



Low-Income Housing Tax Credit Program Compliance Manual

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OUR MISSION

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

PREFACE

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

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

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

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

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

CHAPTER 1 – INTRODUCTION

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

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

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

Part 1.2 Contents and Summary

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

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

Note: Asset Management Manuals, Forms, and Policies may be updated from time to time due to regulation or improvements. Please check the mhdc.com website frequently.

Part 1.3 Compliance Period

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

Compliance Period for Credit Allocations after December 31, 1989

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

Compliance Period for Credit Allocations for 1987 through 1989 Only

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

PLEASE NOTE

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

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

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

CHAPTER 2 – RESPONSIBILITIES

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

Part 2.1 Responsibilities of MHDC

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

Part 2.2 Responsibilities of the MHDC Asset Management Department

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

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

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

B. Provide LIHTC Program compliance manuals and related materials.

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

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

D. Conduct File Monitoring and Physical Unit Inspections

Generally, MHDC will perform a file review for each property within two (2) years of the last building being placed-in-service and at least every three (3) years thereafter. Owners of the selected properties will be required to provide detailed information on resident income and rent for at least 20% or more of the low-income units in the property. Information to be reviewed will include, but is not limited to, the annual Tenant Income Certifications (TICs), the documentation received to support those certifications (i.e., income and asset verifications), and rent and utility allowance records. Owners must provide organized resident files to MHDC with documentation in chronological order prior to inspection. MHDC also retains

the right to perform a physical inspection of any low-income building and/or unit at any time during the Compliance and Extended Use Periods, with or without notice to the owner.

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

E. Notify owners of Noncompliance

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

F. Notify IRS and Owner of Noncompliance

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

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

Penalties include:

- i. Noncompliance fees paid to MHDC;
- ii. Notification to IRS via Form 8823;
- iii. Disallowance of the credit for the entire year in which the noncompliance occurs;
- iv. Recapture of the accelerated portion of the credit for prior years;
- v. Assessment of interest for the recapture year and previous years;
- vi. Rejection of future LIHTC reservation applications;
- vii. Repayment of rent overages; and/or
- viii. Mandatory attendance at an MHDC sponsored compliance training.

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

**Low-Income Housing Credit Agencies
Report of Noncompliance or Building Disposition**
Note: File a separate Form 8823 for each building that is disposed of or goes out of compliance.
Information about Form 8823 is available at www.irs.gov/form8823.

OMB No. 1545-1204
Check here if this is an amended return ☐

IRS Use Only

1 Building name (if any). Check if item 1 differs from Form 8609 ☐
Street address
City or town, state, and ZIP code

2 Building identification number (BIN)

3 Owner's name. Check if item 3 differs from Form 8609 ☐
Street address
City or town, state, and ZIP code

4 Owner's taxpayer identification number ☐ EIN ☐ SSN

5 Total credit allocated to this BIN \$

6 If this building is part of a multiple building project, enter the number of buildings in the project

7a Total number of residential units in this building

b Total number of low-income units in this building

c Total number of residential units in this building determined to have noncompliance issues

d Total number of units reviewed by agency (see instructions)

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY)

9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY)

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem ☐

11 Check the box(es) that apply:
a Household income above income limit upon initial occupancy ☐ Out of compliance ☐ Noncompliance corrected

G. Record Retention

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

PLEASE NOTE

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

Part 2.3 Responsibilities of the Property Owner/Agent/Developer

Each owner has chosen to utilize the Low-Income Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the owner that will benefit low-income residents. The owner must also certify annually (more often during lease up) that all LIHTC program requirements have been met. Any violation of program requirements could result in the loss of credit allocated.

For developments layered with several affordable housing programs, it is the Owner/Agents responsibility to comply with the most restrictive regulations applicable to the development.

Note: Asset Management Manuals, Forms, and Policies may be updated from time to time due to regulation or improvements. Please check the mhdc.com website frequently.

Responsibilities of Property owners/agents include, but are not limited to:

A. Leasing LIHTC Units to Section 42 Eligible Residents

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

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

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

C. Maintaining the Property in Habitable Condition

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

D. Complying with IRS & MHDC Record-Keeping Requirements

See part 7.5 Record Keeping and 7.6 Record Retention.

E. Attending Missouri's LIHTC Compliance Workshop or Other LIHTC Training at Least Once Every Two (2) Years and Training On-Site Personnel.

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

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

MHDC strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. It is suggested that staff attend a Fair Housing and Equal Opportunity training at least once every calendar year. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. **Note:** For the Affirmative Fair Housing Marketing Plan (AFHMP) approval, staff must attend Fair Housing training and ongoing training. Certificates must be provided and available upon request. Staff should be trained on tenant selection in accordance with the property's occupancy policy, including residency preferences (if any).

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

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

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

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

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

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

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

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

F. Requesting Approval for Any Change in Ownership of the Property

The owner must request MHDC approval of any material changes in ownership. No changes in ownership can be made without prior written approval of MHDC. Changes in management can be implemented without prior written approval of MHDC as long as the new management company is on the MHDC

Certified Management Agent List. The owner must ensure that a duly executed management certification and management entity profile is in force at all times. The owner must also certify that the property is being managed in accordance with all applicable federal, state, and local fair housing laws.

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

Any management change that takes place prior to MHDC approval in the case of non-certified MHDC management agents will not be paid management fees and will be subject to reversal if not approved by MHDC. The owner must submit a cover letter requesting the change along with completed Exhibits A-2, J or J-1, L and the Affirmative Fair Housing Marketing Plan (AFHMP). *Note:* If a property is layered with HUD funding, the AFHMP is to be approved by HUD. A copy of the approved plan must be submitted to MHDC by uploading the approved Plan in AMRS.

If property has HUD funding, the owner must submit copy of HUD approved management certification, AFHMP and HUD Form 2530 along with MHDC completed Exhibits J or J-1 and L. The signer must be listed on the Exhibit J-1 for the subject property.

Note: Please refer to the MHDC website for additional information on Management Agent Certification.

G. Notifying MHDC of Any Interest Change, Contact Change or Owner Representative Change

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

H. Reporting Resident Activity and Submitting Annual Owner Certifications

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

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

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

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

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

Note: If the property also participates in the HOME Program, the information compiled on the LIHTC/HOME Occupancy Report (Exhibit H) must be uploaded into MHDC's Asset Management Reporting System (AMRS) utilizing the same seasonal reporting schedule (based on the LIHTC placed-in-service dates) that is required for the tax credit program. In this instance, only the signed Exhibit K must be uploaded into MHDC's Asset Management Reporting System (AMRS), no later than the last day of the month following the CP submission. Whether submitting online through CP or reporting manually, race and ethnic data must be included.

If the document is NOT part of a TPA, please complete and submit this form via upload in (AMRS). The link to AMRS is <https://amrs.mhdc.com/>.

The link to the CP site is: <https://CP.mhdc.com>.

The link to the CP manual is:

<https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/certification-portal-and-annual-reporting/>

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

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

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

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

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

Low-Income Housing Credit Allocation and Certification

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

OMB No. 1545-0988


Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form


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

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

7 Eligible basis of building (see instructions)	7	
8a Original qualified basis of the building at close of first year of credit period	8a	
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
b 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.		
a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ►		<input type="checkbox"/> Yes <input type="checkbox"/> No
b Elect not to treat large partnership as taxpayer (section 42(j)(5)) ►		<input type="checkbox"/> Yes



Multiple Building Property



Each Building = 1 Property

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

J. Submit Affirmative Fair Housing Marketing Plan (AFHMP)

The owner must submit the Affirmative Fair Housing Marketing Plan (AFHMP) to MHDC. The AFHMP should be reviewed annually by the owner to ensure the information is still accurate but at a minimum it must be reviewed and updated every five years as necessary to ensure compliance with HUD's Affirmative Fair Housing Marketing Regulations at 24 CFR 200.620. *Note:* If a property is layered with HUD funding, the AFHMP is to be approved by HUD. A copy of the approved plan must be submitted to MHDC by uploading the approved Plan in AMRS.

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

If property has HUD funding, the owner must submit copy of HUD approved management certification, AFHMP and HUD Form 2530 along with MHDC completed Exhibits J or J-1 and L. The signer must be listed on the Exhibit J-1 for the subject property.

Please review the matrix below to determine who the AFHMP should be submitted to for review and approval:		
Funding Type	AFHMP Approval by	Comments
MHDC Risk share/Fund Balance	MHDC	Owner/Agent must submit AFHMP, for subject property, in AMRS. The signer must be listed on the subject property's Ex. J-1.
HOME	MHDC	Owner/Agent must submit AFHMP, for subject property, in AMRS. The signer must be listed on the subject property's Ex. J-1.
Tax Credit	MHDC	Owner/Agent must submit AFHMP, for subject property, in AMRS. The signer must be listed on the subject property's Ex. J-1.
Participation Loans where MHDC is the servicer	MHDC	i.e., Fannie Mae, US Bank. Owner/Agent must submit AFHMP, for subject property, in AMRS.
HAP only	HUD	Owner/Agent must submit a copy of the approved AFHMP, for subject property, in AMRS.
HUD Section 8/HAP/TC/HOME	HUD	Owner/Agent must submit a copy of the approved AFHMP, for subject property, in AMRS.
HUD Section 8/HAP (layered with HUD funding) <i>Note: Risk Share to be approved by MHDC.</i>	HUD	Owner/Agent must submit a copy of the approved AFHMP, for subject property, in AMRS.
Note: If a property is layered with HUD funding, the AFHMP must be approved by HUD. A copy of the approved AFHMP must be submitted to MHDC by uploading the approved Plan in AMRS.		
<i>The instructions provided are intended to supplement but do not take place of Form 935.2A AFHMP instructions provided.</i>		

K. Maintain Copies of Regulatory Documents

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

L. Annual Financial Statement and Operating Budget Submission Requirement

The Owner must Provide MHDC with audited Annual Financial Statements within 90-days of the close of the fiscal year. For properties that operate on a calendar year basis, the due date is March 31st. For properties without HOME funding that have 12 units or less, MHDC will accept the submission of reviewed or compiled financial statements in lieu of audited financial statements. For properties that received HOME funding and have 10 or more units, both audited financial statements and an annual budget are required.

A proposed operating budget must be provided to MHDC no later than 45-days prior to the end of the current fiscal year. For properties that operate on a calendar year basis the due date is November 15th. Both the annual financial statements and the proposed budget must be entered and uploaded in the Asset Management Reporting System (AMRS) by their respective due dates.

Questions should be directed to the Asset Manager, Financial Assets at the St. Louis office. Details on the required financial statement and budget formats, as well as submission requirements are on a matrix that is available on MHDC's website at this address:

<https://mhdc.com/media/yijgi0jp/afs-and-budget-submission-requirements.pdf>

Annual financial statements must be submitted to MHDC in AMRS no later than 90-days after the close of the fiscal year March 31 of the following year.

Proposed operating budgets for the upcoming fiscal year must be submitted to uploaded in the Asset Management Reporting System (AMRS) MHDC no later than 45-days prior to the close of the fiscal year. For properties that operate on a calendar year, the due date is November 15 of each year. Updates and (please include the intended word after the word "and." Updates and (insert word) should be referred to for any updates.

Annual Financial Statements and budget must be submitted through MHDC's Asset Management Reporting System (AMRS.) All questions should be directed to the Asset Manager of Financial Assets located in the St. Louis office.

M. Notifying MHDC of Any Noncompliance Issues

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

N. Notifying MHDC of Receivership

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

O. Casualty Loss

The owner that experiences a loss of unit due to fire, natural disaster, or other circumstance must inform MHDC immediately and submit a plan that sets a timeframe for reconstruction/replacement. MHDC must report the loss and replacement of the units to the Internal Revenue Service (IRS) (Treasury Regulation 1.42-5(a)). If the unit(s) have not been fully replaced, MHDC will attach a copy of the owner's plan and timeframe for replacement to its report. Once all unit(s) have been replaced, MHDC will then report the replacement of the lost units. In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period. The reasonable period to restore cannot exceed federally set limits. In the case of a casualty loss that relates to a presidentially declared disaster, disallowance of credits is also avoided if restoration happens within the reasonable period. This does not apply to other losses that do not relate to a declared disaster.

Maximum time to restore a casualty loss example:

- Presidentially declared disaster: 25 months after the month the disaster is declared.
 - i.e., Disaster occurred May 2025. Month the disaster is declared: June 2025.
The casualty loss must be restored by July 2027.
- Not related to a declared disaster: 24 months after the end of the year that the casualty loss occurred.
 - i.e., Disaster occurred May 2025. The casualty loss must be restored by December 2027.

P. Change in Eligible Basis

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

Part 2.4 Responsibilities of the Management Company & Onsite Personnel

The management company/agent and all onsite personnel are responsible for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units to residents should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures,

including Section 42 regulations and Fair Housing laws. It is also important that the management company provide information, as needed, to MHDC and submit all required reports and documentation in a timely manner.

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

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

Part 2.5 Due Diligence

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

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

- The owner must request prior approval for any ownership change.
- The owner may change management companies to any approved MHDC certified management company without prior approval.
- The owner should retain a copy of the copies of your completed first year form 8609.

CHAPTER 3 – SELECT REGULATIONS

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

Part 3.1 Calculating and Claiming Credits

A. The Annual LIHTC Amount

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

Qualified Basis = Eligible Basis x Applicable Fraction

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

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

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

- a. The “Unit Fraction”: the ratio of low-income units to total units (whether occupied or not) in a building; or
- b. The “Floor Space Fraction”: the ratio of total floor space of low-income units to total floor space of total units (whether occupied or not) in a building.
 - I. Placed-in-Service Date (PIS)
 - II. The PIS date of a building is the date the building is considered suitable for occupancy. Depending on the nature of the property, there could be different Placed-in-Service dates:

B. The acquisition Placed-in-Service (PIS) date is the date the owner acquires the property.

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

C. Claiming LIHTC in the Initial Year

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

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

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

D. Claiming Credits for Acquisition and Rehabilitation Properties

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

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

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

A. Minimum Set-Aside Election

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

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

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

1. “Average Income” election: At least 40% of its total residential units must be both rent-restricted and occupied by qualified low-income households whose income does not exceed the income limitation designated for the respective unit, where the average of the income-designated units may not exceed 60% AMGI. The unit designations will be made in 10 percent increments. Each unit may be designated at 30, 40, 50, 60, 70, or 80 percent AMGI.

