



Housing Tax Credit

Compliance Handbook

2020

TABLE OF CONTENTS

Introduction	3
Handbook Overview	3
Owner Responsibilities	4
Housing Tax Credit Fundamentals.....	5
Monitoring Requirements	13
Compliance Overview	20
Resources and Links	45

INTRODUCTION

The Housing Tax Credit program, also known as the Low-Income Housing Tax Credit program, is a federal tax incentive designed to increase the supply of quality affordable rental housing. Created through the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code, the HTC program assists with the financing of development costs for eligible rental housing projects. Eligible projects include new construction, rehabilitation, or acquisition with rehabilitation.

The Ohio Housing Finance Agency is the allocating agency for the State of Ohio. Section 42 requires that state allocating agencies develop a Qualified Allocation Plan for the distribution of HTC within its jurisdiction. The QAP describes policies and procedures for the allocation of HTC to affordable rental housing developments and addresses specific state housing needs and priorities.

To comply with HTC program requirements, OHFA recommends that owners and management agents seek experienced legal and accounting advice. Complete regulations for HTC projects may be found in the IRS Code Section 42, HUD 4350.3, Treasury Regulation 1.42, IRS Revenue Procedures and Rulings, as well as the 8823 Audit Guide. A complete list of web links and resources are listed in the Appendices of this handbook.

This compliance handbook is a supplemental reference guide designed to answer general questions regarding procedures, rules, and regulations that govern OHFA's multifamily developments. Owners are responsible for ensuring the project(s) they own comply with all applicable local, state, and federal laws and regulations.

****DISCLAIMER****

The publication of this handbook 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 development will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. OHFA hereby disclaims 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 handbook. You are urged to consult with your own attorneys, accountants, and tax consultants.

HANDBOOK OVERVIEW

Compliance topics for OHFA multifamily rental programs, including the LIHTC program are addressed in this handbook. Although the Handbook is meant to serve as a general reference guide, owners and property management staff should always refer to IRC Section 42, HUD 4350.3, 8823 Audit Guide, updated Revenue Rulings and OHFA's policies and procedures for complete guidance.

Additional information about funding programs administered by the Ohio Housing Finance Agency can be found on the OHFA website at www.ohiohome.org.

OWNER RESPONSIBILITIES

Ongoing Administration, Recordkeeping and Notifications

The Housing Tax Credit recordkeeping requirements are outlined in **IRC 42**. Appropriate recordkeeping can prevent an owner from having noncompliance issues and may also help an owner when noncompliance is identified by evidencing a good faith effort to be in compliance.

Per the guidance issued by the IRS in **Revenue Procedure 97-22** and **Revenue Ruling 2004-82**, tenant records for each building must be kept and retained for the required period of time recommended by the IRS. For example, all tenant records for the first year of the credit period should be retained for a minimum of 21 years. Tenant files and records pertaining to years after year one should generally be retained for six years following the end of the tax year.

OHFA permits the electronic storage of records in lieu of hardcopies. However, hardcopy files should be maintained for all existing current households, and original hardcopies should be kept for all initial qualifying files for the project. Although electronic storage is permitted, OHFA requires hardcopy files onsite for all audits. OHFA recommends owners consult their legal and accounting advisors for guidance on recordkeeping practices and syndicator requirements.

The owner is responsible for keeping OHFA informed of any event that might affect the project's Housing Tax Credits throughout all phases of development, lease-up and operation. This includes the initial phases of construction, scheduled placed-in-service date, casualty losses (e.g., fire damaged unit), destruction of buildings, or the sale of the project.

The Owner is also responsible for ensuring adherence to IRC Section 42, HUD 4350.3, 8823 Audit Guide, updated Revenue Rulings, as well as OHFA's Policies and Procedures.

Monthly Tenant Data Reporting through DevCo

Owners are responsible for ensuring all current tenant level data for the previous month are recorded in DevCo by the 10th of the following month. Tenant level data (or events) can either be added manually or uploaded into DevCo.

OHFA encourages owners and management agents to update the tenant data as the events occur.

Ohio Brokers License

An Ohio Brokers License is required if a management entity does not have an owner interest in the project, does not run the property management company/agent or entity through a licensed Ohio broker, or is a third party managing a project. For further information please see **Ohio Rev. Code § 4735.022**.

Funding Agreements

The owner is responsible for understanding and implementing the restrictions and requirements for all funding agreements on the project. The owner is strongly encouraged to provide the management agents with copies of all funding agreements and ensure that all requirements are followed.

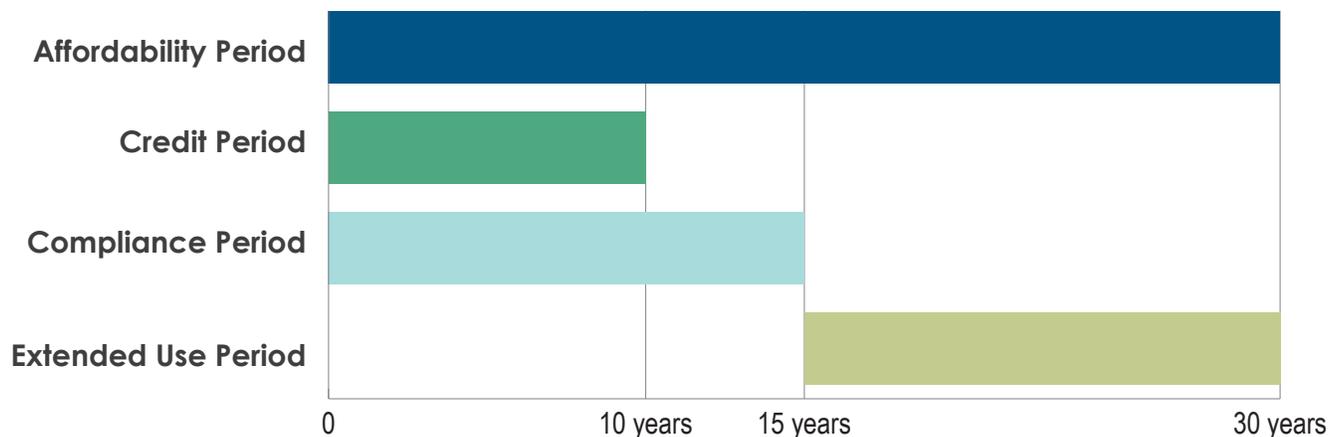
OHFA Communications

Owners and their designees are encouraged to sign up for email notices by joining our email list: <http://ohiohome.org/compliance/>. Current and archived updates are also accessible from the Compliance webpage. Owners are responsible for updates and changes posted on the website.

HOUSING TAX CREDIT FUNDAMENTALS

Housing Tax Credit Time Periods

There are distinct time periods for Housing Tax Credit projects – Affordability, Credit, Compliance and Extended Use. In order for an owner to receive all of their awarded Housing Tax Credits, the project must satisfy all IRC § 42 requirements for a Compliance Period of no less than 15 consecutive years. However, the owner must also agree to maintain the income and rent restrictions continuously through the Credit, Compliance and Extended Use Periods – the entire Affordability Period - by executing and recording a restrictive covenant on the project. Owners are required to file the restrictive covenant with the County Recorder in the county in which the project is located.



Affordability Period

The Affordability Period is at least a 30-year period in which the project owner agrees to maintain rent, income and all restrictions in accordance with the HTC program. The Credit, Compliance and Extended Use Periods are all within the Affordability Period.

Credit Period

The Credit Period is the accelerated period in which actual credits may be taken and extends 10 years from the first day of the first tax year in which credits are claimed. The Credit Period is the period over which the project's tax credits are claimed. A project's Credit Period typically starts the year it is placed in service, but the owner has the option of beginning its credit period the year after they place it in service (i.e., deferring the credit).

Compliance Period

The first year of a building's Compliance Period is also the first year of its Credit Period. The Compliance Period lasts for 15 years. It takes an owner 15 years to earn the Housing Tax Credits the IRS allows them to claim over the accelerated 10-year Credit Period. An owner must comply with all requirements established by the IRS and OHFA for the 15-year Compliance Period to fully benefit from the anticipated tax credits.

Extended Use Period

Extended Use Period is the 15 years (or more, if agreed to in the restrictive covenant) after the Compliance Period during which the project must continue to remain affordable. The Extended Use Period begins the first day the Compliance period ends and for projects receiving Housing Tax Credits in or after 1990 ends on either (1) the date which is 15 years after the close of the Compliance Period or (2) the date specified by OHFA, whichever is later.

Funding Types

There are several types of funding streams available for HTC and non-HTC projects. Most projects have complex layered funding and the owner is responsible for adhering to all individual funding agreements.

Types of OHFA funding may include:

Type of Funding	Key Terms
Housing Tax Credit (HTC)	<ul style="list-style-type: none"> Low-income housing tax credits 9% competitive or 4% non-competitive
Housing Development Funds (HDAP) <i>Housing Credit Gap Financing (HCGF)</i> <i>Bond Gap Financing (BGF)</i> <i>Housing Development Gap Financing (HDGF)</i>	<ul style="list-style-type: none"> Awarded on a competitive basis Gap financing that assists with development or preservation of affordable housing Gap Financing for 9% HTC Gap Financing for 4% HTC Gap Financing without HTC credits
HOME	<ul style="list-style-type: none"> Home Investment Partnership Program Federally funded Type of HDAP funding
Ohio Housing Trust Funds (OHTF)	<ul style="list-style-type: none"> Administered by OHFA Grants and Loans for a wide range of housing and homelessness services Type of HDAP funding
National Housing Trust Funds (NHTF)	<ul style="list-style-type: none"> Administered by the Ohio Development Services Agency (ODSA) Type of HDAP funding
Ohio 811 Project Rental Assistance (PRA) Program (811 Program)	<ul style="list-style-type: none"> Project-based subsidy to expand the supply of housing for extremely low-income individuals with disabilities
Ohio Department of Medicaid Subsidy Demonstration (ODMSD)	<ul style="list-style-type: none"> Project-based subsidy to expand the supply of housing for extremely low-income individuals with disabilities
Neighborhood Stabilization Programs (NSP)	<ul style="list-style-type: none"> Provides emergency assistance to stabilize communities with high rates of abandoned and foreclosed homes Assists households whose annual income is at or below 120% of area median income (AMI)
Tax Credit Assistance (TCAP)	<ul style="list-style-type: none"> Type of OHFA Gap Financing
Tax Credit Exchange (TCE)	<ul style="list-style-type: none"> Type of OHFA Gap Financing
Financial Investment Factor (FAF)	<ul style="list-style-type: none"> Type of OHFA Gap Financing
Capital Investment Program (CIP)	<ul style="list-style-type: none"> Designed to provide funding for minor renovations

Types of Non-OHFA Funding may include:

Type of Funding	Key Terms
U.S. Department of Housing & Urban Development (HUD)	<ul style="list-style-type: none"> Offers subsidized Project Based (Section 8) and Housing Choice Vouchers through local Public Housing Authorities (PHA)
HOME	<ul style="list-style-type: none"> Home Investment Partnership Program Federally funded Administered by state or local jurisdictions
United States Department of Agriculture (USDA) Rural Development (RD)	<ul style="list-style-type: none"> Offers subsidized housing



HDAP Funding

The Housing Development Assistance Program is an OHFA-administered program funded with three sources of funds: federal HOME funds, Ohio Housing Trust Funds (OHTF), and National Housing Trust Funds (NHTF).

The programs are generally administered according to the rules and regulations governing the HOME program. Compliance with the HDAP requirements begins with the funding agreement. The agreement outlines the project characteristics and rent and income restrictions agreed to by the owner. Owners and management agents of HDAP-funded projects must be familiar with the specific guidelines and requirements of the HDAP program, as well as any additional restrictions listed in the funding agreement for their individual project.

The majority of HDAP assisted units are floating units (per the funding agreement), meaning the owner may designate an HDAP unit as any unit in the project where the tenant's income and the rent paid meet the restrictions outlined in the funding agreement. However, if the funding agreement specifically lists fixed units, the units must be fixed and may not float.

Key Differences between HOME, NHTF, and OHTF

Here are the key differences for compliance between the HOME, NHTF and OHTF programs. Refer to the HOME, NHTF, and OHTF chart provided in the Appendix for a full summary of the differences throughout the lifecycle of a project.

The HOME program requires the use of the HUD student rule, and the other funding programs are not restricted to this requirement.

Affordability term and affordability requirements are outlined in the funding agreement for the project. If they are not explicitly stated there should be a reference to the section of the regulations which determines the minimum requirements. Always refer to the funding agreement for details on affordability.

The compliance period start is defined in 24 CFR for both the HOME and National Housing Trust Fund programs. The compliance period start for OHTF is defined by OHFA, and for properties with LIHTC funding it matches the HTF compliance start. If an OHTF property does not have tax credits then compliance period start is the date of construction completion. Due the 2013 Final HOME Rule a risk assessment can be used to determine the review cycle while the other two programs are on a regular three-year cycle. If there are significant compliance issues or concerns, the frequency of reviews can be increased.

Interactions Between HTC and HUD-Assisted Projects

Deductions and the use of Enterprise Income Verification (EIV) Information

Owners must be familiar with HUD requirements for projects with HUD assistance (e.g., project-based Section 8). HUD programs allow medical allowances, deductions for minors, elderly allowances, dependent allowances, occupancy standards and other program-related differences that must be allowed when computing income. Owners must use the HUD 50059 or 50058 certification form when qualifying tenants with HUD assistance. It is important to note that the allowances described above are not part of the calculation of income for purposes of the LIHTC program or other affordable housing programs such as OHTF. In addition, HUD has mandated the owner use the EIV system for use at their project-based rental assistance properties. Information gleaned from this system, commonly referred to as EIV, is proprietary information for use only by HUD and US Health and Human Services. Information and verifications from EIV cannot be used for the LIHTC program.

