that have HOME-assisted units must have a full annual recertification to comply with MHDC's HOME program requirements.

2. The tax credit program allows household self-certification for assets if the total combined value of assets is less than or equal to $5000. HOME requires that all assets be third-party verified, so the "Under $5000 Assets Affidavit" cannot be used to satisfy the verification requirements on HOME-assisted units.

3. In the HOME program, verifications are valid for six (6) months. For Section 42, verifications are only valid for 120 days. Therefore, for units subject to both programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.

C. LIHTC with HOME: Household Size and Eligibility

1. Unborn children of pregnant women are included when determining family size for income limits. When a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question: "Will there be any changes in household composition within the next 12-month period?" If an applicant answers that a child is expected, the manager should explain to the resident that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided. Unborn children can be verified only through self-certification from the expecting mother. No further documentation is allowable.

2. The HOME program does not limit occupancy by full-time students. However, for HOME assisted LIHTC units, the tax credit full-time student rules apply.

D. LIHTC with HOME: Fair Housing and Lead Based Paint Requirements

1. Upon property entry, households living in HOME-assisted units must be given the Fair Housing brochure entitled "You May Be a Victim Of" and the Lead Based Paint brochure entitled "Protect Your Family from Lead in Your Home." The household must sign documentation acknowledging the receipt of these brochures at time of move-in. Although this is not a requirement of Section 42, all HOME-assisted units in a tax credit property should have a signed copy of the acknowledgement located in the resident file.

2. Any tax credit property with five (5) or more HOME units must follow Affirmative Fair Housing Marketing procedures. Further, affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs. The owner must study the local market to determine the populations that are least likely to apply for housing, and then develop a plan to make sure that marketing efforts are reaching out to these groups. The owner should evaluate the property's Affirmative Marketing plan at least once every five (5) years and update the plan if necessary.

E. LIHTC with HOME: MHDC Inspections

A property with tax credits and HOME funds will be audited by MHDC for each program. The tax credit file monitoring will occur once every three (3) years. Additionally, the HOME units will be audited every two years.

F. LIHTC with HOME: Utility Allowance

The LIHTC utility allowance rules allow for the use of PHA estimates. The HOME rule excludes this as an option. Under the HOME rule utility allowances must be determined for each property using either (1) the HUD Utility Schedule Model or (2) otherwise determining the allowance based on specific utilities used at the property.

G. LIHTC with HOME: General Public Use

The LIHTC general public use provisions are more restrictive than the HOME rules. Housing for certain trade groups, for instance, is prohibited for LIHTC units but allowed for HOME. The LHITC rules must be followed in these cases to avoid noncompliance.

H. LIHTC with HOME: Student Rule

The HOME program adopted Section 8 student rules in the 2013 regulation revision. Households in HOME units at LIHTC properties will need to meet BOTH HOME and LIHTC student eligibility criteria. Neither rule is more conservative than the other, or takes precedence, so both rules must be applied.

For more information on MHDC's HOME compliance regulations, please refer to the MHDC HOME Rental Housing Compliance Manual located at
http://www.mhdc.com/program_compliance/home_program_annual_reporting_resources.html.

Notes

CHAPTER 4 – QUALIFYING AND CERTIFYING RESIDENTS

The eligibility of all individuals who reside in an LIHTC unit must be certified. A written application must be fully executed and signed by all adult applicants prior to move in. Potential residents of low-income, rent-restricted units should be advised early in the application process that there are maximum income limits that apply to these units. Management should explain to potential residents expecting to occupy the unit that the anticipated income and assets over $5,000 certification of all adult persons (and the unearned income of minors) must be verified prior to occupancy and then annually recertified for continued eligibility.

The Code states that determination of annual income of individuals and Area Median Gross Income adjusted for family size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, Chapter 5, Occupancy Requirements of Subsidized Multifamily Housing Programs should be used as a reference guide.

IMPORTANT NOTE
It is a recommended practice to engage a consultant to review all first-year files to ensure compliance. This should be done early during the leasing process to identify any potential qualification issues early enough to remedy.

Part 4.1 Resident Eligibility

The owner's election of the Minimum Set-Aside for a property determines the income limit for low-income tenants in the property. Certain other factors, such as student status and U.S. Citizen status may also affect the eligibility of households.

Part 4.2 Qualification and Certification Process

A. Confidentiality of Applicant and Resident Information

Federal law limits the information owners can lect about an applicant or resident to that which is necessary to determine eligibility and rent levels. It is the responsibility of the owner and their employees to use information provided by applicants and residents only for specified program purposes and to prevent the use or disclosure of this information for other purposes.

MHDC requires owners to develop internal procedures and controls to prevent the improper use or unauthorized disclosure of the information provided by applicants and residents.

B. Necessary Documentation for a Resident File

LIHTC units are eligible for the LIHTC program if proper documentation verifying the household's eligibility is placed in the resident file. At a minimum, the following items must be located in the file and must be organized in chronological order for easy review:

1. Initial resident application for residency.

Generally, all adult members (age 18 and older) who are current or anticipated residents must sign a resident application. Anticipated residents or residents who will turn 18 years old during the certification period must sign the required documents at the time of recertification.

Please note you cannot use the EIV Income Report for a tenant who turns 18 between recertifications until the resident has signed the form, even though the employment or income will be reported in EIV. You must address, in your policies and procedures, notification and time frame requirements for residents who turn 18 between annual certifications.

At minimum, an application must:

a. Clearly identify each household member;
b. List ages and relationship to head of household;
c. Request all income and asset sources in detail;
d. Show whose income is included in the qualification;
e. Request any expected changes to the household size;
f. Obtain references and rental history and
g. Qualify for any special needs.

An interview of the applicant should be conducted to review the information provided on the application. Based on the application and any clarifying discussions with the applicant, verification of income, assets, student status, etc. are obtained from the appropriate third parties. If third-party verification cannot be obtained with documentation, an applicant self-affidavit is acceptable. Documentation of attempts to third-party verify is required.

2. Exhibit B-Tenant Income Certification (TIC)

After all of the income and asset information has been obtained, verified and computed, management personnel must prepare an Exhibit B (TIC). When fully executed, the TIC certifies that the applicant is eligible to live in a LIHTC unit in the property. The TIC (or for Section 8 or Section 515 properties, the certification forms used for those programs) must be executed along with the lease prior to move-in and at each annual recertification.

Once an initial TIC has been executed, it should never be altered. If there are any changes, a new or updated TIC should be executed. Any TIC whether updated or new must be signed by all adult household members. Changes are also to be initialed by all adult members. TICs must be signed by each adult member of the household for every year the household resident resides at the property. The TIC must have a proper signature and effective dates clearly stated.

The effective date of TIC must be the date of move-in or recertification. The following guidelines describe TIC completion:

h. Management should instruct the prospective low-income resident to sign the TIC exactly as their name appears on the form.
i. The move-in date is the date the tenant will take possession of the unit.
j. At initial certification, the effective date is the date the tenant takes possession of the unit.
k. The move-in date, lease date and the TIC effective date must match.
l. All verification forms must be dated within 120 days prior to the TIC effective date.
m. The annual recertification must be no more than 365 calendar days from the previous certification. The move-in effective date should always be the same on the TIC.
n. Currently, there is no language stating that the TIC can only be signed up to 30 days prior to the effective date. The TIC may be signed before, or at move-in. If it is signed after move-in, a note to the file with an explanation is required. Clarification is required for a late recertification.

o. The signature and date of the owner/representative must be completed immediately after execution by the applicant/resident.
p. White-out must not be used on any file documentation and changes made to any documentation should be initialed by all parties.
q. All adult occupants of a LIHTC unit must be certified, execute the TIC and bound by the lease agreement. However, a live-in attendant (who is not a spouse or minor child of the person cared for) is not considered a household member and, therefore, is not required to be certified on the TIC or to execute the lease. Should there be changes in household composition, refer to Chapter 4, Part 4.4, Section B.
r. Each year's TIC must stand on its own. For example, a pension verification obtained one year may indicate a certain payout amount in perpetuity, but this would need to be submitted with each and every year's TIC.

For HUD Section 8 and RD Section 515 properties, the HUD and Section 515 annual certification/recertification forms may be used <u>after</u> the initial LIHTC certification. However, RD uses *adjusted income* to determine eligibility. These figures must be modified to show annual gross income as defined by HUD.

To correct a TIC or any file document, management should draw one line through the erroneous information and write the correct information to the side. All corrections should be initialed by the resident and management and dated. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the resident should be initialed by the resident. Corrections to the lease should be initialed by both parties. Neither residents nor management are ever permitted to backdate documents. Corrections to TICs and file documents should be neat, legible and provide clarity as to what change has taken place.

2a. TIC Effective Dates for Existing Residents of Acquisition and/or Rehabilitated Buildings

Some acquisition and rehabilitation properties qualify for two sets of tax credits, one for the acquisition of the building(s) and one for the rehabilitation of the building(s). Each set of credits may have a different Placed-in-Service (PIS) date. However, the owner is not required to determine two applicable fractions.

The acquisition PIS date is the date the building is acquired. The rehabilitation PIS date is based on an expenditure test. The owner chooses a time over a two-year period when at least the greater of 20% of the adjusted basis or $6,400 per unit is spent.

The effective date on the initial TIC must match either the:

a. Building's Acquisition PIS date, if the initial resident qualification is completed 120days before or after the Acquisition PIS date;
b. Building's Rehabilitation PIS date if the initial qualification is completed 120-days before the Rehabilitation PIS date; or
c. Resident move-in date.

2b. Income Qualification of Existing Residents of Acquisition and/or Rehabilitated Buildings

Existing households that will occupy units in Acquisition/Rehabilitation buildings are required to be initially qualified for the unit up to 120-days prior to the Acquisition PIS date, but no later than the Rehabilitation PIS date.

Example 1: Acme Management acquired Coyote Canyon Gardens on May 1, 2016 and finished rehabbing the property October 31, 2016. Existing households would have to have been qualified no earlier than January 1, 2016, but no later than February 1, 2017. This is 120 days before or after the acquisition PIS date of May 1, 2016.

Example 2: Ahab Management completed rehabbing Whale View Heights on January 4, 2016. Existing households would have to have been qualified by September 1, 2016, but no later than October 31, 2016. This is 120 days before the rehabilitation PIS date of January 4, 2016.

All over income households must be addressed in accordance with the following guidelines:

a) The relocation plan established specifically for the property as of the credit allocation date.

b) Continued residence at the property subject to applicable safe harbor rules addressed under Rev. Proc. 2003-82.

Revenue Procedure 2003-82 provides a "safe harbor" for an occupant whose income has increased above the income limit at the beginning of the building's 10-year credit period. To be considered an income qualified household under the safe harbor, the household must have been income qualified at the time the new owner acquired the building or the date the household began occupancy, whichever is later.

Please note that at a property that is being rehabbed with tax credits, households that were previously qualified under the initial set of tax credits continue to be qualified under the new set of credits without certification. In the case of a mixed income property, recertification is required to determine if the household is over income.

The following test requirements must be applied to existing households that occupied units before the acquisition/rehabilitation.

a. The test must be completed within 120 days before the beginning of the first year of the credit period.

b. The test consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, a new TIC (Exhibit B) must be completed based on the household's updated documentation. It is not necessary to complete third party verifications.

c. If the household is over income based on current income limits, the Next Available Unit Rule applies.

Vacant Units that are suitable for occupancy and previously occupied by income qualified households are:

a. considered qualified low-income units but must apply the vacant unit rule for the acquisition credits and;

b. not considered qualified low-income units for the rehabilitation credits.

2c. Existing Residents of Acquisition and/or Rehabilitated Buildings Documentation Required

For a unit to be considered a low-income unit, the owner must have documentation of the household's initial eligibility. The preparation, maintenance and recording of resident files must sufficiently document and support household eligibility for purposes of claiming the tax credit under Section 42 requirement.

<table>
<tr><td colspan="4">Acquisition Rehab</td></tr>
<tr><td colspan="4">Existing Household</td></tr>
<tr>
<td>120 days before

TIC Effective Date =
Acquisition Date

Income Limit =
Income Limit on
Acquisition Date</td>
<td>Acquisition</td>
<td>120 days after

TIC Effective Date
=
Acquisition Date

Income Limit =
Income Limit on
Acquisition Date</td>
<td>121st day and after

Existing and New Households =
Treated as new move-in

TIC Effective Date =
TIC Signature Date

Income Limit =
Income Limit on Signature Date</td>
</tr>
</table>

<u>If Acquisition and Rehabilitation Occur in the Same Year</u>

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (defined as pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition using the current income limits, or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition.

In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the resident has already been living in the unit. This allows the credit flow to begin on the date of acquisition, assuming rehabilitation is completed within the same year.

If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction properties with the effective date being the date that the household takes possession of the unit.

Example 1-Claiming credits when acquisition and rehabilitation are completed in the same year:

A building is acquired on February 1, 2010 and rehabilitation is completed on October 1, 2010. The owner may begin claiming credits back to February 1 (date of acquisition) for those units that were qualified.

Example 2-The 240-day window:

A building is acquired on July 1, 2010. In-place households may be qualified anytime from March 3, 2010 (120 days prior to the date of acquisition) through October 28, 2010 (120 days after the date of acquisition). Any certifications completed during this time will be dated effective as of July 1, 2010 (the date of acquisition). Any existing households that are not certified until after October 28, 2010 will be initially qualified with an effective date of the actual date that the certification was completed.

If Acquisition and Rehabilitation Occur in Different Years / "The Safe Harbor Test"

In the scenario where rehabilitation is not completed until the year **after** the date of acquisition, the owner cannot begin claiming credits on the date of acquisition, but instead must wait until the beginning of the year in which the rehab is completed.

Example-Claiming credits when acquisition and rehabilitation are completed in different years:

A building is acquired on October 1, 2010 and rehabilitation is completed on April 1, 2011. The owner may begin claiming credits on January 1, 2011 (the beginning of the year in which rehabilitation was completed) for those units that were qualified.

Revenue Procedure 2003-82 provides a "safe harbor" for an occupant whose income has increased above the income limit at the beginning of the building's 10-year credit period. To be considered an income qualified household under the safe harbor, (1) the household must have been income qualified at the time the new owner acquired the building or the date the household began occupancy, whichever is later and (2) the unit remains rent restricted. The following test requirements must be applied to existing households that occupied units before the acquisition/rehabilitation.

Therefore, at the beginning of the first year of the credit period, the incomes of the households that were initially certified in the previous year must be tested to determine if any units trigger the Next Available Unit Rule. However, if the effective date of the initial certification is 120 days or less prior to the beginning of the credit year, then the "test" does not have to be performed.

For those units that must be tested, the "test" consists simply of confirming with the household that the sources and amounts of anticipated income listed on the initial TIC form are still current. If additional sources of income are identified, the TIC must be updated based on the household's self-certification (it is not necessary to complete third-party verifications for purposes of conducting the "test"). Any households that exceed the 140% limit at the time of the "test" will invoke the Next Available Unit Rule.

Example 1- "Test" needed:

A building is acquired on July 1, 2010 and rehabilitation is completed on March 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. As of January 1, 2011 (the beginning of the first year of the credit period) the owner must "test" the income of all households that were certified with an effective date more than 120 days prior to January 1, 2011, (this includes all of the in-place households that were certified effective as of July 1, 2010).

Example 2- "Test" not needed:

A building is acquired on November 1, 2010 and rehabilitation is completed on June 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is November 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. In this scenario, the owner will not have to perform the "test," because all certifications had an effective date within 120 days prior to January 1, 2011 (the beginning of the first year of the credit period).

To summarize:

1. The test must be completed within 120 days before the beginning of the first year of the credit period.
2. The test consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, a new TIC (Exhibit B) must be completed based on the household's updated documentation. It is not necessary to complete third party verifications.
3. If the household is over income based on current income limits, the Next Available Unit Rule applies.

Relocating Households during Rehabilitation

An in-place household may have to be relocated from its unit, either temporarily or permanently, in order for the unit to be properly rehabbed. Credits cannot be claimed while the unit is uninhabitable. However, if a household is temporarily moved and then returned to the unit within the same calendar month, credits are not interrupted.

Example 1- Temporarily relocated but back within same calendar month: Household is temporarily relocated on April 4th. Rehabilitation is completed and the household is returned to the unit on April 26th. The owner is eligible to claim credits for the month of April.

Example 2- Temporarily relocated but back in a different calendar month: Household is temporarily relocated on August 15. Rehabilitation is completed and the household is returned to the unit on September 5. The owner may not claim credits on the unit for the month of August but may claim credits for September. If a household permanently relocates to an empty (never qualified) unit, the credits stop on the original unit and begin in the new unit. If a household permanently relocates to a unit that has already been initially qualified, then the units swap status.

Example 3- Permanent relocation to an empty unit: Household permanently relocates from Unit 1 to the empty (never qualified) Unit 12. The credits on Unit 1 stop and the owner cannot continue claiming credits on the unit until a new qualified move-in occurs. The owner may begin claiming credits on Unit 12.

Removing Unqualified In-place Households

It is possible that some in-place households will not be able to qualify as tax credit households, either due to income or student status ineligibility. In a conventional apartment community, the owner can terminate leases at the end of the lease term. However, if the tax credits are being layered over an existing Section 8 or RD property, the households cannot be terminated due to ineligibility for the tax credit program. Any Section 8 or RD families that are over the tax credit income limits, ineligible under tax credit student status regulations, or are paying over the tax credit rent limit cannot be certified as LIHTC households but cannot be evicted or terminated. The owner may not claim credits on those units until the households become eligible or vacate.

Therefore, it may be in the owner's interest to try and negotiate a mutual agreement with the household to encourage them to voluntarily vacate the unit. This could include paying the household's moving expenses, offering other monetary incentives, etc. If an existing tax credit property receives an additional set of credits for rehabilitation, is purchased by a new owner who receives a set of acquisition and rehabilitation credits, the in-place tax credit households are grandfathered into the new allocation and considered qualified households. Households exceeding the 140% limit are considered qualified, but the Next Available Unit Rule will be in effect.

NOTE: Vacant Units that are suitable for occupancy and previously occupied by income- qualified households are:

1) considered qualified low-income units but must apply the vacant unit rule for the Acquisition credits.

2) not considered qualified low-income units for the Rehabilitation credits.

Documentation Required

For a unit to be considered a low-income unit, the owner must have documentation of the household's initial eligibility. The preparation, maintenance and recording of resident files must sufficiently document and support household eligibility for purposes of claiming the tax credit under Section 42 requirements.

3. Verifications of all income and asset sources for all years.

The income of every prospective occupant of the unit must be verified. All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent prior to move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification of all sources of regular income and income from assets.

4. Student Status Certification

An Exhibit F Student Verification must completed by management company, any adult student resident in the household and the educational institution. The management company and adult student resident complete the section related to the adult student resident and execute signatures. With this information completed, the educational institution completes the form and returns it to the management company. An Exhibit F must be completed for each resident that is a student.

Each student must complete the Student Verification form (Exhibit F) if the LIHTC household is comprised of all students (full and/or part-time) claiming no verifiable student exemption OR the LIHTC households are receiving Section 8 or voucher assistance.

An Exhibit M LIHTC Certification of Student Eligibility must be completed annually for the household.

5. Other Verification Documentation

Any other documentation verifying the household's eligibility (e.g., student status verification, unborn child self-certification, joint custody of a child documentation, all management clarification documents, etc.);

6. Initial and subsequent leases and all lease addenda

All leases, initial, subsequent, and associated addendums executed by the resident and owner must be kept in the file.

7. Tenant Selection Plan

A copy of the signed Tenant Selection Plan must be kept in the file.