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

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

B. Applicable Fraction

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

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

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

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

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

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

REMEMBER THIS

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

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

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

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

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

Form 8609 <small>(Rev. October 2014) Department of the Treasury Internal Revenue Service</small>	Low-Income Housing Credit Allocation and Certification <small>► Information about Form 8609 and its separate instructions is at www.irs.gov/form8609.</small>	<small>OMB No. 1545-0988</small>				
Part I Allocation of Credit Check if: <input type="checkbox"/> Addition to Qualified Basis <input type="checkbox"/> Amended Form <table style="width: 100%;"> <tr> <td style="width: 50%;">A Address of building (do not use P.O. box) (see instructions)</td> <td style="width: 50%;">B Name and address of housing credit agency</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table>			A Address of building (do not use P.O. box) (see instructions)	B Name and address of housing credit agency		
A Address of building (do not use P.O. box) (see instructions)	B Name and address of housing credit agency					
Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period						
7 Eligible basis of building (see instructions)		7				
8a Original qualified basis of the building at close of first year of credit period		8a				
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?		<input type="checkbox"/> Yes <input type="checkbox"/> No				

D. Maximum Income Limits

Income limits for qualifying households depend on the Minimum Set-Aside election the owner has chosen. Qualifying households in Properties operating under the “20/50” election may not have incomes exceeding 50% of Area Median Income adjusted for household size. Qualifying households in Properties operating under the “40/60” election may not have incomes exceeding 60% of Area Median Income adjusted for household size. The owner may have also elected to target a percentage of the units to persons at lower income levels (30% or 40%). The owner must also comply with those additional elections as defined in the LURA. For Average Income Test, refer to Chapter 10.

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

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

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

In 2009, HUD began publishing “HERA Special” income limits for counties impacted by HUD’s “hold-harmless” policy. HERA refers to the Housing and Economic Recovery Act of 2008. Where applicable, the

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

HERA limits may be used by all tax credit properties that placed-in service on or before December 31, 2008. HERA Special income limits and HUD’s hold harmless policy are not the same, they are two different policies.

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

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

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

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

E. Maximum Rent Limits

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

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

Gross Rent = Total of Tenant Rent Paid Rent, plus Utility Allowance, plus non-optional charges. Non-optional (allowable) charges included may exceed the MHDC Maximum Rent Limit but must never exceed the Maximum Program rent limit.

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

Example: Income Limits (by household size)

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

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

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

F. Gross Rent Floor

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

DON'T FORGET

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

G. Section 8 Rents and Rental Assistance

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

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

Example:

	<u>Old</u>	<u>New</u>
Tenant Paid Rent	\$300	\$325
Tenant Paid Utilities	<u>\$100</u>	<u>\$110</u>
Tax Credit Rent Limit	\$400	\$435 Tax Credit Rent Limit exceeded.
Tax Credit Rent Overage \$35		

The rent overage is treated as follows:

- **Section 8 Property-Based**

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

- **RD Section 515**

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

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

H. HOME Rents and Rental Assistance

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

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

I. Allowable Fees and Charges

1. General Rule

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

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

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

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

IRS Notice 89-6 and IRS Revenue Ruling 91-38 in Appendix B. 26 CFR Part 1 and 602 Section 1.42-11 Provision of services:

- (a) General rule. The furnishing to residents of services other than housing (whether or not the services are significant) does not prevent the units occupied by the residents from qualifying as a residential rental property eligible for credit under Section 42. However, any charges to low-income residents for services that are not optional generally must be included in gross rent for purposes of Section 42(g).
- (b) Services that are optional – (1) General rule. A service is optional if payment for the service is not required as a condition of occupancy.

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

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

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

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

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

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

3. Application Processing Fees

Application processing fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by management. No amount may be charged in excess of the average expected out-of-pocket cost of processing an application.

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

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

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

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

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

6. Amenities and Services Charges

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

7. Prohibited Fees

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

- a. Fees for work involved in completing the TIC and other program specific documentation.
- b. Fees for preparing a unit for occupancy. The owner is responsible for maintaining all tax credit units in a manner suitable for occupancy at all times. If a resident is to be charged decorating, cleaning, or repair fees, the owner must document the file with photos of the damage to prove that the unit is in condition beyond normal expected wear and tear. Charges cannot exceed the amount actually spent on repair. MHDC will expect to see documentation in the resident file as to the nature of the damage, including photos and receipts for the repair work.
- c. Fees for the use of facilities and amenities included in eligible basis. For example, an owner may not charge a resident for the use of a clubhouse, swimming pool, parking areas, etc. if those items are included in eligible basis. Additionally, residents may not be charged a deposit or security fees for the use of common areas included in eligible basis. However, if the facilities are damaged, the responsible resident(s) may be charged fees for repair.

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

Also see MHDC website for reference on Guidelines on Bed Bug/Infestation Control and Prevention

J. Violations of the Rent Limit

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

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

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

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

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

Part 3.3 Utility Allowances

A. General Information

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

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

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

B. Sub-metering

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

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

1. The utility rates charged to residents in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);
2. If building owners (or their agents) charge residents a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under § 42(g)(2). The fee must not exceed an aggregate amount per unit of \$5 dollars per month unless State law provides otherwise; and
3. If the costs for sewerage are based on the residents' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the residents' sewerage costs are treated as paid directly by the residents for purposes of the utility allowances regulations.

This notice is effective for utility allowances subject to the effective date in § 1.42-12(a)(4). Consistent with § 1.42-12(a)(4), building owners (or their agents) may rely on this notice for any utility allowances

effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

C. Approved Utility Allowance Sources

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

Utility Allowances (UA)		References
LIHTC	<p>Projects with RD or HUD funding use the UA for those programs. There are 5 additional choices for other properties:</p> <p>1) Local PHA published UAs; 2) Estimate from a Utility Company; 3) Estimate from an HFA; 4) HUD Utility Schedule Model (HUSM); 5) Engineer Model.</p> <p>The UA for voucher holding households is the PHA published UA that their rent calculation is based on.</p> <p>For non-RD/HUD-regulated buildings, the UA for voucher-holding households is the PHA published UA that their rent calculation is based on.</p>	<p>Treas. Reg. 1.42-10, 8823 Guide Chapter 18</p> <p>HCV 24 CFR Part 982- §982.517</p>
HUD	UA for a property is calculated based on actual consumption at a property every 3rd year and adjusted by a HUD published rate the other years.	MF Notice H-2015-4
RD	<p>UA for a property is calculated based on Rural Development (RD) policy. If there is more than a 15% rate increase, owners should collect a "significant sampling" of tenant data. If any increase 15% or less, "a sampling" is required. Buildings that receive RD assistance MUST use the applicable utility allowance provided by RD for all rent restricted units, even those units rent restricted with RD and HUD.</p> <p>Note: If a project receives assistance from a Rural Housing Service (RHS) program through RD, the Utility Allowance for all LIHTC units in the project must be determined by using the method required by RD.</p>	<p>7 CFR 3560.202 HB-2-3560 4.26/ 4-29; 7.3 / 7-3 Notice H 2015-04</p> <p>Treas. Reg 1.42-10 (b)(2)</p>
HOME & NHTF/HTF	<p>Reference the 2025 HOME Final Rule effective April 20, 2025. In the 2025 Home Final rule, HUD adopted language permitting participating jurisdictions to use the HUD Utility Schedule Model, the utility allowance established by a local PHA, or other methods approved by HUD for their maximum monthly allowances. The Final Rule applies to projects for which HOME funds are committed on or after April 20, 2025.</p> <p>NHTF/HTF units are allowed to use the PHA, HUSM, Energy Consumption Model (ECM) or Utility Company Estimate utility allowances.</p>	<p>For the HTF, the grantee must establish UAs each year. HTF 24 CFR 93.302 (c)</p> <p>HOME Guide 3.3 D; 24 CFR 92.252 (d) (2013) CPD HOME FAQ 11-13, Homefires Vol. 13 No. 2</p> <p>2025 HOME Final Rule, effective April 20, 2025, Paragraph § 92.252(b).</p>
HOME ARP	Initial Rent Schedule and Utility Allowance: The PJ must establish maximum allowances for utilities and services and update the allowances annually. The PJ may adopt the utility allowance schedule of the PHA. The PJ must review and approve the HOME-ARP rents proposed by the owner, subject to the HOME-ARP rent limitations. For HOME-ARP units where the tenant is paying utilities and services (e.g., trash collection), the PJ must determine that the rent for the unit does not exceed the maximum rent minus the monthly allowance for utilities and services. Excludes telephone.	Notice: CPD-21-10, Section VI.B.13.d

BOND	The bond program does not impose rent limits, thus a UA is irrelevant. The bond LURA agreement may impose further rent restrictions.	N/A
811 PRA	Rental Assistance Contract (RAC) Part II, Section 2.7 (f) allows an owner to align utility allowances with other underlying programs.	HUD Handbook 4350.3 24 C.F.R. part 5
PBRA	Calculated following HUD Notice H 2015-04; Based on actual consumption at property: Every 3 years and adjusted using HUD-published rate intervening years; UAF could increase or decrease UA.	HUD Notice H 2015-04

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

- a. Estimates provided by state LIHTC allocating agencies (typically state housing finance agencies);
- b. Certified engineering studies to estimate utilities (such models can also include water and sewer costs); and
- c. Estimates produced by a new HUD utility modeling program.

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

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

D. Updating Utility Allowances

Properties must submit their Utility Allowance information quarterly through AMRS at <https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/amrs/>.

Supporting documentation for the utility allowance calculation methods must be kept on site and be available for review upon request. The owner must clearly identify on the supporting documentation which utility allowance calculation method is being utilized. If multiple utility sources are being used, evidence of each source must be provided to MHDC.

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

Once any utility allowance is changed, owners must provide a 90-day notice to all residents of such prior to implementation of the new utility allowance. Notice, comment and implementation should not exceed

90-days. When a utility allowance changes, rents must be refigured within 90-days of the effective date of the change to avoid violating the gross rent limitations of Section 42.

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

Example:			
Old Utility Allowance	\$75	New Utility Allowance	\$85
Resident Paid Rent	<u>\$475</u>	Resident Paid Rent	<u>\$465</u>
Maximum Allowable Rent	\$550	Maximum Allowable Rent	\$550

Utility allowances need to be reviewed and updated as follows:

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

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

Part 3.4 Rules Governing the Eligibility of Particular Residential Units

A. Empty Units

Vacant units that have never been occupied (referred to as “empty units”) cannot be counted as “low-income units,” but must be included in the “total units” figure for purposes of determining the Applicable Fraction. The transfer of existing residents to empty units is not allowed for purposes of meeting the Minimum Set-Aside or Applicable Fraction. Such action is considered noncompliance with Section 42 of the Internal Revenue Code and will be reported to the Internal Revenue Service (IRS) via IRS Form 8823.

B. Vacant Unit Rule

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

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

The Vacant Unit Rule is applied on a property basis.

C. 140% Rule/Next Available Unit Rule

1. General Rule

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

- a. The unit continues to be rent restricted at the state set-aside, and
- b. The next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

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

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

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

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

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

2. Next Available Unit Rule at Mixed-Use

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

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

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

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

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

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

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

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

E. Unit Transfer of Existing Residents

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



Multiple Building Property = Transfers Allowed

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



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

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

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

1. Unit Transfers within the Same Building

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

2. Unit Transfers outside the Same Building

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

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

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

Part 3.5 Select Rules Governing the Eligibility of Residents and Uses

A. Household Composition

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

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

B. Live-in Care Attendants

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

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

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

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

C. Foster Children/Adults

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

D. Deployment of Military Personnel

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

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

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

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

E. Student Status

1. General Rule and Definitions

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

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

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

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

2. Student Status Exemptions

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

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

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

For federal tax purposes:

- The terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex.
- The Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.
- The terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

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

- ii. All adult students are single parents with dependent child(ren) and no household member (adult or child) can be claimed by another individual other than the parent of such child(ren), who does not live in the unit.
 - Obtain copies of tax returns demonstrating dependency of each household members.
 - If tax returns are not available, obtain a signed affidavit attesting to the dependency status for all household members.

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

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

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

Required Documentation: Third-party verification of enrollment.

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

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

DON'T FORGET

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

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

3. Changes in Student Status

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

4. Important Distinctions between Student and Income Eligibility Rules

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

- i. While income eligibility is based on anticipated income for the next twelve (12) months, student status eligibility must consider not only if the applicant/resident is or anticipates becoming a student within the next year, but also whether or not that applicant/resident was a student parts of any five (5) months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and backward at student history.
- ii. Income verifications are not required at recertification for 100% tax credit properties after the third year; however, those properties must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not student status requirement for recertification.

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

F. Employee Common Use Units

Owners often elect to provide units for full-time managers, maintenance personnel and/or security personnel (“Common Use Units”). What constitutes “full-time” is not defined by the IRS and, thus, the meaning of “full-time” could vary from property-to-property, depending on the needs of the particular property. To meet the requirements of being designated a common area unit, the unit must benefit all rental units at the property and the employee occupying the unit must be full-time at the property. They cannot work for another property or properties. In addition to full-time site managers, this can also apply to full-time maintenance or security staff. Off-duty police may also occupy a common area unit for security reasons with MHDC prior approval (see Exhibit P). Common use units are considered common space, and it is not necessary to income-qualify the occupants. Charging rent or utilities to an employee does not disqualify a unit as an employee unit. A unit occupied by a part-time manager, caretaker, or maintenance person must either be treated as a qualified low-income unit or as a market-rate unit. If the unit is treated as a qualified low-income unit, then the household must meet all LIHTC eligibility criteria. Please note that any reduction in rent when compared to other comparable units in exchange for services must be considered income.