Use of HUD Form 50059 and Tenant Income Certification

For projects with HUD subsidy and Housing Tax Credits, both a HUD 50059 and a Tenant Income Certification must be completed. The HUD form 50059 Tenant Payment and Subsidy will be based on adjusted income taking into consideration allowances described in Section 6.4.1. The TIC will utilize the gross annual income without any allowances. Both forms, with all required program documentation, must be maintained in the files.

Note: The owner must keep the EIV documents separated from any one not entitled to review them as mandated by HUD. EIV documents must be kept separate from LIHTC-verification documents. This includes OHFA staff. Owners should be fully aware of the restrictions outlined in Chapter 9 of the HUD Handbook 4350.3.

Form 8609: Low-Income Credit Allocation & Certification

Form 8609 is generated by OHFA (the credit allocating Agency) and completed by the owner for each building, or BIN, to certify certain information, such as minimum set asides. Each BIN will have a unique identifying number, and the owner files each completed Form 8609 with the IRS for the first year of the credit period.

Depending on the owner's election on line 8b, the project may be considered either a multiple-building project or a single project. The owner's election on 8b will determine whether or not tenants moving between multiple buildings will need documentation as a transfer or a complete certification as a move-in/move-out. The owner's election on 8b also effects the sample size during an audit.

8609 <small>Form (Rev. May 2018)</small> Department of the Treasury Internal Revenue Service	Low-Income Housing Credit Allocation and Certification ▶ Go to www.irs.gov/Form8609 for instructions and the latest information.	OMB No. 1545-0988
Part I Allocation of Credit Check if: <input type="checkbox"/> Addition to Qualified Basis <input type="checkbox"/> Amended Form		
A Address of building (do not use P.O. box) (see instructions)		B Name and address of housing credit agency
C Name, address, and TIN of building owner receiving allocation		D Employer identification number of agency E Building identification number (BIN)
TIN ▶		
1a Date of allocation ▶	b Maximum housing credit dollar amount allowable	1b
2 Maximum applicable credit percentage allowable (see instructions)		2 %
3a Maximum qualified basis	b Check here ▶ <input type="checkbox"/> If the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)	3a
		3b 1 ____ %
4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-)		4 ____ %
5 Date building placed in service ▶		5
6 Check the boxes that describe the allocation for the building (check those that apply):		
<input type="checkbox"/> Newly constructed and federally subsidized <input type="checkbox"/> Newly constructed and not federally subsidized <input type="checkbox"/> Existing building		
<input type="checkbox"/> Sec. 42(e) rehabilitation expenditures federally subsidized <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures not federally subsidized		
<input type="checkbox"/> Allocation subject to nonprofit set-aside under sec. 42(h)(5)		
Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only		
Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.		
Signature of authorized official		Name (please type or print)
Signature		Date
Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period		
7 Eligible basis of building (see instructions)		7
8a Original qualified basis of the building at close of first year of credit period		8a
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
9a If box 8a or box 8d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?		<input type="checkbox"/> Yes <input type="checkbox"/> 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)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
10 Check the appropriate box for each election.		
Caution: Once made, the following elections are irrevocable.		
<input type="checkbox"/> Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶		
<input type="checkbox"/> Elect not to treat large partnership as taxpayer (section 42(j)(5)) ▶		
<input type="checkbox"/> Elect minimum set-aside requirement (section 42(g)) (see instructions):		
<input type="checkbox"/> 20-50 <input type="checkbox"/> 40-60 <input type="checkbox"/> Average income <input type="checkbox"/> 25-60 (N.Y.C. only)		
<input type="checkbox"/> Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) ▶		
<input type="checkbox"/> 15-40		
Under penalties of perjury, I declare that I have examined this form and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.		
Signature		Taxpayer identification number
Name (please type or print)		Date
Name (please type or print)		First year of the credit period
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.		
Cat. No. 63981U		Form 8609 (Rev. 05-2018)

Placed In Service Dates

The placed-in-service date is the date the building is considered suitable for occupancy. Depending upon the nature of the project, there may be one or two PIS dates. The placed-in-service date is noted on the 8609 issued for the building and based upon the type of credit allocated.

New Construction

New construction or unoccupied buildings will have one PIS date. The PIS date for a newly constructed building is the date that a building is deemed ready for its intended purpose - to house people. This PIS date will be the date that the local building official certifies the building for occupancy, generally referred to as the Certificate of Occupancy. If the building receives a Temporary Certificate of Occupancy, there is still some work that needs to be done to the building but the remaining work will not affect the ability of tenants to occupy the building. The Temporary Certificate of Occupancy would indicate the building's PIS date.

Acquisition/Rehabilitation

Acquisition/rehabilitation projects will have two PIS dates. Generally, people are already living at the property, so a building is technically ready the day it is acquired by the new owner. The acquisition PIS date is the date of acquisition, provided the building is fit for occupancy. If it is not habitable on the acquisition date, the PIS date is the date the building becomes habitable. The second date is the rehabilitation PIS date. The rehabilitation PIS date is any time during the owner-elected 24-month period in which rehabilitation expenses meet program requirements. This date will be indicated on a separate 8609 issued specifically for credits allocated based on the expenditures.

Acquisition and rehab credits also receive separate place-in-service dates. These placed-in-service dates are based on:

- **Acquisition:** *PIS is the date of purchase.* Acquisition credits may actually start as early as the date the building is acquired (placed in service), but must start the same year as the rehab credits do. If rehab credits are placed in service in a later year, the acquisition credits are deferred. An income test will need to be conducted for households at less than 100% HTC projects.
- **Rehab:** *PIS is based on an expenditure test.* The owner selects a time over a 24-month period when financial thresholds have been met. In addition, a sufficient eligible basis must have been achieved for the planned rehab credits.

Claiming Credits with Qualified Units

The importance of the PIS date relates to when credits can begin to be calculated and claimed. A building must be placed in service for a full month before its occupancy can be used in calculating the applicable fraction. Usually a building is considered placed in service when at least one or more of its units is available for occupancy. The PIS also determines the date by which the project's income limits are held harmless.

The ability to claim credits depends upon the number of qualified HTC units. The number of units that must be qualified is based upon the minimum set-aside and the owner's commitment regarding the number of low-income units to be developed.

Providing the building has been placed in service, a unit is "qualified" when it is:

- Suitable for occupancy; and
- Occupied by a qualified household (a household must be "certified" to document that its income falls within the restrictions placed on the project); and
- Rent-restricted; and
- Not occupied by a full time student household that doesn't meet one of the five student rule exceptions; and
- Compliant with the non-transient use clause. (i.e. a six-month or longer lease); or in the case of a preservation project, the owner shows that the tenant population is non-transient.
 - a. There is an exception for Single Room Occupancy and transitional housing for the homeless.

Restrictive and Extended Use Covenants

The IRS requires that a restrictive covenant must be issued for all HTC projects. The restrictive covenant describes the requirements the project must meet, including, but not limited to: rent and income restrictions, minimum set-aside, and applicable fraction. The restrictive covenant is a public document recorded by the county in which the project is located.

If it is determined that an extended use agreement was not in effect by the end of the first year of the credit, an IRS form 8823 is filed (box 11(k)) that prohibits the owner from claiming low-income housing credits on any building that does not have a properly executed extended use agreement. The IRS does allow a correction to this noncompliance without a tax penalty once the owner executes and records the extended use agreement; however, such correction must occur within one year from the date of the noncompliance finding.

Basic Monitoring Requirements

Basic monitoring requirements include, but are not limited to, adherence to the following items:

- Minimum set-aside
- Applicable fraction
- Next available student rule
- Unit vacancy rule
- Qualifying tenants
- Transfers
- Tenancy and leases
- Fees and non-optional charges
- Student rule
- Yearly inspections

The requirements above are discussed further in the Compliance Overview section of the Handbook; however, owners and management agents are strongly encouraged to consult the regulations per IRC 42 and HUD 4350.3. Additional guidance may be found in the 8823 Audit Guide.

Form 8823: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

Form 8823 is a report of noncompliance or building disposition for each building that goes out of compliance or is no longer in service. The state's housing finance agency (OHFA) has a responsibility under the IRC section 42(m) (1)(B)(iii) to notify the IRS of noncompliance even if the noncompliance was corrected on site during an audit.

Potential consequences of noncompliance are loss of credits. Owners and management agents should work closely with OHFA to correct all noncompliance within 60 days to avoid further penalties.

Form 8823 (Rev. June 2011) Department of the Treasury Internal Revenue Service		Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition		OMB No. 1545-1204
Note: File a separate Form 8823 for each building that is disposed of or goes out of compliance.		Check here if this is an amended return <input type="checkbox"/>		
1 Building name (if any). Check if item 1 differs from Form 8609 <input type="checkbox"/>		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 <input type="checkbox"/>				
Street address				
City or town, state, and ZIP code				
4 Owner's taxpayer identification number <input type="checkbox"/> EIN <input type="checkbox"/> 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 <input type="checkbox"/>				
11 Check the box(es) that apply:		Out of compliance		Noncompliance corrected
a Household income above income limit upon initial occupancy		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b Owner failed to correctly complete or document tenant's annual income recertification		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e Changes in Eligible Basis or the Applicable Percentage (see instructions)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g Gross rent(s) exceed tax credit limits		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h Project not available to the general public (see instructions) (attach explanation)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l Low-income units occupied by nonqualified full-time students		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m Owner did not properly calculate utility allowance		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n Owner has failed to respond to agency requests for monitoring reviews		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o Low-income units used on a transient basis (attach explanation)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p Building is no longer in compliance nor participating in the section 42 program (attach explanation)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q Other noncompliance issues (attach explanation)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12 Additional information for any item above. Attach explanation and check box				
13a Building disposition by <input type="checkbox"/> Sale <input type="checkbox"/> Foreclosure <input type="checkbox"/> Destruction <input type="checkbox"/> Other (attach explanation)				
b Date of disposition (MMDDYYYY)				
c New owner's name		d New owner's taxpayer identification number <input type="checkbox"/> EIN <input type="checkbox"/> SSN		
Street address		14 Name of contact person		
City or town, state, and ZIP code		15 Telephone number of contact person		
Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.				
Signature of authorizing official		Print name and title		Date (MMDDYYYY)
For Paperwork Reduction Act Notice, see instructions. Cat. No. 12308D Form 8823 (Rev. 6-2011)				



Acquisition and/or Rehabilitation Certification Process

There are several different scenarios that may be present in Acquisition Rehab or Rehab only projects; generally the certification process remains the same.

- Market rate or adaptive reuse project coming in for tax credits
- Existing HTC projects coming in for additional tax credits (called resyndication)
- Existing Multi-Family Projects that are HUD funded, Section 8 Project-Based or RD projects coming in for tax credits

Many households may be in place as of the date of acquisition. The IRS allows owner/managers up to 120 days before, or after, the date of acquisition to document that existing households qualify and to establish the unit's effective date as the date of acquisition.

If the owner has access to the Tenants before acquisition, any certification containing all required paperwork that was completed no more than 120 days prior to acquisition can also have an effective date as of acquisition. If the certification of a household that was in place as of acquisition is completed after the 120 days, the effective date is the date the last adult household member signs the TIC form. Certifying households quickly may result in being able to claim the maximum amount of credits possible for each unit.

Once a household is certified after acquisition, it is considered a qualified HTC household and will not be considered over-income if the household's income increases in the future. If an owner/manager waits until later to certify the household, their income may have increased over the limits and they will not be considered a qualified household as of the date of acquisition.

Once initial certifications are conducted at acquisition, no recertification is required as of the rehabilitation placed in service date. The recertification cycle will be based on the initial effective date (date of acquisition for most). New move-ins after acquisition are certified prior to move in, like any other new household, and have an effective date and recertification cycle as of their move-in date.

For acquisition/rehabs, OHFA does not require owner/managers to sign a new lease with an existing Tenant who has lived in the unit under a lease that had an initial term of at least six months.

Note: Acquisition/rehab or rehab only projects can be complex and OHFA recommends that competent consultation should be sought to ensure that the rules are applied most effectively.

Transfers

Because of complex construction schedules, household transfers are often necessary at rehabs. At times an owner may elect to identify an unexpected combination of buildings as “projects” within a rehabbed development. Each building may be designated its own project, or some buildings may be combined into projects while excluding other buildings. It very important to know what the 8609 8(b) multi-building election is going to be, along with what buildings are included in the project(s) in the rehabbed development, to ensure that it can be accurately determined if transfers between specific buildings in the development will require recertification or not.

Tenant Files

If existing households are over-income at the time of acquisition, the household does not invoke the Next Available Unit Rule or the Unit Transfer Rule. This is done to ensure that all tenant files are complete and up to date with all current requirements at the time of acquisition.

OHFA suggests that the owner/manager maintain the original file establishing eligibility at move-in for the Compliance Analyst to have during an audit if there are any questions or concerns. In many cases projects have changed management companies and/or ownership and the original file is missing or deficient. If this is the case, the certification done at acquisition along with any subsequent recertification showing that the household was below the income limit current at the time of acquisition will be sufficient. A uniform file order should be established to aid in keeping tenant files audit-ready.

Resyndication causes the site to establish a new placed-in-service date as of the acquisition of the first building for purposes of the new credits. This may affect income and rent limits currently in use, because the resyndication starts a new income limit hold harmless point at the new placed-in-service date. If the project has been holding harmless at past year levels, they will have to adjust to the current lower income and rent limits. Since HERA Special income limits only apply to projects that were placed in service in 2008 or earlier, a resyndication will also eliminate this option for the new credits. Lower income limits may need to be applied to new move-ins after acquisition and rents may need to drop for the project (see Chapter 2 for further details on holding limits harmless and HERA special limits).

The new credits and accompanying covenants do not replace the original covenants found in the original restrictive covenant. BOTH must continue to be applied. During the allocation process for the new credits, OHFA will ensure that the restrictive covenant requirements for both sets of credits are compatible.