8. Residents receiving Section 8 assistance

For residents receiving Section 8 assistance vouchers, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency showing the amount of rental assistance must be in the file. For residents in a property-based Section 8 unit, a copy of the current 50059 showing the amount of rental assistance.

In the case of a resident receiving housing assistance payments under the Section 8 Program, the third-party income verification requirement is satisfied if the Public Housing Authority (PHA) provides a statement to the building owner certifying that the household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code. The only documents that will be acceptable from the Public Housing Authority are HUD Form 50058 and HUD Form 50059.

The form must be completed in its entirety by a qualified representative of the PHA and list the members of the household and the gross income of the household before any deductions that the household may be eligible for under the Section 8 Program. These forms will not be considered valid verifications if they are dated more than 120 days prior to the household's move-in date or recertification date. Once the owner receives the HUD Form 50058 or 50059, no other verifications of income are required. However, verifications for other Section 42 eligibility requirements such as student status, and the tax credit Tenant Income Certification (TIC) form, etc., must still be completed and placed in the household's file.

The 50058 or 50059 replaces the third-party income verifications but does not replace the tax credit TIC. A tax credit TIC must be included in the file, regardless of whether or not there is a 50058/50059. The owner may not rely on the HUD Form 50058 or 50059 if a reasonable person in the owner's position would conclude that the resident's actual annual income is higher than the resident's represented annual income. Additionally, the HUD form must be signed by both the resident and the PHA Representative when used as the income verification.

Because the HUD Form 50059 used for property-based Section 8 is not signed by a PHA representative, the Form 50059 cannot be used as income verification. However, 50059 should be maintained in the file to verify the amount of rental assistance on the unit. Furthermore, the tax credit program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. Therefore, the income of Section 8 recipients living in LIHTC units must continue to be third-party verified. EIV documentation should be kept in a separate file from the tax credit verifications so that it is completely inaccessible to the tax credit monitor.

Verification Transmittal Applicants should be asked to sign two (2) copies of each verification form. The second copy may be used if the first request has not been returned from the source in a timely manner. Income verification requests must be sent directly to the source by the owner or management agent and returned by the source to the owner or management agent. Under no circumstances should the applicant or resident be allowed to send or deliver the verification form to the third-party source or back to the management. It is suggested that a self-addressed, stamped envelope be included with the request for verification to ensure a timely response. In addition, faxed copies of verifications are acceptable. All income verifications should be date stamped as they are received.

Initial Application
TIC

Resident's File Should Contain	
Student Status Certification	All Leases and Lease Addendums
Verification of All Income and Assets	Section 8 Assistance Documentation
Any other documentation verifying eligibility ALL FILES MUST BE KEPT SECURE SO THAT PERSONAL INFORMATION IS SAFE. MAKE SURE THE STAFF THAT HAS ACCESS IS ONLY THE STAFF THAT NEEDS ACCESS.	

The management agent should give the applicant or resident the opportunity to explain any significant differences between the amounts reported on the application or other file documents and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the resident file on a **clarification** form or self-affidavit.

Please note: Clarification is required whenever there is information in a file that is unclear. MHDC does not outline all of the specific instances or reasons of why clarification may be needed. By definition, clarification means to make a situation more comprehensible and is the responsibility of the owner/agent.

Part 4.3- Move-In Dates

A. LIHTC Properties Involving the Acquisition and Rehabilitation of a Building(s)

If a building is occupied at the time it is acquired and remains occupied throughout the period in which it is being rehabilitated, all existing households (those who occupied the building when it was acquired) must be documented as having been income-eligible no earlier than 120 days prior to the date of acquisition using the current income limits or no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition, providing a 240 day window during which the certification can be performed. The effective date of the TIC is the date of acquisition, and the initial TIC is considered a move-in event, even though the resident has already lived in the unit prior to the effective date. If an existing household is not certified within 120 days before or after the date of acquisition, the effective date of the TIC will be the actual date the household is income certified and all documentation is completed. The initial TIC will be considered a move-in event, even though the resident has already lived in the unit prior to the effective date. Households that move into the unit after the date of acquisition must be documented as LIHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be LIHTC eligible at the time of actual move-in to the unit, using the income limits that are in effect at time of move in. For purposes of Rev. Proc. 2003-82, the incomes of the individuals occupying a unit occupied before the beginning of the first credit year must be tested for the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period using the following requirements:

1. The “test” must be completed within 120 days prior to the beginning of the first year of the credit period.
2. The “test” consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, all additional sources must be self-certified and added to the current TIC. If income sources have not changed, it will not be necessary to complete new third-party verifications. Regardless of whether or not the household notes a change in income sources, the “test” does not require third-party verifications.
3. If the household is over-income based on current income limits, the household remains eligible, but the Next Available Unit Rule must be applied.

The test will be necessary if acquisition and rehabilitation are not completed within the same year, because the credit period cannot begin until the year in which rehabilitation is completed. If acquisition and rehabilitation are completed within the same year, the “test” will not need to be completed. If the household is eligible and proper documentation has been obtained for each resident, the standard annual certification requirement will then be implemented annually, beginning with the initial certification date.

B. LIHTC Properties Involving Rehabilitation Only

If a building is occupied during rehabilitation, all existing households (those who occupied the building while it was being rehabilitated) must be documented as having been LIHTC-eligible by no later than 120 days after the rehabilitation placed-in-service date. Households that move into the unit after the rehabilitation placed-in-service date must be documented as LIHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be LIHTC eligible at the time of actual move-in to the unit.

C. Rehabilitation of an Existing Tax Credit Property

It is possible for the owner of an existing tax credit property to be issued another round of credits for rehabilitation after the initial fifteen (15) year compliance period has ended. This is often referred to as a “subsequent allocation.” Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. Any households that were over the 140% limit at their last recertification are treated as qualified units but continue to invoke the Next Available Unit Rule. Additionally, vacant units previously occupied by income-qualified households continue to qualify as LIHTC units as long as the owner properly follows the Vacant Unit Rule.

D. Acquisition and Rehabilitation of an Existing Tax Credit Property

It is possible for an existing tax credit property to be sold to a new owner and then issued a new allocation of acquisition/rehabilitation credits. From the time the property is sold until the time a new declaration is recorded, the new owner is subject to the original extended use agreement between MHDC and the former owner.

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. However, when the new credits are allocated and the credit period begins, the new owner must conduct the “test” as described in Part 4.3 A above, and any households exceeding the 140% limit are subject to the Next Available Unit Rule. Once the new credit period begins, any vacant units that were previously occupied by income-qualified households cease to be treated as qualified

LIHTC units. Instead, these units are treated as empty (never-occupied) units until a qualified household is moved in.

E. LIHTC Properties Involving New Construction

In newly constructed buildings, all households must be documented as being LIHTC eligible at the time of actual move-in to the unit.

F. Mixed Income Properties- Converting a Market Rate Household to a Qualified Household

In properties that have less than a 100% Applicable Fraction, a household that is designated as market rate at the time of actual move-in to the unit may later be re-designated as a LIHTC household. When this happens, the household must be certified as a LIHTC household at the time of re-designation. In this scenario, the household would be treated as a new move-in event. The move-in date and effective date of the initial TIC would both be the date the household was designated as a tax credit eligible household, not the date the household moved in as market rate.

Part 4.4- Annual and Other Income Recertification Requirements

The owner must perform, at least on an annual basis, an income certification for each low-income household and receive documentation to support that certification. MHDC monitors recertification 365 days from the latter of: the move-in date or the one-year anniversary of the effective date of the previous certification. Upon receipt of all verifications, owners or managers should determine if the unit still qualifies for participation in the LIHTC program.

It is important to note the regulations refer to “tenant” income rather than “household” income. The recordkeeping and record retention provisions of the regulations state the owner must keep records that show “...the annual income certification of each low-income tenant per unit...” For this reason, if a new member is being added to an existing, qualified household, the new member must complete an application for residency and a verification of income and assets must be done.

A. Effective Dates of Certifications

Owners may utilize effective dates when performing Tenant Income Certifications. The effective date of the resident’s income certification is the date the resident actually moves into the unit (HUD Handbook 4350.3, 5-17). All adult members of the household should sign the certification. Therefore, the resident may sign the Tenant Income Certification (TIC) form before the date the certification takes effect. However, all income and eligibility verifications must be valid (not older than 120 days) on both the signature date and effective date of the TIC.

If the certification is more than 120 days old, the resident must provide a new certification. The income recertification, if required, must be completed annually based on the anniversary of the effective date.

***Example* 1**: Determining the TIC Effective Date

A potential household consisting of John and Jane Doe and their two children completed a rental application and income certification on April 12, 2004. The property manager completed the third-party verifications and determined that the household was income eligible on April 21, 2004. John and Jane signed the rental lease on April 25th, and took possession of the unit on May1, 2004. The effective date of the TIC is May 1, 2004. All subsequent resident income recertifications must be performed within 120 days before May 1st of each subsequent year of the 15-year compliance period.

When additional adult individuals join the household, the effective day will remain the same until the unit is completely vacated. Therefore, the LIHTC recertification date for a household may not change to align with the recertification date for other programs, even if this means that a household must be certified multiple times annually for multiple programs. The effective date of recertification is the anniversary date of the move-in. Recertifications must be completed within 120 days of the anniversary date.

Please note that if the Section 8 program has established a date that conflicts with the LIHTC annual recertification date, MHDC allows the owner/agent to align the LIHTC recertification dates to the Section 8 program, as long as the household never goes more than 12 months without a LIHTC annual recertification. **If the owner aligns the LIHTC date with another program, the file must include a clarification record.** Please be advised that it is the owner/agent's responsibility to comply with any other applicable program regulations. Remember that first year of occupancy must have a 6-month lease term minimum—see page 47 under Non-Transient Occupancy, Chapter 3, Part 3.5, I.

B. Changes in Household Composition

Whenever household composition changes, LIHTC eligibility must be reevaluated. Composition changes include a birth, a death, a new resident moving into the household, or an existing resident vacating the household.

1: Adding a New Household Member to an Existing Qualified Household within the Initial Six (6) months of residency:

If the new adult member joins the existing household during the initial 6 months of residency, the household must re-qualify as if they are a new LIHTC household qualifying for residency. This requalification must be completed prior to the prospective tenant moving into the unit.

The household's annual recertification will remain on the anniversary of the original move-in date, not the date that the new member was added. The new resident should sign the most recent TIC form and mark "other" and note online the reason for updates and complete all verification documents. Add the new member's income to the most recent TIC and apply the Available Unit Rule.

If an unborn child was included in the initial certification for income and occupancy limits and all anticipated income (e.g., child support) was certified or verified prior to move in, no further documentation is needed until the annual recertification. **Please be advised that a determination must be made as to whether the Available Unit Rule must be implemented by adding an additional occupant.**

2: Adding a New Household Member to an Existing Qualified Household after the Initial Six (6) months of residency:

If the new adult member joins the existing household after the initial 6 months of residency, prior to moving into the unit, the prospective resident must complete an application for residency and a verification of income and assets (as required by the original residents) must be completed. The prospective resident's income must be added to the current household's previously certified income. The combined household income must be compared to the maximum allowable income limit in effect <u>at the time</u>, based on household size. If the combined household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or property will be in violation of Code requirements by adding the new household member.

Example 1: 1 person Household income limit = $15,000 2-person Household income limit = $17,000 140% of 2-person income limit = $23,800. This is a mixed-use property.

Resident A is a qualified resident living alone in a one-bedroom unit. Her income at initial certification (March 14, 2018) was $9,000. The resident recertifies on March 14, 2019 with an income of $10, 500. Eight months later, she informs management that she is getting married and that her new husband, Resident B, will be moving into the unit on December 1, 2019. Resident B completes an application, his income and assets are verified through third-party sources, and a TIC is completed. Resident B is certified as having an annual income of $12,900. The household's combined income will be $23,400 (the sum of Resident A's income at the last recertification and the newly certified income for the new household member Resident B). The household still qualifies since it is below the 140% limit of $23,800.

If the combined income of Residents A and B exceeded 140% of the current income limit, the Next Available Unit Rule would go into effect. The TIC for the new resident is dated December 1, 2019, but the annual household recertification is still due March 14, 2020 (the anniversary of Resident A's initial move-in).

Example 2: 1 person Household income limit = $15,000 2-person Household income limit = $17,000 140% of 2-person income limit = $23,800. This is a 100% Tax Credit property.

Resident A is a qualified resident living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The resident recertifies on March 14, 2009, but since this is a 100% Tax Credit property management does not verify her income at this time. Eight months later, she informs management that she is getting married and that her new husband, Resident B, will be moving into the unit on December 1, 2009.

Resident B completes an application, his income and assets are verified through third-party sources, and a TIC is completed. Resident B is certified as having an annual income of $12,900. The household's combined income will be $21,900 (the sum of Resident A's income at move-in and the newly certified income for the new household member Resident B). The household still qualifies since it is below the 140% limit of $23,800.

If the combined income of Residents A and B exceeded 140% of the current income limit, the Next Available Unit Rule would go into effect. The TIC for the new resident is dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Resident A's initial move-in).

Only the income and eligibility of the new resident is required to be verified when adding a member to a household before the annual TIC is due. The existing members do not need to be recertified if it is not time for their annual recertification. Owners must verify the new resident's income and add it to the existing household's certified income to determine if the household's income has exceeded the 140% income limit. **Please be advised that a determination must be made as to whether the Available Unit Rule must be implemented by adding an additional occupant.**

2: Removing a Household Member

If any adult household member moves out of a LIHTC unit after the initial occupancy certification and leaves existing qualified household members, a new certification is not necessary until the annual recertification. However, the change in household member(s) should be noted in the file.

3: Qualifying Units When All Original Household Members Vacate the Unit

If at any time the household composition changes and none of the original household members live in the unit, the household is considered a new household and must meet all initial qualifying income limitations and requirements to be eligible to remain in a LIHTC unit.

C. Additional Comments on Resident Certifications

Also, note the following recertification requirements:

1. If residents in a previously qualified household become full-time students at any time, the household can only be considered as a qualified LIHTC household if at least one of the exceptions under the Full-Time Student Rule is met as described previously. This eligibility determination must be made <u>immediately</u> upon the resident becoming a full-time student and cannot be delayed until a recertification of the household is due.

2. In the event that a resident moves into a building prior to the placed-in-service date of the building (as shown on the building's IRS Form 8609), and the verification of the resident's income was performed more than 120 days prior to the placed-in-service date, the resident must be recertified on the placed-in-service date. All income verifications must be valid (no older than 120 days) on the placed-in-service date.

3. In the event household composition changes in any way, i.e., birth, death, marriage, divorce, or a family member or roommate vacates the unit, the household should notify management of the changes.

Part 4.5- 100% Recertification Exemption

Effective July 31, 2008, with the passing of the Housing and Economic Recovery Act (a.k.a. HERA or H.R.3221), 100% tax credit properties are no longer required to certify after year 3. MHDC will exempt the third-year annual income recertification requirement for 100% tax credit properties with <u>prior approval only</u>. MHDC reserves the right to require full certification at 100% tax credit properties. This policy replaces MHDC's former recertification policy and procedures.

A 100% tax credit property has tax credit funding <u>only</u> for the entire property. The property includes every building and unit. If a property is not 100% LIHTC, then the annual income recertification and third-party verification is required. If there is one market unit in the property, or if a staff unit is treated as a market unit, then all units in the property must be recertified/income verified annually.

100% Low Income (Tax Credit only) properties that elect the average income set aside are neither required nor prohibited from completing annual income re-certifications. MHDC limits this requirement only to properties that are 100% LIHTC.

However, 100% Low Income (Tax Credit only) Properties that elect the average income test and choose to do annual income re-certifications would be able to adjust the rent downward (in accordance with all applicable lease terms), if the income level of the household changes. This is permitted only if the AMI designation changes, and 60% AMI Income Average is maintained.

It is important to correctly define "property" for each tax credit property. If "No" was checked on Part II line 8b of IRS Form 8609, then the building is considered its own property. If "Yes" was checked on Part II line 8b of IRS Form 8609, then the building is considered part of a "multi-building property". The recertification exemption applies on a property level.

As of the date of this manual publication, August 1, 2020, MHDC will no longer allow the use of the Annual Resident Certification (Exhibit U) without prior approval from MHDC prior to implementation. For approval to use the Exhibit U, contact:

Program Compliance Administrator
Missouri Housing Development Commission
920 Main, Suite 1400
Kansas City, MO 64105

The Program Compliance Administrator will determine whether or not the property is 100% LIHTC and able to use the Exhibit U.

Properties approved to use Exhibit U must still obtain verifications of household income and assets at move-in, and the following year. However, the household must continue to annually complete a TIC to verify household composition and each household must continue to complete a student status certification if there is a change in student status. This must be done on the annual recertification date for the household.

Example 1: XYZ Apartments is a 100% tax credit property with 50 units. 10 of these units are HOME assisted units. All 50 units must continue to recertify income on an annual basis.

For 100% tax credit properties

In Year 1	Initially income certify household
In Year 2	Annual income recertification
In Year 3 and after	If prior approval is received from MHDC, the Exhibit U may be used.

Income Averaging Set-aside Compliance

The Owner shall ensure that the Development continues to meet the minimum set-aside elected by the Owner and as indicated in the LURA for Income Averaging Area Median Income (AMI) set-aside compliance. Restricted units may float throughout the development. When a resident occupying a set-aside unit moves out of the development and thereby causes the percentage of units with residents who qualified at the applicable Area Median Gross Income to drop below the required AMI set-aside percentage(s) elected by Owner, the Owner shall ensure that the next resident who moves in is a household at or below the AMI to meet the set aside requirement.

Part 4.6 - Lease and Rent Requirements

All residents occupying LIHTC units must be certified and under a lease no later than the time a resident moves into the unit. Leasing guidelines are listed below.

A. Lease Requirements

A signed lease must be in effect for each year that a household resides in a unit. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit. A unit must be leased directly to the household, not to an organization that is providing services to the household. The household may have a cosigner if necessary, but the cosigner should sign a self-affidavit stating that he or she will not reside in the unit.

B. Rents

Rents on the LIHTC units may not exceed the amounts allowed by Section 42 of the Code. Any violation of overcharging rents is considered noncompliance and an IRS Form 8823 will be issued.

All rental increases must be approved by MHDC. See Chapter 7 for additional information on rent increases.

C. Transient Use

Under program requirements, a unit cannot be LIHTC eligible if it is used on a transient basis. A unit is deemed to be transient if the initial lease term is less than six (6) months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all LIHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period. The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2: “Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use.” Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time. Federal regulations do allow shorter leases for certain types of housing for homeless individuals. The following types of housing are exempt from the six (6) month minimum lease period:

1. Single Room Occupancy (SRO) units in Properties receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance; or

3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or

4. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within twenty-four (24) months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

Please Note

If a property has units set aside in a building for homeless households and/or transitional housing units, those residents must have leases with at least six (6) month terms, unless the building's primary use is described in Exemptions #1-4 above. Tax credit units may never be used as emergency shelters.

<u>Things I should remember</u>

CHAPTER 5 - ANNUAL INCOME, ASSETS AND VERIFICATION

Part 5.1 - Annual Income

A. Whose Income is Counted?

Household Member	Unearned and Earned Income	Asset Income
Head, Spouse, Co-head	Yes	Yes
Other Adult	Yes	Yes
Foster Adult	Yes	Yes
Child under 18	No	Yes
Full Time/Part Time Dependent Student over 18 (not head, spouse or co-head)	Yes up to $480	Yes
Foster Child	Unearned Income only	Yes
Temporarily Absent Member	Yes	Yes
Permanently living in a hospital or nursing home	Household Decision	Household Decision
Live in Attendant	No	No

B. What is Annual Income?

Annual income is defined as the gross amount of anticipated earned and unearned income, the value of assets and income from assets to be received by all adult members of the household (18 years of age and older, including full-time and part-time students) and the unearned income of minors during the twelve (12) months following the date of certification or recertification.