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

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

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

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

G. Model Units

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

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

i. Permanent Model Unit

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

unit should be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

ii. Model Unit->Tax Credit Unit

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

iii. Tax Credit Unit-> Model Unit

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

H. Community Service Facilities

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

I. Non-Transient Occupancy

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

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

1. Single Room Occupancy (SRO) units in properties receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance; or
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or

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

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

J. Home-Based Business/Office in a Unit

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

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

K. Housing Priority (Permanent Supportive Housing/Vulnerable Population) Set-aside

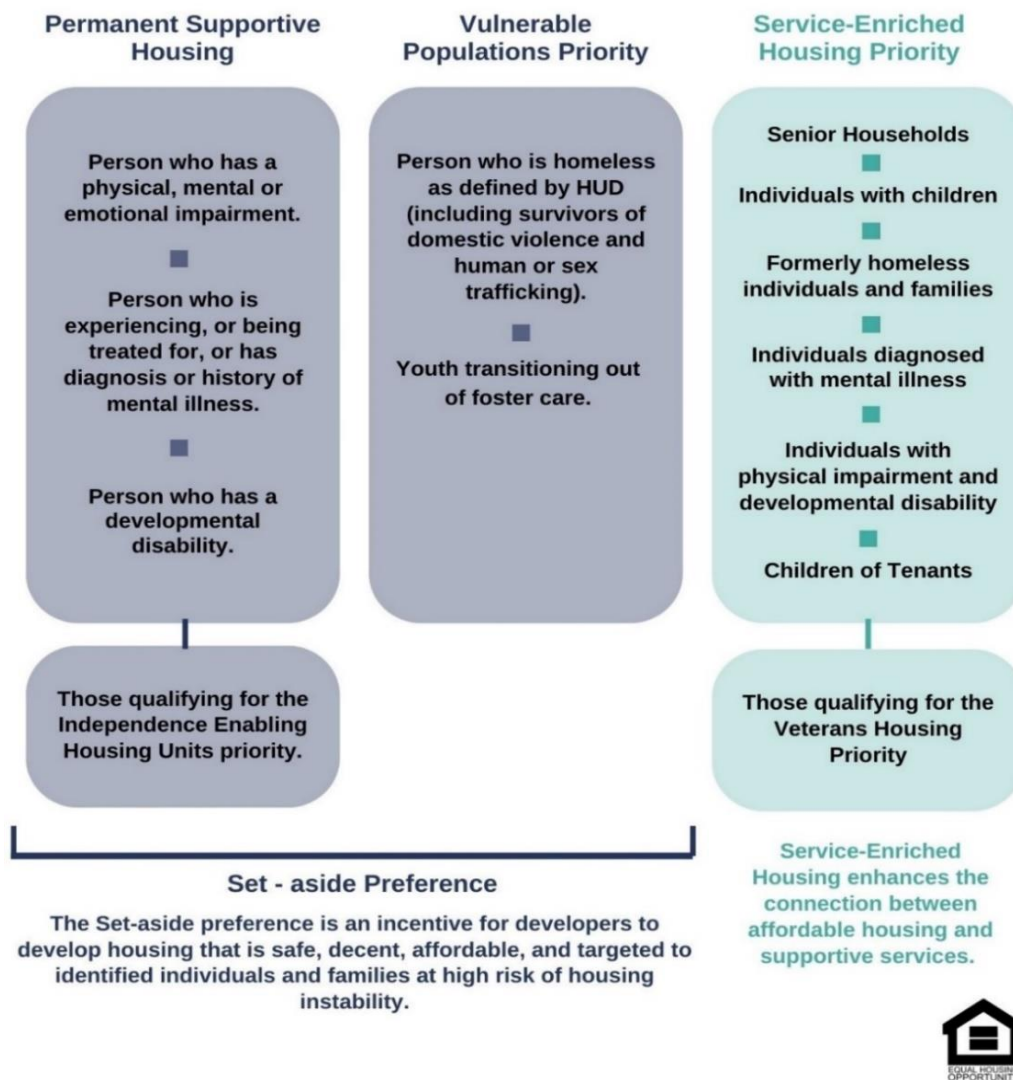
Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit property may have committed in writing to set aside a percentage of total units to qualified residents who meet the MHDC's definition of the vulnerable population or Permanent Supportive Housing and must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

A person from the Permanent Supportive Housing priority is a person who has a physical, mental, or emotional impairment, and/or a person who is experiencing, or being treated for, or has diagnosis or history of mental illness, and /or a person who has a developmental disability.

A person from the Vulnerable Housing Priority is a person who is homeless as defined by HUD (including survivors of domestic violence and human or sex trafficking) and /or youth transitioning out of foster care. A property with Permanent Supportive Housing/Vulnerable Population set-aside may not give preference to potential residents based upon having a particular disability or condition to the exclusion of persons with other disabilities or conditions.

A lead referral agency should refer Permanent Supportive and Vulnerable Population households qualified to lease targeted units and local service agencies should provide a network of services capable of assisting each type of Set-aside housing priority, defined above. A Lead Referral Agency is defined as a service provider agency that will provide tenants and services to the community through compliance period.

During physical and file inspections, the files of those residents who qualify as Permanent Supportive Housing/ Vulnerable Populations must include documentation to show that the unit is meeting the set aside. Please note, management may not inquire in the specific nature of the Set-aside Preference (for example, management cannot ask the resident details about their disability).



If the Permanent Supportive Housing/Vulnerable Population units are floating, then the next available unit in the property must be used to house a Permanent Supportive Housing/ Vulnerable Population resident at the designated rent amount in the event there is a Set-aside Preference rent amount. If the Permanent Supportive Housing/Vulnerable Population units are not floating, then there should be an addendum to the lease (signed by the resident) acknowledging that they may be required to move to another unit should the Permanent Supportive Housing/ Vulnerable Population unit be required to house a resident needing the features associated with that unit.

The Exhibit Z Housing Priority Checklist certification is to be updated and completed annually for properties with Permanent Supportive Housing units and/or Serviced Enriched Housing priority. The certification is to be completed in the Asset Management Reporting System (AMRS), Ex. Z module, and is due based on the property's placed-in-service date and the seasonal reporting schedule.

L. Disaster Relief

Owners are encouraged to rent vacant units to disaster-displaced residents for temporary housing. Owners are not, however, required to hold vacant units off the market for disaster displaced residents. In

the event of a disaster, refer to www.mhdc.com for specific guidelines and required documentation for placing disaster-displaced residents.

DON'T FORGET

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

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

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

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

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

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

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

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

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

B. Fair Housing: Reasonable Accommodations and Modifications

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

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

C. General Public Use

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

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

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

D. General Occupancy Guidelines / Household Size

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

E. Resident Selection Criteria

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

Regarding citizenship status, effective July 7, 2009, Missouri implemented Missouri House Bill [RSMo 208.009](#). Accordingly, for verification of citizenship status, the immediate use of the following HUD forms are now required for all applicants instituted prior to the initial move in and instituted at recertification for existing tenants. These forms must be completed for each household member. This is a one (1) time form unless the alien status for any household member should change.

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

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

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

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

Part 3.7 Tax Credits Properties with HOME-Assisted Units

A tax credit property may also receive HOME funds, resulting in a certain number of units reserved as both tax credit and HOME-assisted units. Units that are both LIHTC and HOME assisted must follow the compliance rules of both programs. As a general rule of thumb, when program compliance regulations differ, the owner should follow the stricter of the two. **For income/asset calculation and recertification/verification requirements, refer to the MHDC HOTMA Manual.** The following is a sampling of common issues management may face when combining tax credits with HOME funding. This is not meant as an exhaustive listing.

A. LIHTC with HOME: Rent and Income Limits

1. HOME and LIHTC rent, and income limits may be different within the same county for the same year. MHDC releases a separate set of limits for each program. For a unit under both programs, the stricter of the two sets of limits should be used (generally the HOME limits are lower and are thus the stricter). For example, if the HOME rent for a unit is \$650 and the tax credit rent for a unit is \$750 (before the utility allowances are subtracted for either rent) start at \$650 (the HOME rent) and subtract the utility allowance from that amount. Otherwise, the HOME program rent could be out of compliance, and the unit would be ineligible for both programs.
2. Section 42 does not include rental assistance in the gross rent calculation. For HOME assisted units, resident-based rental assistance is included in the gross rent calculation, but property-based rental assistance is not included. For purposes of determining whether a HOME-assisted unit is in compliance with the rent limits, the sum of the resident-paid rent portion + resident-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME rent limit.

B. LIHTC with HOME: Household Size and Eligibility

1. Unborn children of pregnant women are included when determining family size for income limits. When a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question: "Will there be any changes in household composition within the next 12-month period?" If an applicant answers that a child is expected, the manager should explain to the resident that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy

must be provided. Unborn children can be verified only through self-certification from the expecting mother. No further documentation is allowable.

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

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

1. Upon property entry, households living in HOME-assisted units must be given the Fair Housing brochure entitled “You May Be a Victim Of” and the Lead Based Paint brochure entitled “Protect Your Family from Lead in Your Home.” The household must sign documentation acknowledging the receipt of these brochures at time of move-in. Although this is not a requirement of Section 42, all HOME-assisted units in a tax credit property should have a signed copy of the acknowledgement located in the resident file.
2. Any tax credit property with five (5) or more HOME units must follow Affirmative Fair Housing Marketing procedures. Further, affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs. The owner must study the local market to determine the populations that are least likely to apply for housing, and then develop a plan to make sure that marketing efforts are reaching out to these groups. The owner should evaluate the property’s Affirmative Marketing plan at least once every five (5) years and update the plan if necessary.

D. LIHTC with HOME: Utility Allowance

The LIHTC utility allowance rules allow for the use of PHA estimates. For HOME, reference the 2025 HOME Final Rule effective April 20, 2025.

E. LIHTC with HOME: General Public Use

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

F. LIHTC with HOME: Student Rule

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

For more information on MHDC’s HOME compliance regulations, please refer to the MHDC HOME Rental Housing Compliance Manual located at: [MHDC.com](https://www.mhdc.com)

CHAPTER 4 – QUALIFYING AND CERTIFYING RESIDENTS

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

For income calculation requirements and asset limitations refer to MHDC HOTMA guidance on the MHDC website under [Manual and Reference Guides](#).

Note: It is a recommended practice to engage a consultant to review all first-year files to ensure compliance. This should be done early during the leasing process to identify any potential qualification issues early enough to remedy. The Code states that determination of annual income of individuals and Area Median Gross Income adjusted for family size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, Chapter 5, Occupancy Requirements of Subsidized Multifamily Housing Programs should be used as a reference guide.

Part 4.1 Resident Eligibility

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

Part 4.2 Qualification and Certification Process

A. Confidentiality of Applicant and Resident Information

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

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

B. Necessary Documentation for a Resident File

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

1. Initial resident application for residency

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

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

At minimum, an application must:

- a. Clearly identify each household member;
- b. List ages and relationship to head of household;
- c. Request all income and asset sources in detail;
- d. Show whose income is included in the qualification;
- e. Request any expected changes to the household size;
- f. Obtain references and rental history and
- g. Qualify any Permanent Supportive or Vulnerable Population set-aside.

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

2. Exhibit B-Tenant Income Certification (TIC)

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

A document that has been altered with correction fluid or “white-out” will not be accepted by MHDC. Any TIC whether updated or new must be signed by all adult household members. Changes are also to be initialed by all adult members. TICs must be signed by each adult member of the household for every year the household resident resides at the property. The TIC must have a proper signature, and effective dates clearly stated.

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

- a. Management should instruct the prospective low-income resident to sign the TIC exactly as their name appears on the form.
- b. The move-in date is the date the tenant will take possession of the unit.
- c. At initial certification, the effective date is the date the tenant takes possession of the unit.
- d. The move-in date, lease date and the TIC effective date must match.
- e. Verification: Reference the Verification Hierarchy Table J2 (HUD HOTMA Joint Implementation Notice H 2023-10&P1H 2023-27).
- f. The annual recertification must be no more than 365 calendar days from the previous certification.
- g. Currently, there is no language stating that the TIC can only be signed up to 30-days prior to the effective date. The TIC may be signed before, or at move-in. If it is signed after move-in, a note to the file with an explanation is required. Clarification is required for a late recertification.
- h. The signature and date of the owner/representative must be completed immediately after execution by the applicant/resident.
- i. White-out must not be used on any file documentation and changes made to any documentation should be initialed by all parties.
- j. All adult occupants of a LIHTC unit must be certified, execute the TIC and bound by the lease agreement. However, a live-in attendant (who is not a spouse or minor child of the person cared for) is not considered a household member and, therefore, is not required to be certified or to execute the lease. Should there be changes in household composition, refer to Chapter 4, Part 4.4, Section B.
- k. Each year’s TIC must stand on its own. For example, a pension verification obtained one year may indicate a certain payout amount in perpetuity, but this would need to be submitted with each and every year’s TIC.

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

To correct a TIC or any file document, management should draw one line through the erroneous information and write the correct information to the side. All corrections should be initialed by the resident and management and dated. Corrections on forms filled out by the management should

be initialed by the management agent. Corrections on forms filled out by the resident should be initialed by the resident. Corrections to the lease should be initialed by both parties. Neither residents nor management are ever permitted to backdate documents. Corrections to TICs and file documents should be neat, legible and provide clarity as to what change has taken place.

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

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

The acquisition PIS date is the date the owner acquires the property, as long as the building(s) is/are suitable for occupancy. The rehabilitation PIS date is based on an expenditure test. The owner chooses a time over a two-year period when at least the greater of 20% of the adjusted basis or \$6,400 per unit is spent.

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

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

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

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

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

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

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

- a) The relocation plan established specifically for the property as of the credit allocation date.
- b) Continued residence at the property subject to applicable safe harbor rules addressed under (under what?)

Rev. Proc. 2003-82.

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

Please note that at a property that is being rehabbed with tax credits, households that were previously qualified under the initial set of tax credits continue to be qualified under the new

set of credits without certification. In the case of a mixed income property, recertification is required to determine if the household is over income.

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

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

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

- a. considered qualified low-income units but must apply the vacant unit rule for the acquisition credits and;
- b. not considered qualified low-income units for the rehabilitation credits.

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

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

Acquisition Rehab			
Existing Household			
120-days before	Acquisition	120-days after	121 st day and after
TIC Effective Date = Acquisition Date		TIC Effective Date = Acquisition Date	Existing and New Households = Treated as new move-in
Income Limit = Income Limit on Acquisition Date		Income Limit = Income Limit on Acquisition Date	TIC Effective Date = TIC Signature Date Income Limit = Income Limit on Signature Date

If Acquisition and Rehabilitation Occur in the Same Year

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

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

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

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

Example 2 - The 240-day window:

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

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

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

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

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

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

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

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

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

Example 1 - “Test” needed:

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

Example 2 - “Test” not needed:

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

To summarize:

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

Relocating Households during Rehabilitation

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

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

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

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

Removing Unqualified In-place Households

It is possible that some in-place households will not be able to qualify as tax credit households, either due to income or student status ineligibility. In a conventional apartment community, the owner can terminate leases at the end of the lease term. However, if the tax credits are being layered over an existing Section 8 or RD property, the households cannot be terminated due to ineligibility for the tax credit program. Any Section 8 or RD families that are over the tax credit income limits, ineligible under tax credit student status

regulations, or are paying over the tax credit rent limit cannot be certified as LIHTC households but cannot be evicted or terminated. The owner may not claim credits on those units until the households become eligible or vacate.