Resyndication

After an existing HTC property has concluded its initial 15-year Compliance Period, there is an option for the owner to submit a new HTC application to OHFA to start a new flow of tax credits. This is often referred to as “resyndication”. The resyndication of tax credits is used to purchase and finance the rehab of the existing HTC property.

One important feature of resyndication is how existing tenants are treated. Tenants at a non-HTC property undergoing HTC acquisition/rehab must be tested to see if they qualify to stay. The IRS considers tenants who were qualified under the first allocation of credits as protected (or “grandfathered in”) during the entire Extended Use Period of that allocation of credits. According the IRS, qualified households in an existing HTC project that is being rehabbed with new tax credits continue to qualify for the next set of credits without having to be independently certified at the time of the second allocation of credits.

Warning: Only income qualification is automatic for past-qualified households. If an owner thinks there is any chance of resyndication, the IRS student rules should continue to be applied to ensure household continued eligibility.

MONITORING REQUIREMENTS

DevCo

DevCo is OHFA's online database system that allows organizations working with OHFA to manage and enter information about their projects and respond to site audits. Owners must have access to DevCo and ensure property managers and the appropriate on-site staff have access to, and are registered in, DevCo. For more information on DevCo, including guides and webinars, visit the [DevCo webpage](#). All inquiries and questions regarding DevCo must be submitted through the [DevCo Helpdesk](#).

Compliance

DevCo Compliance is used to generate Tenant Income Certifications, record Utility Allowances used on the project and submit yearly tenant data and Annual Owner Certification.

Inspect

Beginning in March 2019, OHFA compliance staff will use the OHFA Inspection software system for audits. The software allows OHFA compliance staff to conduct physical audits using tablets and also allows the owner and/or management agents to respond to review reports by uploading documents and other forms of owner responses directly into OHFA Inspection.

Further guidance is available on the [DevCo webpage](#).

Annual Owner Reporting

Owners with projects funded by OHFA through HTC, Gap Financing/HDAP (e.g. HOME, Ohio Housing Trust Fund or National Housing Trust Fund) or Multifamily Bonds must annually submit an Annual Owner Certification to remain in compliance with these programs. The Annual Owner Certification and Tenant Data must be submitted using OHFA's online reporting system, [DevCo Online](#), and certifies information for the preceding 12-month period. Owners must begin reporting tenant events in DevCo Online as soon as the building(s) is placed in service. If the project sold during the reporting period, the owner of record at the end of the reporting period is responsible for annual reporting.

Annual Owner Certification – AOC

Per IRC [§1.42-5\(c\)\(1\)](#) and OHFA requirements, the owner must annually certify the following:

- Has there been a change in the ownerships or management during the reporting period? If “Yes” complete Form PC-E39 “Owner-Manager Change Notification Form” located on the OHFA website.
- Is the property third-party managed or managed by a company that is not part of the ownership interest?
- The 20-50 test under IRC §1.42 (g)(1)(A), or the 40-60 test under section 42(g)(1)(B), whichever minimum set aside test was applicable to the project and if applicable to the project, the 15-40 test under sections 42(g)(4) and 142(d)(4)(B) for “deep rent skewed” projects;
- There was no change in the applicable fraction (as defined in section 42(c)(1)(B)) of any building in the project, or there was a change, accompanied by a description of the change.
- The owner has received an annual income certification from each low-income tenant, as appropriate, with documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section.
- Each low-income unit in the project was rent-restricted under section 42(g)(2).
- All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under section 42 [i][3][B][iii]).
- Pursuant to requirements under IRS §1.42-5, the buildings and low-income units were suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report/notice was issued by the governmental unit, attach a statement summarizing the violation report/notice or a

copy of the violation report/notice to the annual certification and indicate if the violation has been corrected

- There was no change in the eligible basis (as defined in section 42[d]) for any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge).
- All resident facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to any tenants in the building.
- If a low-income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in the project increased above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income.
- The owner has not refused to lease a unit in the project to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate.
- No finding of discrimination under the Fair Housing Act has occurred for the project (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a Federal court).
- For the preceding 12-month period, no tenants in low-income units were evicted or had their tenancies terminated other than for good cause, and no gross rents were increased other than permitted under Section 42.
- An extended low-income housing commitment as described in Section 42(h)(6) was in effect. OHFA reserves the right to adjust the above requirements according to changes in federal regulations.
- Form 8609 Part II election 8(B) states, "Are you treating this building as part of a multiple building project for purposes of section 42?"
- As required by the Violence Against Women Act of 2013, an emergency transfer plan for victims of domestic violence seeking safety is in place and publicly available at the property as of June 14, 2017. The plan incorporates reasonable confidentiality measures to ensure that the owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of violence or stalking against the tenant.
- Tenants and applicants are informed of their rights under VAWA, by using the HUD Notice of Occupancy Rights form 5380 or other means.
- If VAWA was invoked by a tenant, the Certification of Domestic Violence form 5382, the Emergency Transfer Request form 5383, or other documentation were utilized. Other possible documentation includes an affidavit signed by the victim under penalty of perjury, an affidavit or letter signed by a domestic violence service provider, attorney or medical/mental health professional who assisted the victim, or a court or administrative record.
- Additional language regarding VAWA was included in the lease or a lease addendum for tenants, both the OHFA Lease Addendum and the HUD VAWA Lease Addendum; however, additional language can be incorporated into the lease.
- Was an OHFA Compliance Training attended in the last two years by the owner/agent responsible for final approval of resident files or the site manager/leasing consultant who processes the Tenant Income Certifications? List all staff that attended.

Tenant Data Submission (Finalize Year)

The Housing and Economic Recovery Act of 2008 added the requirement that each state housing finance agency that administers the Low-Income Housing Tax Credit to submit certain demographic and economic information on tenants in LIHTC units to the U.S. Department of Housing and Urban Development according to standards determined by the Secretary of HUD. HERA specifically requires HFAs to submit to HUD information concerning race, ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of households residing in LIHTC properties.

To fulfill this requirement, OHFA requests all tenant rental activity (or events) for the reporting year to be submitted through DevCo. In DevCo Compliance this is referred to as Finalize Year.

Administration and Recordkeeping

The Housing Tax Credit recordkeeping requirements are outlined in IRC §1.42. Appropriate recordkeeping can prevent an owner from having non-compliance issues and may also help an owner when non-compliance is identified by evidencing a good faith effort to be in compliance.

Required Tenant File Forms and Documents

In addition to the requirements outlined in IRC 42, owners and management agents should also adhere to the requirements issued by the IRS in Revenue Procedure 97-22 and Revenue Ruling 2004-82, tenant records for each building must be kept and retained for the required period of time recommended by the IRS.

OHFA permits the electronic storage of records in lieu of hardcopies. However, hardcopy files should be maintained for all existing current households, and original hardcopies should be kept for all initial qualifying files for the project. Although electronic storage is permitted, OHFA requires hardcopy files on site for all audits. OHFA recommends owners consult their legal and accounting advisors for guidance on recordkeeping practices and syndicator requirements.

OHFA also requires the following forms and documents in each HTC file:

- Tenant Income Certification;
- Lease;
- HTC Addendum, if applicable. Should not be used with HUD Model or RD lease;
- Sworn Income & Asset Statement;
- All Income & Asset Verifications;
- Student Status Certification for HTC;
- PHA supporting documentation, if applicable;
- Under \$5,000 Asset Certification, if applicable;
- VAWA required forms and notices;
- Clarification Record(s), if applicable;
- Move In/Move Out Inspections;
- Annual Inspections;
- Other documents required by OHFA.

The OHFA website has a list of additional suggested forms at <http://ohiohome.org/compliance/forms.aspx>.

Monthly Requirements

Each project is required to upload tenant level data into DevCo each month using the DevCo Online System: <http://ohiohome.org/devco>. Although OHFA strongly encourages the owner and management agents to record any changes or updates in tenant data as they occur, all tenant-level data must be uploaded into DevCo by the 10th of the following month, unless otherwise notified by OHFA.

For those generating Tenant Income Certifications or recording rental activity outside of DevCo, XML upload can be used to update DevCo. If generating TICs in DevCo, they should be completed in DevCo on the day of or prior to the move-in, transfer or certification.

OHFA Audits

Monitoring Cycles

OHFA will conduct an on-site review at least once every three years in accordance with [IRC §1.42-5](#) and the Uniform Physical Conditions Standards. OHFA will review the number of units and files published in the Federal Register 26 CFR Part 1, Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations, IRC 1.42-5(h)(2), effective February 26, 2019.

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14 - 16	10
17 - 18	11
19 - 21	12
22 - 25	13
26 - 29	14
30 - 34	15
35 - 40	16
41 - 47	17
48 - 56	18
57 - 67	19
68 - 81	20
82 - 101	21
102 - 130	22
131 - 175	23
176 - 257	24
258 - 449	25
450 - 1461	26
1462 - 9999	27

OHFA reserves the right to review additional files and/or inspect additional units and buildings. OHFA also reserves the right to inspect and audit projects more frequently, if needed.



Preparing for an OHFA Audit

The owner and management agent should take the following steps in order to be prepared for an on-site review:

- Notify all households of OHFA's inspection at least 24 hours in advance of the day of the review;
- Ensure sufficient staff is available to accompany OHFA staff during physical inspections;
- Ensure all unit keys and tenant files are readily accessible.

The date of the OHFA inspection notification letter is considered by the IRS to be a "bright line date." Once the notification letter has been sent, any noncompliance corrected after that time is still subject to being reported via Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance of Building Disposition (i.e. 8823).

Submitting Prep Documentation in OHFA Inspection

Use the upload feature located in the Documents area of DevCo to submit documentation listed in the scheduling letter that is required for preparation for the OHFA Audit.

On-site Audits

Compliance Analysts will provide no more than a 15-day notice to the owner and management agent of an on-site review. OHFA staff will not provide advanced notice as to which files and units will be inspected. The auditor will inform the property manager/agent of the specific files and units that will be inspected upon arriving onsite.

If OHFA discovers noncompliance during an inspection, under [IRS §1.42-5\(e\)\(2\)](#), OHFA must provide written notice of noncompliance to the owner. The correction period is the timeframe in which the owner has to correct deficiencies found during an OHFA inspection. The correction period begins with the date OHFA provides written notification of noncompliance to the owner that the building is not in compliance. The owner must take appropriate action to cure noncompliance.

Tenant Files

Revenue Procedure 97-22 and Revenue Ruling 2004-82, set forth requirements for how long tenant records for each building must be kept and retained for the required period of time recommended by the IRS. For example, all tenant records for the first year of the credit period should be retained for a minimum of 21 years. Tenant files and records pertaining to years after year one should generally be retained for six years following the end of the tax year.

OHFA permits the electronic storage of records in lieu of hard copies; however, hard copies of all the files must be onsite for an audit. Hard copy files should always be maintained for all existing current households and original hard copies should be kept for all initial qualifying files for the project. OHFA recommends owners consult their legal and accounting advisors for guidance on recordkeeping practices and syndicator requirements.

Physical Inspections

Physical inspections will be performed on all required units within the sample size according to UPCS standards. OHFA reserves the right to increase the required sample size.

Desktop Monitoring

At OHFA's discretion, files may be audited electronically through a secure upload in DevCo.

Interim Audits

Interim audits will be conducted at OHFA's discretion, as needed.

Responding to an OHFA Audit

Timeline

The owner will receive notice of non-compliance from OHFA and a date by which non-compliance must be cured. OHFA may extend the correction period not to exceed six months from the date of the notice only for good cause or mitigating circumstance. Requests for an extension must be made in writing or by electronic email to OHFA prior to the end of the initial correction period.

Process

The owner and/or management agents to respond to review reports by uploading documents and other forms of owner responses are submitted to OHFA. These responses for the audit should be submitted within OHFA Inspection.

Failure to Respond

Failing to respond to the scheduling of or the notice of audit findings is considered non-compliance. Based on the age of a project (e.g., in extended use), a pattern of lack of responses or severity, 8823s may be issued or other remedies pursued. If a pattern of noncompliance is found over a period of time, OHFA may pursue legal remedies and/or place the owner, property or management company in 'Not in Good Partnership' status. The owner/management would not be eligible to apply for new Housing Tax Credits from OHFA until the deficiencies were cured. Compliance fees may be assessed for issues of non-compliance.

Potential Consequences

Recapture

Recapture is defined as an increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements. Recapture is the return of the accelerated portion of the credits, to be earned in years 11-15 of the compliance period that was claimed during the 10-year credit period.

If an owner fails to maintain compliance for the LIHTC Program, the owner risks possible recapture of tax credits and may potentially lose the ability to claim full tax credits in the future. Adherence to the requirements of the LIHTC Program falls solely on the owner, who may face a substantial financial loss if program requirements are not met and maintained throughout the compliance period.

Noncompliance may be self-reported by the owner and/or affiliates or may be determined as a result of an OHFA inspection, re-inspection, complaint or any other manner as determined by OHFA. If the owner determines a building, a unit or a project does not comply with the Housing Tax Credit program requirements, the owner is required to notify OHFA immediately. The owner must formulate a plan to return the property to compliance and must submit that plan, in writing, to OHFA.

Generally, during the compliance period, a project is out of compliance and tax credit recapture may apply if:

- There has been a change in the Applicable Fraction or Eligible Basis that results in a decrease in the Qualified Basis of the building from one year to the next; or
- The building no longer meets the Minimum Set-Aside requirements of IRC Section 42, the gross rent requirements of IRC Section 42, or the other requirements for the units which are set-aside; or
- There is failure to submit the annual utility allowance documentation, IRS required Annual Owner Certification, tenant events, along with any applicable supporting documentation in a timely manner; or
- An ineligible household resides in an HTC unit; or
- A unit or building is no longer suitable for occupancy or otherwise in violation of the physical inspection protocol used by OHFA (e.g., Uniform Physical Condition Standards) criteria; or
- The owner does not comply with requests to conduct a physical inspection or file monitoring.