For information regarding annual income inclusions and exclusions and how to calculate annual income, see HUD Handbook 4350.3. HUD Exhibit 5-1 lists income inclusions and exclusions and HUD Exhibit 5-2 lists asset inclusions and exclusions.

Note that LIHTC income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for LIHTC units.

C. What income is counted/included in total annual income?

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income.

Some circumstances present more than the usual challenges to estimating anticipated income. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. (HUD Handbook 4350.3 REV 1, 5-5(C)).

Annual income to include and exclude can be found in Exhibit 5-1, Income Inclusions and Exclusions, of the HUD Handbook 4350.3.

The following is included in Annual Income:

a. The gross amount (the amount before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including persons under the age of 18 who are the head, spouse or co-head). Includes salaries of adults received from a family-owned business.

b. Unearned and asset income of foster children under the age of 18.

c. The net income, salaries, and other amounts distributed from a business (new or existing).

d. Interest, dividends, and other net income of any kind from real or personal property (including income distributed from an irrevocable trust).

e. The gross amount (before deductions for Medicare, etc.) of periodic social security payments, including any withholdings and annual cost of living adjustment. This includes payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.

f. The gross amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, (e.g., Veterans Disability). These payments should be reduced by any amounts the individual previously paid into the account in order to receive the pension, annuity or insurance policy.

g. Delayed periodic payments received because of delays in processing unemployment, welfare, or other benefits. These are payments that would have been paid periodically, but were paid in lump sum because of circumstances such as processing delays.

h. Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay. Any payments that will begin during the next 12 months must be included. Anticipated income for the certification year should be determined by using the required Unemployment Certification (Exhibit Q).

i. The amount of welfare assistance received by the household.

j. Alimony and child support received by the household. For court-ordered alimony and/or child support received by a member of the household, count the amount specified in a divorce settlement or separation agreement, as applicable, unless the applicant:

    i. certifies that the income is not being provided; and

    ii. has made reasonable efforts to lect the amounts due, including filing with courts or agencies responsible for enforcing payment.

Alimony or child support paid by a member of the household is not deducted from income, even if it is garnished from wages.

Example: Mr. Smith pays $200 per month in child support. It is garnished from his monthly wages of $1,000. After the child support is deducted from his salary, he receives $800. Mr. Smith's income must be counted as $1,000 per month.

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k. Regular contributions or gifts regularly received from persons not living in the unit. Exclude recurring monetary contributions that are paid directly to a childcare provider by persons not living in the unit. Exclude gifts of groceries.

l. 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.

m. The full amount of any resident service stipend received in excess of $200 per month. If the amount of the stipend is less than $200 per month, the entire amount is excluded from income.

n. Students
   i. If the unit is receiving Section 8 assistance, include the amount of student financial aid (scholarships and grants) in excess of tuition.

   ii. If a Full-Time Student is not the head, co-head or the spouse of the head or cohead, only the first $480 of earned income is included in the calculation of household income.

o. Periodic deposits being made to the applicant/resident from someone not included in the household in order to help financially support the applicant/resident should be included as income. Please note that if the applicant/resident has already disclosed that they receive cash contributions, care should be taken to not accidentally count the contributions twice.

p. Religious Order Income. Members of religious orders generally receive a stipend to meet monthly expenses. They may also be employed, with the money from employment usually going to the religious order. The primary financial relationship is with the religious order, and the amount of the stipend received by the person should be counted as income.

Example 1:

<u>Religious Order Stipend Exceeds Earning</u>

A missionary serving in a city is part of an order and receives a stipend of $2,050 a month. He is also employed and makes $1,900 a month, which goes directly to the order. The $2,050 should be counted as income.

Example 2:

Religious Order Stipend Does Not Exceed Earning

A nun is part of an order and receives a stipend of $1,320 a month. She is also employed and makes $5,000 a month, which goes directly to the order. The $1,320 should be counted as income.

What income is not counted/excluded from total annual income?

The following is excluded from Annual Income:

q. Earned and unearned income from employment of children under the age of 18.

r. Foster care payments for the care of foster children are excluded.

s. Meals on wheels or other programs that provide food for the needy, groceries provided by persons not living in the household, and amounts received under the School Lunch Act or the Child Nutrition Act of 1966 (including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children).

t. Income of a live-in aid (as defined in 24 CFR 5.403).

u. Amounts paid by a state agency to a household with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member in the home.

v. Grants or other amounts received specifically for:

   i. amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member (including Medicare premiums paid by an outside source);

   ii. set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income eligibility (a PASS permits a person with disabilities who is receiving Supplemental Social Security and who is also receiving other income, to set aside a portion of the other income in order to achieve a work-related goal); and

   iii. out-of-pocket expenses for participation in publicly assisted programs. Such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.

w. The full amount of student financial assistance paid directly to the student or the educational institution.

x. Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse).

y. Adoption assistance payments in excess of $480 per adopted child.

z. Loans (e.g., personal or student loans).

aa. Temporary, nonrecurring or sporadic income (e.g., gifts, census taker income from the Federal Bureau of the Census).

bb. Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.

cc. The special pay to a household member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm).

dd. Amounts received under training programs funded by HUD (e.g., training received under Section 3).

ee. Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person.

   i. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion.

   ii. Training income may be excluded only for the period during which the family member participates in the employment training program. Once training is completed, the employment income becomes income that is counted.

   iii. Exclusions include stipends, wages, transportation or child care payments or reimbursements.

   iv. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.

ff. Any resident service stipend of up to $200 per month.

gg. 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. Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era.

hh. Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment or in prospective monthly amounts.

ii. Payments received for the care of foster children or foster adults (foster adults are usually adults with disabilities who are unrelated to the household member(s) and who are unable to live alone).

jj. Amounts received on behalf of someone who does not reside with the household provided such amounts:

   i. are not intermingled with the household member’s funds; and

   ii. are used solely to benefit the person who does not reside with the tenant household.

For such amounts to be excluded the individual must provide the owner with an affidavit stating the amounts are received on behalf of someone who does not reside with the household and the amounts meet the conditions in points 1. and 2. above.

Example 1: Julie lives in a LIHTC property. Her 14-year-old sister, Mary, lives with her mother in other housing in the same city. Julie has been designated as the Representative Payee for Mary's SSI payments. The Social Security Administration designated Julie because her mother is a heroin addict. Julie makes sure that Mary's SSI payments are used exclusively for Mary.

Example 2: Emily receives royalty income that is reported on IRS Form 1099. Emily distributes this income to the designated heirs in accordance with her aunt's will and retains only the amount to which she is entitled. Only count the royalty income that is designated specifically for Emily. Emily will have to show that she distributes this income to the other heirs.

kk. Deposits

i. Loan proceed deposits should be excluded from income if the payments being made to the applicant/resident by an individual to pay the applicant/resident back money that the applicant/resident loaned to the individual.

ii. Deposits made into the account from another household member residing in the unit should be excluded from income.

iii. Deposits that are business payments should be excluded from income. Remember that the net income from the business is used as the income.

ll. Reverse mortgage payments should be excluded from income. The home is still an asset, but the payments are not counted as income. Payments received by the homeowner are not income, but rather the proceeds of loans against the property.

Reverse mortgages are loans for seniors that are taken out against the equity in a home. These loans may be paid to the senior in instalments or in lump sums. In either case, these are NOT income as they are the proceeds of a loan. Such a loan does not require monthly payments be made by the senior to pay it back, but before the homeowner can permanently move out of the property, or at their death, the loan must be paid off. Additionally, the value of the property must be reduced by the outstanding loan secured by the home.

The value on a home with a reverse mortgage is calculated by taking the market value and subtracting any amounts owed and costs to sell.

Example

$140,000 -market value
-130,000 -reverse mortgage payoff
-<u>10,000 -costs to sell</u> $ 0 -cash value

w. Income excluded by federal statute:

1. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

2. Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).

3. Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e)).

4. Payments received under Alaskan Native Claims Settlement Act (43 U.S.C. 1626(c)).

5. Payments from disposal of funds of Grand River Bank of Ottawa Indians.

6. The first $2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe.

7. The amount of any scholarship funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087(uu)).

8. Payments or allowances received under the Department of Health and Human Services' Low-Income Home Energy Assistance Program.

9. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veteran's employment programs, state job training programs, career intern programs, AmeriCorps).

10. Payments received under Title V of the Older Americans Act (e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program).

11. Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat.1785).

13. Any earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32(j)).

14. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433).

15. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. §12637(d)).

16. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805).

17. Any amount of crime victim compensation under the Victims of Crime Act received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because
of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602).

18. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

19. 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 ("CCDBGA") (42 U.S.C. 9858(q)). Participating families may either pay a reduced amount based on a sliding fee scale or they may receive a certificate for childcare services. This exclusion does not apply to amounts received by a childcare provider for services paid through the CCDBGA.

Example 1: The following is <u>excluded</u> from Annual Income: Ms. Smith receives a certificate for childcare services under CCDBGA. The amount of the certificate is not included in Ms. Smiths' income.

Example 2: The following is <u>included</u> in Annual Income: Ms. Anderson, a tenant who is receiving Section 8 assistance, is paid through the CCDBGA for childcare services she provides to Ms. Smith. The income she receives for providing this childcare is included in annual income.

Part 5.2 - Assets

A. Whose Assets are Counted?

Household Member	Unearned and Earned Income	Asset Income
Head, Spouse, Co-head	Yes	Yes
Other Adult	Yes	Yes
Foster Adult	Yes	Yes
Child under 18	No	Yes
Full Time/Part Time Dependent Student over 18 (not head, spouse or co-head)	Yes up to $480	Yes
Foster Child	Unearned income only	Yes
Temporarily Absent Member	Yes	Yes
Permanently living in a hospital or nursing home	Household Decision	Household Decision
Live in Attendant	No	No

B. What are Assets?

Assets are items of value, other than necessary personal items. Income from assets must be taken into consideration when determining the eligibility of a household. Asset information (asset value and income from assets) should be obtained at the time of application. For more information regarding household asset inclusions and exclusions, and how to determine the cash value and income from assets, see HUD Handbook 4350.3, specifically Chapter 5-7 AND Exhibit 5-2.

C. What assets are counted/included in annual household income?

Assets to include and exclude can be found in Exhibit 5-2, Asset Inclusions and Exclusions, of the HUD Handbook 4350.3.

a. Cash held in savings and checking accounts, safety deposit boxes, homes, pre-paid debit cards, etc.

   1. For savings accounts, use the current balance.

   2. For checking accounts, use the average balance for the last six months. A six-month average balance is optimal but other average balances can be used if the six-month average is unavailable.

   3. Pre-paid debit cards are treated as cash on hand.

b. The cash value of any revocable trust available to the household (see discussion of trusts in HUD Handbook 4350.1, paragraph 5-7(G)(1)).

c. Equity in real estate or other capital investments. Include the current fair market value less:

   1. Any unpaid balance on any loans secured by the property; and

   2. Reasonable costs that would be incurred in selling the asset (e.g.,, penalties, broker fees, etc.).

d. If the person's main business is real estate, any income should be counted as business income.

e. Stocks, bonds, treasury bills, certificates of deposit, money market accounts.

f. Individual Retirement Accounts, 401K, and Keogh Accounts. These are included because participation in such retirement savings accounts is voluntary and the holder has access to the funds, even though a penalty may be assessed. If the individual is withdrawing from the account, determine the amount of the asset by using the average balance for the previous six months. Do not count withdrawals as income.

   1. The withdrawal of cash or assets from an investment received as periodic payments should be counted as income unless the family can document that the amounts withdrawn are reimbursement of amounts invested. When a family is making regular withdrawals from an account in which it has made an investment, the withdrawals will count as income only after the amount invested has been totally paid out. Withdrawals from investments will be treated as income only when the withdrawals are made on a regular basis, as in the monthly payments received from an annuity.

2. Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made.

3. Lump sum payments that are for delayed periodic payments would be counted as income and not an asset. However, when the holder elects to receive the investment as a lump sum, the lump sum is considered an asset. The lump sum amount calculation would depend on how the resident reinvests or disposes of the amount.

4. Calculations when an annuity is considered an asset.

   i. When an applicant or tenant has the option of withdrawing the balance of an annuity, the annuity will be treated like any other asset.

   ii. In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity.

   iii. The owner will need to verify with the insurance agent or other appropriate source:

   - ✓ the right of the holder to withdraw the balance, even if penalties are involved;
   - ✓ the basis on which the annuity may be expected to grow in the coming year;
   - ✓ the surrender or early withdrawal penalty fee; and
   - ✓ the tax rate and tax penalty that would apply if the family withdrew the annuity.

   iv. The cash value will be full value of the annuity, less the surrender penalty, and less any taxes and tax penalties that would be due.

   v. The actual income is the balance in the annuity times the percentage at which the annuity is expected to grow over the coming year. This money will be reinvested into the annuity, but it is still considered actual income from the asset and must be included in household total income.

g. Retirement and Pension Funds

1. While the person is employed, include only amounts the household can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.
2. At retirement or termination of employment, periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:

   i. if benefits will be received in a lump sum, include the lump sum receipt in net household assets;

ii. if benefits will be received through periodic payments, include the benefits in annual income (do not count any remaining amounts in the account as an asset);

iii. if the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

Example: Upon retirement, Mrs. Harvey receives a lump sum amount of $10,000 plus she will receive an annuity of $400 per month. Count the $400 as income and count only that portion of the $10,000 receipt that is placed into an asset as an asset. This example assumes the lump-sum receipt is a one-time receipt and does not represent delayed periodic payments.

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h. 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). Do not include a value for term insurance, which has no cash value to the individual before death.

i. Personal property held as an investment. Include items such as gems, jewelry, coin lections, or antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.

j. Lump sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

k. A mortgage or deed of trust held by an applicant (land contract)

1. 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.

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

3. To count the actual income for this asset, use the interest portion paid on the amortization schedule for the 12-month period following the certification.

4. To count the imputed income for this asset, determine the asset value at the end of the 12-month period following the certification (see example below). Since this amount will continually be reduced by the principal portion paid during the previous year, the owner/management will have to determine this amount at each annual recertification.

Computation of Imputed Income Example: A resident sells her home and holds the mortgage for the buyer. The **cash value** of the mortgage is $60,000. The combined payment of principal and interest expected to be received for the upcoming year is $5,000. This $5,000 payment is broken into $2,000 in principal and $3,000 in interest. When computing the asset income calculation, the **cash value** of the mortgage/asset is $60,000 and projected **annual** interest/**income** from the asset is $3,000.

To compute the **imputed income,** the mortgage would be reduced to $58,000 ($60,000-$2,000 payment) <u>after</u> the first year. The owner/management would multiply this amount the current passbook rate.

l. If an asset is not or has not been disposed of, documentation of the intent of use (i.e., rental, sale, etc.) should be obtained at certification and each annual recertification and documentation must be placed in the file.

m. Assets disposed of for less than fair market value within two years of the effective date of the certification/recertification, including assets put into irrevocable trusts.

1. Applicants and tenants must declare **in writing** whether an asset has been disposed of for less than fair market value at each certification and recertification.

2. Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the applicant/tenant received by more than $1,000.

3. In such cases, the whole difference between the cash value of the asset and the amounts received must be included. If the difference is less than $1,000, ignore it.

4. Do consider:

   i. Assets disposed of for less than fair market value when they are placed into an irrevocable trust (assuming that no consideration is received or the consideration which is received is less than cash value). Amounts received through settlements or judgments that are placed into trusts on behalf of a member of the household are not considered as assets disposed of for less than fair market value.

Example: Mr. and Mrs. Long's son, John, was injured in a car accident. He received a settlement of $300,000 to compensate him for injuries and future loss of income. The attorney handling the case set up an irrevocable trust of $300,000 for the benefit of John. This trust is not under the control of any member of the tenant household. The trust would not be considered an asset disposed of for less than fair market value. Count only the actual income distributed from the trust to John.

ii. Business assets that are no longer part of any active business that are disposed of for less than fair market value. Business assets are excluded from net household assets only while they are part of an active business.

5. Do not consider assets disposed of for less than fair market value as a result of:

i. foreclosure; a foreclosure may occur after a borrower fails to make their mortgage payments. Assets lost to foreclosure are not considered to be "disposed of," as the disposal is not considered an owner's choice. If a home owned by an applicant is in foreclosure, and the foreclosure is not final, this is counted as an asset until the foreclosure is concluded.

NOTE: for a home in foreclosure, the actual cash value may often (but not always) be zero due to the outstanding mortgage exceeding the value of the property.

ii. bankruptcy; or

iii. a divorce or separation agreement if the applicant/resident receives important consideration not measurable in dollars; or

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

D. What assets are not counted/excluded from annual household income?

The following assets are excluded from annual household income: (HUD Handbook 4350.3, Chapter 5)

g. Personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities, etc.).

h. Interests in Indian trust land.

i. Term Life insurance policies (i.e., where there is not cash value).

j. Equity in the cooperative unit in which the household lives.

k. Assets that are part of an active business. “Business” does not include rental of properties that are held as an investment and not a main occupation.

Example 1: Mr. and Mrs. Truitt own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copier, the fax machines, the bicycles, etc.).

Example 2: Mrs. Linn rents out the home that she and her husband lived in for 35 years. This home is **not** an active business asset. Therefore, it is considered an asset and the owner/management must determine the annual income that Mrs. Linn receives from it.

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l. Assets that are not effectively owned by the applicant (irrevocable trusts are not covered by this paragraph). Assets are not effectively owned when they are held in an individual's name, but:

1.The assets and any income they earn accrue to the benefit of someone else who is not a member of the household; and

2.That other person is responsible for income taxes incurred on income generated by the assets.

Example 1: Assets held pursuant to a power of attorney because one party is not competent to manage the assets or assets held in a joint account solely to facilitate access to assets in the event of an emergency. This asset would not be included in annual household income.

Example 2: Mr. Green and his daughter, Miss Green, have a bank account with both names on the account. Miss Green’s name is on that account for the convenience of her father in case an emergency arises that would result in Miss Green’s handling payments for her father. <u>Miss Green has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned</u>. Therefore, Miss Green **does not own** this account. If Ms. Green applies for assisted housing, the owner/management <u>should not count this account as her asset</u>. This asset belongs to Mr. Green and would be counted entirely as the father’s asset should **he** apply for assisted housing.

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m. Assets that are not accessible to the applicant and provide no income to the applicant (irrevocable trusts are not covered by this paragraph).

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

E. How is the value of an asset determined?

In determining income from assets, owner/management must use the cash value of the assets. The cash value is the amount the applicant/resident would receive if the assets were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash.

Expenses that may be deducted include:

n. penalties for withdrawing funds before maturity;

o. broker/legal fees assessed to sell or convert the asset to cash;

p. settlement costs for real estate transactions; and/or

q. loans on the asset

F. Assets Converted to Trusts

A trust is a legal arrangement regulated by state law in which one party holds property for the benefit of another. A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trust assets are typically transferred to the beneficiary upon the death of the grantor. This manual will discuss three types of trusts, revocable, irrevocable, and special needs.

1. Revocable Trusts

The grantor of a revocable trust can change this type of trust as often as he or she wishes and, therefore, has access to this asset at any time. The cash value of any revocable trust available to the household is included as a household asset. The beneficiary of a revocable trust cannot access the trust without the creator/grantor. Thus, the trust is not included as an asset of the beneficiary.