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

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



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



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

Documentation Required

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

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

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

2. Student Status Certification

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

Each student must complete the Student Verification form (Exhibit F) if the LIHTC household is comprised of all students (full and/or part-time).

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

3. Other Verification Documentation

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

4. Initial and subsequent leases and all lease addenda

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

5. Tenant Selection Plan

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

6. Residents receiving Section 8 assistance

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

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

The form must be completed in its entirety by a qualified representative of the PHA and list the

Resident's File Should Contain

Initial Application TIC
Student Status Certification
All Leases and Lease Addendums
Verification of All Income and Assets
Section 8 Assistance Documentation
Any other documentation verifying eligibility.

ALL FILES MUST BE KEPT SECURE SO THAT PERSONAL INFORMATION IS SAFE.

MAKE SURE THE STAFF THAT HAS ACCESS IS ONLY THE STAFF THAT NEEDS ACCESS.

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

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

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

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

Part 4.3 Tax Credit Acquisition/Rehab/Re-syndication/New Construction

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

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

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

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

B. LIHTC Properties Involving Rehabilitation Only

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

C. LIHTC Re-syndication (aka Subsequent Allocation of Credits)

1. Rehabilitation of an Existing Tax Credit Property

It is possible for the owner of an existing tax credit property to be issued another round of credits for rehabilitation after the initial fifteen (15) year compliance period has ended. This is often referred to as a "subsequent allocation or LIHTC re-syndication (see Section E. below)." Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as

a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. Any households that were over the 140% limit at their last recertification are treated as qualified units but continue to invoke the Next Available Unit Rule. Additionally, vacant units previously occupied by income-qualified households continue to qualify as LIHTC units as long as the owner properly follows the Vacant Unit Rule.

2. Acquisition and Rehabilitation of an Existing Tax Credit Property

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

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. However, when the new credits are allocated and the credit period begins, the new owner must conduct the “test” as described in Part 4.3 A above, and any households exceeding the 140% limit are subject to the Next Available Unit Rule. Once the new credit period begins, any vacant units that were previously occupied by income-qualified households cease to be treated as qualified LIHTC units. Instead, these units are treated as empty (never-occupied) units until a qualified household is moved in.

3. Temporary relocation for LIHTC re-syndication

If it is a temporary relocation for a tax credit household that qualified under the original credits (with a certification in place), the household will still qualify when they move back to their unit, once rehab is completed. This may be documented in the file.

As long as the household was previously income qualified when they first occupied a unit (during the initial LIHTC compliance period) they may be used as a qualified household for the new round of credits. According to *Chapter 4-27 of the IRS Form 8823 Guide*, households determined to be income-qualified during the compliance period are also income-qualified households during the extended-use period. As a result, any household determined to be income qualified at the time of move-in during the extended-use period is a qualified low-income household for any subsequent LIHTC allocation. Keep in mind ‘grandfathering’ applies only to income, student status must still be tested. **Note: For tax credit re-syndication developments, the original LURA restrictions must be followed for the original LURA term.**

8823 Guide:

Example 1

Scenario: Allocation of additional credit to the same owner who received the first allocation:

An owner received IRC §42 credits to construct new low-income housing. The owner placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005. In 2007, the owner applied for and received an allocation of credit to rehabilitate the existing low-income buildings. The rehabilitation is completed, and the owner starts claiming the credit in 2009. On February 1, 2004, John and Mary are determined to be income qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2008. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.

Response:

The unit is a low-income unit on January 1, 2009, when the owner (a calendar year taxpayer) begins claiming the credit. If the unit was determined to be an over-income unit under IRC §42(g)(2)(D) at the time of the household’s last income recertification in January of 2008, then the owner is subject to the Available Unit Rule.

Example 2

Scenario: A **new owner** acquires and rehabilitates the low-income buildings:

Owner ABC received IRC §42 credits to construct new low-income housing. ABC placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005. In 2006, ABC sold the project to XYZ, who simultaneously received an allocation of acquisition and rehabilitation credit. The rehabilitation was completed and XYZ started claiming the credit in 2008. From the time of acquisition until a new extended use agreement is recorded, XYZ is subject to the extended use agreement between ABC and the state agency. IRC §42(h)(6)(B)(v)

On February 1, 2004, John and Mary are determined to be income-qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2007. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.

Based on the 2007 annual income recertification, the unit is a low-income unit at the beginning of XYZ's credit period on January 1, 2008, when XYZ (a calendar year taxpayer) begins claiming the credit. XYZ should follow the procedures under Rev. Proc. 2003-82 ([proc 03-82.pdf](#)) to test income at the beginning of the credit period as described above.

NOTE: Vacant units previously occupied by income-qualified households are not low-income units on January 1, 2008. The owner must apply IRC §42(f)(2).

The owner should use the original file showing the household qualified for the first set of credits (IRS Audit Technique Guide for competing Form 8823 pgs. 4-35 and 4-36). Also, keep in mind 'grandfathering' applies only to income. Student status must still be tested.

The Available Unit Rule (AUR) (8823 Guide & LIHC Newsletter #39):

- For a second credit allocation to the **same** owner, the AUR is applied based on the household's last annual income recertification.
- For a **new** owner, income is tested at the beginning of the credit period and the AUR applied accordingly. However, the household is not required to complete a new income (re)certification within 120-days of the acquisition; the existing certification is fine.

Vacant units:

- For a second credit allocation to the **same** owner, vacant low-income units continue to qualify as low-income units if the units are suitable for occupancy.
- For a second allocation to a **new** owner, units previously occupied by income-qualified households, but are vacant at the beginning of the 10-year credit period are not low-income units.

D. LIHTC Properties Involving New Construction

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

Part 4.4 Annual and Other Income Recertification Requirements

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

It is important to note the regulations refer to "tenant" income rather than "household" income. The recordkeeping and record retention provisions of the regulations state the owner must keep records that show "...the annual income certification of each low-income tenant per unit..." For this reason, if a new member is being

added to an existing, qualified household, the new member must complete an application for residency and a verification of income and assets must be done.

A. Effective Dates of Certifications

Owners may utilize effective dates when performing Tenant Income Certifications. The effective date of the resident's income certification is the date the resident actually moves into the unit (HUD Handbook 4350.3, 5-17). All adult members of the household should sign the certification. Therefore, the resident may sign the Tenant Income Certification (TIC) form before the date the certification takes effect. Reference the Verification Hierarchy Table J2 (HUD HOTMA Joint Implementation Notice H 2023-10 & PIH 2023-27 for income and eligibility verifications.

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

Example 1: Determining the TIC Effective Date

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

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

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

B. Changes in Household Composition

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

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

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

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

If an unborn child was included in the initial certification for income and occupancy limits and all anticipated income (e.g., child support) was certified or verified prior to move in, no further documentation is needed until the annual recertification.

Please be advised that a determination must be made as to whether the Available Unit Rule must be implemented by adding an additional occupant.

2. Adding a New Member to an Existing Household

If a new adult member joins an existing household during the initial six months of residency, the household must re-qualify as if it is a new household qualifying for residency (the only exception would be the addition of child/children born to or adopted by a member of the original household).

In the event a tenant wishes to add an additional person to the household, the following steps must be taken:

- The prospective tenant must complete an application and provide verification of income and assets as required of the initial tenant;
- Once accepted as a qualified tenant, the new household member must sign the lease and must also complete other paperwork required of new move-ins, including student status certification;
- The new household member's income must be added to the next annual certification (or self-certification). Owner/Agent can choose to execute a new Tenant Income Certification immediately to reflect the new composition and income of the household; however, it is not required. The low or high HOME status will be addressed at the next annual certification, as usual for HOME.

In the event a household's income at recertification exceeds 80% of the area median income, the household is considered over-income by HOME Program standards and the amount of rent the resident must pay is the lesser of the amount required by state or local law or 30% of their adjusted income. The development will still be in compliance provided the requirements of 24 CFR 92.252(i) are met. Residents of HOME-assisted units that have been allocated LIHTCs must pay the rent governed by Section 42 of the Internal Revenue Code.

Please note that if a unit is both LIHTC and HOME, the rent charged would be the approved MHDC LIHTC rent in the most recent Schedule II. Reference: 24 CFR Part 92.252 and HUD Exchange HOME Guidance on rent limits.

3. Removing a Household Member

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

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

1. Mixed-use: The household was entirely recertified and qualified under income limits when any new member moved in or any time thereafter. This essentially created a new qualified "original household" including the new members.
2. 100% LIHTC buildings: The remaining person was individually income-qualified at move-in.

Adding Household Members Example:

A single resident qualified and moved into his unit in 2022. In 2024, his girlfriend passes the usual background checks and moves into the unit. Her personal income is verified to be over the 2024 income limit.

1. Available Unit Rule (AUR) must be tested. Since the project is not 100% LIHTC and is subject to full income recertification, the manager adds her move-in income to the existing household income that was verified at the most recent annual certification four months earlier. The household is determined to be over the 140% limit for a two-person household. The AUR is in effect and an eligible household must be moved into the next available unit in the building they live in until the applicable fraction is restored. If this unit is also HOME, the Low or High HOME status will be addressed at the next annual certification, as usual for HOME. See the MHDC HOME Manual for further reference.
2. As she is personally above the income limit for one person when she moves in, she will not qualify in the future for continued occupancy if her boyfriend ever moves out because she would not have qualified if she had entered the property by herself in 2024. This will be true unless:
 - a) At a future recertification, they together are below the income limit OR
 - b) The girlfriend is below the income limit at the time that the boyfriend leaves the unit.

4. Qualifying Units When All Original Household Members Vacate the Unit

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

Note the following recertification requirements:

1. If residents in a previously qualified household become full-time students at any time, the household can only be considered as a qualified LIHTC household if at least one of the exceptions under the Full-Time Student Rule is met as described previously. This eligibility determination must be made immediately upon the resident becoming a full-time student and cannot be delayed until a recertification of the household is due.
2. In the event that a resident moves into a building prior to the placed-in-service date of the building (as shown on the building's IRS Form 8609), and the verification of the resident's income was performed more than 120-days prior to the placed-in-service date, the resident must be recertified on the placed-in-service date. All income verifications must be valid (no older than 120-days) on the placed-in-service date.
3. In the event household composition changes in any way, i.e., birth, death, marriage, divorce, or a family member or roommate vacates the unit, the household should notify management of the changes.

Part 4.5 100% Recertification Exemption

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

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

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

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

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

Note that HOME and other programs may have recertification requirements that are different than the LIHTC rules. An owner will apply the other program’s rules to affected units, but the LIHTC-only units are still exempt by law from income recertification for all LIHTC purposes, if the property is not mixed-use. Unless the other program is also monitored by MHDC, the Agency will consider all units exempt from income recertification for approved 100% LIHTC projects.

Owner/Agents MUST receive approval to implement the MHDC Exhibit U Annual Resident Certification. This form applies to 100% LIHTC properties (see Chapter 4, Part 4.5 regarding Ex. U LIHTC Annual Resident Certification Usage approval). 100% LIHTC, for MHDC monitoring purposes, means that the property is 100% LIHTC and does not have any market rate units. Additionally, if the property has any other active MHDC monitored programs/funding that have more restrictive recertification requirements, those must be followed. If the property has market rate units, the property is considered mixed-use. If MHDC does monitor the other program(s), income recertifications will be reviewed for compliance with the other program requirements, but any noncompliance with the other program will not be treated as LIHTC noncompliance.

For approval to use the Exhibit U, contact:

Program Compliance Administrator
Missouri Housing Development Commission
1201 Walnut St., Suite 1800
Kansas City, MO 64106

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

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

Example 1: XYZ Apartments is a 100% tax credit property with 50 units. 10 of these units are HOME assisted units. All 50 units must continue to recertify income on an annual basis. Both the HOME and LIHTC requirements must be considered for compliance.

For 100% tax credit properties	
In Year 1	Initially income certify household
In Year 2	Annual income recertification
In Year 3 and after	If prior approval is received from MHDC, the Exhibit U may be used.

Income Averaging Set-aside Compliance

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

Part 4.6 Lease and Rent Requirements

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

A. Lease Requirements

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

B. Rents

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

All rental increases must be approved by MHDC. See Rent Increase Guidelines section of this Manual for additional information on rent increases.

C. Transient Use

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

1. Single Room Occupancy (SRO) units in Properties receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance; or
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or
4. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within twenty-four (24) months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

PLEASE NOTE

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

CHAPTER 5 - ANNUAL INCOME, ASSETS, AND VERIFICATION

For income calculation requirements, asset limitations, and verification requirements, refer to the MHDC HOTMA Manual on the MHDC website under [Manual and Reference Guides](#).

Part 5.1 Annual Income

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income. Some circumstances present more than the usual challenges to estimating anticipated income. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. Annual income includes all amounts that are not specifically excluded by HUD regulation. HUD Regulation 24 CFR 5.609(b) provides a complete list of exclusions. See HUD Notice H-2023-10 - HOTMA Implementation Guidance for additional reference, charts, and examples as it relates to HOTMA; Income and Assets.

Whose Income is Counted? (HUD 4350.3 5-6/5-7; HUD 4350.3 Figure 5-2/5-8)

Household Member	Earned Income	Unearned Income
Head, Spouse, and/or Co-head	Yes	Yes
Other Adult Household Member	Yes	Yes
Children (under the age of 18)	No	Yes
Full-Time Student (18 & older-not the head, co-head, or spouse)	Yes, up to current dependent deduction	Yes
Temporarily Absent Household Member	Yes	Yes
Permanently Confined Family Members (i.e. living in a care facility/nursing home)	<i>Household Decision</i>	
Foster Adults and Children	No	No
Live-in Attendant	No	No
Guests	No	No

Part 5.2 Assets

For income calculation requirements, asset limitations, and verification requirements, refer to the MHDC HOTMA Manual on the MHDC website under [Manual and Reference Guides](#).