Penalties for Non-Compliance

Noncompliance may be determined at the unit, building or project level. If noncompliance is discovered and an owner fails to correct deficiencies, OHFA will take corrective action and the following penalties could apply.

Penalties include:

- Notification to the IRS via Form 8823;
- Recapture of the accelerated portion of the credit for prior years;
- Disallowance/loss of the credit for the entire year in which the noncompliance occurs;
- Assessment of interest for the recapture year and previous years;
- Inability to obtain future OHFA funding such as HTC;
- Rejection of future Housing Tax Credit applications;
- Repayment of rent overages;
- Payment of noncompliance fees to OHFA;
- Mandatory attendance at an OHFA compliance training; and/or
- An increase in the frequency of OHFA inspections.

If a pattern of noncompliance is found over a period of time, OHFA may pursue legal remedies and/or place the owner, property or management company in 'Not in Good Partnership' status. The owners/management would not be eligible to apply for new Housing Tax Credits from OHFA until which time the deficiencies were cured. Compliance fees may be assessed for issues of non-compliance.



COMPLIANCE OVERVIEW

The Compliance Overview provides a quick reference on a variety of topics affecting tax credits; however, it is not meant to replace full guidance found at IRC section 42, HUD 4350.3, 8823 Audit Guide, Revenue Rulings and OHFA's policies and procedures.

Compliance Next Steps Meetings

The Compliance Next Steps Meeting provides an opportunity to ensure all parties involved with OHFA-funded multifamily properties are aware of federal and state regulations. The meeting fosters partnership between OHFA and property contacts. Owners and management agents will be required to participate in the following meetings:

- Initial compliance next steps meeting which is held based on the following criteria:
 - **New Construction:** when the project reaches the 50% construction completion point. The owner will indicate the 50% construction completion point, or estimated point on the [OHFA Quarterly Construction Monitoring Form](#).
 - **Acquisition/Rehabilitation:** when the property is transferred to the new ownership entity. Owners must indicate the date, or expected date, of this ownership transfer in the [OHFA Quarterly Construction Monitoring Form](#).
 - **HDAP-only:** held after gap financing with OHFA has closed
- Check-in call(s)

All correspondence or inquires on the Compliance Next Steps Process should be sent to ComplianceNextSteps@ohiohome.org. Discussions at the Compliance Next Steps meetings will be tailored to the specific requirements and progress of the project.

For more information on Compliance Next Steps meetings review the [Multifamily Training & Technical Assistance webpage](#).

Training Requirements

QAP Required Training

The owner must be able to evidence that the individual(s) responsible for final approval of tenant files, or the site manager/leasing consultant who processes TICs has completed the following:

- Provide verification of completion of a Housing Tax Credit compliance training within the past two years. The training may be either an event offered by OHFA or [Quadel Consulting](#), [MAHMA](#), [NAHB](#), and [NAHMA](#). OHFA will accept a certificate of completion or other equivalent supporting documentation as verification of completion.

Individuals are required to maintain this level of continuing education at least once every two years, and the owner is responsible for ensuring its completion by project managers and the site manager/leasing consultant. This level of training is also required as part of the process to receive 8609s.

To complete this requirement with an OHFA training, review the listings for the OHFA Policy and Procedure Workshop included on the [Multifamily Training & Technical Assistance webpage](#), which may include offerings for both in-person and on-demand courses.

Additional Training for Industry Partners

OHFA offers trainings related to policy and procedures, specific HTC requirements, HOME funding, DevCo, and many other topics. Videos and on-demand material can be reviewed at any time to increase understanding of the compliance requirements for OHFA funded programs.

These additional course offerings may be required as part of a training package for partners that are inexperienced with OHFA or have had recent compliance issues. OHFA will tailor the training requirements to meet the current needs of the organization(s) involved.

Organization Onboarding

For ownership entity, property management agent, or other partners that are new to OHFA (i.e. never received OHFA funding) or have little to no experience with OHFA multifamily programs, OHFA requires completion of the Onboarding Program. Onboarding may be needed at any point of the life of a property.

Partners Building Their OHFA Relationship

OHFA will work with representatives of the ownership entity, HDAP Recipient, and/or property management company who have experienced issues that impacted the successfulness of a property or properties. Participation in the Relationship Building Program may be based on if there are systemic noncompliance issues, frequent management company turnover, repeated unresponsiveness to OHFA, or other ongoing issues jeopardizing the viability of the property.

Fair Housing Standards and Affirmative Fair Housing Marketing Plans

The purpose of affirmative marketing is to reach those least likely to apply and meet fair housing requirements. The practice of affirmative marketing includes the development of marketing procedures to attract applicants from all protected classes. Affirmative Marketing means understanding market demographics and underserved populations and extending marketing efforts beyond current or usual efforts. Taking extra effort to directly market to underserved populations living in the housing market area helps ensure that knowledge of housing opportunities and information on how to apply is reaching underserved households. The regulations can be found in Title 24 Housing and Urban Development, Part 200.

OHFA will accept the HUD or RD approved plan for properties that are funded with HUD or RD. For the multifamily projects that are not funded with HUD or RD, OHFA requires owners to complete OHFA's Affirmative Fair Housing Marketing Plan form. Owners are required to submit OHFA's AFHMP upon property lease up and every five years thereafter. See OHFA's AFHMP procedure on the website for guidance. Affirmative marketing procedures must continue throughout the compliance and affordability periods.

The AFHMP and fair housing posters must be posted for public inspection. The tenant selection plan, rent collection policy, rent schedule and income limits by family size should be made available to all potential applicants for review. The posting of these items will assist management with maintaining consistency when addressing inquiries from applicants and in the elimination of misinformation that could result in Fair Housing complaints.

All advertisements must reflect the Equal Housing Opportunity slogan or logo, which can be accessed at the following web address: <https://www.hud.gov/library/bookshelf11/hudgraphics>.

Office hours and information for the application process should also be clearly posted in a public area. If appointments are required to complete the application, information regarding how to obtain an appointment must be made available to the public.

Tenant Selection Plans

To ensure that everyone who applies is treated fairly and to make sure that program requirements are covered, owner/managers must adopt a written Tenant Selection Plan. Owner and property-specific topics may be included. There is a sample template on the OHFA website under sample forms.

Violence Against Women Act – VAWA

All OHFA multifamily funding programs mandate adherence to Violence Against Women Act requirements. Although the IRS has not provided guidance on how to comply with the VAWA, OHFA recommends that all properties follow the [HUD 2013 VAWA Final Rule](#) when implementing VAWA Rule protections for their tenants.

Within the VAWA protections, an applicant or tenant of housing assisted under the Housing Tax Credit program may not be denied admission or assistance, terminated or evicted from housing because they are a victim of domestic violence, dating violence, sexual assault or stalking, regardless of sex, gender identity, or sexual orientation. This Standard must be consistently applied with all nondiscrimination and fair housing requirements.

These applicants or tenants must also otherwise qualify for admission, assistance, participation or occupancy. An incident of domestic violence, dating violence, sexual assault or stalking, regardless of sex, gender identity, or sexual orientation shall not be considered a lease violation by the victim, nor shall it be considered good cause for an eviction. If a tenant who is a victim requests an early lease termination, lease bifurcation or transfer to another unit because they feel in danger, an owner shall make every effort to comply with the request and shall not penalize the tenant.

Tenants and applicants must be informed of their rights under VAWA. OHFA owners may use the [HUD Notice of Occupancy Rights under VAWA form 5380](#) and language incorporated into the tenant selection plans. The OHFA Tax Credit Lease Addendum contains language regarding following VAWA. However, additional language regarding VAWA can be incorporated into the lease or the HUD VAWA Lease Addendum may be used in addition to the OHFA Lease Addendum.

Owners are required to have an emergency transfer plan (HUD Model Plan) for victims seeking safety, which incorporates reasonable confidentiality measures to ensure that the owner does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, sexual assault or stalking against that tenant.

OHFA recommends the use of HUD forms when rights under VAWA are invoked, which include the [Certification of Domestic Violence form 5382](#) and the [Emergency Transfer Request form 5383](#). Other possible documentation includes an affidavit signed by the victim under penalty of perjury, an affidavit or letter signed by a domestic violence service provider, attorney or medical/mental health professional who assisted the victim, or a court or administrative record. This submission shall be confidential. HUD also provides [VAWA forms in multiple languages](#).

OHFA requires owners to certify compliance with VAWA requirements when submitting the Annual Owner Certification.

Clarification Records

In certain circumstances, a Clarification Record should be used and placed in the tenant file to further describe an event or to add clarity to an action regarding the file. OHFA does not encourage the use of True & Correct statements on documents because they often fail to correct the deficiency. Instead, a Clarification Record should be placed immediately following the document it is clarifying.

Minimum Set Aside

A Housing Tax Credit project is qualified when a minimum number of tax credit units in the entire project are qualified. This minimum number is called the minimum set-aside. The owner elects to set aside a portion of the units to be occupied and affordable to households at/or below certain incomes.

- **40/60:** 40% of the units affordable to and occupied by households at or below 60% of the area median income, as adjusted by family size.
- **20/50:** 20% of the units affordable to and occupied by households at or below 50% of the area median income, as adjusted by family size.
- **Average Income:** The project meets the minimum requirements if 40% or more of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed 60% and the average of all of the tax credit units averages at or below 60%. The rent elections available are in increments of 10, ranging from 20% - 80%. At any point in time, the average of all tax credit units must be at or below 60% (§42(g)(1)(C)).

It is important to note the minimum set-aside is an irrevocable election on Form 8609. Once an owner elects a set-aside, it cannot be changed for the life of the project. Failure to meet the minimum set-aside by the end of the first year of the credit period will result in a permanent loss of credits. Once met, the set-aside must be maintained throughout the period of extended use. A failure to maintain the minimum set-aside could result in a loss of tax credits.

Applicable Fraction

Each building has its own "applicable fraction". The applicable fraction is the lesser of: 1) the number of low income units divided by the total number of residential units in the building, or 2) the amount of low-income residential square footage divided by the total residential square footage of the building. The applicable fraction is established at the close of the first year in which credits are taken.

A project must maintain the applicable fraction in a particular building to secure credits and must continue to maintain the applicable fraction for the entire compliance period and the extended use period. The applicable fraction should never fall below the fraction established on the last day of the first year of the credit period. If the applicable fraction is reduced because of an event of noncompliance, there is a direct impact on the tax credits.

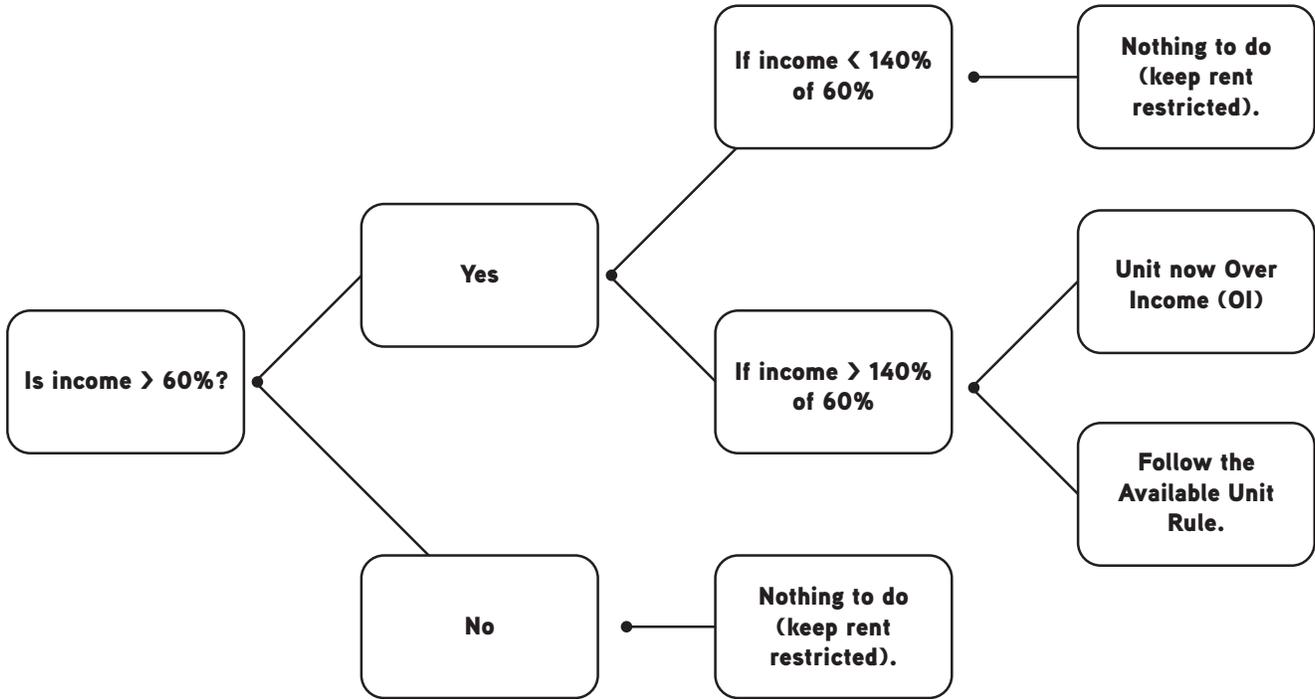
Next Available Unit Rule

The Housing Tax Credit program is designed to let households increase their income without penalty after they move in. However, projects that contain non-Housing Tax Credit units are under obligation to rent non-housing tax credit units that become vacant to Housing Tax Credit households to replace units housing tax credit households that are "over-income" (OI) when recertified. This is called the Next Available Unit Rule.

If at recertification, a household's income has increased to 140% or more of the current minimum set-aside income limit, the management agent must implement the NAUR. The NAUR applies only on a per building basis in which the over-income household resides. The NAUR states that an owner may continue to claim tax credits for such a unit provided the unit remains rent restricted and the next available comparable or smaller unit is leased to qualified households until the applicable fraction is restored. The applicable fraction is the lesser of the square footage or unit fraction. Thus, in replacing an over-income unit, a management agent may have to lease more than one unit to restore the fraction. For further information on the applicable fraction.