Example of a Revocable Trust: Mr. Porter establishes a revocable trust of $30,000 in his daughter's name (the daughter is not a member of the household). Because it is revocable, he can modify this trust at any time and has access to it. For purposes of this example, the income is either reinvested into the trust or paid to his daughter. Treat this trust as a current asset. Even though Mr. Porter does not receive the income from this asset, he is required to report the cash value of the asset and the income the trust generates. Because it is still considered to be an asset owned by Mr. Porter, it is not considered an asset disposed of for less than fair market value.

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2. Irrevocable Trusts

This is a trust agreement that allows an individual to permanently transfer assets during his or her lifetime to someone else.

a. Creator/Settlor

The creator/settlor has no access to principal or income of the trust and, therefore, the trust is not included in the calculation of the household's annual income. Only the actual income distributed to the applicant/resident from an irrevocable trust should be counted when determining annual income (as with all other income, this amount would include the gross amount received before taxes or other deductions).

b. Beneficiaries

If a trust beneficiary has access to the principal balance of the trust and the beneficiary can receive the full value in a lump sum, the trust is treated as an asset. If the beneficiary is receiving periodic payments, such payments would be treated as annual income.

If a trust beneficiary has access to income generated from the trust (no principal balance access), the amounts received from the trust must be counted as annual income.

3. <u>Special Needs Trusts</u>

This type of trust is set up generally by family members for the benefit of disabled persons unable to make financial decisions for themselves. The assets within the trust are usually not accessible to the beneficiary.

If the beneficiary does not have access to income from the trust, it is not included as income or an asset. If the beneficiary receives regular payments from the trust, it must be counted as income.

G. Assets Disposed for Less than Fair Market Value

If an asset is disposed of for less than fair market value by being converted to an irrevocable trust, assuming that no consideration is received or the consideration which is received is less than fair market value, the owner/management must count such an asset for a period of two years.

In addition, any actual income distributed from the irrevocable trust must also be counted as income. Therefore, for a two-year period, the owner/management will consider this asset for purposes of income computation and, in addition, will count actual income distributed from the irrevocable trust to the applicant/resident. Following the two-year period, the owner/management will count only the actual income distributed from the trust to the applicant/tenant.

H. Actual and Imputed Income from Assets

If the net household assets are less than $5,000, annual income must include the actual income from the assets.

Example:

Type of Asset	Cash Value	Actual Income per Year
Checking Account	**$ 550**	**$ 0**
Savings Account	**$3,000**	**$300**
Totals	**$3,550**	**$300**

If the net household assets exceed $5,000, annual income must include the greater of:

a. the actual income from the assets, or

b. imputed income from the assets (impute income by multiplying total net household assets by the passbook rate specified by HUD; as of 2/1/15, the rate was .06%). This rate may change annually and can be found on HUD's website.

Example:

Type of Asset	Cash Value	Actual Income per Year
Checking Account	**$ 550**	**$ 0**
Savings Account	**$ 3,000**	**$300**
Cert of Deposit	**$12,000**	**$480**
Property	**$32,000**	**$ 0**
Totals	**$47,550**	**$780**

Since the total assets in this example exceed $5,000, the imputed income must be calculated. The net household assets of $47,550 would be multiplied by .06% (passbook rate), totaling $28.53. The actual income from assets ($780) would be compared with the imputed income from assets ($28.53), with the greater of the two included as part of the household's gross annual income. In this case, the actual income from assets of $780.00 is included in the household's income. MHDC recommends rounding up to the next dollar amount if it is $.50 or above to provide the most conservative estimate of annual income.

I. Net Family Assets Greater than $5,000

Third-party verification of the value of assets and income from assets is required when the combined value of the assets held by all members of the household exceeds $5,000. Third party verification must be obtained for the initial certification of the household and for each recertification. If third party verification is unobtainable, all efforts to obtain verification must be documented.

Acceptable methods for verifying family assets are:

a. Asset verification form

b. Current CD, passbook, account statements

c. Form 1099 from financial institution.

If net family assets exceed $5,000, asset income (which must be included as part of total gross household income) will be the greater of: a) actual asset income; or b) net family assets times the HUD approved passbook rate for the area (the Imputed Income from Assets). Local HUD offices periodically publish the HUD approved passbook savings rate. The current rate is .06%. All accessible assets must be verified and listed on the TIC until disposal of the asset can be verified and documented.

J. Net Family Assets Less than $5,000

The household must submit Exhibit D Under $5,000 Verification to certify net family assets less than $5,000 or no family assets. This form must be completed by the household for the initial TIC and for each subsequent recertification. However, the owner may not rely on the low-income household's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the household's annual income from assets is higher than the amount represented on the self-certification.

The rule allowing self-certification of assets when total cash value of household assets is less than or equal to $5000 is a <u>tax credit specific rule</u>. Households that are under other programs (e.g., HOME) will need to third-party verify all assets in order to comply with those programs.

All accessible assets must be verified and listed on the TIC until disposal of the asset can be verified and documented.

K. Assets Owned Jointly

If assets are owned by more than one person, prorate the assets according to their percentage of ownership. If no percentage is specified or provided by statute or local law, prorate the assets evenly among all owners.

***Example*:** Mrs. Robertson is a LIHTC tenant. She and her daughter, Ms. Duncan, who lives 1,200 miles away, have a joint savings account. Assume that in this example, state law does not specify ownership. Even though either Mrs. Robertson or Mrs. Duncan could withdraw the entire asset for her own use, count Mrs. Robertson's ownership as 50% of the account.

L. Computing the Total Household Income

After all income and asset information has been obtained and computed for a household, all qualified sources of income are added together to derive the total household income. In order for the household to qualify for a LIHTC unit, the total household income must be at or below the maximum allowable qualifying income in effect at the time of resident certification. If the total household income is greater than the maximum allowable qualifying income, then the household cannot be certified for a LIHTC unit.

Remember, LIHTC income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for LIHTC units.

Part 5.3 - Verification of Income and Assets

A. Effective Term of Verification

The owner/agent must obtain the applicant/resident's consent for the release of information before contacting third parties.
For LIHTC properties: Verification documents are acceptable if they are not older than 120 days at the time of receipt by the owner agent and then must be used for a certification with an effective date no later than 120 days after receipt of the document.

For LIHTC/HOME properties: The above applies but additionally must be no older than 6 months old at the effective date of the certification the verifications are attached to. For HOME-only properties: Verifications are good until they are more than 6 months old.

B. Acceptable Methods and Forms of Verification

This section provides guidance on acceptable forms of income verification. There are three (3) methods of verification, third-party, second-party and self- certification. All three (3) methods of verification are permitted, but management must attempt to receive third-party verification <u>before</u> using the other methods.

Owners/managers must verify the prospective household's income prior to the effective date of the TIC. Income disclosed by the applicant must be supported with third-party verification. Only after exhausting all attempts to secure third-party verification can the household's eligibility be based on second-party verification or self-certification.

Acceptable methods of verification for specific types of income situations include (see HUD Handbook 4350.3 for more detail, including Appendix 3 Acceptable Forms of Verification):

<u>Earned Income</u>

1. Employment

MHDC requires the first method of employment verification using the MHDC Employment Verification form (Exhibit C) completed by the employer.

Employment or military pay. If formal written third-party verification is unobtainable, pay stubs showing gross pay per period and frequency may be used. Pay stubs that cover a minimum of two months of recent consecutive pay stubs brought in by the household must be collected. The most recent pay stub must meet the 120-day/120-day lifespan requirement. The most recent pay stub must be no more than 120 days old on the effective date of a certification. Military pay stubs are called Leave and Earnings Statements (LES). The accompanying pay stubs with gross income and all deductions listed are required.

If documentation is delivered through the hands of an applicant or resident the owner/agent must review the document for signs of authenticity such as original signatures and authentic contact information. To establish authenticity, printouts from websites must clearly identify the website URL, usually with the company name in it; this is found in the header or footer of a printout from the internet. In all cases, the verifications used must establish enough information to accurately calculate income and determine other eligibility factors.

<u>Unearned Income</u>

1. Unearned Income such as a pension, social security, unemployment, child support/alimony, temporary disability benefits, etc., such as a pension, social security, unemployment, child support/alimony, temporary disability benefits, etc.

   • Statements supplied by the household. The Social Security benefits award letter (dated or with an applicable effective date). This does not apply to Supplemental Social Security Benefits, as these benefits may fluctuate throughout the calendar year. Unemployment benefit letter, Temporary Disability letter, Child Support printouts, bank statements, or similar documentation.

   • Verification forms completed by third parties.

My Calculation Cogitation Space (Notes)

Determining Employment Income

According to Treasury Regulations, "tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the U.S. Housing Act of 1937." [Treas. Reg. §1.42-5(b)(1)(vii)] For purposes of calculating annual household income, IRS regulations refer to HUD Handbook 4350.3. MHDC is aware that some LIHTC professionals and state LIHTC agencies have developed very restrictive calculation methodologies that are more stringent than the Section 8 program requires.

While viewed as more "conservative," these methods are not consistent with Section 8 rules. MHDC only requires compliance with the regulation and does not add additional rules that could exclude otherwise eligible households. Some of these non-HUD methodologies include using the highest of a range of hours supplied by an employer or basing income determinations on the higher of information provided by the employer and a calculation of annual income based on year-to-date information. Generally, HUD would use the average of the hours given and use anticipated information supplied by the employer. It is understood that the use of non-HUD methodologies is often required by investors/owners.

While MHDC does not forbid these methodologies, it does not feel it is in the best interest of the program to exclude households that qualify based on Section 8 methodologies but do not qualify based on more conservative methods. MHDC will not find an owner/agent who uses averages in a range of hours provided by the employer or other basic HUD methodology to be out of compliance if a household is qualified by the owner/agent using HUD methods, even if another method would determine the household to be over-income.

As HUD nowhere requires that owners always conduct a comparative year-to-date analysis, they have never provided YTD calculation instructions. LIHTC professionals have many different calculations that they favor as "accurate", but these are opinions only without federal guidance. If the owner/agent chooses to examine YTD and it is crucial to eligibility, an owner/agent may, according to consistent company policy, determine why there is a discrepancy through further interaction with the employer. To satisfy Fair Housing equal treatment, any approach developed by an owner/agent must be consistently applied to each household at a property.

Example: Range of Hours

An applicant's employer anticipates that the applicant will work 35-40 hours a week.

What number of hours should be used in calculating annual income?

An owner/agent may use the average, 37.5 hours. When ranges on items such as the number of hours are provided by the employer, an average should be used.

Example: Year-To-Date

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

What annual income may be used? $31,228

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

Self-Employment Income

a. Existing Business. An income certification affidavit for self-employed persons must be completed by the individual. This affidavit must be signed by applicant/resident showing amount earned and pay period. Additional information for Self-Employment verification requirements can also be found in the HUD Handbook 4350.3, Appendix 3 and *(See Paragraph 5-5.C and Paragraph 5-6.H) This form must be submitted along with:

   i. a signed copy of the prior two year's income tax return (including income Schedules C, E and/or F),

   ii. (II) financial statement(s) for the business (audited or unaudited) including an accountant's calculation of straight-line depreciation expenses if accelerated depreciation was used on the tax return or financial statement,

   iii. (III) any loan application listing income derived from the business during the preceding 12 months, and

   iv. for rental property, copies of recent rent checks, lease and receipts for expenses, or IRS Schedule E.

b. New Business. A business plan or financial statement (audited or unaudited) must be included itemizing the anticipated income and expenses that would be necessary to calculate the net income of the business. This information must be documented in the file.

Gig economy is defined as working for companies such as Uber, Lyft and Door Dash drivers (or any other website that provides individual jobs to people). Employment like this is considered self-employed and this income must be calculated and documented as such. Printouts from the website that the person works for can provide the gross income from the business, and perhaps some information on expenses (such as mileage for ride-share services). If the person can provide additional documentation of expenses, these also may be factored in to establish net income.

Documentation includes IRS Form Schedule C, including the IRS Form 1099 (1099-K for earnings in excess of $20,000). Both Uber and Lyft contractors can access their 1099 through their online driver accounts, as well as a tax summary which will provide information on expenses, such as driver fees and mileage. Drivers can also access their earnings and expense history through their online driver accounts. These earnings statements may be used to support income determination for drivers who have not yet had their business in operation long enough to file taxes.

When verifying and calculating employment income MHDC requires the owner calculate the employment income using one of the appropriate following methods:

1.

To annualize full-time employment multiply	
Hourly Wages	X 2,080 (for full-time employment with no overtime)
Weekly wages	x 52
Bi-Weekly wages	x 26
Semi-monthly amounts	x 24
Monthly amounts	x 12

2. To annualize income from other than full-time employment, multiply periodic amounts (hourly, biweekly, monthly, etc.) by the number of periods (hours, weeks, months) the household member expects to work.

   Example 1: $5 per hour x 25 hours per week x 52 weeks = $6,500 Annual Income

   Example 2: $130 per week x 52 weeks = $6,760 Annual Income

3. Use an annual wage without additional calculations.

   Example: If a teacher earns an annual salary of $22,000, the $22,000 should be used as the annual salary, regardless of whether the teacher is paid over a 9 or 12-month period. No interim certification is done at the end of the school year to reduce the household's income.

4. Use anticipated employment and current circumstances to determine projected income unless verification forms indicate an imminent change will occur.

   Example of Anticipated Increase in Hourly Rate: The employment verification indicates that as of April 1, 2000 the applicant's current hourly rate is $8.00 per hour. It also indicates that on May 15, the applicant's income will increase to $8.50 per hour.

   The applicant works 40 hours per week. You would make the following calculations:

   April 1 through May 14 = 6 weeks x 40 hours x $8.00 = $ 1,920
   Remainder of the year = 46 weeks x 40 hours x $8.50 = <u>$15,640</u>
   Annual Income = $17,560

5. If a household indicates that income might not be received for the full 12 months (e.g., unemployment insurance benefit is expected to terminate), the income should still be annualized, unless there is documentation of an imminent change which would require prorating the income amounts.

   Example: John works 25 - 30 hours per week and makes $8.25 per hour. To annualize his hours, use: 30 hours x 52 weeks x $8.25 = $12,870 Annual Income

The management agent should give the applicant or resident the opportunity to explain any significant differences between the amounts reported on the application or other file documents and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the resident file on a clarification form or self-affidavit.

Social Security, Pensions, Supplemental Security Insurance ("SSI"), Social Security Disability Insurance ("SSDI")

Social Security. The amount an individual receives in Social Security income does not change throughout the year. Therefore, a current annual award letter is sufficient documentation to verify income. Because the amount of social security received does not change for the year, it is not necessary for the annual award letter received to be dated within 120 days of the verification date. It is, however, necessary to have a current annual award letter or a benefit verification completed by the agency providing the benefits.

a. SSI/SSDI. SSI/SSDI payments are income-based and available to those with a physical/mental disability that prevents them from being employed. The amount of SSI/SSDI received can change during the year based on the individual's other income. SSI is adjusted annually based on the Cost of Living Adjustment. Because the amount of SSI/SSDI received can adjust throughout the year, the verification received must be dated within 120 days of the verification date. Either a benefit verification completed by the agency providing the benefits, or an award or benefit notification letter prepared and signed by the authorizing agency are acceptable forms of SSI verification.

b. The gross amount of Social Security, SSI and/or SSDI should be included in an individual's income. This includes the full amount of such payments, before deducting Medicare, state health insurance, etc.

When interpreting Social Security benefit letters, remember to use the gross amount before deductions, unless the deduction is for a prior overpayment of benefits. If there is a reduction in benefits to adjust for a prior overpayment, count the amount that is provided after the adjustment.

For Social Security and SSI Direct Express Debit Cards, the balance on the card is considered an asset and the verification method is consistent with savings account verifications. Specifically, residents who receive their benefit on a Direct Express Debit Card will need to provide an account balance no more than 120 days old at the time of recertification. This balance can be obtained from an ATM, though the online account service, or a paper statement. The verification document must identify the account and the account holder. Reference: hud.gov HUD RHIIP Listserv Posting #296, effective 3/1/2013, http://www.ssa.gov/pubs/10073.html

PayPal, Venmo, Cashapp, and the like are considered peer-to-peer payment accounts or eWallets (additional Reference: HUD 4350.3 Exhibit 5-2).

Apps such as these allow the user to maintain a cash balance in their accounts, the balance of these accounts should be treated as an asset to the account holder. The market value and the cash value is the current balance of the account.

When calculating income, there is not any actual income derived from these accounts as interest is not earned on the balance; however, the cash value of the accounts must be included when calculating the total cash value of all assets for the purposes of imputing asset income.

Please note that if the applicant is using one of these or similar apps (PayPal, Venmo, Square, etc.) for business purposes then the accounts would be excluded as an asset, as assets that are part of an active business are not considered household assets.

Unemployed Applicants/Residents

If an applicant or resident is currently unemployed and claiming no wages, the MHDC Non-Employment Affidavit (Exhibit Q) must be executed. Evidence of anticipated income for the certification year should also be determined by using Exhibit Q. Anticipated changes that are ***imminent***, ***verifiable, and determinable*** (not those that are just *possible*) must be addressed in anticipated income. If the applicant/resident is unemployed but has secured new employment with a start date determined, verification of new employment (Exhibit C) must take place. Verified income from new employment must be counted on the TIC.

Zero Income

A Certification of Zero Income (Exhibit E) must be executed by any applicant or resident who is currently unemployed, has no regular verifiable income from any source and is claiming zero income, to account for how the resident intends to pay rent/utilities/expenses, etc. If a reasonable person would question an income determination (such as if the income calculated is so low as to make covering the rent for a year improbable), further information may need to be gathered. This could include exploring the likely possibility of gifts or other income.

Alimony or Child Support Payments

Either:

a. a copy of a separation or settlement agreement or a divorce decree stating the amount and type of support and payment schedule, or

b. a notarized letter from the person paying the support.

If neither (a) or (b) is available, a notarized statement or affidavit from the receiver of the support stating the frequency and value of the support, accompanied with copies of checks, may be provided. However, efforts to lect (a) and (b) above must be thoroughly documented.

All single-parent households must certify in writing whether child support is due or received.

a. If the household is decreed to receive alimony and/or child support payments but does not receive such payments, supporting documentation must be placed in the household's file.

b. If decreed alimony and/or child support payments are not being received, proof must be provided showing enforcement or attempted lection and supporting documentation must be placed in the household's file.

c. If no support is legally agreed, lected, documented, or decreed, a notarized statement or affidavit from the applicant/resident must be documented and placed in the household's file.

d. If no support is legally agreed, documented, or decreed but is lected, an attempt to get a statement declaring the amount paid in support should be gotten from the parent paying such support.

Recurring Contributions and Gifts

Either (a) a notarized statement or affidavit signed by the person providing the gift stating the frequency and value of the gift, or (b) a verification letter from a bank, attorney or trustee administering the gift. If neither (a) or (b) is available, a notarized statement from the receiver of the gift stating the frequency and value of the gift, accompanied with copies of checks, may be provided.

C. Third-Party Verification

HUD requires specific language be included in all third-party verification authorization forms (HUD Handbook 4350.3, Chapter 5). Verification forms sent to third-party sources must be accompanied by a copy of the completed Authorization. A copy must be attached to all verification forms that were sent out to all sources and maintained in the household's file.

D. Documentation of Verification Attempts

All attempts to third-party verify tenant information must be thoroughly documented. Owners/management should:

a. keep copies of all form letters sent to third-party sources;

b. keep copies of all correspondence from third-party sources;

c. maintain telephone log sheets for oral inquiries; and

d. make appropriate notations in the household files.