Assets are items of value, other than necessary personal items. Income from assets must be taken into consideration when determining the eligibility of a household. Asset information (asset value and income from assets) should be obtained at the time of application. For more information regarding household asset inclusions and exclusions, and how to determine the cash value and income from assets, **refer to the MHDC HOTMA Manual on the MHDC website under [Manual and Reference Guides](#) and HUD HOTMA Guidance.**

Whose Income is Counted? (HUD 4350.3 5-6/5-7; HUD 4350.3 Figure 5-2/5-8)

Household Member	Earned Income	Unearned Income
Head, Spouse, and/or Co-head	Yes	Yes
Other Adult Household Member	Yes	Yes
Children (under the age of 18)	No	Yes
Full-Time Student (18 & older-not the head, co-head, or spouse)	Yes, up to current dependent deduction	Yes
Temporarily Absent Household Member	Yes	Yes
Permanently Confined Family Members (i.e. living in a care facility/nursing home)	<i>Household Decision</i>	
Foster Adults and Children	No	No
Live-in Attendant	No	No
Guests	No	No

Part 5.3 Verification of Income and Assets

For income calculation requirements, asset limitations, and verification requirements, refer to the MHDC HOTMA Manual on the MHDC website under [Manual and Reference Guides](#).

Verifications

With HOTMA, HUD has implemented a new order of preference for verifications in their Verification Hierarchy Table J2. The Verification Hierarchy table describes verification documentation from most acceptable to least acceptable (*HUD HOTMA Joint Implementation Notice H 2023–10 & PIH 2023–27*). Verifications for LIHTC must meet both of the following criteria for LIHTC households:

1. No older than 120-days on the date they are received.
2. Used for a certification effective within 120-days of receipt.

For paystubs, the most recent paystub must cover a pay period that ends no more than 120-days before the effective date of the certification. If a unit is also HOME, the verification must be no more than 6 months old by the certification effective date. HOME properties without LIHTC financing may use verifications that are up to 6 months old by the effective date of the certification. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. When necessary, the owner/management agent should follow up directly with the third-party source to obtain necessary verification of information.

Documentation of Verification Attempts

- A. All attempts to third-party verify tenant information must be thoroughly documented.

Owners / management should:

- a. keep copies of all form letters sent to third-party sources;
- b. keep copies of all correspondence from third-party sources;
- c. maintain telephone log sheets for oral inquiries; and
- d. make appropriate notations in the household files.

In addition, if the owner receives third-party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the onsite management representative accepting the information, and the date. Furthermore, if after requesting third-party verification, the third party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

Faxed copies of verifications are acceptable. All income verifications should be date stamped as they are received.

CHAPTER 6 - COMPLIANCE REQUIREMENTS AND MONITORING

This section of the manual outlines MHDC's procedures for monitoring all properties receiving tax credits. Monitoring is designed to assist the owners with federal and state regulations regarding MHDC's compliance monitoring requirements and procedures in accordance with the IRS guidelines in Section 42 of the Internal Revenue Code. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit. Monitoring each property is an ongoing activity that extends throughout the Compliance Period. MHDC is required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of an owner to certify compliance, no later than 45-days after the period of time allowed for correction. Notification to the IRS by MHDC is required whether or not the noncompliance has been corrected.

Part 6.1 Owner and Management Agent Contacts

Correspondence from MHDC to the owner will be sent to the owner/owner representative designated on the Exhibit L (Property Data Sheet) submitted by the property.

If at any time the owner/owner representative changes, it is the sole responsibility of the owner to inform MHDC in writing of such change with supporting documentation. Changes in ownership must have prior approval and be reported to MHDC.

Changes in management must have prior approval and be reported to MHDC. Failure to notify MHDC of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible non-compliance fees.

Part 6.2 The Compliance Manual

The compliance monitoring procedures and requirements set forth herein are issued by MHDC pursuant to Treasury Regulations. These provisions may be amended by MHDC for purposes of conforming to the Treasury Regulations and/or as may otherwise be appropriate, as determined by MHDC or the Internal Revenue Service.

In addition, MHDC periodically releases updates on policies, sample forms, and other issues relevant to the Section 42 LIHTC Program. These notices are available online at <https://www.mhdc.com/>.

Part 6.3 Certification Portal (CP)

The Annual Owner Certification of Continuing Compliance Exhibit A is submitted using MHDC's Certification Portal (CP) rental reporting system. All tax credit properties are required to enter resident data using CP. Resident events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates.

Resident events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from (CP) it is required that all resident events be entered into the system within 30-days of the event date.

After reviewing the CP submission from the property, MHDC will notify the owner in writing of any errors or incompleteness. All correspondence to the owner will be sent electronically.

The CP site address is <https://cp.mhdc.com/login.aspx>.

The CP User Guide is located here:

<https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/certification-portal-and-annual-reporting/>.

Part 6.4 MHDC File Review and Property Inspection

As provided in IRS compliance monitoring regulations, MHDC has the right to review a property's resident/unit files and record keeping and record retention files, in-house (at MHDC offices) or onsite at the property and/or to

perform physical inspections of LIHTC properties as deemed necessary throughout the Compliance Period. MHDC is required to monitor and physically inspect each Section 42 property within two (2) years of the placed-in-service date of the last building and every three (3) years thereafter. However, MHDC reserves the right to inspect the files and/or physical units of Section 42 property at any time at its discretion.

Based on Rev. Proc. 2016-15 (effective February 25, 2015) MHDC is no longer required to select the same low-income units for on-site inspections and low-income certification review. If MHDC chooses to select different low-income units for on-site inspections and for low-income certification review, we must select the units for each purpose separately and randomly. MHDC may choose a different number of units for on-site inspections and low-income certification review, provided we choose at least the minimum number of low-income units in each case.

Further, because the units no longer need to be the same, MHDC may choose to conduct physical inspections and low-income certification reviews at different times.

A 100% tax credit property consists of three buildings. The last building was placed-in-service in 2009. MHDC's first monitoring and physical inspection will occur in 2011 (two years after the year of the placed-in-service date of the last building). After this initial inspection, a regularly scheduled monitoring will occur once every three years (2014, 2017, etc.). However, MHDC has the right to perform additional inspections at any time, with or without notice to the owner/management.

A. Prior to MHDC Property Inspection Review

1. Notify the owner and/or the management company, no later than 10-days prior to the inspection, of the date and approximate time the inspection will take place. The date having been agreed upon by the owner or management company representative.
2. Request that the owner/management company and maintenance representatives be present and accompany the inspector throughout the entire inspection process.

It is required that all units (vacant and occupied) and common areas (interior and exterior) be available for inspection.

B. MHDC Inspection Review

1. Provide an exit interview summary to the management representative.
2. Inform the owner of any findings of noncompliance with regard to such review.
3. Allow the owner ten (10) business days to request an extension to repair physical deficiencies.
4. Allow the owner thirty (30) calendar days to notify MHDC of correction of noncompliance.
5. Report all instances of noncompliance to the IRS and/or appropriate authority whether or not the noncompliance has been corrected.

Note: For reference on Electronic Desk Review, see the MHDC website, Missouri Housing Development Commission Electronic Desk Reviews (EDR).

C. After MHDC Property Inspection Review

1. Provide the property representative identification of all severe and life-threatening deficiencies observed at the time of the inspection that require immediate corrections. All severe and life-threatening deficiencies identified must be corrected within 24 hours and MHDC must be notified of the completed corrections within seventy-two (72) hours.
2. Critical violations that are not corrected within twenty-four (24) hours may be fined \$250 per day, starting the first hour after the twenty-four (24) hour correction period expires.
3. Forward a copy of the inspection report to the owner indicating a correction time frame.

4. Request that legible copies of the proof of the corrections, in the form of legible work orders, receipts, and/or invoices and pictures, be forwarded to MHDC within the allotted time frame indicated in the inspection report or approved extension.
5. Schedule a second inspection if necessary.
6. MHDC may charge additional monitoring fees if MHDC staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) \$250 or (b) \$35 per unit.
7. Review the supporting documents of correction for correlation with the inspection report.
8. Forward a close out letter indicating that no further corrective actions regarding the physical condition of the property are needed at this time, or issue non corrected IRS form 8823 to the IRS for deficiencies that remain unresolved.

Part 6.5 Corrective Action Plan

Should there be any issues that cannot be resolved within the Notification Response Period, the owner must submit to MHDC a Corrective Action Plan (Exhibit Y) describing how and when the issues will be corrected. The Corrective Action Plan must be updated and submitted to MHDC by the 10th of each month until all issues are resolved. Any pending issue(s) will be reported to the IRS on Form 8823. When the outstanding item(s) have been resolved, a corrected Form 8823 will be issued.

Part 6.6 Annual Reporting Requirements

A. Occupancy Reports

The submission deadline for the Annual Owner's Certificate of Continuing Compliance (Exhibit A) and the Annual Occupancy Report (Exhibit H) are set forth in the schedule below. Properties with 12 units or less may manually submit this documentation. All other properties must submit all annual reports on-line through CP. The due dates for such reports are based on the year the last building was/is placed in service.

Please refer to the Seasonal Reporting Schedule in Chapter 2, Part 2.3.

Properties that report through CP must also submit the original, signed, and notarized documents to MHDC. Updated reporting due dates can be found at www.mhdc.com.

Refer to Chapter 10 for AIT reporting requirements.

B. Annual Financial Statements

Properties containing 12 or less units are not required to file financial statements with MHDC unless they have 10 or more HOME units. For properties with 13 or more units, annual financial statements are required to be submitted on-line via MHDC's Asset Management Reporting System (AMRS) within 90-days after the end of the property's fiscal year. Properties with 13-23 units can submit reviewed or compiled financial statements that follow the Statement on Standards for Accounting and Review Services. Properties with 24 or more units must submit audited financial statements that follow Generally Accepted Accounting Standards (GAAP) or Government Accounting Standards if HUD or RD assistance is received. Properties that operate on a calendar year must submit their annual financial statements by March 31st of the following year, or within the MHDC approved extension window, as applicable. Late submissions will automatically be placed in noncompliance by AMRS.

MHDC requires that all properties prepare their financial statements using MHDC's standard chart of accounts. MHDC will return any financial statement not prepared using such chart.

Extensions to the above 90-day deadline are available and may be granted on a case-by-case basis. Extensions must be requested on-line at amrs.mhdc.com and the reason(s) the extension is necessary must be indicated. MHDC will respond via AMRS with the approval or denial of such extension request. In no event will an extension of more than 30-days be granted.

A listing of MHDC's standard chart of accounts, required schedules, suggested balance sheet and income statement format, and frequently asked questions can be found at www.mhdc.com.

C. Annual Proposed Operating Budget

For properties with 13 or more units, annual proposed operating budgets are required to be submitted on-line via MHDC's Asset Management Reporting System (AMRS) at amrs.mhdc.com, excluding properties where all units are covered by an HAP contract. Properties with 25% to 99% of the units covered by a HAP contract and all other properties (with the exception in the previous sentence) must be submitted by November 15 of each year. Extensions to the November 15 deadline are available and may be granted on a case-by-case basis. Extensions must be requested on-line at amrs.mhdc.com and the reason(s) the extension is necessary must be indicated. MHDC will respond via AMRS with the approval or denial of such extension request. In no event will an extension of more than 30-days be granted. Properties that do not submit their operating budget by November 15 of each year or within the MHDC-approved extension window, as applicable, will be placed in noncompliance.

MHDC requires owners to prepare their budget using MHDC's standard chart of accounts (see the Budget Worksheet (Exhibit A-10) for a sample of the required budget format). A complete budget consists of three years of data - previous year audited income statement data, current year actual data, and proposed income statement data. All properties are required to fully explain significant increases and decreases as flagged by the AMRS system. A blank budget worksheet can be found at www.mhdc.com.

D. Reporting of Tenant Demographic Information

Pursuant to HR 3221, state agencies administering tax credits under Section 42 must furnish to HUD, at least annually, information regarding the race, ethnicity, family composition, age, income, use of rental assistance under Section 8 or other similar assistance, disability status, and monthly rental payments of households residing in LIHTC unit.

Each household member must complete HUD Form 27061-H to report race and ethnicity data. The instructions which accompany HUD Form 27061-H should be followed carefully. Family composition, age, income, use of rental assistance and monthly rental payment is reported annually to MHDC using the TIC (Exhibit B). Disability status must be reported annually according to HUD published guidelines.

This information collected from the residents should be reported to MHDC, either through the CP system or, if reporting manually, by the use of Exhibit H.

Part 6.7 Housing Priority Certification

The Exhibit Z Housing Priority Checklist certification is to be updated and completed annually for properties with Permanent Supportive Housing units and/or Serviced Enriched Housing priority. The certification is to be completed in the Asset Management Reporting System (AMRS), Exhibit Z module, and is due based on the property's placed-in-service date and the seasonal reporting schedule.

Part 6.8 Non-Compliance Fees

Noncompliance is defined as a period of time a property, specific building, or unit or management agent is ineligible because of failure to satisfy program requirements. Owners/Managers are strongly encouraged to make every effort to maintain properties in compliant status or bring properties back into compliant status within the time frame granted. If a property is not brought back into compliance within the time frame specified, beginning July 1, 2014, MHDC will charge a noncompliance fee in accordance with the following amounts and circumstances:

1. A fee, the greater of (a) \$250 or (b) \$35 per unit/file may be charged if staff must return to review deficiencies or errors noted during the initial inspection after the issuance of an 8823, or if a subsequent inspection determines that deficiencies noted in the previous inspection were not actually corrected as reported by management.
2. If there are repeated, subsequent, open, noncompliance issues from previous inspections the fee may be \$500/month until corrected. This fee will be retroactive from the first inspection where noncompliance was reported.
3. A fee of \$35 per hour may be charged if staff must return to verify unrepaired deficiencies discovered during a Latent Defect Inspection (LDI).

4. A fee, the greater of (a) \$250 or (b) \$35 per unit/file may be charged if an initial inspection is scheduled because the owner/management representative was not onsite at the designated time and location, or residents did not receive proper notice of inspection.
5. A fee of \$250 per occurrence may be assessed for failure to submit any required documentation in the time frame requested (see Exhibit A-20 for published schedules). The following list is not comprehensive but offers examples of when the fee will be applied: annual utility allowance documentation, annual owner certification, resident income; and rent report with any supporting documentation, financial documents, budgets, 8609s, CP submissions, physical needs inspections; and/or documentation responding to findings.
6. A \$1,000 fee may be assessed if there is a change in partnership (general or limited) without prior notice and/or approval from MHDC. Please note the partnership may not delete, amend, or modify any provision of the partnership agreement or organizational documents, voluntarily dissolve the partnership, or convert the partnership to another form of entity without prior approval from MHDC.
7. A \$1,000 fee may be assessed if there is a change in management agent without prior approval from MHDC. Please note that MHDC retains the right to require replacement of the management agent; this includes a management agent that has not been approved by MHDC prior to taking over management of a property.
8. A fee of \$250 may be charged for failure to report: 1) casualties or crimes that result in damage to the property or serious bodily injury such as, on property homicides or rapes; or 2) resident-initiated lawsuits (excluding rent-related matters or failure to return a security deposit) within 30-days of the event.