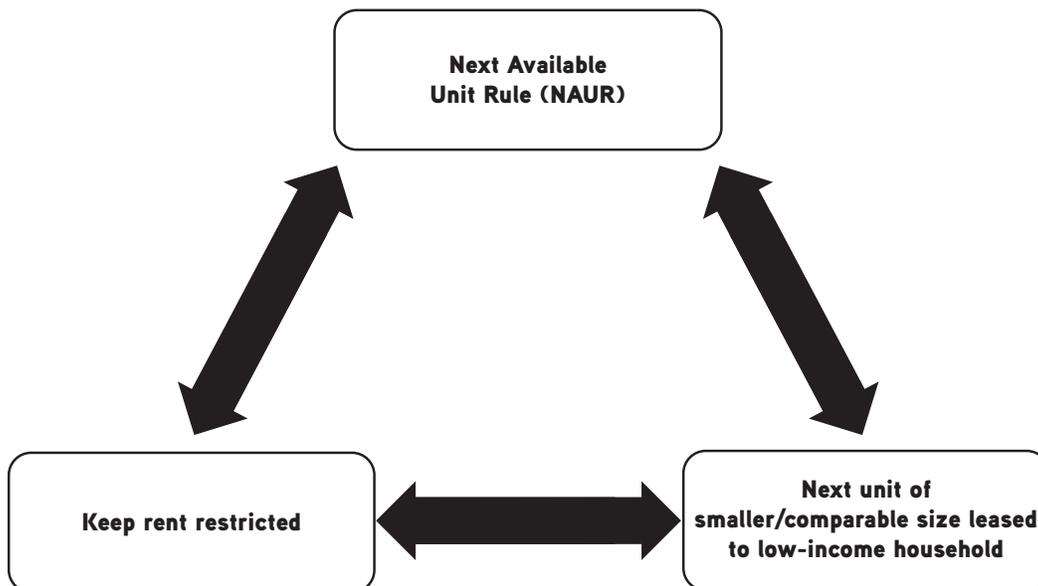
While tax credits may be lost for all over-income units in a building when the NAUR is violated, an owner may also face additional non-compliance issues, such as failing to meet the minimum set-aside. If a sufficient number of units are OI, and thus not qualified, the project could drop below its minimum set-aside. Additional tax credits would then be at risk, so it is important to understand the NAUR to avoid loss of credits.

Example with a 40/60 minimum set-aside:



IRS 42(g)(2)(D) and IRS 1.42-15:

- Building based rule
- When a household's income exceeds 140% of the current income limit at recertification, the unit is OI and the Next Available Unit Rule MUST be followed.
- If the rule is not followed, ALL OI units in the building lose their low-income status.



Unit Vacancy Rule

The vacant status of a unit does not result in a loss of tax credits, if appropriate steps are taken. Three conditions must be met to continue claiming credits on a vacant tax credit unit:

1. The unit has previously been qualified as a HTC unit by an eligible tenant.
2. Reasonable attempts are being made to rent the unit.
3. No other low-income units of comparable or smaller size are rented to non-qualifying households.

In the event vacancies exist among the Housing Tax Credit units, the management agent must be able to clearly demonstrate with evidence such as photographs, invoices, photocopies of advertisements and other means, an effort to market the comparable and smaller units to low-income tenants. The marketing requirement can be met through a number of different strategies. Some of these include the following:

- Comprehensive marketing plan
- Use of banners, flags, "For Rent" signs, and extended office hours
- Open houses and advertising
- Tenant referral program
- Rent concessions and incentives
- Outreach to community organizations for referrals
- Keeping a log of prospective tenants who viewed units
- Maintaining a waiting list and selecting tenants from the list
- Retaining a professional marketing consultant

Management agents should refer to the project's Affirmative Fair Housing Marketing Plan for guidance regarding appropriate affirmative marketing.

Student Rule and Exceptions

With few exceptions, households may not be composed entirely of full-time students. A full-time student is defined as a student who has or will be a full-time student, according to the policies of the educational institution. IRS § 151(c)(4) defines a "student" as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC Sec 170(b)(1)(A)(ii). Treas. Reg. Sec. 1.51-3(b) further provides that the five calendar months do not need to be consecutive. Student status must be declared by the adults in the household by completing the Student Status Certification that is located on the OHFA website.

Student Rule Exceptions

Five exceptions to the student rule are outlined in Section 42. A household that qualifies under one of the following exceptions will not be considered a household of full-time students:

1. Receiving assistance under Title IV of Social Security Act (specifically Temporary Assistance for Needy Families (TANF))
2. Previously under the care, placement or responsibility of the local county children services agency (i.e., foster care)
3. Enrolled in a government-sponsored job training program
4. Married and eligible to file a joint return
5. A single parent household with at least one dependent child. This applies if the parent is not the dependent of another individual and the child is only a dependent of the tenant or the other non-tenant parent.

To claim one of the five exceptions, the applicant/tenant must supply proof he/she meets the exception. This proof might include a copy of past tax returns to show filing status, a letter from a job training program, or other similar evidence to properly document the tenant's file.

As with income, student status may change from year to year. The applicant/tenant should be required to notify the management agent if the household becomes composed entirely of full-time students. Such an eventuality should be clearly noted in the lease agreement. The management agent should determine if the applicant/tenant meets one of the student exceptions. If none of the student rule exceptions applies, then the unit becomes an unqualified Housing Tax Credit unit, or a market rate unit, if the project is approved to have market rate units.

A full time student household may qualify for HUD Section 8 assistance, but not be eligible to lease a Housing Tax Credit unit.

HTC Income, Rent and Utility Allowances

All Housing Tax Credit units must be occupied by income-qualified households and each unit must be rent restricted, based on the Multifamily Tax Subsidy Projects Income Limits published by HUD. Owners have 45 days from the HUD effective date to implement the new limits and corresponding rents. Limits remain in effect until new annual limits are published by HUD. During the 45-day implementation period, the owner may rely on either set of limits (the previous or new), including building(s) placing in service for purposes of hold harmless limits.

Limits for qualifying households depend on the Minimum Set-Aside election the owner has selected. Qualifying households in projects operating under the "20/50" election may not have incomes exceeding 50% of Area Median Income, adjusted for family size. Qualifying households in developments operating under the "40/60" election may not have incomes exceeding 60% of AMI, adjusted for family size. Owners may have also elected to target a percentage of the units to persons at lower income levels (e.g., 30% or 35% AMI).

Many projects agreed to additional limits to rent or income to receive funding from OHFA. Any additional limits agreed to will be listed in the recorded Restrictive Covenant, funding agreements, and when applicable, any subsequent recorded amendments to the Restrictive Covenant. When reviewing these documents, "Occupied by" is used for restrictions on income while "Affordable to" is used for rent restrictions.

Income Limits

Household income must be determined in a manner consistent with the Section 8 methodology of calculating annual income as described in [Chapter 5 of HUD Handbook 4350.3](#). When determining if a household's income is at or below the applicable limit, the earned income from each adult household member 18 years old or older and the unearned income of all members of the household (regardless of age) must be included in the total household income calculation (refer to [HUD Handbook 4350.3 in Appendix 6-C](#) for complete rules on calculating income).

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

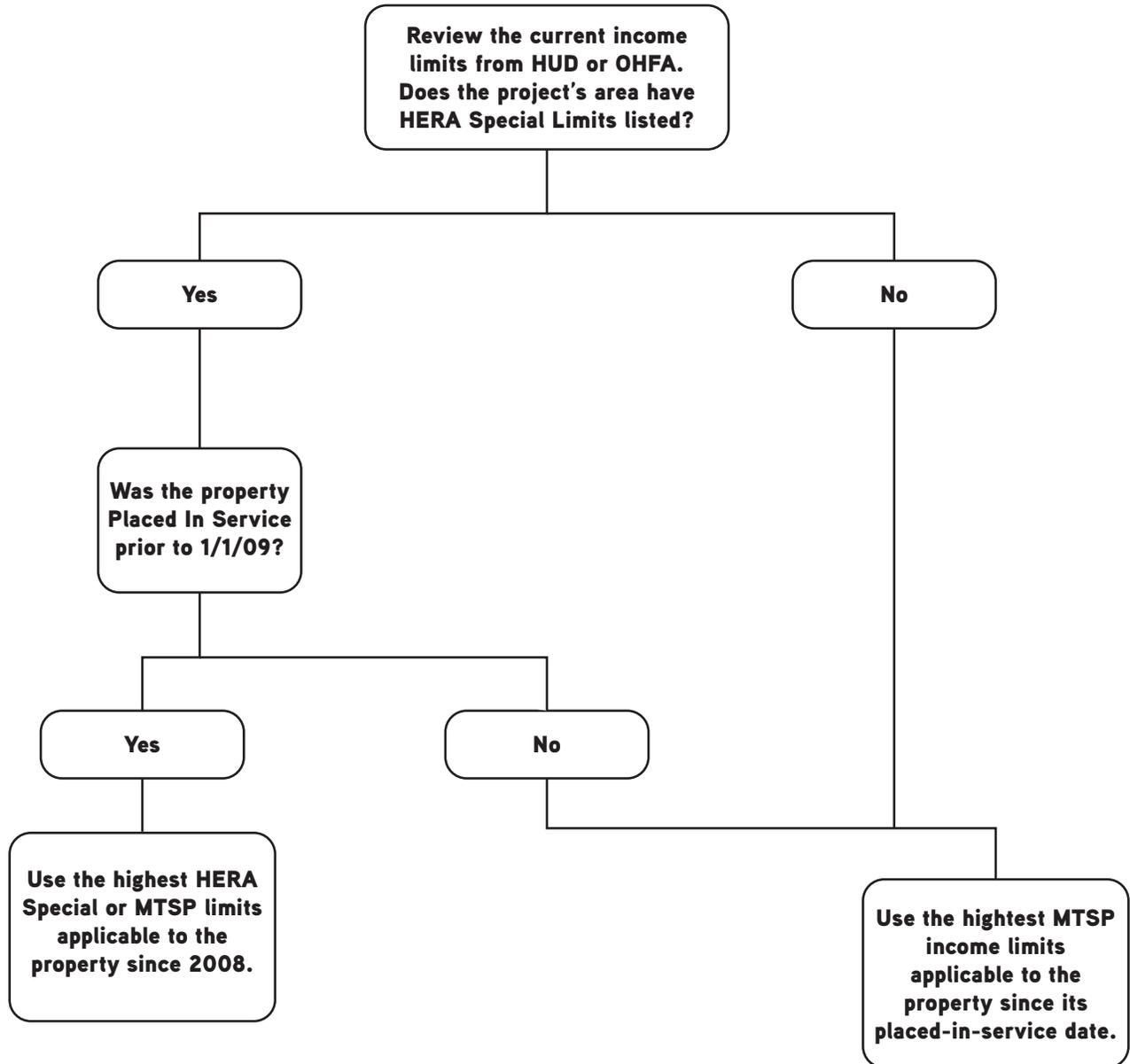
Determining Income Limits Used

To determine which set of income limits to use for a particular project, the owner must first properly define the project based on the election made on Line 8b of Form 8609 and then identify the placed-in-service date for that project. A multiple building project is considered placed-in-service on the date the first building in the project is placed in service.

1. A project that placed-in-service on or before 12/31/08 will use the current HERA special limits. If the county in which the project is located does not have HERA special limits published, then the project will use the regular limits for that county.
2. A project that placed-in-service on or after 1/1/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set ("hold-harmless").

Note: A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits.

How to Select the Correct LIHTC Limits



“Hold Harmless”

The [Housing and Economic Recovery Act of 2008](#) amended IRS §1.42 to include a “hold-harmless” policy for income and rent limits. According to the hold harmless provision, the income limits and corresponding rent limits for a particular project (as defined by the 8609 Line 8b election) will never decrease for any calendar year after 2008, even if there is a decrease in the HUD published limits for the county in which the project is located. However, a project is never eligible to use a set of limits if it was not placed-in-service during the time those limits were in effect. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

Example:

Year	
2016	Ichabod Manor places in service and uses 2016 income limits
2017	The published limits for the area go down. Ichabod Manor continues to use 2016 limits. Sunnydale Plaza, a property next to Ichabod Manor, places in service in 2017. They must use the 2017 limits, which are lower than the limits at Ichabod Manor.
2018	Limits continue to decrease, but Ichabod Manor will hold harmless at the 2016 levels, and Sunnydale Plaza will hold harmless at the 2017 limits.
2019	Income limits go up and exceed the 2016 limits: both projects will now use the 2019 limits and hold harmless to those units.

Income limits are project specific based on the placed-in-service date. If buildings within the same development are considered separate “projects” (i.e., if Line 8b of the 8609 is marked ‘no’), then each building may potentially have different sets of limits based on their different placed-in-service dates. Even if the multiple building project election is marked “yes,” it is important to note that separate phases are always considered different projects and are therefore likely to have different sets of income and rent limits.

A project that placed-in-service during the 45 day implementation period after the release of a new set of income limits may rely on either set of limits (the old or new) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property.

HERA Special Income Limits

In 2009, HUD began publishing HERA special income limits. Where applicable, the HERA limits must be used by all Housing Tax Credit projects that placed-in-service on or before December 31, 2008. However, not all counties in Ohio will have HERA special limits every year. Projects that placed-in-service in 2009 or later are not eligible to use the HERA special limits, including projects that receive a subsequent credit allocation.

To summarize, a project (as defined by Line 8b of Form 8609) is eligible to use the HERA special limits if

1. The county in which the project is located has HUD published HERA special limits for the year.
2. The project placed-in-service on or before December 31, 2008.



Qualifying Household Income and Assets

The owner is solely responsible for qualifying households, and the owner must ensure that all staff are properly trained. Owners and management agents should refer to IRS § 42 and the HUD Handbook 4350.3 for more information.