Owners must send and receive verification forms directly to/from the third-party, not through the applicant or resident. Income verification requests must be sent directly to the source by the owner or management agent and returned by the source to the owner or management agent. Under no circumstances should the applicant or resident be allowed to send or deliver the verification form to the third-party source or back to the management. When written verification is not possible prior to move-in, direct contact with the source will be acceptable to MHDC only as a last resort and should be followed by written verification. Owners should maintain telephone log sheets. Additionally, the conversation should be documented in the resident file to include all information that would be contained in a written verification. The information must include the name, title, and phone number of the contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

In addition, if the owner receives third-party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the onsite management representative accepting the information, and the date. Furthermore, if after requesting third-party verification, the third party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

Faxed copies of verifications are acceptable. All income verifications should be date stamped as they are received.

E. Second Party Verification

If there is a fee associated with receiving the third-party verification, second party verification will suffice. For example, if a bank will charge a fee for providing bank account information on a checking account, the owner may verify the account by obtaining the most recent six (6) months of bank statements from the resident.

If second-party verification must be used, the owner is required to document the resident file explaining the reason third-party verification could not be obtained and showing all efforts that were made to obtain third-party verification. Page 5-61 of the HUD Handbook 4350.3 states that the following documents should be placed in the resident file:

a. A written note to the file explaining why third-party verification is not possible; and/or

b. A copy of the date-stamped original request that was sent to the third-party; and/or

c. Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or

d. A written note to the file indicating that the request has been outstanding without a response from the third-party.

F. Verbal Verification/Resident Self-Certification

When written verification is not possible prior to move-in, direct contact with the source will be acceptable to MHDC only as a last resort and should be followed by written verification. The conversation should be documented in the resident file to include all information that would be contained in a written verification. The information must include the name, title, and phone number of the contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

In addition, if the owner receives third-party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the onsite management representative accepting the information, and the date. Furthermore, if after requesting third-party verification, the third party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

As a last resort, the owner may accept a resident's signed affidavit if third-party and second party verifications cannot be obtained. The owner should try to refrain from using self-affidavits except where absolutely necessary. If a self-affidavit must be used to verify income or asset sources, the owner is required to document the resident file by explaining the reason third-party or second-party verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the resident file:

a. A written note to the file explaining why third-party verification is not possible; and/or

b. A copy of the date-stamped original request that was sent to the third-party; and/or

c. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and/or

d. A written note to the file indicating that the request has been outstanding without a response from the third-party; and/or

e. A written note to the file explaining why second-party verification is not possible.

Notes to Self

CHAPTER 6 – COMPLIANCE REQUIREMENTS AND MONITORING

This section of the manual outlines MHDC's procedures for monitoring all properties receiving tax credits. Monitoring is designed to assist the owners with federal and state regulations regarding MHDC's compliance monitoring requirements and procedures in accordance with the IRS guidelines in Section 42 of the Internal Revenue Code. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit. Monitoring each property is an ongoing activity that extends throughout the Compliance Period. MHDC is required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of an owner to certify compliance, no later than 45 days after the period of time allowed for correction. Notification to the IRS by MHDC is required whether or not the noncompliance has been corrected.

Part 6.1 - Owner and Management Agent Contacts

Correspondence from MHDC to the owner will be sent to the owner/owner representative designated on the Exhibit L (Property Data Sheet) submitted by the property.

If at any time the owner/owner representative changes, it is the sole responsibility of the owner to inform MHDC in writing of such change with supporting documentation. Changes in ownership must have prior approval and be reported to MHDC.

Changes in management must have prior approval and be reported to MHDC. Failure to notify MHDC of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible non-compliance fees.

Part 6.2 - The Compliance Manual

The compliance monitoring procedures and requirements set forth herein are issued by MHDC pursuant to Treasury Regulations. These provisions may be amended by MHDC for purposes of conforming to the Treasury Regulations and/or as may otherwise be appropriate, as determined by MHDC or the Internal Revenue Service.

In addition, MHDC periodically releases updates on policies, sample forms, and other issues relevant to the Section 42 LIHTC Program. These notices are available online at http://www.mhdc.com

Part 6.3 - Certification Portal (CP)

The Annual Owner Certification of Continuing Compliance Exhibit A is submitted using MHDC's Certification Portal (CP) rental reporting system. All tax credit properties are required to enter resident data using CP. Resident events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates.

Resident events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from (CP) it is required that all resident events be entered into the system within thirty (30) days of the event date.

After reviewing the CP submission from the property, MHDC will notify the owner in writing of any errors or incompletion. All correspondence to the owner will be sent electronically.

The CP site address is https://CP.mhdc.com/

The CP User Guide is located here: http://www.mhdc.com/program_compliance/LIHTC/comp-online/CPM.pdf

Part 6.4 - MHDC File Review and Onsite Property Inspections

As provided in IRS compliance monitoring regulations, MHDC has the right to review a property's resident/unit files and record keeping and record retention files, in-house (at MHDC offices) or onsite at the property and/or to perform physical inspections of LIHTC properties as deemed necessary throughout the Compliance Period. MHDC is required to monitor and physically inspect each Section 42 property within two (2) years of the placed-in-service date of the last building and every three (3) years thereafter. However, MHDC reserves the right to inspect the files and/or physical units of Section 42 property at any time at its discretion.

Based on Rev. Proc. 2016-15 (effective February 25, 2015) MHDC is no longer required to select the same low-income units for on-site inspections and low-income certification review. If MHDC chooses to select different low-income units for on-site inspections and for low-income certification review, we must select the units for each purpose separately and randomly. MHDC may choose a different number of units for on-site inspections and low-income certification review, provided we choose at least the minimum number of low-income units in each case.

Further, because the units no longer need to be the same, MHDC may choose to conduct physical inspections and low-income certification reviews at different times.

A 100% tax credit property consists of three buildings. The last building was placed-in-service in 2009. MHDC's first monitoring and physical inspection will occur in 2011 (two years after the year of the placed-in-service date of the last building). After this initial inspection, a regularly scheduled monitoring will occur once every three years (2014, 2017, etc.). However, MHDC has the right to perform additional inspections at any time, with or without notice to the owner/management.

A. Prior to performing an onsite Property inspection, MHDC will:

1. Notify the owner and/or the management company, no later than 10 days prior to the inspection, of the date and approximate time the inspection will take place. The date having been agreed upon by the owner or management company representative.

2. Request that the owner/management company and maintenance representatives be present and accompany the inspector throughout the entire inspection process.

It is required that all units (vacant and occupied) and common areas (interior and exterior) be available for inspection.

B. When performing an onsite (at the Property or management office) review, MHDC will:

1. Provide an exit interview summary to the management representative.

2. Inform the owner of any findings of noncompliance with regard to such review.

3. Allow the owner ten (10) calendar days to request an extension to repair physical deficiencies.

4. Allow the owner thirty (30) calendar days to notify MHDC of correction of noncompliance.

5. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

C. After performing an onsite Property inspection, MHDC will:

1. Provide the property representative identification of all exigent health, safety (EH&S) hazards observed at the time of the inspection that require immediate corrections. All exigent health and safety (EH&S) issues identified must be corrected and MHDC must be notified of the completed corrections within seventy-two (72) hours.

2. Critical violations that are not corrected within seventy-two (72) hours will be fined $250 per day, starting the first hour after the seventy-two (72) hour correction period expires.

3. Forward a copy of the inspection report to the owner indicating a correction time frame.

4. Request that legible copies of the proof of the corrections, in the form of legible work orders, receipts, and/or invoices and pictures, be forwarded to MHDC within the allotted time frame indicated in the inspection report or approved extension.

5. Schedule a second inspection if necessary.

6. MHDC will charge additional monitoring fees if MHDC staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit.

7. Review the supporting documents of correction for correlation with the inspection report.

8. Forward a close out letter indicating that no further corrective actions regarding the physical condition of the property are needed at this time, or issue non corrected IRS form 8823 to the IRS for deficiencies that remain unresolved.

Part 6.5 - CORRECTIVE ACTION PLAN

Should there be any issues that cannot be resolved within the Notification Response Period, the owner must submit to MHDC a Corrective Action Plan (Exhibit Y) describing how and when the issues will be corrected. The Corrective Action Plan must be updated and submitted to MHDC by the 10th of each month until all issues are resolved. Any pending issue(s) will be reported to the IRS on Form 8823. When the outstanding item(s) have been resolved, a corrected Form 8823 will be issued.

Part 6.6 ANNUAL REPORTING REQUIREMENTS

A. Missouri Eligibility Statement (MOST) and 8609-A Annual Statement

During the Credit Period, an executed copy of the MOST and IRS Form 8609-A (Annual Statement) for each building which are to be filed with the owner's tax return must be submitted annually by March 1st. MOST is a required form for all properties that received an allocation of State LIHTC (§135.355, RSMo).

B. Occupancy Reports

The submission deadline for the Annual Owner's Certificate of Continuing Compliance (**Exhibit A**) and the Annual Occupancy Report (**Exhibit H**) are set forth in the schedule below. Properties with 12 units or less may manually submit this documentation. All other properties must submit all annual reports on-line through CP. The due dates for such reports are based on the year the last building was/is placed in service.

SEASONAL REPORTING SCHEDULE			
Placed-In- Service Date	Activity Period Covered	CP Report Due Date	Exhibit A & K Due Date
1990, 1991, 1992, 1993, 2006, 2010, 2014, 2018, 2022, 2026, 2030, 2034, 2038	April 1 – March 31	April 15	April 30
1994, 1995, 1996, 1997, 2007, 2011, 2015, 2019, 2023, 2027, 2031, 2035, 2039, 2043	July 1 – June 30	July 15	July 31
1998, 1999, 2000, 2001, 2008, 2012, 2016, 2020, 2024, 2028, 2032, 2036, 2040, 2044	October 1 – September 30	October 15	October 31
2002, 2003, 2004, 2005, 2009, 2013, 2017, 2021, 2025, 2029, 2033, 2037, 2041, 2045	January 1 – December 31	January 15	January 31

Properties that report through CP must also submit the original, signed, and notarized documents to MHDC. Updated reporting due dates can be found at www.mhdc.com.

C. Annual Financial Statements

Properties containing 12 or less units are not required to file financial statements with MHDC. For properties with 13 or more units, annual financial statements are required to be submitted on-line via MHDC's Asset Management Reporting System (AMRS) at amrs.mhdc.com, within 90 days after the end of the property's fiscal year. Properties with 13-23 units can submit reviewed or compiled financial statements that follow the Statement on Standards for Accounting and Review Services. Properties with 24 or more units must submit audited financial statements that follow Generally Accepted Auditing Standards and/or Government Auditing Standards if HUD or RD assistance is received. Properties that do not submit their annual financial statement by March 31st of each year or within the MHDC-approved extension window, as applicable, will be placed in noncompliance.

Properties that submit their financial statement with HUD under the REAC system do not need to submit their financial statement on-line through AMRS. However, a copy of the property's financial statement must be mailed to:

MHDC Accounting Department
505 N. 7th Street, 20th Floor, Ste. 2000
St. Louis, MO 63101

MHDC requires that all properties prepare their financial statements using MHDC's standard chart of accounts. MHDC will return any financial statement not prepared using such chart.

Extensions to the above 90-day deadline are available and may be granted on a case-by-case basis. Extensions must be requested on-line at amrs.mhdc.com and the reason(s) the extension is necessary must be indicated.

MHDC will respond via AMRS with the approval or denial of such extension request. In no event will an extension of more than 30 days be granted.

A listing of MHDC's standard chart of accounts, required schedules, suggested balance sheet and income statement format can be found at www.mhdc.com.

D. Annual Proposed Operating Budget

For properties with 13 or more units, annual proposed operating budgets are required to be submitted on-line via MHDC's Asset Management Reporting System AMRS at amrs.mhdc.com, excluding properties where all units are covered by an HAP contract. Properties with 25% to 99% of the units covered by a HAP contract and all other properties (with the exception in the previous sentence) must be submitted by November 15 of each year. Extensions to the November 15 deadline are available and may be granted on a case-by-case basis. Extensions must be requested on-line at amrs.mhdc.com and the reason(s) the extension is necessary must be indicated. MHDC will respond via AMRS with the approval or denial of such extension request. In no event will an extension of more than 30 days be granted. Properties that do not submit their operating budget by November 15 of each year or within the MHDC-approved extension window, as applicable, will be placed in noncompliance.

MHDC requires owners to prepare their budget using MHDC's standard chart of accounts (see the Budget Worksheet (Exhibit A-10) for a sample of the required budget format). A complete budget consists of three years of data - previous year audited income statement data, current year actual data, and proposed income statement data. All properties are required to fully explain significant increases and decreases as flagged by the AMRS system. A blank budget worksheet can be found at www.mhdc.com.

E. Reporting of Tenant Demographic Information

Pursuant to HR 3221, state agencies administering tax credits under Section 42 must furnish to HUD, at least annually, information regarding the race, ethnicity, family composition, age, income, use of rental assistance under Section 8 or other similar assistance, disability status, and monthly rental payments of households residing in LIHTC unit.

Each household member must complete HUD Form 27061-H to report race and ethnicity data. The instructions which accompany HUD Form 27061-H should be followed carefully. Family composition, age, income, use of rental assistance and monthly rental payment is reported annually to MHDC using the TIC (Exhibit B). Disability status must be reported annually according to HUD published guidelines.

This information lected from the residents should be reported to MHDC, either through the CP system or, if reporting manually, by the use of Exhibit H.

Part 6.7 - NON-COMPLIANCE FEES

Noncompliance is defined as a period of time a property, specific building, or unit or management agent is ineligible because of failure to satisfy program requirements. Owners/Managers are strongly encouraged to make every effort to maintain properties in compliant status or bring properties back into compliant status within the time frame granted. If a property is not brought back into compliance within the time frame specified, beginning July 1, 2014, MHDC will charge a noncompliance fee in accordance with the following amounts and circumstances:

1. A fee, the greater of (a) $250 or (b) $35 per unit/file will be charged if staff must return to review deficiencies or errors noted during the initial inspection after the issuance of an 8823, or if a subsequent

inspection determines that deficiencies noted in the previous inspection were not actually corrected as reported by management.

2. If there are repeated, subsequent, open, noncompliance issues from previous inspections the fee will be $500/month until corrected. This fee will be retroactive from the first inspection where noncompliance was reported.

3. A fee of $35 per hour will be charged if staff must return to verify unrepaired deficiencies discovered during a Latent Defect Inspection (LDI).

4. A fee, the greater of (a) $250 or (b) $35 per unit/file will be charged if an initial inspection is scheduled because the owner/management representative was not onsite at the designated time and location, or residents did not receive proper notice of inspection.

5. A fee of $250 per occurrence will be assessed for failure to submit any required documentation in the time frame requested (see Exhibit A-20 for published schedules). The following list is not comprehensive but offers examples of when the fee will be applied: annual utility allowance documentation, annual owner certification, resident income; and rent report with any supporting documentation, financial documents, budgets, 8609s, CP submissions, physical needs inspections; and/or documentation responding to findings.

6. A $1,000 fee will be assessed if there is a change in partnership (general or limited) without prior notice and/or approval from MHDC. Please note the partnership may not delete, amend, or modify any provision of the partnership agreement or organizational documents, voluntarily dissolve the partnership, or convert the partnership to another form of entity without prior approval from MHDC.

7. A $1,000 fee will be assessed if there is a change in management agent without prior approval from MHDC. Please note that MHDC retains the right to require replacement of the management agent; this includes a management agent that has not been approved by MHDC prior to taking over management of a property.
8. A fee of $250 will be charged for failure to report: 1) casualties or crimes that result in damage to the property or serious bodily injury such as, on property homicides or rapes; or 2) resident-initiated lawsuits (excluding rent-related matters or failure to return a security deposit) within 30 days of the event.

The above list is not conclusive, and MHDC reserves the right to remove or include additional circumstances and fees when deemed necessary. Properties will be billed for noncompliance fees which are to be paid within 30 days. If the property has an MHDC loan, MHDC will debit the appropriate reserve account.

If the owner/manager appeals the fee, an appeal of noncompliance fees must be made in writing within 30 calendar days from the date of the non-compliance assessment letter or email. MHDC will respond to an appeal within 45 days of the date an appeal is received. All fees assessed are to be paid immediately if the Director of Asset Management determines the fees are warranted.

Appeals should be sent to:

Director of Asset Management
Missouri Director Housing Development Commission
505 N. 7th Street, 20th Floor, Ste. 2000
St. Louis, MO 63101

Frequency of the Required Inspection and Management Reviews

For developments layered with several affordable housing programs MHDC must conduct the inspection consistent with the most restrictive regulations applicable to the development.

- Mixed MHDC Fund Balance or HOME Funds with LIHTCs – inspections are conducted annually.
- HOME Funds and/or NHTF with LIHTCs – inspections are conducted every two years.
- HOME Funds – inspections are conducted every two years. LIHTC-only – inspections are conducted every three years.

Notes and Things to Remember

Table 6.1 MHDC EXHIBITS AND WHEN TO USE THEM

Exhibit		On what type of property is it used?	When is it used?	Please Note
A	Owner's Certificate of Continuing Program Compliance	LIHTC	Annually when submitting resident data.	May be submitted more frequently during property lease-up.
B	Tenant Income Certification	LIHTC/HOME/ MHDC/FDIC/ AHAP	Initial qualification and recertification. May also be used to correct a TIC or if household composition changes within the first 6 months of certification.	If Section 8 and utilizing 50059, there must be a TIC completed at move-in.
C	Employment Verification	LIHTC/HOME/ MHDC/ SECTION 8/AHAP/FDIC	Initial qualification and recertification.	
C-5	Management Questionnaire	LIHTC/HOME/ MHDC/ SECTION 8/AHAP/FDIC	Prior to property inspection.	Must be submitted to Compliance Officer within seven (7) business days prior to the inspection date.
D	Under $5,000 Asset Verification	LIHTC/HOME/ MHDC/ SECTION 8/AHAP/FDIC	When assets are less than $5,000.	If this is a HOME unit, use if no assets are reported by resident(s). For HOME, all assets are to be verified by a 3rd party.
E	Certification of Zero Income	LIHTC/HOME/ MHDC/ SECTION 8/TBRA	Move in and re-certification when there is no reported income from an adult member of the household.	
F	Student Verification	LIHTC/HOME/ SECTION 8	Move in and re-certification if household member is a full-time student.	Not needed if allowed to utilize the Ex. U. Note: HOME units follow Section 8 Student Rule
G	Notice of Change of Ownership or Ownership Interest	All programs	Initial and if there are any changes of ownership or ownership interest.	
H	Annual Occupancy Reports for Non internet Reporting	LIHTC/HOME	Annually.	For properties with 12 units or more.
I	Unit Certification	LIHTC	At move-in or at transfer.	
J	Authorized Representative Designation	All programs LIHTC/HOME/ MHDC	Initial and if there are any changes in authorized representatives.	

Table 6.1 MHDC EXHIBITS AND WHEN TO USE THEM (continued)

J-1	Management Authorized Representative Designation	All programs LIHTC/HOME/ MHDC	Initial and if there are any changes in authorized management representatives.	
K	HOME Annual Certification of Continuing Program Compliance	HOME	Annually when submitting resident data.	May be submitted more frequently during property lease-up.
L	Property Information Sheet	All programs LIHTC/HOME/ MHDC/ TBRA/AHAP	Initial and if there are any changes in management staff.	
M	LIHTC Certification of Student Eligibility	LIHTC, HOME, MHDC, SECTION 8	At move in and recertification.	Student rules, as defined by Section 42, will no longer apply. Other programs such as HOME have longer compliance periods where the student rule may apply.
M-1	HOME Certification of Student Eligibility	HOME	At move in and recertification.	
N	Disclosure of Lead Paint-Hazards Warning	HOME/LIHTC/ MHDC	At move-in.	For all properties built before 1978
O	Tenant Eviction Language Lease Addendum	LIHTC/MHDC	At move in, recertification and any time a new lease is executed.	
P	Request for Common Use Unit	All programs LIHTC/MHDC/ HOME	When a common use unit is requested or cancelled.	Common use units are that could be occupied by a qualified resident, but instead are used for management, security, or maintenance purposes.
Q	Non-Employment Affidavit	LIHTC/MHDC/ HOME/TBRA/ SECTION 8	At move in and re-certification.	
R	Addendum to Lease – HOME Provisions	HOME	At move in, re-certification and any time a new lease is executed.	
T	Request for Extension	All programs LIHTC/MHDC/ HOME/AHAP	When an extension for time to cure deficiencies is needed.	Due to MHDC by the 10th calendar day from the mail-out date of inspection report.