The above list is not conclusive, and MHDC reserves the right to remove or include additional circumstances and fees when deemed necessary. Properties will be billed for noncompliance fees which are to be paid within 30-days. If the property has an MHDC loan, MHDC will debit the appropriate reserve account.

If the owner/manager appeals the fee, an appeal of noncompliance fees must be made in writing within 30 calendar days from the date of the non-compliance assessment letter or email. MHDC will respond to an appeal within 45-days of the date an appeal is received. All fees assessed are to be paid immediately if the Director of Asset Management determines the fees are warranted.

Appeals should be sent to:

Director of Asset Management
Missouri Director Housing Development Commission
505 N. 7th Street, 20th Floor, Ste. 2000
St. Louis, MO 63101

Frequency of the Required Inspection and Management Reviews

For developments layered with several affordable housing programs MHDC must conduct the inspection consistent with the most restrictive regulations applicable to the development.

1. MHDC Fund Balance, Risk Share, Participation Loan, TCR, TCAP are conducted annually.
2. HOME Funds and/or NHTF with LIHTCs – inspections are conducted every two years.
3. HOME Funds – inspections are conducted every two years.
4. LIHTC-only – inspections are conducted every three years.

MHDC reserves the right to adjust any given project's inspection schedule and frequency of inspection for any reason. MHDC reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to the rental of tax credit units throughout the extended use period of the buildings in the project.

Part 6.9 MHDC Exhibits and When to Use Them

Please note: Refer to the seasonal reporting schedule when applicable, Chapter 2, Part 2.3. If the document is NOT part of a TPA, please complete and submit this form via **upload in MHDC's Asset Management Reporting System (AMRS)**. For information on authorized signatory requirements for MHDC Asset Management forms and exhibits, please see the MHDC Notice: Exhibits & Forms Authorized Signatory Chart at MHDC.com.

	Exhibit	On what type of property is it used?	When is it used?	Please Note
A	Owner's Certificate of Continuing Program Compliance	LIHTC	Annually when submitting resident data.	May be submitted more frequently during property lease-up, and to be submitted in AMRS.
A-2	Project Owner's Management Agent Certification	All programs	If your role is an Owner or Management Agent and you own and/or manage an MHDC Multifamily Housing property or an LIHTC Multifamily Housing property, you must complete this form.	The signer must be listed on the Exhibit J-1 for the subject property and is to be submitted in AMRS.
B	Tenant Income Certification	LIHTC/HOME/MHDC/AHAP	Initial qualification and recertification. May also be used to correct a TIC or if household composition changes within the first 6 months of certification.	If Section 8 and utilizing 50059, there must be a TIC completed at move-in.
C	Employment Verification	LIHTC/HOME/MHDC/ SECTION 8/AHAP	Initial qualification and recertification.	Refer to MHDC HOTMA Manual Verification Hierarchy.
C-5	Management Questionnaire	LIHTC/HOME/MHDC/ SECTION 8/AHAP	Prior to property inspection.	Must be submitted to Compliance Officer within seven (7) business days prior to the inspection date.
D	Under \$50,000 Asset Verification	LIHTC/HOME/MHDC/ SECTION 8/AHAP	For households whose combined net assets do not exceed the applicable Imputed Income Limitation.	If this is a HOME unit, use if no assets are reported by resident(s). For HOME, see MHDC HOME Manual.
E	Certification of Zero Income	LIHTC/HOME/MHDC/ SECTION 8/TBRA	Move in and re-certification when there is no reported income from an adult member of the household.	
F	Student Verification	LIHTC/HOME/ SECTION 8	Move in and re-certification if household member is a full-time student.	Not needed if allowed to utilize the Ex. U. Note: HOME units follow Section 8 Student Rule.
G	Notice of Change of Ownership or Ownership Interest	All programs	Initial and if there are any changes of ownership or ownership interest.	To be submitted in AMRS.
H	Annual Occupancy Reports for Non internet Reporting	LIHTC/HOME	Annually.	For properties with 12 units or more, and to be submitted in AMRS.
I	Unit Certification	LIHTC	At move-in or at transfer.	
J	Authorized Representative Designation	All programs LIHTC/HOME/MHDC	Initial and if there are any changes in authorized representatives.	To be submitted in AMRS.
J-1	Management Authorized Representative Designation	All programs LIHTC/HOME/MHDC	Initial and if there are any changes in authorized management representatives.	To be submitted in AMRS.
K	HOME Annual Certification of Continuing Program Compliance	HOME	Annually when submitting resident data.	May be submitted more frequently during property lease-up, and to be submitted in AMRS.
L	Property Information Sheet	All programs LIHTC/HOME/MHDC/TBRA/AHAP	Initial and if there are any changes in management staff.	To be submitted in AMRS

MHDC EXHIBITS AND WHEN TO USE THEM (continued)

Exhibit		On what type of property is it used?	When is it used?	Please Note
M	LIHTC Certification of Student Eligibility	LIHTC, HOME, MHDC, SECTION 8	At move in and recertification.	For the LIHTC EUP, student rules, as defined by Section 42, will no longer apply. Other programs such as HOME have longer compliance periods where the student rule may apply.
M-1	HOME Certification of Student Eligibility	HOME	At move in and recertification.	See MHDC HOME Manual
N	Disclosure of Lead Paint-Hazards Warning	HOME/LIHTC/MHDC	At move-in.	For all properties built before 1978.
O	Section 42 Form	LIHTC/MHDC	This form must be completed at the time of the initial occupancy certification, and any instance a new lease is signed, for all tax credit units.	This form should be placed in the tenant file and made available to MHDC upon request.
P	Request for Common Use Unit	All programs LIHTC/MHDC/HOME	When a common use unit is requested or cancelled.	Common use units are that could be occupied by a qualified resident, but instead are used for management, security, or maintenance purposes.
Q	Non-Employment Affidavit	LIHTC/MHDC/HOME/TBRA/SECTION 8	At move in and re-certification.	
R	HOME Form	HOME	This form must be completed at the time of the initial occupancy certification, and any instance a new lease is signed, for all HOME units.	This form should be placed in the tenant file and made available to MHDC upon request. To the extent that any portion of this agreement conflicts with the HUD Lease Agreement, the HUD requirements shall control.
T	Request for Extension	All programs LIHTC/MHDC/HOME/AHAP	When an extension for time to cure deficiencies is needed.	Due to MHDC by the 10th business day from the mail-out date of inspection report.
U	Annual Resident Certification	100% LIHTC properties only	3rd year recertification on 100% tax credit properties only. If there market-rate units, the Exhibit U may not be used.	Prior approval must be requested to use the Exhibit U.
V	IOI Statement Qualifications	All properties with MHDC interest LIHTC/MHDC/HOME/AHAP/TBRA	At move in and re-certification.	
W	8609 Owners Certification General Partnership Form	LIHTC	When original 8609s cannot be obtained by any other means.	8609s must be requested of the original owner and/or the IRS before an Exhibit W will be accepted.
Y	Corrective Action Plan	All properties subject to management review	When a property is out of compliance to track uncorrected deficiencies.	Due on the 10th of the month until the property is no longer on a corrective action plan.
Z	Housing Priority Checklist	Properties with Permanent Supportive and Vulnerable Population units and/or Service Enriched Housing Priority	To be completed annually. Refer to the Seasonal Reporting Schedule.	Submitted in AMRS Exhibit Z Housing Priority Certification module.

PLEASE NOTE

Forms are revised from time to time. It is the responsibility of the owner/management company to check the MHDC website and implement new forms immediately. Revision dates are printed on the bottom of the form and new or updated forms are denoted with a banner on the website. **Additionally, required MHDC exhibits must be used. No other forms are acceptable.**

CHAPTER 7 – ADDITIONAL MHDC REQUIREMENTS

Part 7.1 Adjustments to Rent, Utility Allowance or Subsidy

Any changes to rent, Utility Allowance, or rent subsidies occurring between recertification dates must be reported to MHDC on the next Annual Occupancy Report.

Part 7.2 Rent Increase Guidelines

Rent Increase Guidelines

MHDC is required to approve the rents for all properties involved in the MHDC Fund Balance, Low Income Housing Tax Credit, Missouri Affordable Housing Assistance Program (AHAP), HOME, and National Housing Trust Fund (NHTF) programs. All rent increase requests must be submitted on-line through MHDC's Asset Management Reporting System (AMRS). amrs.mhdc.com The rent increase submission window is open from **October 1–December 31** for the following year. Properties desiring a January 1 effective date must submit their complete rent increase request by November 15. Properties desiring a February 1 effective date must submit their request by December 15th. All others are due no later than December 31. Requests submitted outside this window are not processed. The effective date of approved rent increase requests must be at least one year from the property's last building place-in-service date or one year from the last Schedule II effective date. Existing residents must be given a thirty (30) day notice before implementing any rent increase. The owner/management is required to post for public viewing a signed MHDC Exhibit A-21 Notice to Residents of Management's Intention to Submit a Rent Increase Request to MHDC for Approval (Asset Management Exhibits at MHDC.com) prior to submitting the rent increase request to MHDC. The Exhibit A-21 notice provides a thirty (30) day comment period for residents to respond to MHDC. Mid-term lease increases are not allowed, and tenant leases are not to include language that allows rent increases in the middle of the tenant's lease term. MHDC-approved rent increases are issued on Form Schedule II.

For MHDC rent increase policies and procedures, refer to MHDC rent increase guidance on the MHDC website under [Rent Increases](#).

Part 7.3 Resident Leases

Any resident occupying a LIHTC unit must be income certified and subject to a lease agreement.

A. Lease Terms

At a minimum, the lease language should include (but is not limited to):

- The legal name of parties to the agreement and all other household members (all household members 18 and over must sign the lease);
- A description of the unit to be rented; must include unit/bedroom size, set-aside percentage, and unit address (if unit /bedroom size and set-aside percentage can be located on the TIC, it is not mandatory to be on the lease as well);
- the effective date of the lease (date of move-in or when the resident(s) take possession);
- the term of the lease;
- the rental amount plus any other amount paid by the tenant for parking, pets, air conditioning, etc.;

- List any additional optional and non-optional charges/fees with description;
- The utility allowance requirements and monthly allowance being provided, including a clear breakdown of which utilities are owner-paid and which are resident-paid;
- the acceptable use of the premises;
- the rights and obligations of the parties, including the obligation of the household to certify annually to income as set forth in the LIHTC program requirements and the obligation of the household to notify management should there be any change in student status and/or household composition;
- Language addressing income decreases and increases (i.e., the 140% Rule), utility allowance increases/decreases and basic rent changes (in Rural Property or 236 Properties), or any other change and its impact on the resident's rent and eligibility.
- LIHTC Lease Addendum (Exhibit O) must be signed by the head of household. This signature by the head of the household serves as signature by all household members 18 and over.
- Language addressing pet policies that informs tenants whether or not pets are permitted (with an exception for assistance animals for disabled persons) and the consequences for violating pet policies. Or if pets are permitted, let tenants know that pets and service animals may be subject to certain rules and violation of these rules may be grounds for removal of the animal or termination of the animal owner's tenancy or both.

Please note that a lease may not contain provisions that relieve an owner/agent from liability for wrongful removal of a pet.

B. Lease Addendums and Program Requirements

It is strongly recommended that leases for LIHTC units include an addendum that contains specific provisions obligating the tenants to cooperate with the owner/management. These provisions should clearly set forth the tenant's responsibility to provide the information necessary to assess the household's eligibility to occupy a LIHTC unit.

At a minimum, the addendum should include:

- explanation of the LIHTC program;
- a place to list all of the certified tenants and language stating that only the tenants listed are permitted to occupy the unit and that management must be immediately notified of any changes to the household (these include, but are not limited to, changes in household members, income or assets, Full-Time Student status, need for live-in care attendant and rental assistance);
- language stating that any new household members are subject to eligibility requirements of the LIHTC program;
- language stating that eligibility of any new household member must be certified prior to the occupancy; and
- a provision defining eligibility requirements (e.g., annual recertifications) and the consequences of not promptly complying with such requirements.

C. The Violence Against Women Act (VAWA)

On March 7, 2013, The Office on Violence Against Women reauthorized The Violence Against Women Act (VAWA). This reauthorization improves and expands legal tools and grant programs addressing domestic violence, dating violence, sexual assault, and stalking. The effective date of grant-related changes is October 1, 2013. Please note that specific to the Low-Income Housing Tax Credit (LIHTC) and HOME programs, a key element of VAWA includes requiring public housing agencies (PHAs), assisted housing

owners and managers to bifurcate leases of tenants residing in federally subsidized housing. This assists in evicting a tenant who engages in domestic violence, dating violence, sexual assault, or stalking without penalizing a victim of such criminal activity.

The VAWA 2013 reauthorization continues this lease policy, and now provides that if the person removed as a result of bifurcation was the sole eligible tenant, remaining tenants must have the opportunity to establish their eligibility for the program, or, if not eligible, be given a reasonable amount of time to find new housing. Public housing agencies (PHAs) assisted housing owners and managers are required to attach the HUD-approved Lease Addendum, Form HUD-91067, which includes the VAWA provisions to each existing or new lease. For the HUD-approved Lease Addendum, Form HUD-91067, please review the link below:

- VAWA Addendum HUD Form 91067 - HUD /U.S.
- Form HUD-91067 must be signed by the head of household. This signature by the head of the household serves as signature by all household members 18 and over.
- LIHTC and HOME are only two of a list of covered programs. For a full listing of covered programs and the entire VAWA 2013 reauthorization, please review the link below:

<http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>

D. Initial Lease Term

There must be an initial lease term of no less than six full months on all LIHTC units. The six-month requirement may include free rental periods or rental concessions of a month or less. Succeeding leases are not subject to a minimum lease period but there must always be a lease in effect if a LIHTC unit is occupied (e.g., month-to-month is acceptable).

E. Single Room Occupancy

Single room occupancy housing ("SRO") must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas.