Before beginning the certification process, the potential tenant should complete a rental application. All adults, ages 18 and older and listed as current or anticipated tenants, must sign the rental application.

OHFA does not require a specific rental application. Aspects of the tenant application for a Housing Tax Credit project or other affordable housing community differ from the applications used by many market-rate projects in that detailed questions about student status and sources of income will be included. Affordable housing communities are encouraged to use a model application to ensure all relevant requirements are addressed.

As part of the application process, the applicant is required to disclose all sources of income. All disclosures of income and assets are made on the OHFA Sworn Income and Asset Statement. The management agent is required to use this form.

Each adult applicant must complete and sign a SIAS. The management agent must sign and date the SIAS when the applicant signs the SIAS. By signing the SIAS at the same time as each applicant, the management agent is indicating they are a witness to the proper execution of the SIAS. In addition to the SIAS form, each adult household member must also complete an OHFA Student Status Certification. The SIAS and Student Status Certification are available on the OHFA website.

If the tenant or applicant is unable to sign the SIAS or any other forms, an individual with a general power of attorney with authority to sign legal documents may sign the required documents. A copy of the power of attorney should be retained in the applicant's file. If the applicant would need assistance in completing the form as a reasonable accommodation, the management agent may assist the applicant. OHFA suggests documenting the reasonable request using a clarification record. A clarification record has been created for convenience by OHFA and is available on the Forms page of the OHFA website.

Errors on the SIAS or the Tenant Income Certification must be corrected by striking through the incorrect information and inserting the correct information. The applicant and management agent's initials and the date should be next to the changed information to indicate the correction was made.

All income and assets listed by the tenant on the SIAS, must be third-party verified as instructed in the HUD Handbook 4350.3. If there are items that are unclear on the third-party verification, a clarification record should be used when correcting or supplementing information on third-party verification forms. There should be no handwritten corrections on the third-party verification forms.

Finally, each form must be signed and dated by the management agent and the adult applicant(s), or the applicant's general power of attorney.

Tenant Income Certification (TIC)

Once all household composition and income information has been gathered and verified, the information is encapsulated on the Tenant Income Certification. OHFA has a TIC that is required for both LIHTC and HOME units. All household adults and the owner/manager must sign the TIC. Be sure to download the most current TIC form and instructions on the OHFA website.

The TIC

- Should be typed or completed in pen. Pencil is not acceptable.
- Should never be signed blank. The signature is how the manager and household attest that the information on the form is accurate. Signing a blank TIC is a form of fraud.
- Should always have a dated signature when it is signed. It must never be backdated to match the effective date in cases where the TIC is signed late.
- Any corrections that are necessary (such as math errors resulting in incorrect income totals) should be made by crossing out the incorrect information and adding the correct information. WiteOut does not show what correction was necessary and should never be used.
- Can reflect the past effective date when a late certification is being created retroactively. However, it must be signed when dated and have a statement next to the signature that the information was "true and accurate as of" the effective date.

Determining Household Size for Income Limit Purposes

Income limits are based on the number of household members. Household members include all persons who occupy the unit as their primary residence. Household members may include:

- Children under joint custody who will be in the unit at least 50% of the time
- Children away in foster care who will be returning to the household
- Dependent students away at school
- Members temporarily in nursing home or hospital
- Children being adopted
- Foster children and adults
- Persons in active military duty
- Future spouse or roommate
- Unborn children

Unborn children must be verified only through affidavit from the expecting mother. No further documentation is allowable.

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

- Live-in attendants/aids for the disabled, when verified as necessary
- Children under joint custody who will be in the unit less than 50% of the time
- Temporary visitors or guests

Live-in attendants may be counted when determining the unit size (e.g., one bedroom vs. two bedroom).

Changes in Household Size

When adding members to the household after initial move-in verification and adding the new member's income to the rest of the household's income as verified on the household's most recent Tenant Income Certification the new household member must also complete other paperwork required of new move-ins, including a Student Status Certification and the Sworn Income and Asset Statement. Apply the Available Unit Rule if the new additional income with the already verified income of the existing members exceeds the 140% limit. When subtracting household members, wait until the next recertification date and simply reflect the smaller household on the TIC then.

Income Calculation

Provided an applicant meets the basic leasing requirements of the owner, an income calculation will be made. Calculating an accurate gross household income involves some key factors:

- The potential tenant must have provided honest and complete answers on the SIAS.
- Sources of income must be included as appropriate.
- Due diligence, including documented clarification when needed, is essential. Specific inclusions and exclusions of income can be found in the HUD Handbook 4350.3.

Typical sources of income include the following:

- Employment
- Self-Employment
- Income from Assets
- Social Security and Other Benefits
- Payments in Lieu of Earnings
- Welfare Assistance
- Periodic Allowances (Child Support, Gifts, Cash)
- Military Pay
- Student Financial Assistance (for Section 8 assistance recipients)

Please contact OHFA when unusual sources of income are encountered to ensure the income is properly included or excluded from the income calculation.

Annual Household Income

Annual Income is the anticipated total income from all sources received by the household head and spouse and by each additional member of the household, even if temporarily absent. This also includes all income derived from assets for the 12-month period following the effective date of certification of income. The gross household income is then compared to the applicable income limit (the 50% or 60% limits, for example) to determine if the household qualifies.

Doing the Math: Household Income

Once all verifications have been received and reviewed, the applicant/tenant income can be calculated.

The income calculation is:

$$\text{Gross income} = \text{earned income} + \text{income from assets}$$

The following discussion involves key income calculation concepts. Familiarity with these will help ensure an accurate TIC.

First, the income calculation is based on gross income, not net income. Income before all deductions, for example, taxes, insurance, Medicare, or garnishments, is counted. Note that more than one income calculation may have to be completed for an applicant/tenant.

The next important concept is anticipated income. Applicant/tenant income is calculated based on the anticipated circumstances for the next 12 months. Any expected changes in income or hours worked should be included in the income calculation.

For example:

If an employer indicates the applicant/tenant will be receiving a \$.25 per hour increase in wages on his employment anniversary date, and that date falls within the certification period, the raise should be included on a pro rata basis. If an employer lists an anticipated raise covering a range, for example \$.30 to \$.50 per hour, the higher amount should always be used.

Assets

An asset is generally considered an item of value that is accessible to the household and can be converted into cash. Assets range from financial accounts to baseball cards sold regularly for profit. As with income, some items that can be reasonably defined as assets are not considered assets when computing total household assets. All income earned from reportable assets must be included in the calculation of gross household income.

Since income from assets is considered unearned income, the income from assets for all household members, including minors, is included in the calculation. Similar to the calculation of earned income, the assets of live-in aides is not included in the calculation.

HUD's Occupancy Manual, the [HUD Handbook 4350.3 Exhibit 5-2](#) provides a comprehensive description of assets.

Verification

Income, assets and student status must be verified through knowledgeable third parties. Information disclosed by the household must be supported by third-party information. The tenant eligibility process assumes third-party verification is available. Appendix 3 of the HUD Handbook 4350.3 provides a comprehensive list of acceptable forms of verification.

One documentation exception applies to households with total assets under \$5,000. Households with assets under \$5,000 may use OHFA's Under \$5,000 Asset Form to satisfy the asset verification requirement. Provided the assets, and the income from the assets, are fully disclosed, no additional verification is necessary. The Under \$5,000 Asset Form is not required if an applicant certifies they have zero assets.

The Under \$5,000 Asset Form is prohibited in HDAP/HOME-assisted units. In addition, Section 8, Section 811 Project Rental Assistance and RD 515 projects prohibits the use of the Under \$5,000 Asset Form.

The assets of households in HOME-assisted units must be third-party verified, or verified using a self-certification during the first and every sixth year of the property's affordability period. A self-certification may be used for recertifications completed in the interim two through five-year period.

All verifications must be dated within 120 days of the effective date of the household certification. No extensions of the verification period are applicable.

For households benefiting from a HUD Section 8 voucher, the verification requirements are satisfied if the Public Housing Authority provides a statement to the owner declaring that the household's income does not exceed the applicable income limit (IRS §1.42-5(b)(1)(vii)). The supporting document from the PHA for applicants receiving Section 8 Housing Assistance Payments is available in the Required Compliance Forms section on the OHFA website. This mandatory form must be included in the tenant's file. However, for projects that have existing HUD Section 8 project-based assistance, 811 Project Rental Assistance or USDA RD 515 rental assistance the management agent must provide third-party verification of all income and assets.

HUD Section 8 projects and other projects financed through a HUD multi-household program may have access to the Enterprise Income Verification system. The EIV system provides access for management agents to verify household income. HUD policies clearly indicate the verifications obtained through the EIV may not be used to support income certification in any other program, including the LIHTC program. Therefore, owners/management agents of LIHTC or other OHFA-financed projects are prohibited from using the EIV information as third-party verification, even if the project is eligible to use it on a HUD program also supporting the project. Any information related to the EIV must be separated from LIHTC files.

Child Support

Two questions should guide the verification of child support. First, does the applicant/tenant have a court order for support? Second, is the applicant/tenant receiving child support? If the applicant/tenant is receiving child support, the amount of child support must be included in the income calculation. Remember, there is no deduction from the gross income calculation when an applicant/tenant pays child support.

Child support received must be verified. If the applicant/tenant does not have a court order for child support, and the applicant/tenant is receiving child support, the parent paying child support should complete a verification of Informal Support indicating the amount to be received. If the applicant/tenant does not have a court order for child support, and the applicant/tenant is not receiving support, verification is not required.

If the applicant/tenant has a court order for child support, verification must be obtained. Normally the local child support enforcement agency can provide documents showing amounts paid over a given period of time. This should provide sufficient verification of the amount received by applicant/tenant. According to the 4350.3 Chapter 5, if a lesser amount other than the court ordered amount is counted, the household must certify that full payments are not being received and show that they are actively working with the enforcement agency to collect the full amount. The payment history can be used to calculate the average over 12 months.



Utility Allowances

When utilities are paid directly by the tenant (rather than the owner/ development), a utility allowance must be used to determine maximum allowable rent. The maximum allowable rent calculations include costs to be paid by the tenant for utilities including: heat, water heating, lights (other electric), air conditioning and appliances such as the stove or refrigerator, water, sewer, oil, gas or trash, where applicable. If all utilities are included in the household's gross rent payment, no utility allowance is required.

To qualify as part of the utility allowance, the cost of any utility except telephone, cable television, or internet must be paid directly by the tenant(s), and not by or through the owner of the building. If the owner or a third-party separately bills the tenant for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance unless the utilities are sub-metered. The utility allowance must be subtracted from the rent limit to determine the maximum allowable tenant-paid rent. Owners are expected to comply with IRS §1.42-10. The IRS provides additional information utility allowances in [IRS Notice 89-6, Federal Register Vol. 73, No. 146 "Section 42 Utility Allowance Regulations Update"](#), and Chapter 18 of the 8823 Guide.

Approved Utility Allowance Sources

The Ohio Housing Finance Agency will accept the following utility allowance methods without prior approval as defined in IRS §1.42-10:

- Public Housing Authority Allowance
 - For properties with HOME funds committed on or after August 23, 2013, estimates that are not project-specific cannot be used.
- Utility allowances as required by other federal programs should be used:
 - Allowances for buildings assisted by the Rural Development or with Rural Housing Assisted Tenants (515)
 - Utility allowances for buildings regulated by HUD
 - Allowances for tenants receiving HUD Rental Assistance either from the Housing Choice Voucher Program or a project-based voucher facilitated by the local metropolitan housing authority

The following "alternative" utility allowance methods must be reviewed and approved by OHFA:

- Utility Company Estimates
- HUD Utility Schedule Model
- Engineer's Energy Consumption Model

Owners may combine utility allowances from different sources to benefit the development. When using multiple utility allowance sources for different utilities, the owner must clearly document which source is being used for each utility type. Furthermore, the owner may elect to change the utility allowance type from year to year. Such changes must be approved by OHFA and may only occur once every 12 months.

Sub-metering

Sub-metering measures tenants' actual utility consumption, and tenants 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 tenant utility consumption, and tenants receive documentation of utility costs as specified in the lease.

Ratio Utility Billing System (RUBS)

While sub-metered utilities may be included in a utility allowance, utilities paid using a Ratio Utility Billing System cannot be included in utility allowance. Utilities paid through RUBS are not includable in utility allowances because RUBS bills tenants using an allocation formula instead of actual consumption data.

RUBS is a system usually used only for water and sewer, that uses one master meter for the entire property or building instead of separate sub-meters for each unit. Management then divides the total utility cost for the property among all tenants using a determined formula. The formula is generally based on factors such as number of occupants, square footage of the unit, number of bathrooms in the unit, etc. While this type of utility is not considered in the utility allowance calculation, the amount of the monthly bill is included in the gross rent calculation as a non-optional fee.

Updating Utility Allowances

Owners are required to review current utility allowance, based on the method, in accordance with IRS §1.42-10. This update must be recorded in DevCo, OHFA's online reporting database, and proof of verification must also be provided in DevCo annually.

To remain in compliance, owners must utilize the correct and most current utility allowance in order to properly determine unit rents. When a utility allowance changes, rents must be recalculated within 90 days of the effective date of the change to avoid violating the rent limit.

Utility allowances should be reviewed and updated in the following circumstances:

- When the rents for a development or building are changed, or there is a change in who pays the utilities.
- Utility allowances as required by other federal programs, within the appropriate timeframe as defined by the HUD or USDA Rural Development program
- PHA Allowance within 90 days of a change being made available in the type of applicable allowance (e.g., a tenant begins receiving Section 8 rental assistance and the applicable PHA approved utility allowance must now be used for that unit)
- Alternative method the utility rates used must be reviewed, at least once a calendar year, and updated if there is a change.