Table 6.1 MHDC EXHIBITS AND WHEN TO USE THEM (continued)

U	Annual Resident Certification	100% LIHTC properties only	3rd year recertification on 100% tax credit properties only. If there is any other type of funding in any unit, the Exhibit U may not be used.	Prior approval must be requested to use the Exhibit U.
V	IOI Statement Qualifications	All properties with MHDC interest LIHTC/MHDC/ HOME/AHAP/ TBRA	At move in and re-certification.	
W	8609 Owners Certification General Partnership Form	LIHTC	When original 8609s cannot be obtained by any other means.	8609s must be requested of the original owner and/or the IRS before an Exhibit W will be accepted.
Y	Corrective Action Plan	All properties subject to management review	When a property is out of compliance to track uncorrected deficiencies.	Due on the 10th of the month until the property is no longer on a corrective action plan.
Z	Housing Priority Checklist	Properties with Special Needs units and/or Service Enriched Priority	To be completed by Management to give to CO at the time of the inspection.	

PLEASE NOTE

Forms are revised from time to time. It is the responsibility of the owner/management company to check the MHDC website and implement new forms immediately. Revision dates are printed on the bottom of the form and new or updated forms are denoted with a banner on the website. **Additionally, MHDC exhibits must be used. No other forms are acceptable.**

CHAPTER 7 – ADDITIONAL MHDC REQUIREMENTS

Part 7.1 - Adjustments To Rent, Utility Allowance Or Subsidy

Any changes to rent, Utility Allowance, or rent subsidies occurring between recertification dates must be reported to MHDC on the next Annual Occupancy Report.

Part 7.2 - Rent Increase Guidelines

Rent Increase Guidelines

MHDC is required to approve the rents for all properties involved in the MHDC Fund Balance, Low Income Housing Tax Credit, Missouri Affordable Housing Assistance Program (AHAP), HOME, and National Housing Trust Fund (NHTF) programs. All rent increase requests must be submitted on-line through MHDC's Asset Management Reporting System (AMRS) https://amrs.mhdc.com. The rent increase submission window is **October 1– December 31.** Properties desiring a January 1 effective date must submit their complete rent increase request by November 15. Properties desiring a February 1 effective date must submit their request by December 15th. All others are due no later than December 31. Requests submitted outside this window are not processed. The effective date of approved rent increase requests must be at least one year from the property's last building place-in-service date or one year from the last Schedule II effective date. Existing residents must be given a thirty (30) day notice before implementing any rent increase. The owner/management is required to post for public viewing a signed MHDC Exhibit A-21 Notice to Residents of Management's Intention to Submit a Rent Increase Request to MHDC for Approval prior to submitting the rent increase request to MHDC. The Exhibit A-21 notice provides a thirty (30) day comment period for residents to respond to MHDC. Mid-term lease increases are not allowed, and tenant leases are not to include language that allows rent increases in the middle of the tenant's lease term.

All family designated properties submitting a rent increase have the option to request either an automatic 2% rent increase subject to compliance testing or a budget-based rent increase which would allow for a rent increase up to a maximum of 7%. All senior designated properties (i.e., properties for residents aged 55 and older) are capped at the lower of the prior year Social Security Cost Of Living Adjustment (CPA) or the allowed 7% maximum. However, in years of 0% A adjustments, the owner will be allowed to request a rent increase of a maximum of 2%. Please visit https://www.ssa.gov/OACT/A/CPaseries.html for previous year A adjustments.

For developments electing Average-Income Set-Aside, the income and rent levels will be assigned from the beginning of the project based on the market study submitted at application. MHDC will input the income levels into AMRS so developments can track the range for every potential income and rent level.

All MHDC-approved rent increases are issued on Form Schedule II.

Automatic 2% and Budget Based Rent Increase Submission Requirements:

- Property has submitted their Annual Financial Statement and Budget. Please note Annual Financial Statements and Budgets are tracked through MHDC's AMRS system.
  Properties cannot request a rent increase until these items are received.
- Current Utility Allowance has been submitted.

- Current Rent Roll has been submitted. Please note a current rent roll must contain each unit, bedroom type, rent amount, rent type, and lease move-in/renewal effective dates for each resident.
- Signed copy of MHDC **Exhibit A-21** Notice to Residents of Management's Intention to Submit a Rent Increase Request to MHDC for Approval must be submitted with the rent increase request. Please note Owner/Management is required to deliver to residents and post for public viewing MHDC Exhibit A-21 prior to submitting the rent increase request to MHDC. This notice may not be substituted with alternative language.

Automatic 2% Rent Increase Compliance Testing:

- The property must be in compliance with all program requirements and MHDC policy and procedures.
- Property's occupancy submission must be current and average occupancy must not be below 90% over a rolling 12-month period.
- Property's most recent inspection must be closed in compliance.
- Property must demonstrate that they are charging the current approved rents based on the most recent approved Schedule II.
- The property's proposed rents do not exceed the maximum Section 42 rent limit requirements.
- If applicable, the property's mortgage must be current.

Note: Under the automatic 2% rent increase policy, a Schedule II will be issued as long as the property can demonstrate that they are in compliance with the above list. Rents **MUST NOT** be implemented until Schedule II is signed by MHDC and returned to the owner with the effective date specified. In the event the owner/management has not complied with the list above, Schedule II will be placed on hold until the non-compliance is corrected.

Budget Based Rent Increase Compliance Testing:

- Required for any rent increase request greater than 2% and up to a maximum of 7%.
- The annual development budget must demonstrate a need for a rent increase determined by analyzing the following performance indicators: o Cash Flow after including development soft debt, deferred development fee, and agreed upon owner distribution.
- Development DCR. MHDC considers a healthy property to maintain a 1.30 DCR.

Note: Any budget that projects a property to exceed 1.30 DCR may have their rent increase reduced or denied. Higher DCRs may be allowed for properties to achieve their agreed upon owner distribution and re-pay surplus cash notes and remaining deferred developer fees. In any event, MHDC will not approve an increase that is more than 7%.

Other Budget Based Rent Increase Compliance Items:

- The property must be in compliance with all program requirements and MHDC policy and procedures.
- The property's AOD reporting must be in compliance.
- Property's occupancy submission must be current and average occupancy must not be below 90% over a rolling 12-month period.
- Property's most recent inspection must be closed in compliance.
- Property must demonstrate that they are charging the current approved rents based on the most recent approved Schedule II.

- The property's proposed rents do not exceed the maximum Section 42 rent limit requirements.
- If applicable, the property's mortgage must be current.

Note: Rents **MUST NOT** be implemented until Schedule II is signed by MHDC and returned to the owner with the effective date specified. In the event the owner/management has not complied with the list above, Schedule II will be placed on hold until the non-compliance is corrected.

Rent Increase Procedures for Senior Developments:

Rent increase requests for all senior designated properties (i.e., properties for residents aged 55 and older) are capped at the lower of the prior year Social Security Cost of Living Adjustment (A) or the allowed 7% maximum. However, in years of 0% A adjustments, the owner will be allowed to request a rent increase of a maximum of 2%. Please visit https://www.ssa.gov/OACT/A/CPaseries.html for previous year adjustments.

Part 7.3 - Resident Leases

Any resident occupying a LIHTC unit must be income certified and subject to a lease agreement.

A. Lease Terms

At a minimum, the lease language should include (but is not limited to):

- The legal name of parties to the agreement and all other household members (all household members 18 and over must sign the lease);
- A description of the unit to be rented; must include unit/bedroom size, set-aside percentage, and unit address (if unit /bedroom size and set-aside percentage can be located on the TIC, it is not mandatory to be on the lease as well);
- the effective date of the lease (date of move-in or when the resident(s) take possession);
- the term of the lease;
- the rental amount plus any other amount paid by the tenant for parking, pets, air conditioning, etc.;
- The utility allowance requirements and monthly allowance being provided, including a clear breakdown of which utilities are owner-paid and which are resident-paid;
- the acceptable use of the premises;
- the rights and obligations of the parties, including the obligation of the household to certify annually to income as set forth in the LIHTC program requirements and the obligation of the household to notify management should there be any change in student status and/or household composition;
- Language addressing income decreases and increases (i.e., the 140% Rule), utility allowance increases/decreases and basic rent changes (in Rural Property or 236 Properties), or any other change and its impact on the resident's rent and eligibility.
- LIHTC Lease Addendum (Exhibit O) must be signed by the head of household. This signature by the head of the household serves as signature by all household members 18 and over.

- Language addressing pet policies that informs tenants whether or not pets are permitted (with an exception for assistance animals for disabled persons) and the consequences for violating pet policies. Or if pets are permitted, let tenants know that pets and service animals may be subject to certain rules and violation of these rules may be grounds for removal of the animal or termination of the animal owner's tenancy or both.

Please note that a lease may not contain provisions that relieve an owner/agent from liability for wrongful removal of a pet.

B. Lease Addendums – Program Requirements

It is strongly recommended that leases for LIHTC units include an addendum that contains specific provisions obligating the tenants to cooperate with the owner/management. These provisions should clearly set forth the tenant's responsibility to provide the information necessary to assess the household's eligibility to occupy a LIHTC unit.

At a minimum, the addendum should include:

- explanation of the LIHTC program;
- a place to list all of the certified tenants and language stating that only the tenants listed are permitted to occupy the unit and that management must be immediately notified of any changes to the household (these include, but are not limited to, changes in household members, income or assets, Full-Time Student status, need for live-in care attendant and rental assistance);
- language stating that any new household members are subject to eligibility requirements of the LIHTC program;
- language stating that eligibility of any new household member must be certified prior to the occupancy; and
- a provision defining eligibility requirements (e.g., annual recertifications) and the consequences of not promptly complying with such requirements.

C. The Violence Against Women Act (VAWA)

On March 7, 2013, The Office on Violence Against Women reauthorized The Violence Against Women Act (VAWA). This reauthorization improves and expands legal tools and grant programs addressing domestic violence, dating violence, sexual assault, and stalking. The effective date of grant-related changes is October 1, 2013. Please note that specific to the Low-Income Housing Tax Credit (LIHTC) and HOME programs, a key element of VAWA includes requiring public housing agencies (PHAs), assisted housing owners and managers to bifurcate leases of tenants residing in federally subsidized housing. This assists in evicting a tenant who engages in domestic violence, dating violence, sexual assault, or stalking without penalizing a victim of such criminal activity.

The VAWA 2013 reauthorization continues this lease policy, and now provides that if the person removed as a result of bifurcation was the sole eligible tenant, remaining tenants must have the opportunity to establish their eligibility for the program, or, if not eligible, be given a reasonable amount of time to find new housing. Public housing agencies (PHAs), assisted housing owners and managers are required to attach the HUD-approved Lease

Addendum, Form HUD-91067, which includes the VAWA provisions to each existing or new lease. For the HUD-approved Lease Addendum, Form HUD-91067, please review the link below:

VAWA Addendum HUD Form 91067 - HUD /U.S.

Form HUD-91067 must be signed by the head of household. This signature by the head of the household serves as signature by all household members 18 and over.

LIHTC and HOME are only two of a list of covered programs. For a full listing of covered programs and the entire VAWA 2013 reauthorization, please review the link below:

http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf

D. Initial Lease Term

There must be an initial lease term of no less than six full months on all LIHTC units. The six-month requirement may include free rental periods or rental concessions of a month or less. Succeeding leases are not subject to a minimum lease period but there must always be a lease in effect if a LIHTC unit is occupied (e.g., month-to-month is acceptable).

E. Single Room Occupancy

Single room occupancy housing ("SRO") must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas.

Federal rules allow for month-to-month leases for the following types of SRO housing for homeless individuals:

1.SRO units in properties receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;

2.SRO units intended as permanent housing and not receiving McKinney Act assistance; and

3.SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services.

F. Lead-Based Paint Certification (24 CFR Part 35)

All properties which are not exempt from the disclosure rule must provide tenants with the EPA/HUD/Consumer Product Safety Commission Lead Hazard Information Pamphlet *(Protecting Your Family from Lead in Your Home)* or an EPA-approved equivalent. Prior to occupancy, each household must execute a Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards Lead Warning (Exhibit N). A fully executed copy of such document must be retained in each household's file.

Please note that if a property is built before 1978 and has been rehabbed, Exhibit N is still required.

There is some confusion regarding Lead Abatement vs. Lead Renovation, Repair, and Painting (RRP). Abatement, as defined by the EPA, is a specialized activity designed to address lead and permanently eliminate lead-based paint hazards. RRP activities disturb paint as a consequence of the activity, but they are often undertaken for reasons unrelated to lead issues or as an interim control measure to minimize lead hazards. RRP is not designed to permanently eliminate lead-based paint hazards. Encapsulating (RRP) of the hazard is not a permanent solution nor does it eliminate the hazard.

The following properties are exempt from the lead-based paint disclosure rule:

1. residential structures built after January 1, 1978 (Congress banned the use of lead-based paint for residences after this date);
2. rental property found to be lead-based paint free by a lead-based paint inspector certified under the federal certification program or under a federally accredited state or tribal certification program (certification is a legal requirement);
3. zero-room dwelling units, including SRO units;
4. housing specifically designated for the elderly or persons with disabilities, unless a child under the age of 6 resides or is expected to reside in the unit; and
5. short-term leases of 100 days or less when no lease renewal or extension can occur.

Part 7.4 - Property Signs

All property signs must be in good condition.

At a minimum, property signs in place prior to 2004 should include the property name and the Fair Housing logo.

At a minimum, property signs built or put in place after 2004 should include the on-site office phone number and/or manager's emergency contact phone number, the local TDD number, the Fair Housing logo, and the handicap logo (if applicable).

Part 7.5 - Record Keeping

Owners are required, by IRS Regulation 1.42-5(b)(2) Code, to keep records for each qualified low-income building in the property. The records must show the following for each year in the Compliance Period:

•the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);

•the percentage of units in the building that are low-income units;

•the rent charged on each unit in the building (including Utility Allowances, with supporting documentation);

- the number of occupants in each low-income unit;
- the low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;
- the annual income certification of each qualifying low-income resident;
- documentation to support each qualifying low-income resident's income qualification;

- the eligible basis and qualified basis of the building at the end of the first year of the Credit Period; and
- the character and use of the non-residential portion of the building included in the building's Eligible Basis.

Part 7.6 - Record Retention

The owner is required, by IRS Regulation 1.42-5(b)(2) Code, to retain the records described above for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

The records for the first year of the Credit Period must be retained for a minimum of six years after the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period, which means the first-year records must be retained for a total of 21 years.

Electronic storage of documents is acceptable as long as hard copies of ALL initial qualifying documentation, and all resident file documentation is readily available for review by the compliance staff.

Part 7.7 - Pet Policy

If the property allows pets, the following pet policy is in effect:

An owner or management agent may not discriminate against prospective tenants in admission to or current tenants in continued occupancy of housing because a person or a person in their family owns or keeps a common household pet. An owner/agent must develop proposed rules to govern the owning or keeping of common household pets. The property's pet rules must not conflict with state or local laws or regulations governing pets. If a conflict exists, the state or local laws or regulations must be applied.

The term "common household pet" means a domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. If this definition conflicts with any applicable State or local laws or regulations defining the pets that may be owned or kept in dwelling accommodations, the State or local laws or regulations must be applied.

A. Assistance Animal Exclusion

An owner/agent may apply or enforce house pet rules developed in accordance this handbook against individuals with animals that are used to assist handicapped persons (e.g., guide dogs for persons with vision impairments, hearing dogs for persons with hearing impairments, and emotional support animals for persons with chronic mental illness).

An owner/agent may require tenants to qualify for this exclusion by certifying the following items. If a tenant certifies to the following, the owner/agent must grant an exclusion:

- The tenant or a member of his/her family is handicapped, and;
- The animal has been trained to assist persons with that specific handicap, and;
- The animal assists the handicapped individual.

An owner/agent may make no determination as to whether the pet's therapeutic value is inappropriate to the pet owner or the interests of the property or existing tenants.

B. Prospective Tenant's Rejection of a Unit

An applicant for tenancy in a property may reject a unit offered by an owner/agent if the unit is in close proximity to a dwelling unit where an existing tenant owns or keeps a common household pet.

An applicant's rejection of a unit under this section will not adversely affect his/her application for tenancy in the property, i.e., his/her position on the property waiting list, and qualification for any tenant selection preference, etc.

The owner/agent may serve a written notice of a pet rule violation on the pet owner if an owner/agent determines based on objective facts supported by written statements that a pet owner has violated a pet rule governing the owning or keeping of a pet.

C. Notice of Pet Removal

An owner/agent may serve a notice for the removal of the pet if they are unable to resolve the pet rule violation at the meeting, or it is determined that the pet owner has failed to correct the pet rule violation.

D. Initiation of Procedures to Terminate a Pet Owner's Tenancy

The property owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation unless the pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period and the pet rule violation is sufficient to begin procedures to terminate the pet owner' s tenancy under the terms of the lease.

E. Pet Policy Inclusions

The owner/agent may place a reasonable limitation on the number of common household pets that may be allowed in each dwelling or group home as well as the pet size, type and weight. Group home is defined as a small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically handicapped.

The pet rules may require a tenant who owns or keeps a cat or dog in their unit to pay a refundable pet deposit.

The pet rules may permit an owner/agent to impose a separate pet waste removal charge up to $5.00 per occurrence on a pet owner who fails to remove pet waste in accordance with the prescribed pet rules.

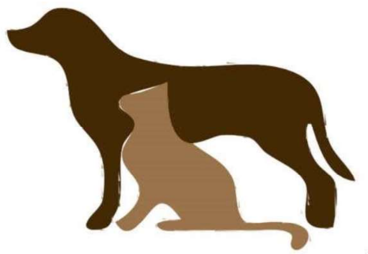
The pet rules may require pet owners to license their pets in accordance with applicable State or local laws or regulations.

F. Pet Deposit

Pet deposit must not exceed $300.00 (HUD 4350.1 32-14). This amount was set by publication of a notice in the Federal Register by HUD and may change periodically with future publications. Pet deposits may be used to pay reasonable expenses. An owner/agent may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the property, including but not limited to:

- The cost of repairs and replacement to, and fumigation of, the tenant's dwelling unit.
- The cost of animal care facilities or the protection of a pet.

The owner must refund the unused portion of the pet deposit after the tenant moves out of the property or no longer owns or keeps a dog or cat in the dwelling unit.



CHAPTER 8 – EXTENDED USE PERIOD

Part 8.1 - Definitions Compliance Period

The Internal Revenue Code Section 42(j)(1) defines the term “compliance period” as the period of 15 taxable years beginning with the 1st taxable year of the credit period. The first year of the compliance period is the first year in which the owner claimed credits. Owners should rely on Form 8609, filed with the IRS, to determine the first year of credits.