Federal rules allow for month-to-month leases for the following types of SRO housing for homeless individuals:

1. SRO units in properties receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
2. SRO units intended as permanent housing and not receiving McKinney Act assistance; and
3. SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services.

F. Lead-Based Paint Certification (24 CFR Part 35)

All properties which are not exempt from the disclosure rule must provide tenants with the

EPA/HUD/Consumer Product Safety Commission Lead Hazard Information Pamphlet (*Protecting Your Family from Lead in Your Home*) or an EPA-approved equivalent. Prior to occupancy, each household must execute a Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards Lead Warning (Exhibit N). A fully executed copy of such document must be retained in each household's file.

Please note that if a property is built before 1978 and has been rehabbed, Exhibit N is still required.

There is some confusion regarding Lead Abatement vs. Lead Renovation, Repair, and Painting (RRP). Abatement, as defined by the EPA, is a specialized activity designed to address lead and permanently eliminate lead-based paint hazards. RRP activities disturb paint as a consequence of the activity, but they are often undertaken for reasons unrelated to lead issues or as an interim control measure to minimize lead hazards. RRP is not designed to permanently eliminate lead-based paint hazards. Encapsulating (RRP) of the hazard is not a permanent solution, nor does it eliminate the hazard.

The following properties are exempt from the lead-based paint disclosure rule:

1. residential structures built after January 1, 1978 (Congress banned the use of lead-based paint for residences after this date);
2. rental property found to be lead-based paint free by a lead-based paint inspector certified under the federal certification program or under a federally accredited state or tribal certification program (certification is a legal requirement);
3. zero-room dwelling units, including SRO units;
4. housing specifically designated for the elderly or persons with disabilities, unless a child under the age of 6 resides or is expected to reside in the unit; and
5. short-term leases of 100-days or less when no lease renewal or extension can occur.

Part 7.4 Property Signs

All property signs must be in good condition.

At a minimum, property signs in place prior to 2004 should include the property name and the Fair Housing logo.

At a minimum, property signs built or put in place after 2004 should include the on-site office phone number and/or manager's emergency contact phone number, the local TDD number, the Fair Housing logo, and the handicap logo (if applicable).

Part 7.5 Record Keeping

Owners are required, by IRS Regulation 1.42-5(b)(2) Code, to keep records for each qualified low-income building in the property. The records must show the following for each year in the Compliance Period:

- the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
- the percentage of units in the building that are low-income units;
- the rent charged on each unit in the building (including Utility Allowances, with supporting documentation);
- the number of occupants in each low-income unit;
- the low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;
- the annual income certification of each qualifying low-income resident;
- documentation to support each qualifying low-income resident's income qualification;
- the eligible basis and qualified basis of the building at the end of the first year of the Credit Period; and
- the character and use of the non-residential portion of the building included in the building's Eligible Basis.

Part 7.6 Record Retention

The owner is required, by IRS Regulation 1.42-5(b)(2) Code, to retain the records described above for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

The records for the first year of the Credit Period must be retained for a minimum of six years after the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period, which means the first-year records must be retained for a total of 21 years.

Part 7.7 Electronic Signature, Transmission, and Storage

Electronic storage of documents is acceptable as long as hard copies of ALL initial qualifying documentation, and all resident file documentation is readily available for review by the compliance staff. More information on electronic signatures may be found here:

- <https://www.hudexchange.info/programs/home/>
- MHDC Electronic Signature, Transmission, and Storage Policy for Owner and Agents (MHDC.com)

Part 7.8 Pet Policy

If the property allows pets, the following pet policy is in effect:

An owner or management agent may not discriminate against prospective tenants in admission to or current tenants in continued occupancy of housing because a person or a person in their family owns or keeps a common household pet. An owner/agent must develop proposed rules to govern the owning or keeping of common household pets. The property's pet rules must not conflict with state or local laws or regulations governing pets. If a conflict exists, the state or local laws or regulations must be applied.

The term "common household pet" means a domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. If this definition conflicts with any applicable State or local laws or regulations defining the pets that may be owned or kept in dwelling accommodations, the State or local laws or regulations must be applied.

A. Assistance Animal Exclusion

An owner/agent may apply or enforce house pet rules developed in accordance this handbook against individuals with animals that are used to assist handicapped persons (e.g., guide dogs for persons with vision impairments, hearing dogs for persons with hearing impairments, and emotional support animals for persons with chronic mental illness).

An owner/agent may require tenants to qualify for this exclusion by certifying the following items.

If a tenant certifies to the following, the owner/agent must grant an exclusion:

- The tenant or a member of his/her family is handicapped, and;
- The animal has been trained to assist persons with that specific handicap, and;
- The animal assists the handicapped individual.

An owner/agent may make no determination as to whether the pet's therapeutic value is inappropriate to the pet owner or the interests of the property or existing tenants.

B. Prospective Tenant's Rejection of a Unit

An applicant for tenancy in a property may reject a unit offered by an owner/agent if the unit is in close proximity to a dwelling unit where an existing tenant owns or keeps a common household pet.

An applicant's rejection of a unit under this section will not adversely affect his/her application for tenancy in the property, i.e., his/her position on the property waiting list, and qualification for any tenant selection preference, etc.

The owner/agent may serve a written notice of a pet rule violation on the pet owner if an owner/agent determines based on objective facts supported by written statements that a pet owner has violated a pet rule governing the owning or keeping of a pet.

C. Notice of Pet Removal

An owner/agent may serve a notice for the removal of the pet if they are unable to resolve the pet rule violation at the meeting, or it is determined that the pet owner has failed to correct the pet rule violation.

Initiation of Procedures to Terminate a Pet Owner's Tenancy

The property owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation unless the pet owner has failed to remove the pet or correct a pet rule violation within the

applicable time period and the pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease.

D. Pet Policy Inclusions

The owner/agent may place a reasonable limitation on the number of common household pets that may be allowed in each dwelling or group home as well as the pet size, type and weight. Group home is defined as a small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically handicapped.

The pet rules may require a tenant who owns or keeps a cat or dog in their unit to pay a refundable pet deposit.

The pet rules may permit an owner/agent to impose a separate pet waste removal charge up to \$5.00 per occurrence on a pet owner who fails to remove pet waste in accordance with the prescribed pet rules.

The pet rules may require pet owners to license their pets in accordance with applicable State or local laws or regulations.

E. Pet Deposit

Pet deposit must not exceed \$300.00 (HUD 4350.1 32-14). This amount was set by publication of a notice in the Federal Register by HUD and may change periodically with future publications. Pet deposits may be used to pay reasonable expenses. An owner/agent may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the property, including but not limited to:

- The cost of repairs and replacement to, and fumigation of, the tenant's dwelling unit.
- The cost of animal care facilities or the protection of a pet.

The owner must refund the unused portion of the pet deposit after the tenant moves out of the property or no longer owns or keeps a dog or cat in the dwelling unit.

F. Infection Disease Plan

Developments with MHDC funding must establish an Infectious Disease Management Plan (ID Plan) to be adopted and followed by the property management agent in response to an outbreak of COVID-19, other infectious disease, or comparable circumstances. The ID Plan should be prepared in accordance with guidance from the Centers for Disease Control (CDC) or other appropriate local health authorities. The ID Plan must address, at minimum, the following:

- a) Plan for addressing an outbreak of infectious disease at the property including but not limited to communication standards for informing stakeholders.
- b) Methods of preventing or reducing infection rates including how processes normally involving person-to-person contact will be handled. Such processes include but are not limited to interactions in the leasing office, use of community space or common amenities, resident events, deliveries, service or maintenance calls, collection of rent, interaction with third party vendors and marketing or showing of property to prospective tenants.
- c) Processes or procedures addressing high risk tenants such as elderly, permanent supportive housing or vulnerable populations.
- d) Cleaning and sanitization protocols for all units and common areas.
- e) Any COVID-19 or other related services that will be provided.

G. VAWA Emergency Transfer (VET) Plan

Developments with MHDC funding must have an Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking. The *Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking* (HUD-5381) form contains only general provisions of an Emergency Transfer Plan that apply across HUD programs. Adoption of this model plan without further information will not be sufficient to meet an O/A's responsibility to adopt an emergency

transfer plan. O/As must consult applicable regulations and program-specific HUD guidance when developing their own emergency transfer plans, to ensure their plans contain all required elements

(see HUD Notice H 2017-05;

https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act; HUD.gov).

CHAPTER 8 – EXTENDED USE PERIOD

Part 8.1 Definitions Compliance Period

The Internal Revenue Code Section 42(j)(1) defines the term “compliance period” as the period of 15 taxable years beginning with the 1st taxable year of the credit period. The first year of the compliance period is the first year in which the owner claimed credits. Owners should rely on Form 8609, filed with the IRS, to determine the first year of credits.

Extended Use Period (EUP)

MHDC defines the term “extended use period (EUP)” as beginning on the 1st day following the initial “compliance period” and ending on the date specified by the LURA.

Period of Affordability

Section 42(h)(6)(D) defines the term "extended use period" as the period beginning on the first day in the compliance period on which the building is part of a qualified low-income housing property and ending on the later of (1) the date specified by the agency in the extended low-income housing commitment, or (2) the date which is 15 years after the close of the compliance period.

Compliance Period + Extended Use Period = LIHTC Period of Affordability

Part 8.2 Owner Responsibilities

The owner must ensure that the property meets certain requirements and [HUD’s National Standards for Physical Inspection of Real Estate \(NSPIRE\)](#) during the EUP. These requirements are to:

1. Ensure the property is managed in accordance with the LIHTC regulations and requirements agreed to during the allocation process for the duration of the EUP. Violation of the requirements may result in default on a loan and suspension of further utilization of MHDC resources.
2. Guarantee that all units are suitable for occupancy by meeting [NSPIRE](#) standards, local health, safety and building codes, and ensure that the on-site management team complies with all applicable rules, regulations, and policies. This includes following policies and regulations pertaining to disclosure of lead-based paint and asbestos, and/or remediation where required.
3. Advise MHDC of and receive prior approval for any changes in ownership or management. Failure to obtain prior written approval of these changes is considered an act of noncompliance subject to issuance of an 8823 and may be considered grounds for suspension or debarment from future participation in MHDC programs. After receipt of MHDC approval for any changes, provide a Notice of Change in Ownership (Exhibit EUP 4) prior to ownership transfers. Such a transfer agreement puts new ownership on notice that the property is subject to compliance restrictions and monitoring.
4. Ensure that a duly executed management certification and management entity profile is always in force. Prior written approval of MHDC is required to implement changes to the management certification.
5. Certify that the property is being managed in accordance with all applicable federal, state, and local fair housing laws.
6. Assume liability for any instances of noncompliance and the correction of such deficiencies.
7. Provide MHDC the EUP Certification of Owner Compliance (Exhibit EUP 2) and annual Occupancy Report (Exhibit EUP 3) through Certification Portal (CP) in accordance with the seasonal reporting schedule. Owners that do not report online are to provide the EUP Certification of Owner Compliance (Exhibit EUP 2) and Annual Occupancy Reports (Exhibit EUP 3) for non-internet reporting in accordance with the seasonal reporting schedule. Exhibit EUP 2

and EUP 3 is located at:

<https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/exhibits-forms/>.

The seasonal reporting schedule is as follows and is based on the year the last building is placed in service.

Please refer to the Seasonal Reporting Schedule in Chapter 2, Part 2.3.

Part 8.3 The Management Agent

The management agent is responsible for properly implementing LIHTC and MHDC program requirements in the EUP, and must comply with all federal laws, rules and regulations governing certification and leasing procedures. The management agent is required to provide all necessary and required information to MHDC; this includes submission of various program compliance reports within specified time frames. Further, if the management agent determines that the property is not in compliance with LIHTC Program requirements in the EUP, the Asset

Management Department must be immediately notified in writing to:

Asset Management
Physical Property Compliance
505 N. 7th Street, 20th Floor, Ste. 2000,
St. Louis, MO 63101

A duly executed management certification, and management plan is required to be in place at the onset of leasing activity and continually throughout the affordability period. Prior written approval of MHDC is required to implement changes to the management certification.

Part 8.4 MHDC Asset Management Department

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

1. Notify owners and management agents upon the property entering EUP.
2. Receive, review and file all documentation and certifications required for compliance during the EUP by owners, developers, and management agents.
3. Initiate, schedule, and conduct on-site physical, management and file reviews.
4. Provide LIHTC Program compliance monitoring staff to serve as a point-of-contact for information for owners, developers, and management agents during EUP.
5. Notify owners when the property is found to be out of compliance with IRS, HUD or MHDC requirements, including submission of reports or other requested information.
6. Ensure that property certifications and other records are retained for the applicable record retention period.

Part 8.5 Summary of Extended Use Period Changes

The owner agreed to comply with the originally recorded LURA and during the EUP certain changes to the regulatory agreement may be allowed. Based on the requirements of the LURA, specified in Section 42 regulations and the agreement itself, MHDC has the authority to set policy for certain criteria during the EUP. In summary, MHDC will require the following:

1. An annual recertification is no longer required on 100% Low Income Housing Tax Credit properties. Please note, this is property wide, not unit specific. If any unit has any other type of funding, it is considered a mixed-use property.
2. An annual recertification on mixed-use properties only. MHDC will accept, in lieu of income/asset verification, a self-certification from the household (acknowledged by management) attesting to continued compliance with income restrictions. The MHDC Exhibit B Tenant Income Certification form must be completed along with the self-certification.

Note: 100% LIHTC, for MHDC monitoring purposes, means that the property is 100% LIHTC and does not have any market rate units. Additionally, if the property has any other active MHDC monitored programs/funding that have more restrictive recertification requirements, those must be followed. If the property has market rate units, the property is considered mixed-use.