All of these utility allowance types must be submitted to and approved by OHFA at the applicable effective date and cannot be implemented until 90 days after that effective date (e.g., a utility company estimate is dated January 15th, which represents the effective date of the utility allowance and the beginning of the 90-day period). The utility company estimate must be submitted to OHFA January 15th, and the allowance cannot be implemented until April 15th, 90 days after January 15th.

Noncompliance with Utility Allowances

Housing Tax Credit units are considered out of compliance when the gross rent exceeds the applicable rent limit. If use of an incorrect or outdated utility allowance causes rent limits to be exceeded, a Form 8823 will be issued and both line items 11G (violation of gross rent limit) and 11M (utility allowance noncompliance) will be checked as out of compliance on the form.



Rent Limits

The rent limit is the maximum amount of rent, including a utility allowance for tenant-paid utilities (except telephone, cable television and internet) and the amount of any non-optional fees that can be charged for a Housing Tax Credit unit. Because the rent limit includes the amount of a utility allowance, tenants cannot actually be charged rent in the amount equal to the rent limit unless all utilities are owner-paid and there are no additional non-optional charges.

Rent Limit Terminology

Gross Rent: The gross rent for a unit is the sum of the tenant portion rent, utility allowance and non-optional charges. The gross rent may never exceed the applicable published rent limit.

$$\text{Gross rent} = \text{tenant portion of rent} + \text{utility allowance} + \text{non optional charges}$$

Maximum Allowable Rent: The maximum allowable rent is the most an owner is permitted to actually charge for rent once tenant-paid utilities (except telephone, cable television and internet) and other non-optional charges are deducted. The maximum allowable rent can never exceed the applicable published rent limit. Maximum allowable rent may also be referred to as the "maximum chargeable rent" or the "net rent."

Tenant-Paid Rent: The tenant-paid rent or lease rent is the actual rent charged to the household by the owner, as defined in the lease and excludes any payments received as rental assistance under Section 8 or comparable federal rental assistance program. The lease rent may never exceed the maximum allowable rent or the applicable published rent limit.

Gross Rent Floor: Every Housing Tax Credit project has a "gross rent floor," defined as the lowest rent limits that will ever be in place for that particular development. If the current year's published rent limits drop below the gross rent floor, a project may continue to use the rent limits established within the gross rent floor.

For Housing Tax Credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development (if elected by the owner) or on the allocation date (per IRS, this is the default gross rent floor lock-in). The allocation date will be defined as the date of the Carryover Agreement (reservation date for bond projects).

A project that places-in-service during the 45-day implementation period after the release of a new set of income and rent limits may rely on either set of limits (the old or new) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property.

If an existing Housing Tax Credit project receives a subsequent credit allocation, the gross rent floor is reset. The gross rent floor from the original allocation does not carry forward.

See [Revenue Procedure 94-57](#) for more information.

Non Optional Charge: Non optional charge is any fee that is charged for a service that is a condition of occupancy, which must be included in the gross rent computation when checking rent against the applicable rent limit.

Determining Rent Limits Used

To determine which set of rent limits to use for a particular project, the owner/management agent must first properly define the project based on election made on Line 8b of Form 8609 and then identify the first placed-in-service date for that project. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

1. A project that placed-in-service on or before 12/31/08 will use the current HERA special limits. If the county in which the project is located does not have HERA special limits published, then the project will use the regular limits for that county.
2. A project that placed-in-service on or after 1/1/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set. A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits.
3. Compare the rent limits from either step #1 or #2 (above) to the gross rent floor and use the higher of the two limits.

Calculating Maximum Rent Limits

Rents are based on bedroom size. For properties that received an allocation of credits after December 31, 1989, gross rent is calculated at 30% of maximum qualifying income assuming 1.5 persons per bedroom, except for zero bedroom or single room occupancy units, which have rents calculated based on the one person income limits.

Example: How to Calculate Gross 50% Rents

Unit size: Three bedrooms

County: Franklin (2018)

Four Person Household at 50% AMGI: \$38,200

Five Person Household at 50% AMGI: \$41,300

To calculate the 50% gross rent for a three-bedroom unit, average the 50% income limits for the four- and five-person households.

Step 1: $(\$38,200 + \$41,300) / 2 = \$39,750$ (We assume 1.5 persons per bedroom.)

Step 2: $\$39,750 \times .3 = \$11,925$ (Gross rent is based on 30% of the AMGI.)

Step 3: $\$11,925 / 12 \text{ months} = \993.75

Step 4: Gross rent for a three-bedroom unit cannot be greater than \$993.75. Gross rents are rounded down to the nearest whole dollar, resulting in a gross rent of \$993 per month. Gross rents must never be rounded up.

Example: How to Calculate 60% Gross Rents

Unit Size: Three bedrooms

County: Franklin (2018)

Four-Person Household at 60% AMGI: \$45,840

Five-Person Household at 60% AMGI: \$49,560

To calculate the 60% gross rent for a three-bedroom unit, average the 60% income limits for the four- and five-person households

Step 1: $45,840 + \$49,560) / 2 = \$47,700$ (We assume 1.5 persons per bedroom.)

Step 2: $\$47,700 \times .3 = \$14,310.25$ (Gross rent is based on 30% of the AMGI.)

Step 3: $\$14,310 / 12 = \1192.50

Step 4: Gross rent for a three-bedroom unit cannot be greater than \$1192.50. Gross rents are rounded down to the nearest whole dollar, resulting in a gross rent of \$1192 per month. Gross rents must never be rounded up.

Note: Gross rent does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable government-sponsored rental assistance program such as RD515 or housing assistance payments from the local metropolitan housing authority known as a Housing Choice Voucher.

Rental Assistance

Gross rent does not include any rental assistance payments (tenant-based or project-based) made to the owner to subsidize the tenant's rent, including Section 8 or any comparable federal, state, or local government rental assistance program to a unit or its occupants. The gross rent limit applies only to payments made directly by the tenant.

Gross rent does not include any rental payment to the owner of the unit to the extent such as the owner pays an equivalent amount back to USDA Rural Development under Section 515. As long as the owner pays back to Rural Development, the rent amount that is above the tax credit limit (referred to as "the overage") is considered in compliance.

The portion of the rent paid by Section 8 households can exceed the tax credit rent limit as long as the owner receives a Section 8 assistance payment on behalf of the household, and the rent limit is exceeded due to Section 8 requirements for calculating the household rent portion. If no subsidy is provided, the household may not pay more than the tax credit rent limit allows.

For tenants receiving Section 8 vouchers, a copy of the original Housing Assistance Payment Contract and the current HAP Amendment from the Section 8 agency must be kept in the household's tax credit file in order to verify the amount of Section 8 rental assistance received. For tenants residing in units with project-based Section 8, the current HUD Form 50059 showing the amount of rental assistance must be included in the file.

Noncompliance with Rent Limit

Once the gross rent of a unit has exceeded the rent limits, that unit is considered out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge. Therefore, a Form 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected Form 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. Refunding the overcharge does not prevent the Form 8823 from being issued. OHFA requires the owner to reimburse the tenant and adjust the rent before a corrected Form 8823 will be issued for the unit.

If the owner or management discovers that rent has been overcharged, the owner should take action to correctly adjust the rent and reimburse the overcharges.



Leases

All tenants occupying low-income units are required to execute an initial lease. The lease must reflect the move-in date or the date the tenant takes possession of the unit. Initial lease terms must have a minimum six-month term. Tenants living in tax credit buildings have good cause eviction protection, which means that owners are prohibited from evicting tenants or refusing to renew leases or rental agreements, other than for good cause. The IRS required language is incorporated into the OHFA LIHTC Lease addendum which must be used for all properties with the exception of HUD or RD properties. The HUD and RD model lease already contains adequate good cause language.

Allowable and Prohibited Fees and Charges

Customary fees that are normally charged to all tenants, such as damage (security) deposits, pet deposits/fees, application fees and/or credit deposits are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms of documentation such as the Tenant Income Certification and income/asset verification documents.

The 8823 Guide makes it clear that refundable fees associated with renting units (e.g., security deposits) and one-time penalty fees (e.g., late payment fees and fees for prematurely breaking a lease, as long as such fees are clearly defined within the lease) are allowable fees that are not included in the gross rent calculation.

Condition of Occupancy Rule (Optional Versus 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/mandatory) must be included in the gross rent computation when checking gross rent against the applicable rent limit. This is true even if federal or state law requires that the services be offered to tenants by the owner.

Assuming they are truly optional, fees may be charged for elected services or additional amenities (e.g., pet fees, fees for extra storage units, etc.). These fees would not be included in the gross rent calculation. A service or amenity is considered optional only if (1) a tenant may opt out of the service or amenity without penalty and continue to live at the development, and (2) "reasonable/practical alternatives" exist. Refer to IRS §1.42-11 Provision of Services:

Additionally, any services the tenant pays for that are provided by the development (whether optional or non-optional) must be listed in the tenant's lease with the cost of each individual service clearly listed. See IRS Notice 89-6 and IRS Revenue Ruling 91-38.

Mandatory Renter's Insurance

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 do one of the following:

1. Obtain proof of renter's insurance for the tenant, locate the annual premium and divide by 12 to obtain a monthly cost of renter's insurance. This monthly cost must then be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent.
2. Obtain an estimate similar to creating a utility allowance, in which the average rates are compared for at least three of the primary insurance providers in the area. The annual estimate for renter's insurance should be divided by 12 to reach a monthly estimate. The monthly renter's insurance allowance estimate must be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent. As with utility allowances, an updated rent insurance estimate must be created annually.

If renter's insurance is required, the sum of the tenant paid rent, utility allowance, and renter's insurance premium cannot exceed the maximum gross rent. If the tenant's payment exceeds the gross rent as a result of paying mandatory renter's insurance premiums, the tenant paid rent must be reduced by the amount by which the tenant's total payments exceed the gross rent. The rent reduction must occur in the month following the month in which the tenant notifies the owner of the amount of the insurance premium. The owner must provide written notice of the change in rent to the tenant.

Tenants cannot be forced to obtain insurance from the owner's preferred provider. The tenant may select his/her own provider without penalty. The owner must provide tenants with a written statement indicating they have an option to choose another provider, such as the firm that provides their car insurance. The statement must be signed and dated by the tenant.

Month-to-month Tenancy Fees

Although month-to-month fees may seem optional (i.e., the tenant 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.

Application Fees

Most projects charge a potential tenant a fee when an application for housing is received. The purpose of this fee is to reimburse the project for costs associated with processing the application. In addition, the fee represents a measure of good faith on the part of the applicant. The application fee should only include the costs incurred by the project to process the application.

Under no circumstances, may "administrative" costs be included in the application fee. Please refer to Chapter 11, pages 11-2 and 11-3 of IRS Guide for Completing Form 8823 ("8823 Guide" or the "Guide") for more information.

Prohibited Fees

Examples of fees that are not permitted include the following:

1. Work involved in completing the Tenant Income Certification and other program specific documentation
2. Preparing a unit for occupancy (prepping a unit that has normal wear and tear)
3. Use of Tenant facilities and amenities (such a swimming pools, parking areas or recreational facilities) when the cost is included in Eligible Basis
4. Pet deposits or fees for service/therapy animals
5. Pest extermination fees

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

1. The owner will be required to refund excess rent amount for all months affected;
2. The IRS may disallow tax credits on the affected unit for the taxable year and recapture any accelerated credits already claimed; and,
3. The earliest that the LIHTC unit will be considered back in compliance is the start of the following tax year, provided the unit is rent restricted under the applicable program rent requirements.

Lease Addendums

Other Lease Addendums

OHFA reserves the right to approve or reject any lease addendum that is not required by multifamily funding programs.

LIHTC Lease Addendum

The OHFA LIHTC Lease Addendum must be in all HTC tenant files. The OHFA LIHTC Lease Addendum is prohibited in HUD or RD tenant files.

Lease Terminations

Tenants living in tax credit buildings have good cause eviction protection which means that owners are prohibited from evicting tenants or refusing to renew leases or rental agreements, other than for good cause. The IRS required language is incorporated into the OHFA LIHTC Lease addendum which must be used for all properties with the exception of HUD or RD properties. The HUD and RD model lease already contains adequate good cause language.

Annual Inspections

At minimum, annual inspections are required for all HTC projects. The inspection for each year must be kept in the tenant file.

Recertifications

Verification Validity Length

Verifications must be dated within 120 days of the effective day of the certification. As this is the case, many management agents elect to start the recertification process 120 days before the due date of the recertification. A good start to the process is to begin confirming mailing and account information at an early stage.

OHFA allows recertifications to be signed up to 120 days in advance of effective date of the recertification.

100% Housing Tax Credit Projects

Since 2008, federal law does not require income recertification at projects that are 100% Housing Tax Credit because a project will always move in an income qualified household into a vacant unit. For these projects, only Student Status needs to be verified annually by the anniversary of the effective date of the most recent certification.

HOME, OHTF, and NHTF

The waiver of recertifications does not apply to Housing Development Assistance Program-assisted units (i.e., HOME, OHTF, or NHTF); annual certifications are required.

Mixed-income Projects

Projects with both HTC units and market units based on the allocation are required to income recertify the HTC units. The recertification process involves securing a new Sworn Income and Asset Statement (SIAS) and Student Status Certification, obtaining new third-party verifications, preparing and executing a new TIC, and if applicable, executing a new lease.

Other programs, such as HUD Section 8 or RD assistance, may require an interim recertification upon a change in household income. In preparing recertifications for other housing programs, a new certification of income for the HTC program does not have to be prepared.

Tenants Unwilling to Recertify

Occasionally, a management agent will encounter a tenant who proves unwilling to recertify their income, yet continues to make rent payments and generally abides by the lease. In these situations, an owner/management agent may remain in compliance by clearly documenting attempts to recertify the tenant's income. Such documentation may include, but is not limited to the following:

- Copies of mailed or hand-delivered notices
- Logs noting when reminder phone calls were made
- Copies of certified mail receipts

The tenant file should be documented with an OHFA Clarification Record indicating why a recertification has not been completed. In addition, any legal action allowed by the lease, and pursued by the management agent, should be recorded in the tenant file.