Extended Use Period (EUP)

MHDC defines the term “extended use period (EUP)” as beginning on the 1st day following the initial “compliance period” and ending on the date specified by the LURA.

Period of Affordability

Section 42(h)(6)(D) defines the term "extended use period" as the period beginning on the first day in the compliance period on which the building is part of a qualified low-income housing property and ending on the later of (1) the date specified by the agency in the extended low-income housing commitment, or (2) the date which is 15 years after the close of the compliance period.

Compliance Period + Extended Use Period = LIHTC Period of Affordability

Part 8.2 - Owner Responsibilities

The owner must ensure that the property meets certain requirements and Uniform Physical Condition Standards (UPCS) during the EUP. These requirements are to:

1. Ensure the property is managed in accordance with the LIHTC regulations and requirements agreed to during the allocation process for the duration of the EUP. Violation of the requirements may result in default on a loan and suspension of further utilization of MHDC resources.
2. Guarantee that all units are suitable for occupancy by meeting UPCS standards, local health, safety and building codes, and ensure that the on-site management team complies with all applicable rules, regulations, and policies. This includes following policies and regulations pertaining to disclosure of lead-based paint and asbestos, and/or remediation where required.
3. Advise MHDC of and receive prior approval for any changes in ownership or management. Failure to obtain prior written approval of these changes is considered an act of noncompliance subject to issuance of an 8823 and may be considered grounds for suspension or debarment from future participation in MHDC programs. After receipt of MHDC approval for any changes, provide a Notice of Change in Ownership (Exhibit EUP 4) prior to ownership transfers. Such a transfer agreement puts new ownership on notice that the property is subject to compliance restrictions and monitoring.

4. Ensure that a duly executed management certification and management entity profile is always in force. Prior written approval of MHDC is required to implement changes to the management certification.
5. Certify that the property is being managed in accordance with all applicable federal, state, and local fair housing laws.
6. Assume liability for any instances of noncompliance and the correction of such deficiencies.
7. Provide MHDC the EUP Certification of Owner Compliance (Exhibit EUP 2) and annual Occupancy Report (Exhibit EUP 3) through Certification Portal (CP) in accordance with the seasonal reporting schedule. Owners that do not report online are to provide the EUP Certification of Owner Compliance (Exhibit EUP 2) and Annual Occupancy Reports (Exhibit EUP 3) for non-internet reporting in accordance with the seasonal reporting schedule. Exhibit EUP 2 is located at

http://www.mhdc.com/program_compliance/LIHTC/forms-documents.htm and EUP 3 is located at http://www.mhdc.com/program_compliance/LIHTC/formsdocuments.htm.

The seasonal reporting schedule is as follows and is based on the year the last building is placed in service:

SEASONAL REPORTING SCHEDULE			
Placed-In- Service Date	***Activity Period Covered***	***CP Report Due Date***	***Exhibit A & K Due Date***
1990, 1991, 1992, 1993, 2006, 2010, 2014, 2018, 2022, 2026, 2030, 2034, 2038, 2042	April 1 – March 31	April 15	April 30
1994, 1995, 1996, 1997, 2007, 2011, 2015, 2019, 2023, 2027, 2031, 2035, 2039, 2043	July 1 – June 30	July 15	July 31
1998, 1999, 2000, 2001, 2008, 2012, 2016, 2020, 2024, 2028, 2032, 2036, 2040, 2044	October 1 – September 30	October 15	October 31
2002, 2003, 2004, 2005, 2009, 2013, 2017, 2021, 2025, 2029, 2033, 2037, 2041, 2045	January 1 – December 31	January 15	January 31

Part 8.3 - The Management Agent

The management agent is responsible for properly implementing LIHTC and MHDC program requirements in the EUP, and must comply with all federal laws, rules and regulations governing certification and leasing procedures. The management agent is required to provide all necessary and required information to MHDC; this includes submission of various program compliance reports within specified time frames. Further, if the management agent determines that the property is not in compliance with LIHTC Program requirements in the EUP, the Asset Management Department must be immediately notified in writing to:

Asset Management
Physical Property Compliance
505 N. 7th Street, 20th Floor, Ste. 2000, Suite 300 St. Louis, MO 63101

A duly executed management certification, and management plan is required to be in place at the onset of leasing activity and continually throughout the affordability period. Prior written approval of MHDC is required to implement changes to the management certification.

Part 8.4 - M HDCAsset Management Department

The MHDC Asset Management Department is responsible for compliance monitoring of properties that receive LIHTC Program funding. This department performs the following functions:

1. Notify owners and management agents upon the property entering EUP.
2. Receive, review and file all documentation and certifications required for compliance during the EUP by owners, developers, and management agents.

3. Initiate, schedule, and conduct on-site physical, management and file reviews.
4. Provide LIHTC Program compliance monitoring staff to serve as a point-of-contact for information for owners, developers, and management agents during EUP.
5. Notify owners when the property is found to be out of compliance with IRS, HUD or MHDC requirements, including submission of reports or other requested information.
6. Ensure that property certifications and other records are retained for the applicable record retention period.

Part 8.5 - Summary Of Extended Use Period Changes

The owner agreed to comply with the originally recorded LURA and during the EUP certain changes to the regulatory agreement may be allowed. Based on the requirements of the LURA, specified in Section 42 regulations and the agreement itself, MHDC has the authority to set policy for certain criteria during the EUP. In summary, MHDC will require the following:

1. An annual recertification is no longer required on 100% Low Income Housing Tax Credit properties. Please note, this is property wide, not unit specific. If any unit has any other type of funding, it is considered a mixed-use property.
2. An annual recertification on mixed-use properties only. MHDC will accept, in lieu of income/asset verification, a self-certification from the household (acknowledged by management) attesting to continued compliance with income restrictions. The MHDC Exhibit B Tenant Income Certification form must be completed along with the self-certification.
3. An initial income certification on all new move-ins as described in the MHDC Low Income Housing Tax Credit compliance manual.
4. Student rules, as defined by Section 42, will no longer apply. Please note that other programs with student rules must be adhered to.
5. Unit transfers from building to building are allowed. Please be advised that if the owner has elected “no” on line 8b of Form 8609, then residents may not transfer between buildings. If a household wants to move to another building, they must be treated as a new move-in and re-qualified for the program based on current circumstances.
6. Mixed-use properties will be required to monitor the set-asides of low-income units.
7. The available unit rule no longer pertains to “comparable or smaller size”. The amended rule provides that if a household’s income goes over 140% of the applicable AMI, a currently vacant unit or the next unit in the same building must be rented to a qualifying household.
8. Rent increases will no longer be reviewed annually. MHDC Program Rent Limits will apply with a final Schedule II from MHDC.
9. Annual and financial statements will no longer be required by the tax credit program although loan requirements still apply.
10. Tax credit income restrictions will apply although MHDC may, as deemed necessary, authorize income waivers upon request.
    - A request for an income waiver to 80% of area median income adjusted for family size must be in writing, outline the factors the owner/owner agent believes contributed to the need to request the income waiver and provide support for the items outlined on the waiver request.
    - Owners should note that properties which are in the 3-year decontrol period, the “opt out” process, or have additional restrictions or special circumstances may not be eligible for an income waiver.
    - Please be aware that the 80% income limits will be determined solely by HUD.

For the purpose of determining an income qualified household MHDC will only use the HUD 80% income limits found at: http://www.huduser.org/portal/datasets/il.html and more specifically http://www.huduser.org/portal/datasets/il/il10/mo.pdf.

- Income waiver requirements are located at http://www.mhdc.com/program_compliance/LIHTC/forms-documents.htm.
- The request for an income waiver is submitted by completing the Income Waiver Request Form (Exhibit EUP 6) located at http://www.mhdc.com/program_compliance/LIHTC/forms-documents.htm.

The Income Waiver Request Form (Exhibit EUP 6) and required documentation must be sent to:
Missouri Housing Development Commission
Asset Management Program Compliance
920 Main
Kansas City, MO 64105

This waiver only applies to LIHTC-designated units within the property. The owner/owner agent must ensure that residents in HOME, Section 8, Section 236 or other income restricted units continue to maintain those program specific guidelines.

11. Physical inspections and file reviews will be performed every five years or as deemed necessary by MHDC staff.
    - Physical Inspection - a minimum of 3 units chosen at random or a maximum of 10% of the low-income units not to exceed 15 units in any development. Evidence of deficiency trends may trigger additional unit inspections.
    - File Review – MHDC will no longer limit the review to files related to the inspected unit. New move-ins will require income and asset verifications. Recertification files on mixed-use properties will require a self-certification at minimum. Files may be chosen at random. Evidence of deficiency trends may trigger additional file reviews.
12. MHDC will rely on Section 8 or Rural Development inspection reports for those properties with layered financing or rental assistance provided by either agency.

Part 8.6 - Consequences Of Noncompliance During Eup

IRS Form 8823 has been amended to reflect agency-defined language. Evidence of noncompliance reported through an 8823 may result in suspension or debarment from participation in future MHDC programs and may be reported to other agencies inquiring of the compliance status of the owner or manager.

MHDC's mission is to provide strength, dignity, and quality of life through the partnerships that we have created in the affordable housing industry. It is our intent to create more relaxed compliance criteria during the extended use period as a means of reducing the administrative burden on the owners and managers of Low-Income Housing Tax Credit properties. These efforts ensure the longevity of the affordable housing program and therefore provide quality affordable housing to the citizens of Missouri.

Things I should remember.

CHAPTER 9 – QUALIFIED CONTRACT PROCESS

Part 9.1 - Background

Properties in the tax credit program beginning with the tax year 1990 have a 30-year period of affordability which consists, at minimum, of a 15-year mandatory compliance period and a 15 year extended use period (EUP). However, the mandatory compliance period can be greater than 15 years. Depending on owner elections in the Land Use Restriction Agreement ("LURA"), it may be possible for an owner to opt-out of the tax credit program after the expiration of the mandatory compliance period. If in the LURA an owner elects the right to request a qualified contract after the end of the mandatory compliance period, the owner may begin the QCP no earlier than January 1, of the last year of the mandatory compliance period.

A qualified contract is a bona fide contract to acquire a low-income housing tax credit property for the sum of the existing debt, adjusted investor equity and other capital contributions less the property cash distributions as set forth in IRC §42(h)(6)(F). The QCP will establish the minimum price for the property required by IRC Section 42.

Please note: In order for a property to exit the tax credit program via the qualified contact process, any MHDC financing (Fund Balance/HOME, etc.) existing on the property must be paid off first, and subject to the remaining affordability period, if any.

If it is a property that will convert to homeownership following opt out and pay off of any financing, the homes may be sold subject to a deed restriction for the remaining affordability period, if any.

For deals that pre-date MHDC's homeownership conversion policy/guidelines but would like to sell homes to existing residents, please contact us to determine the conversion requirements.

PART 9.2 - Application Process

Instructions and the checklist for the QCP can be reviewed by reading the Qualified Contract Request Application Instructions (Exhibit QCP-1). The QCP begins with the submission of the Qualified Contract Request Notification (Exhibit QCP-2), Qualified Contract Request Application (Exhibit QCP-3) and Qualified Contract Worksheets (Exhibit QCP-4).

The Qualified Contract Request Application must be submitted with the required items below:

- Proof that the property is eligible to request a qualified contract according to the LURA;
- Property Information (Name, Address, # of Buildings in Property, Building PIS Date, Building Identification #, 1st Year Tax Credits Claimed);
- First year 8609's showing Part II completed;
- Ownership/Partnership Information;
- Proof that the partnership agreement or other legal document does not grant any form of preference for purchasing the property (for example, a right of first refusal granted to a nonprofit partner);
- Proof that the partnership agreement or other legal document does not provide for any form of agreement to sell the property for less than Fair Market Value;
- Proof that the property is not restricted by any other affordability restrictions (i.e., USDA Rural Development, state/local funding, or property-based assistance);
- Copies of all pending 8823's with evidence of resolution;

- Documentation of the completed 100 percent inspection and correction of all deficient items dated no earlier than six months prior to submission of the Qualified Contract Request Application;
- Proof of payoff if the property received gap financing from MHDC (i.e., HOME; MHDC Fund Balance; etc.);
- Narrative Descriptions of the property to include financing, equity contributions, unit structure and current rent levels, occupancy levels, and market conditions;
- Exterior and interior photos;
- Location Map;
- Site plan;
- Name and contact information of the current Owner and Management Company and
- The Non Refundable Administrative Fee (see chart below).

NON REFUNDABLE ADMINISTRATIVE FEE

Development Size	Fee
1-12 units	$ 500
13-24 units	$1,000
25-47 units	$1,500
48+ units	$3,500

Once the Qualified Contract Request Notification (Exhibit QCP-2), Qualified Contract Request Application (Exhibit QCP-3); and Qualified Contract Worksheets (Exhibit QCP-4) are received, the property will be scheduled to undergo a 100 percent physical inspection. Please note, the Qualified Contract Agreed Upon Procedures (Exhibit QCP-5) must be reviewed as it contains an overview of agreed upon accounting procedures for the QCP calculation.

PART 9.3 - Qualified Contract Price (QCP) Worksheets

All calculations must follow the IRS code. All assumptions must be reasonable and customary. The following assumptions must be used when calculating the QCP using worksheets A-E. Worksheets A-E must be submitted and include appropriate back-up documentation (i.e., loan statements; K-1s; partnership agreements; financial statements; appraisals; assessed valuations; etc.).

Completed QCP Worksheets include:

- **Worksheet A Outstanding Indebtedness**-Include the unpaid balance of all secured and unsecured indebtedness; the supporting documentation needed is mortgage statements; financial statements, etc.
- **Worksheet B Calculation of Adjusted Investor Equity**-Include investment amounts for all year's taxpayer was required to invest and the extent the investment amount is included in the adjusted basis of the property. The investment amount should be increased by the applicable cost of living adjustment percentage set forth by US Department of Labor Statistics and calculated per the guidance under IRC Section 42; the supporting documentation needed is partnership K-1s; financial statements, partnership agreements, etc.

- **Worksheet C Other Capital Contributions**-Include other contributions that were not required to be submitted on Worksheet A or B. For this purpose, capital contributions are not limited to cash. Therefore, include amounts to replace capital items not paid from reserves i.e., furnace; land; etc. The supporting documentation would include invoices; financial statements; tax returns; HUD settlement statement; and other information to support amount.
- **Worksheet D Cash Distributions-** Include all cash distributions made with respect to the property but also all cash that is available for distribution; all cash legally required by restrictions or regulatory agreements to remain with the property following the sale; The supporting documentation needed is partnership K-1s; financial statements; etc.

- **Worksheet E Fair Market Value**–Include Fair Market value on non-low-income portion of buildings including total land cost. This amount needs to be determined by a certified appraiser. Using assessed valuation of land from county/city assessor's office in lieu of appraisal is acceptable for properties with 12 units or less.

MHDC will notify the owner in writing of any deficiencies in the submission. The owner must respond within 30 days. If outstanding items are not corrected or received by year end the owner must submit a new application. The 90-day period to find a qualified buyer will <u>not</u> begin until all items required have been submitted, fully supported, and approved by MHDC.

Upon approval of the above-listed items, there will be a waiting period for release of the LURA by MHDC. MHDC will post the property information on the agency website to notify any potential buyers.

If MHDC presents a prospective buyer to the owner, the owner must agree to allow the prospective buyer to inspect all relevant documents pertaining to the property. If the owner rejects an offer at or above the Qualified Contract Price, the development will remain affordable throughout the term of the LURA") recorded against the property. If no buyer is found, MHDC will release the LURA, and the three-year decontrol period begins after the release has been recorded. MHDC will notify the owner of the beginning of the decontrol period.

PART 9.4 - Disqualification of Qualified Contract

Owners may choose to cancel the QCP at any time during the process. However, MHDC may determine that an owner cannot submit another request. MHDC must have continuous cooperation from the owner in respect to all aspects of property information, financial statements, and tax returns. Lack of cooperation will cause the processing of the QCP to be terminated.

Additionally, if requests for missing information remain outstanding and the QCP has not been approved by year end, the process will be terminated, and the owner will need to resubmit the QCP for consideration.

In the event of a QCP suspension due to noncompliance or audit, the property must be maintained and operated under the extended use agreement.

PART 9.5 - Three Year Decontrol Period

Following notification from MHDC of LURA release, the owner must implement and comply with the three-year decontrol period procedures according to IRC§ 42(h)(6)(E)(ii).

The information below can be submitted on the Annual Owners Certification of Continuing Compliance (Exhibit 3YDP).

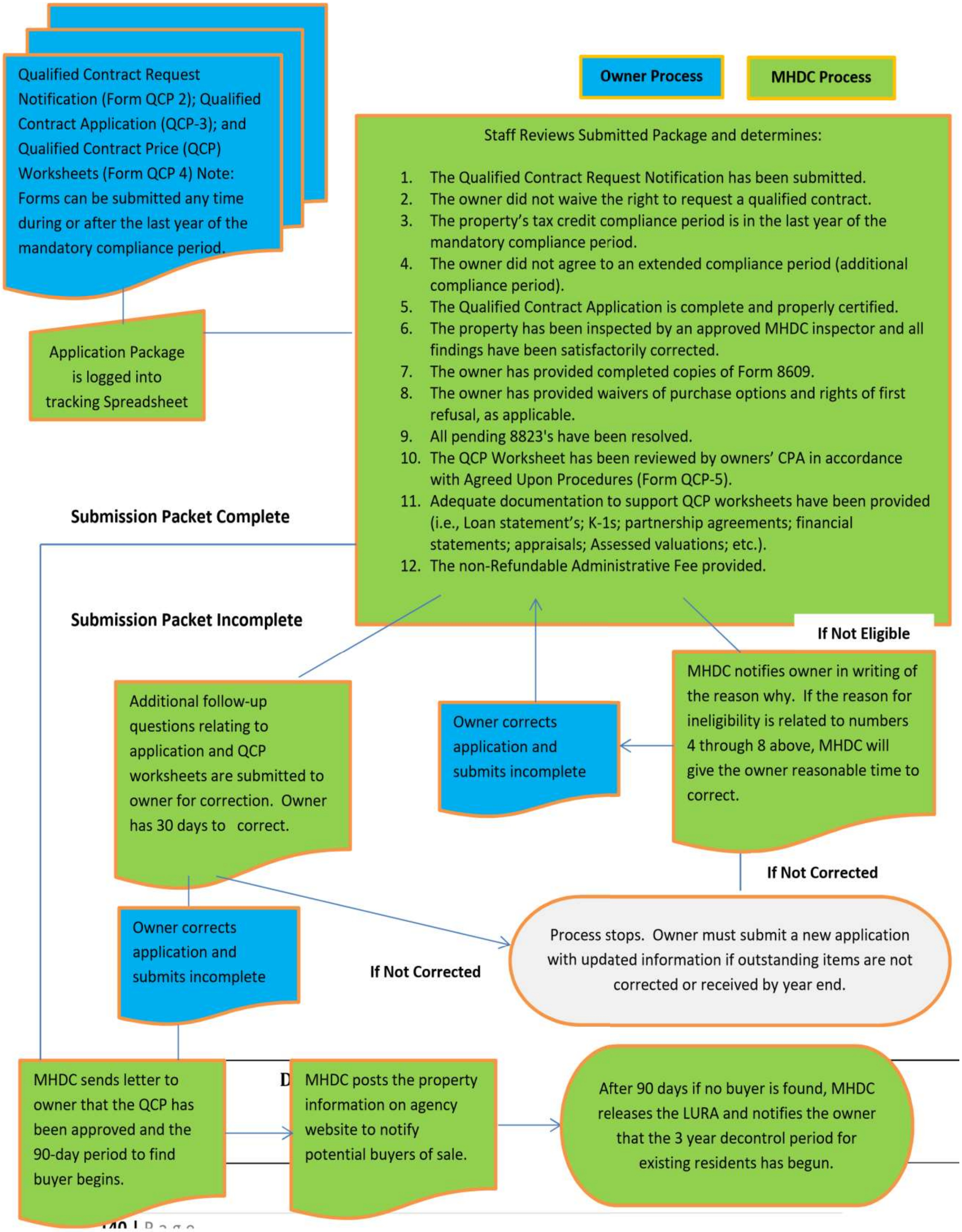
The three-year decontrol period procedures are as follows:

- The owner certifies that none of the existing residents have been evicted without good cause.
- The owner certifies that rent amounts for the existing residents have not increased more than 7 percent per annum.
- The owner certifies the number of vacant units at the end of the reporting period; except for the first report, when the number of vacant units is the beginning number at the start of the decontrol period.
- The owner submits a list of existing residents, rent amounts, lease dates and unit numbers (i.e., current rent roll).

The Exhibit 3YDP items must be submitted annually to:

Missouri Housing Development Commission
Asset Management
505 N. 7th Street, 20th Floor, Ste. 2000
St. Louis, MO 63101

Notes



NOTE: All properties must complete their <u>mandatory</u> compliance period before the LURA is released, i.e.,, a QCP approved in March of Year 15 would not be eligible to be released until the first day of Year 16, thus resulting in a waiting period longer than 90 days.

CHAPTER 10 - Glossary

100% Tax Credit property: A property in which all units are LIHTC qualified units (i.e., there are no market rate units).

140% Rule: If upon recertification, a low-income household's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the property same building is rented to a qualified low-income household.

240-day Window: For acquisition/rehabilitation properties, the owner may certify households as eligible up to 120 days prior to the date of acquisition (using the current income limits) or up to 120 days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition.

20%/50% Test: Twenty percent (20%) or more of the residential units must be rented to households with gross annual income of 50% or less of the Area Median Income adjusted for family size.

40%/60% Test: Forty percent (40%) or more of the residential units must be rented to households with gross annual income of 60% or less of the Area Median Income adjusted for family size.

8609: The IRS Form entitled "Low-Income Housing Credit Allocation and Certification." Part I of the Form 8609 is completed by MHDC and issued to the owner so that credits may be claimed. Part II of the Form 8609 is completed by the owner and the elections made in Part II are important for ongoing compliance. The owner files Form 8609 with the IRS each year of the Credit Period.

8823: The IRS Form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition". Form 8823 is filed by MHDC to the IRS in order to report instances of noncompliance or building disposition.

8823 Guide: Common name for the IRS guidebook entitled Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised October 2009*. While the guide is not considered legal authority, it does provide valuable information regarding the state agency's responsibilities in determining noncompliance and reporting that noncompliance to the IRS.

Adjusted Basis: The cost basis of a building adjusted for capital improvements minus depreciation allowable.

Allowable Fee: A fee that may be charged to tax credit residents. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.

Annual Household Income: The combined anticipated, gross annual income of all persons who intend to reside in a unit.

Annual Income: Total current anticipated income to be received by a resident from all sources including assets for the next twelve (12) months.

Annual Income Recertification: Document by which the resident recertifies his/her income for the purpose of determining whether the resident will be considered low-income according to the provisions of the LIHTC Program.

Applicable Credit Percentage: Although the credits are commonly described as 9% and 4% credits, the percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month.

Applicable Fraction: The portion of a building that is occupied by low-income households. The Applicable Fraction is the lesser of a) the unit fraction, defined as the ratio of the number of low-income units to the total number of units in the building or b) the floor space fraction, defined as the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

Applicant: Any owner, principal or participant, including any affiliate associated with a property, that is seeking an award of LIHTCs. A prospective resident who has applied for residency at a property.

Application: Form completed by a person or family seeking rental of a unit in a property. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and MHDC guidelines.

Assets: Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household.

Asset Income: The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

Available Unit: A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

Certification Year: The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

Compliance: The act of meeting the requirements and conditions specified under the law and the LIHTC program requirements.

Compliance Period: The time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance. The property's first fifteen (15) taxable years.

Correction Period: A reasonable time as determined by MHDC for an owner to correct any violation as a result of noncompliance.

Credit: Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Credit Period: The period of ten (10) taxable years during which credit may be claimed, beginning with:

1) the taxable year the building is placed-in-service; or

2) at the election of the taxpayer, the succeeding year, but only if the building is a Qualified Low-Income Building as of the close of the first year of such building, and remains qualified throughout succeeding years.

Current Anticipated Income: Gross anticipated income for the next twelve (12) months as of the date of occupancy or recertification, including asset income.

Date of Acquisition: The date on which a building is acquired through purchase.

Declaration of Extended Low-Income Housing Commitment: The agreement between MHDC and the owner restricting the use of the property during the term of the LIHTC Extended Use Period.

Developer: Any individual and/or entity who develops or prepares a real estate site for residential use to be an LIHTC property.

Property: Rental housing property receiving a LIHTC allocation.

Due Diligence: The appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of resident income, independent audits, and timely recordkeeping. MHDC expects all LIHTC Properties to demonstrate due diligence.

Earned Income: Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises and any other compensation. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included.

Educational Organization: An institution that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried out. This term includes elementary schools, junior and senior high schools, leges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses but does include online educational institutions.

Effective Date of Resident Certification: The date the TIC becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertification, this date must be the anniversary date of the move-in.

Effective Term of Verification: A period of time not to exceed one hundred twenty (120) days. After this time, if the resident has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at the time of Resident's Income Certification.

Eligible Basis: The Eligible Basis of a qualifying property generally includes those capital assets incurred with respect to the construction, rehabilitation, or acquisition in certain circumstances, of the property, minus non-depreciable costs such as land and certain other items such as financing fees. While it may not include any parts of the property used for commercial purposes, it may include the cost of facilities for use by residents to the extent there is no separate fee for their use, and they are available to all residents. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

Eligible Basis is reduced by an amount equal to the portion of a building's adjusted basis which is attributable to non-low-income units which exceed the average quality standard of the low-income units unless the cost of building the market rate units does not exceed the cost of the average low-income units by more than 15% and the excess cost is excluded from Eligible Basis.

Under IRC 42(d)(5)(A) the Eligible Basis is further reduced by the amount of any federal grants applied towards the property, and should the owner so elect, it may be reduced by "federal subsidies" to take advantage of the higher applicable LIHTC percentage. It is determined without regard to depreciation.

Eligible Resident: The current resident(s) of the unit, so long as that resident(s) is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a resident whose income would not currently qualify under Section 42, but who was qualified at the time of resident's original occupancy of the unit.

Employment Income: Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job.

Empty Unit: A unit that is designated as a tax credit unit but has never been occupied by a qualified LIHTC household.

Extended Use Period: The time frame which begins the first day of the initial fifteen (15) year Compliance Period, on which such building is part of a qualified low-income housing property and ends fifteen (15) years after the close of the initial Compliance Period, or the date specified by MHDC in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

Extended Use Policy: The set of compliance rules and monitoring procedures for Properties that have entered their Extended Use Period. For more information see Chapter 8.

Fair Market Value: An amount which represents the true value at which a property could be sold on the open market.

First Year of the Credit Period: Either the year a building is placed-in-service, or, at the owner's option, the following year.

Floor Space Fraction: The fraction, the numerator of which is the total floor space of the low-income units in the building, and the denominator of which is the total floor space of the residential rental units (whether occupied or not) in the building. The floor space fraction is compared to the unit fraction when computing the Applicable Fraction. The Applicable (Please correct the spacing of this sentence.)
Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Foster Adult: A foster adult is usually an adult with a disability who is unrelated to the tenant family and who is unable to live alone.

Foster Children: Children that are in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet are cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency. These children will generally remain in foster care until they are reunited with their parents, or until their parents voluntarily consent to their adoption by another family, or until the court involuntarily terminates or severs the parental right of their biological parents, so that they can become available to be adopted by another family. Therefore, the parental rights of the parents of these children may or may not have been terminated or severed, and the children may or may not be legally available for adoption.

Full-time Student: Any resident or applicant who is, was, or will be a full-time student at an educational organization for parts of five calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization at which the student is enrolled.

Full-time Student Household: A household in which all residents/applicants are full-time students.

Good-cause Eviction: Tax credit households cannot be evicted or have their tenancy terminated without "good-cause," generally considered material violation of the lease. The actions that constitute good-cause for eviction or termination of tenancy must be given to the resident in writing at the time of occupancy, preferably in the lease, as well as in the property's Resident Selection Criteria.

Gross Income: See Annual Household Income.

Gross Rent Floor: The lowest rent limit that an owner will ever have to implement for a unit. For tax credit properties, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the property or on the allocation date. For bond properties, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the property or on the reservation letter date. If the HUD published rent limits decrease from year to year, the rent limit for a particular property never has to fall below its gross rent floor.

Gross Rent Floor Election Date: For tax credit properties, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the property or on the allocation date. For bond properties, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the property or on the reservation letter date.

Gross Rent: Resident-paid rent portion + utility allowance + any non-optional fees. The total gross rent must be at or below the applicable rent limit for the unit to be in compliance.

Guest: A visitor temporarily staying in a tax credit unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in Annual Household Income calculations.

HERA: The Housing and Economic Recovery Act passed by Congress on July 30, 2008. Among other things, this legislation added the HERA special income and rent limits, the recertification exemption for 100% tax credit properties, and the foster care student status exemption.

Household: The individual, family, or group of individuals living in the unit.

Imputed Income: The estimated earnings of assets held by a household using the potential earning rate (passbook rate) established by HUD.

Income Limits: The maximum income as published by HUD, used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction (30%, 40%, 50%, or 60%).

Initial Resident File: The file for the first household to occupy a unit. Initial resident files, also called first-year files, contain the records for the first year of the credit period and are important for demonstrating that the property was eligible to begin claiming credits. Initial resident files must be kept for twenty-one (21) years.

Initial Compliance Period: A fifteen (15) year period, beginning with the first taxable year in which credit is claimed, during which the appropriate number of units must be marketed and rented to LIHTC eligible households, at restricted rents.

In-place Household: A household that is already occupying a unit at the time of acquisition. Inspection: A review of a property made by MHDC or its agent, including an examination of records, a review of operating procedures, and a physical inspection of units.

Joint Venture: A combination of one or more independent entities that combine to form a new legal entity for the purpose of a property.

Lease: The legal agreement between the resident and the owner which delineates the terms and conditions of the rental of a unit.

LIHTC: Also, known as Low Income Housing Tax Credit (LIHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Live-in Care Attendant / Live-in Aide: A person who resides with one or more elderly, near- elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the resident, (b) must not be financially obligated to support the resident, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) & (c). A live-in care attendant for an LIHTC resident should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income.

Low-Income Household/Resident: Households whose incomes are not more than either 50% or 60% of the median family income for the local area adjusted for family size.

Low-Income Unit: Any unit in a building if:

1. Such unit is rent-restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code);
2. The individuals occupying such unit meet the income limitation applicable under subsection 42(g)(1) to the property of which such building is part;
3. The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

Management Company: A firm authorized by the owner to oversee the operation and management of the property and who accepts compliance responsibility.

Manager's Unit: Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the property. If the unit is considered a common area, the manager does not have to be income qualified, but no rent can be charged. If the unit is considered a tax credit rental unit, the resident manager must be income qualified, and rent can be charged for the unit.

Maximum Chargeable Rent (Net Rent): The applicable rent limit minus the utility allowance for resident-paid utilities and any other non-optional charges.

Median Income: A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

Minimum Set-Aside: The minimum number of units that the owner has elected and set forth in the Declaration of Low-Income Housing Commitment to be income and rent restricted.

Mixed-use Property: A property with LIHTC and market-rate units and/or other types of funding (HOME, MHDC fund balance, etc.).

Model Unit: A rental unit set aside to show prospective residents the desirability of the property's units without disturbing current residents in occupied units. The model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

Multi-building Property: A property in which multiple buildings are all considered to be part of one property. A property is a multi-building property only if the owner elected so by choosing "yes" on Line 8b of Part II of the Form 8609.

Next Available Unit Rule: (See definition under 140% Rule).

Noncompliance: The period of time that a property, specific building, or unit is ineligible for LIHTC because of failure to satisfy program requirements.

Non-optional fee: A fee charged for services/amenities that are mandatory (i.e., services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

Optional fee: A fee charged for an extra service or amenity that is elected by a resident. If the service or amenity is truly optional (i.e., it is not a condition of occupancy that the resident accept the service), then a fee may be charged without being included in the gross rent calculation.

Over-income Unit: Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

Owner: Any individual, association, corporation, joint venture, or partnership that owns a LIHTC property.

Passbook Rate: The HUD approved rate for imputing assets. The rate may change annually and can be found on the HUD website.

Placed-in-Service (PIS) Date: For buildings, this is the date on which the building is ready and available for its specifically assigned function, as set forth on IRS Form 8609. For new construction, the placed-in-service date is generally the date a building receives its Certificate of Occupancy. For acquisition, the placed-in-service date is the date of acquisition.

PHA: Public Housing Authority.

Property: A property may be all of the buildings in a property, or one particular building within a property, depending on the election made by the owner on Line 8b on Part II of Form 8609. If Line 8b is marked yes, then the building is part of a multi-building property. If Line 8b is marked no, then the building is considered its own property.

Protected Class: One of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are race, or, national origin, religion, sex, disability, and familial status.

Qualified Allocation Plan: The plan developed and promulgated from time to time by MHDC, which sets out the guidelines and selection criteria by which MHDC allocates LIHTC.

Qualified Basis: The portion of the Eligible Basis attributable to low-income rental units. It is equal to the Eligible Basis multiplied by the Applicable Fraction. The amount of Qualified Basis is determined annually on the last day of each taxable year. Note: This is the lesser of the Applicable Fraction/Occupancy Percentage:

a. the proportion of low-income units to all residential rental units; or

b. the proportion of floor space of the low-income units to the floor space of all residential rental units.

Qualified Low-Income Building: Any building that is part of a qualified low-income housing property at all times during the period beginning on the first day in the compliance period on which such building is part of such a property and ending on the last day of the compliance period with respect to such building (Section 42(c)(2)(A) of the Code).

Qualified Unit: A unit in a Qualified Low-Income Building occupied by qualified persons at a qualified rent.

Reasonable Accommodation: A change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations.

Reasonable Modification: A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the resident, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will be responsible for paying for the modifications.

Recapture: An increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements.

Referral Agreement: A property that includes units set-aside for special needs populations must enter into a Referral Agreement with a qualified organization that will provide services to the special need's population. The owner must agree to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set aside units occur at the property. The qualified organization must agree to: (a) refer qualified households to the property and (b) notify households of the vacancies of the set-aside units at the property.

Rent Limit: The HUD published the maximum amount that a resident can pay for rent, including a utility allowance and any non-optional fees.

Section 8: Section 8 of the United States Housing Act of 1937, as Amended.

Section 42: Section 42 of the Internal Revenue Code of 1986, as Amended, which establishes the Low-Income Housing Tax Credit Program.

Set-aside: Shall mean and require that units designated as "set-aside" for a specific population may be used only for the identified population and for no other. If qualified residents in the designated population are not available, the unit(s) must remain vacant.

Special Needs Populations: Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit property may have committed in writing to set aside a percentage of total units in the property to qualified residents who meet the state definition of "special needs population," and must equip each unit to meet a particular person's need at no cost to the resident.

Special needs populations include: 1. Persons with physical or developmental disabilities 2. Persons with mental impairments 3. Single parent households 4. Victims of domestic violence 5. Abused children 6. Persons with chemical addictions 7. Homeless persons 8. The elderly

Student: Any resident or applicant who is, was, or will be a full-time student at an educational organization for parts of 5 calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization in which the student is enrolled.

Subsequent Credit Allocation: A set of rehabilitation credits allocated to a property that has already completed an original credit period and fifteen-year compliance period. A property receiving a subsequent credit allocation begins a new ten-year credit period and fifteen-year compliance period. Existing residents are grandfathered into the new allocation without being recertified as new move-in events.

Tax Credit: A tax credit is a dollar-for-dollar reduction in the federal or state income tax liability of the owner. The tax credit amount is calculated by multiplying the Qualified Basis by the Applicable Credit Percentage. The credit percentage, determined monthly, changes so as to yield over a ten (10) year period, a credit equal to either 30% or 70% of the present value of the Qualified Basis of the building. An owner may elect to lock in the Applicable Credit Percentage either at the time a Commitment is made by MHDC, or at the time the allocation is made.

Resident: Any person occupying the unit.

Resident/ Unit File: Complete and accurate records pertaining to each dwelling unit, containing the application for each resident, verification of income and assets of each resident, the annual TIC for the household, utility schedules, rent records, all leases and lease addenda, etc. Any authorized representative of MHDC or the Department of Treasury shall be permitted access to these files.

Transient Use: A LIHTC unit is considered transient use and is out of compliance if the initial lease term is less than six (6) months. There are some exceptions where units with less than a 6-month term are considered non-transient (See page 42 of this manual).

Unearned Income: Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

Unit Fraction: The fraction, the numerator of which is the number of low-income units in the building, and the denominator of which is the number of residential rental units (whether or not occupied) in the building. The unit fraction is compared to the floor space fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Utility Allowance: An allowance representing the average monthly cost of resident-paid utilities for a particular unit size and type. Utility allowances include costs of heat, unit electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include the costs of telephone, cable television, or internet services. The utility allowance is added to resident-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit (utility allowance inclusive) must be at or below the applicable published rent limit. Acceptable utility allowance methods include a utility schedule published by HUD, Rural Property, or the PHA, or established by a letter from the utility company which states the rates, an MHDC estimate, the HUD Utility Schedule Model, or an Energy Consumption Model as calculated by an approved engineer or licensed professional. (Please correct the spacing of this sentence.)
The IRS requires that Utility Allowances be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146 “Section 42 Utility Allowance Regulations Update.”

Vacant Unit: A unit that is currently unoccupied but was formerly occupied by a qualified LIHTC household.

Vacant Unit Rule: Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set Aside requirement (as well as for determining qualified basis) provided reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income-qualified resident before any units in the property were or will be rented to a nonqualified resident. Management must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

Verification: Information from a third-party that is collected in order to corroborate the accuracy of information about income and/or assets as provided by applicants to a property.

ADDITIONAL RESOURCES

HUD Uniform Physical Condition Standards: Real Estate Assessment Center (REAC) | HUD.gov / U.S. Department of Housing and Urban Development (HUD)

REAC's Library | HUD.gov / U.S. Department of Housing and Urban Development (HUD)

If you or someone you know served in the U.S. Armed Forces, we encourage you to visit http://veteranbenefits.mo.gov or call (573) 751-3779 to learn about available resources.

APPENDIX

All forms may be accessed in either Word or PDF formats under Extended Use Period Forms on the MHDC website at http://www.mhdc.com/program_compliance/LIHTC/formsdocuments.htm

Exhibit EUP 2 EUP Owner Certification of Compliance

Exhibit EUP 3 Annual Occupancy Report (non-internet reporting only)

Exhibit EUP 4 Notice of Change of Ownership

Exhibit EUP 5 EUP Requirements for Income Waiver

Exhibit EUP 6 EUP Income Waiver Request Form

Exhibit QCP-1 Qualified Contract Request Application Instructions

Exhibit QCP-2 Qualified Contract Request Notification

Exhibit QCP-3 Qualified Contract Request Application

Exhibit QCP-4 Qualified Contract Worksheets

Exhibit QCP-5 Qualified Contract Agreed Upon Procedures

Exhibit 3YDP Annual Owners Certification of Continuing Compliance