A management agent is not required to secure a TIC from a tenant being sued for eviction. In these instances, documentation of the attempt to evict the tenant should be retained in the tenant file along with an OHFA Clarification Record describing the situation.

Owners will not be cited for non-compliance if a tenant departs a project before an income certification can be completed. For example, if a household's income recertification was due on June 30, and the household moved out of the unit on May 15, the unit is not out of compliance.

Fraud and Misrepresentations

If an owner/management agent suspects a tenant in a tax credit project, or applicant to a project, has intentionally misrepresented his or her income, or is committing fraud, the owner/management agent should report the suspected fraud using the Internal Revenue Service's Suspected Tax Fraud Hotline at 1-800-829-0433. When calling the Hotline, be prepared to supply the following information:

1. Tenant's name
2. Tenant's social security number
3. Explain the tenant's involvement with the LIHTC program
4. Description of how the tenant misrepresented his or her income (the owner may be asked to provide evidence of the tenant's fraudulent acts)
5. Amount of tenant income as reported by the tenant and the amount actually verified
6. The difference between the market rate and restricted rent for the unit and how long the tenant has been or was in the unit. This is the amount of economic benefit the tenant may be deemed to have received as taxable income.

HUD also provides an extensive system for reporting suspected fraud involving HUD programs such as Section 8 and the HOME Program. Owners/management agents have several options. Suspected fraud can be reported:

- On-line at <https://www.hudoig.gov/report-fraud/hotline-report-form>
- By telephone at 1-800-347-3735
- By facsimile at (202) 708-4829 using Form 211
- By mail using Form 211 at HUD Office of Inspector General Hotline, GFI, 451 7th Street, SW, Washington, DC

2013 Final HOME Rule

A [Final HOME rule](#) was published in 2013. Some of the changes were significant and prompted several changes to the compliance rules and monitoring for the HOME program.

HDAP Rent and Income Restrictions

Compliance with the HDAP requirements begins with the funding agreement. The agreement outlines the project characteristics and rent and income restrictions agreed to by the owner.

The majority of HDAP assisted units are floating units (per the funding agreement), meaning the owner may designate an HDAP unit as any unit in the project where the tenant's income and the rent paid meet the restrictions outlined in the funding agreement. However, if the funding agreement specifically lists fixed units, the units must be fixed and may not float.

HOME High and Low Rents

HDAP projects with fewer than five assisted units may implement the High HOME rent for all assisted units. Projects with five or more assisted units must implement both the High and the Low HOME rent. Low HOME rents must be applied to 20% of the units when the project has five or more assisted units. For example, a project with seven units will have two Low HOME units (when determining the number of Low HOME units, always round UP to the next whole number).

Gross rent under the HOME program includes any housing assistance payment, the utility allowance, and the net rent. If the owner is paying for all necessary utilities (excluding telephone and cable television service), the HOME rent represents the maximum charge the tenant may be required to pay.

Utility Allowances

The [2013 Final HOME Rule](#) requires OHFA to determine an individual utility allowance for each HOME rental project by using the HUD Utility Schedule Model, utility company estimate, or energy consumption model. PHA estimates or other estimates that are not project specific are no longer acceptable to be used for HOME-assisted units.

OHFA requires owners of projects that received an allocation of HOME funds on or after August 23, 2013 to request a utility allowance from OHFA. Owners of these projects will no longer be able to use the Public Housing Authority allowance for the HOME units in the project. Owners are required to submit a utility allowance request for the HOME unit(s) by using the HUD Utility Model, utility company estimate, or energy consumption (engineer) model. Projects that have a utility allowance mandated by another federal program (e.g., HUD Section 8, USDA Rural Development) may use the utility allowance as determined by the housing contract. Due to the HOME program not allowing the PHA utility allowance to be utilized, a household with a Housing Choice Voucher would not be able to meet the HOME utility allowance criteria. If selecting such a unit is the only option at the property, the owner/management agent must contact OHFA for further guidance.

Owners of projects that received OHFA HOME funds prior to August 23, 2013 **are not impacted** by the new utility allowance requirement and may continue to use any utility method described in OHFA's Utility Allowance Policy to include PHA estimates which is located on OHFA's website.

HOME Rent Approval Process

The 2013 Final HOME Rule amends §92.252(f)(2), which requires OHFA to review and approve rents for each HOME-assisted project annually to ensure that the project complies with the HOME limits and do not result in undue increases from the previous year.

Within 45 days of the annual publication of new HOME rents, HOME award recipients must certify what HOME rent will be used at the project and submit the OHFA Rent Approval Form located on the OHFA website.

Qualifying Households

Recertification

When over-income tenants are identified at recertification, the process implemented is similar to the process used in the LIHTC program. If a household living in a Low HOME unit has an income at recertification that exceeds 50% of the area median gross income, but it is still below 80% of the area median gross income, that unit can be designated as a High HOME unit, and the next available HOME unit would be designated a Low HOME unit. The project could meet this requirement by selecting an existing qualifying household, or could lease the next available unit.

- If 100% HOME, then the owner must charge rent equal to 30% of adjusted income.
- If HOME and market units, then the owner must charge rent equal to the lesser of 30% of adjusted income OR market rent.
- If HOME and another affordable housing program, then the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other program.

Verification of Income

The verification of income for HDAP-assisted units differs slightly from the process used for the LIHTC program. The HDAP-assisted units require a full third-party verification of income and assets on a six-year rotation (i.e. at year one, year six, year 12, year 18, etc.). The certifications for the intervening years can be a self-certification of household income. If the household reports an income greater than the 80% income limit, then all income and assets must be verified using source documentation.

Verifying Employment Income

The 2013 HOME regulation (24 CFR 92.203) requires the use of income source documentation for HOME-assisted units. Two months of pay history, such as paystubs, must be used for the income source documentation {92.203 (a) (1) (i) & (a) (2)}. Owners and management agents are cautioned that four to six consecutive pay stubs must be used to verify income for the LIHTC program.

Compliance with the HUD Student Rule

The [2013 Final HOME rule](#) adopted the HUD Student rule.

The HUD final rule establishing eligibility of students for Section 8 assistance was published on December 30, 2005, and updated on April 10, 2006. The rule requires that a student at an institution of higher education meet certain requirements in order to be eligible for Section 8 rental assistance. In order to be eligible, the student has to either be independent of their parents for at least one year, or be an “independent student” as defined by the United States Department of Education. An “independent student” is one who met any one of the following requirements:

- Is age 24 or older by December 31 of the award year
- Is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or a ward of the court at any time from age 13
- Immediately prior to the age of majority, was an emancipated minor or in legal guardianship as determined by a court
- Is a veteran of the United States military or on active duty for service other than training (i.e., not Guard or Reserve)
- Is a graduate or professional student
- Is married
- Has legal dependents other than a spouse
- Was verified during the school year as either an unaccompanied youth who is homeless or at risk of homelessness and is self-supporting

Students who are orphans, in foster care, wards of the court from age 18, emancipated or under legal guardianship, homeless or at risk of homelessness are considered “vulnerable youth.” In this case, they are automatically considered an “independent student.”

When determining a student’s independence from parents, all of the following are required:

- Review and verification of previous address information in order to confirm a separate household
- Review of student’s prior year tax returns to verify independence
- A written certification of support or nonsupport from the parent(s)

If any of these three requirements are not met, proof of the parents’ eligibility for Section 8 assistance is required.

Tenancy and Lease Requirements

Section 504 requirements

The HOME regulations require that projects comply with the guidelines established in [Section 504 of the Rehabilitation Act of 1973](#), and the [Americans with Disabilities Act of 1990](#) (updated 2008) (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225). Section 504 prohibits discrimination based on disability in federally assisted programs and further stipulates that persons with disabilities will have access to “programs and activities that receive federal funds”.

In new construction and substantial rehabilitation multifamily rental projects, 5% of the total units (but not fewer than one unit) are to be accessible to persons with mobility impairments, and 2% of the total units (but not fewer than one unit) are to be accessible to persons with sensory impairments. Units should be made available in a sufficient range of sizes and amenities so the choice of living arrangements of qualified persons with disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. Owners and management agents should show due diligence in marketing mobility and sensory units to the general public. See [HUD HOME fires - Vol. 1 No. 5](#), February 2, 1998, for additional information.

Lease and Supportive Services

A new provision ([24 CFR 92.253 \(b\) \(9\)](#)) specifies that a tenant’s failure to participate in any required supportive services of transitional housing is a permissible basis for terminating a tenancy or refusing to renew the lease. This provision ensures that transitional housing can be made available to individuals who use the transitional housing for its intended purpose. HUD clarified that supportive services cannot be mandatory for tenants of HOME-assisted units, but only for supportive services provided in transitional housing. Owners are cautioned that requiring tenants to accept supportive services (with exception for tenants of transitional housing) is a prohibited HOME lease clause.

RESOURCES AND LINKS

OHFA Resources

This list is provided as a reference, and additional information may be available on OHFA's website. If a link is found to invalid or does not work please notify OHFA.

Asset Management & Project Changes

<http://ohiohome.org/compliance/changes.aspx>, includes:

- Asset Management Policy
- Ownership Transfer Policy
- Management Company Change Policy
- Restrictive Covenant Modification Policy
- Lease Purchase Sales

Compliance Policies

<http://ohiohome.org/compliance/policies.aspx>, includes:

- Extended Use Policy
- Affirmative Fair Housing Plan Guidance
- Violence against Women Act (VAWA)
- Utility Allowance

Compliance Forms

<http://ohiohome.org/compliance/forms.aspx>, includes:

- Required Compliance Forms
- Tenant File
- Other Required
- Suggested Compliance Forms
- Income Verifications
- Asset Verifications
- Certification Tools

Compliance Message Updates a Archive

- <http://ohiohome.org/compliance/messagearchive.aspx>

Compliance FAQs

- <http://ohiohome.org/pcfqa/default.aspx?type=devco>

DevCo Resources

- <http://ohiohome.org/devco/default.aspx>

Compliance and DevCo Helpdesk

- <https://devco.ohiohome.org/devcoinquiries/>

Federal Regulations and Guidance

IRS - Applicable Guides, Code and Regulations

- [Guide for Completing Form 8823](#) (Revised January 2011)
- [OHFA Guidance - Revised 8823 Guide](#) (Issued January 2011)
- [Internal Revenue Code Section 42](#)
- [Treasury Regulation 1.42](#)
- [Guide for Completing Form 8823](#) (Revised October 2009)
- [OHFA Guidance - Revised 8823 Guide](#) (Issued October 2009)
- [OHFA 8823 Guide Implementation Memo](#) (Issued May 2007)

IRS Notices

- [Notice 2009-79: Tax-Exempt Housing Bonds and 2008 Housing Legislation](#)
- [Notice 88-80: Determination of Income](#)
- [Notice 88-91: Building Identification Numbers](#)
- [Notice 88-116: Placed in Service](#)

Revenue Procedures

- [Rev. Proc. 92-31: Unused Allocation](#)
- [Rev. Proc. 94-57: Gross Rent Floor](#)
- [Rev. Proc. 94-65: Net Family Assets \(Assets under \\$5,000\)](#)
- [Rev. Proc. 96-32: Charitable Organizations and Housing](#)
- [Rev. Proc. 98-25: Electronic Record Storage](#)
- [Rev. Proc. 99-11: Treasury Direct Account](#)
- [Rev. Proc. 2003-82: Safe Harbor - Recertification](#)
- [Rev. Proc. 2004-39: Qualified Residential Rental Projects](#)
- [Rev. Proc. 2005-37: Good Cause Safe Harbor](#)
- [Rev. Proc. 2007-54: Disasters Declared by the President](#)
- [Rev. Proc. 2008-60: Recapture/Discontinuing a Surety Bond or Treasury Direct Account](#)

Rules

- [Rev. Rule 90-60: Satisfactory Bond \(Change in Ownership\)](#)
- [Rev. Rule 90-89: Minimum Set-Aside Requirements](#)
- [Rev. Rule 91-38: Frequently Asked Questions](#)
- [Rev. Rule 92-61: Resident Manager Unit](#)
- [Rev. Rule 94-57: AMGI; Tenant Qualification; Available Unit Rule](#)
- [Rev. Rule 95-49: Tenant Right of First Refusal](#)
- [Rev. Rule 96-35: Treatment of FEMA Assistance](#)
- [Rev. Rule 97-4: Buildings Eligible for Credit](#)
- [Rev. Rule 98-47: Residential Units - Tax Exempt Bond Projects](#)
- [Rev. Rule 98-49: Section 8 Payments](#)
- [Rev. Rule 2002-65: HUD Subsidies Treated as Grants](#)
- [Rev. Rule 2003-77: Community Service Facility](#)
- [Rev. Rule 2004-82: Questions and Answers](#)

Additional IRS Resources Curated by Novogradac

- <https://www.novoco.com/lihtc-irs-guidance>
- <https://www.novoco.com/irs-bond-guidance>
- <https://www.novoco.com/other-lihtc-guidance>
- <https://www.novoco.com/year-15-information>
- <https://www.novoco.com/fair-housing-resource-page>
- <https://www.novoco.com/american-recovery-and-reinvestment-act>
- <https://www.novoco.com/housing-and-economic-recovery-act-2008-hera>

HUD Resources and Guidance

- [HUD Notice H 2014-15 - Change to Passbook Rate - effective 2/1/15](#)
- [HOME Program Self Certification Guidance - effective 11/16/12](#)
- [HOME Program Final Rule - updated 7/27/13](#)
- [Uniform Physical Condition Standards Guidelines - posted 3/8/00](#)
- [External Link to HUD Occupancy Handbook 4350.3](#)
- [4350.3 REV-1 Chapter 5, Determining Income and Calculating Rent](#)
- [4350.3 REV-1 Appendix 3, Acceptable Forms of Verification - revised 5/03](#)