3. An initial income certification on all new move-ins as described in the MHDC Low Income Housing Tax Credit compliance manual.
4. Student rules, as defined by Section 42, will no longer apply. Please note that other programs with student rules must be adhered to.
5. Unit transfers from building to building are allowed. Please be advised that if the owner has elected “no” on line 8b of Form 8609, then residents may not transfer between buildings. If a household wants to move to another building, they must be treated as a new move-in and re-qualified for the program based on current circumstances.
6. Mixed-use properties will be required to monitor the set-asides of low-income units.
7. The available unit rule no longer pertains to “comparable or smaller size.” The amended rule provides that if a household’s income goes over 140% of the applicable AMI, a currently vacant unit or the next unit in the same building must be rented to a qualifying household.
8. Rent increases will no longer be reviewed annually. MHDC Program Rent Limits will apply with a final Schedule II from MHDC.
9. Annual and financial statements will no longer be required by the tax credit program although loan requirements still apply.
10. Tax credit income restrictions will apply although MHDC may, as deemed necessary, authorize income waivers upon request.
 - A request for an income waiver to 80% of area median income adjusted for family size must be in writing, outline the factors the owner/owner agent believes contributed to the need to request the income waiver and provide support for the items outlined on the waiver request.
 - Owners should note that properties which are in the 3-year decontrol period, the “opt out” process, or have additional restrictions or special circumstances may not be eligible for an income waiver.
 - Please be aware that the 80% income limits will be determined solely by HUD. For the purpose of determining an income qualified household MHDC will only use the HUD 80% income limits found at: <http://www.huduser.org/portal/datasets/il.html>.
 - Income waiver requirements are located at:
<https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/exhibits-forms/>.
 - The request for an income waiver is submitted by completing the Income Waiver Request Form (Exhibit EUP 6) located at:
<https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/exhibits-forms/>.

The Income Waiver Request Form (Exhibit EUP 6) and required documentation must be sent to:

Missouri Housing Development Commission
Asset Management Program Compliance
505 N. 7th Street, Suite 2000
St. Louis, MO 63101

This waiver only applies to LIHTC-designated units within the property. The owner/owner agent must ensure that residents in HOME, Section 8, Section 236 or other income restricted units continue to maintain those program specific guidelines.

11. Physical inspections and file reviews will be performed every five years or as deemed necessary by MHDC staff.

- Physical Inspection - a minimum of 3 units chosen at random or a maximum of 10% of the low-income units not to exceed 15 units in any development. Evidence of deficiency trends may trigger additional unit inspections.
- File Review – MHDC will no longer limit the review to files related to the inspected unit. New move-ins will require income and asset verifications. Recertification files on mixed-use properties will require a self-certification at minimum. Files may be chosen at random. Evidence of deficiency trends may trigger additional file reviews.

12. At MHDC's discretion, MHDC may rely on Section 8 or Rural Development inspection reports for those properties with layered financing or rental assistance provided by either agency.

Part 8.6 Consequences of Noncompliance during EUP

IRS Form 8823 has been amended to reflect agency-defined language. Evidence of noncompliance reported through an 8823 may result in suspension or debarment from participation in future MHDC programs and may be reported to other agencies inquiring of the compliance status of the owner or manager.

MHDC's mission is to provide strength, dignity, and quality of life through the partnerships that we have created in the affordable housing industry. It is our intent to create more relaxed compliance criteria during the extended use period as a means of reducing the administrative burden on the owners and managers of Low-Income Housing Tax Credit properties. These efforts ensure the longevity of the affordable housing program and therefore provide quality affordable housing to the citizens of Missouri.

CHAPTER 9 – QUALIFIED CONTRACT PROCESS

Part 9.1 Background

Properties in the tax credit program beginning with the tax year 1990 have a 30-year period of affordability which consists, at minimum, of a 15-year mandatory compliance period and a 15-year extended use period (EUP). However, the mandatory compliance period can be greater than 15 years. Depending on owner elections in the Land Use Restriction Agreement ("LURA"), it may be possible for an owner to opt-out of the tax credit program after the expiration of the mandatory compliance period. If in the LURA an owner elects the right to request a qualified contract after the end of the mandatory compliance period, the owner may begin the QCP no earlier than January 1, of the last year of the mandatory compliance period.

A qualified contract is a bona fide contract to acquire a low-income housing tax credit property for the sum of the existing debt, adjusted investor equity and other capital contributions less the property cash distributions as set forth in IRC §42(h)(6)(F). The QCP will establish the minimum price for the property required by IRC Section 42.

Please note:

If it is a property that will convert to homeownership following opt out and pay off of any financing, the homes may be sold subject to a deed restriction for the remaining affordability period, if any.

For deals that pre-date MHDC's homeownership conversion policy/guidelines but would like to sell homes to existing residents, please contact us to determine the conversion requirements.

Part 9.2 Application Process

Instructions and the checklist for the QCP can be reviewed by reading the Qualified Contract Request Application Instructions ([Exhibit QCP-1](#)). The QCP begins with the submission of the Qualified Contract Request Notification

([Exhibit QCP-2](#)), Qualified Contract Request Application ([Exhibit QCP-3](#)) and Qualified Contract Worksheets ([Exhibit QCP-4](#)).

The Qualified Contract Request Application must be submitted with the required items below:

- Proof that the property is eligible to request a qualified contract according to the LURA;
- Property Information (Name, Address, # of Buildings in Property, Building PIS Date, Building Identification #, 1st Year Tax Credits Claimed);
- First year 8609's showing Part II completed;
- Ownership/Partnership Information;
- Proof that the partnership agreement or other legal document does not grant any form of preference for purchasing the property (for example, a right of first refusal granted to a nonprofit partner);
- Proof that the partnership agreement or other legal document does not provide for any form of agreement to sell the property for less than Fair Market Value;
- Proof that the property is not restricted by any other affordability restrictions (i.e., USDA Rural Development, state/local funding, or property-based assistance);
- Copies of all pending 8823's with evidence of resolution;
- Documentation of the completed 100 percent inspection and correction of all deficient items dated no earlier than six months prior to submission of the Qualified Contract Request Application;
- Narrative Descriptions of the property to include financing, equity contributions, unit structure and current rent levels, occupancy levels, and market conditions;
- Exterior and interior photos;
- Location Map;
- Site plan;
- Name and contact information of the current Owner and Management Company and
- The Non-Refundable Administrative Fee (see chart below).

NON-REFUNDABLE ADMINISTRATIVE FEE

Development Size	Fee
1-12 units	\$ 500
13-24 units	\$1,000
25-47 units	\$1,500
48+ units	\$3,500

Once the Qualified Contract Request Notification ([Exhibit QCP-2](#)), Qualified Contract Request Application ([Exhibit QCP-3](#)); and Qualified Contract Worksheets ([Exhibit QCP-4](#)) are received, the property will be scheduled to undergo an inspection. Please note, the Qualified Contract Agreed Upon Procedures ([Exhibit QCP-5](#)) must be reviewed as it contains an overview of agreed upon accounting procedures for the QCP calculation.

Part 9.3 Qualified Contract Price (QCP) Worksheets

All calculations must follow the IRS code. All assumptions must be reasonable and customary. The following assumptions must be used when calculating the QCP using worksheets A-E. Worksheets A-E must be submitted and include appropriate back-up documentation (i.e., loan statements; K-1s; partnership agreements; financial statements; appraisals; assessed valuations; etc.).

Completed QCP Worksheets include:

- **Worksheet A: Outstanding Indebtedness** - Include the unpaid balance of all secured and unsecured indebtedness; the supporting documentation needed is mortgage statements; financial statements, etc.

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- **Worksheet B: Calculation of Adjusted Investor Equity** - Include investment amounts for all year's taxpayer was required to invest and the extent the investment amount is included in the adjusted basis of the property. The investment amount should be increased by the applicable cost of living adjustment percentage set forth by US Department of Labor Statistics and calculated per the guidance under IRC Section 42; the supporting documentation needed is partnership K-1s; financial statements, partnership agreements, etc.
- **Worksheet C: Other Capital Contributions** - Include other contributions that were not required to be submitted on Worksheet A or B. For this purpose, capital contributions are not limited to cash. Therefore, include amounts to replace capital items not paid from reserves i.e., furnace; land; etc. The supporting documentation would include invoices; financial statements; tax returns; HUD settlement statement; and other information to support amount.
- **Worksheet D: Cash Distributions** - Include all cash distributions made with respect to the property but also all cash that is available for distribution; all cash legally required by restrictions or regulatory agreements to remain with the property following the sale; The supporting documentation needed is partnership K-1s; financial statements; etc.
- **Worksheet E: Fair Market Value** – Include Fair Market value on non-low-income portion of buildings including total land cost. This amount needs to be determined by a certified appraiser. Using assessed valuation of land from county/city assessor's office in lieu of appraisal is acceptable for properties with 12 units or less.

MHDC will notify the owner in writing of any deficiencies in the submission. The owner must respond within 30-days. If outstanding items are not corrected or received by year end the owner must submit a new application. The one-year period to find a qualified buyer will not begin until all items required have been submitted, fully supported, and approved by MHDC.

Upon approval of the above-listed items, there will be a waiting period for release of the LURA by MHDC. MHDC will post the property information on the agency website to notify any potential buyers.

If MHDC presents a prospective buyer to the owner, the owner must agree to allow the prospective buyer to inspect all relevant documents pertaining to the property. If the owner rejects an offer at or above the Qualified Contract Price, the development will remain affordable throughout the term of the LURA") recorded against the property. If no buyer is found, MHDC will release the LURA, and the three-year decontrol period begins after the release has been recorded. MHDC will notify the owner of the beginning of the decontrol period.

Part 9.4 Disqualification of Qualified Contract

Owners may choose to cancel the QCP at any time during the process. However, MHDC may determine that an owner cannot submit another request. MHDC must have continuous cooperation from the owner in respect to all aspects of property information, financial statements, and tax returns. Lack of cooperation will cause the processing of the QCP to be terminated.

Additionally, if requests for missing information remain outstanding and the QCP has not been approved by year end, the process will be terminated, and the owner will need to resubmit the QCP for consideration.

In the event of a QCP suspension due to noncompliance or audit, the property must be maintained and operated under the extended use agreement.

Part 9.5 Three Year Decontrol Period

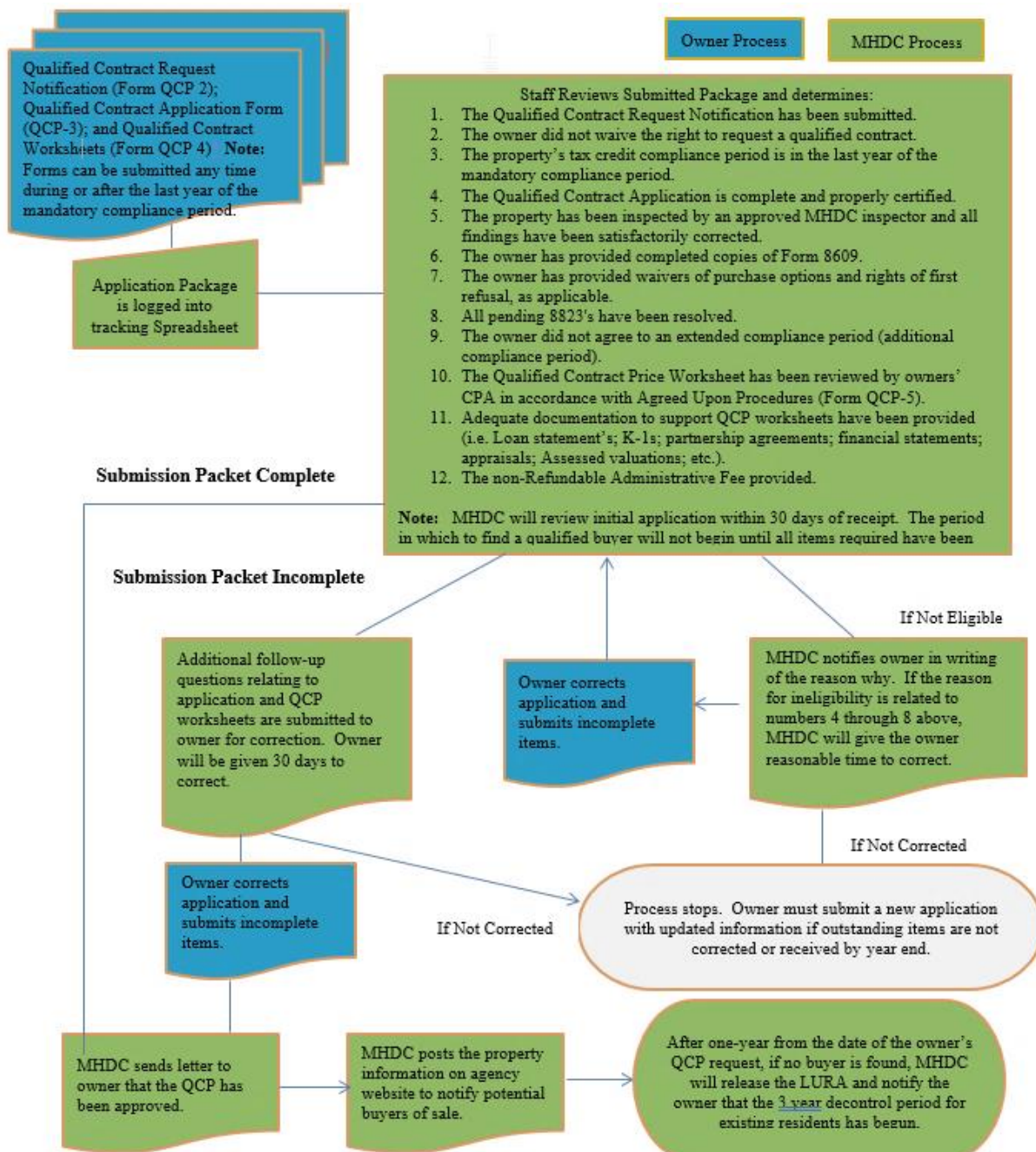
Following notification from MHDC of LURA release, the owner must implement and comply with the three-year decontrol period procedures according to IRC§ 42(h)(6)(E)(ii).

The information below can be submitted on the Annual Owners Certification of Continuing Compliance ([Exhibit 3YDP](#)).

The three-year decontrol period procedures are as follows:

- The owner certifies that none of the existing residents have been evicted without good cause.
- The owner certifies that rent amounts for the existing residents have not increased more than 7 percent per annum.
- The owner certifies the number of vacant units at the end of the reporting period; except for the first report, when the number of vacant units is the beginning number at the start of the decontrol period.
- The owner submits a list of existing residents, rent amounts, lease dates and unit numbers (i.e., current rent roll).

The [Exhibit 3YDP](#) items must be uploaded annually to AMRS:



- Qualified Contract Request Notification triggers the one-year period for MHDC to find a buyer to keep the project in the LIHTC program. If a Qualified Contract Request Notification is submitted without the Qualified Contract Application Worksheets and supporting documentation, the requester has 60 days to submit their remaining materials to MHDC. If items have not been received within 60 days, the one-year period will start to toll. MHDC in its sole discretion may restart the one-year period if it determines necessary.

CHAPTER 10 - AVERAGE INCOME TEST (AIT)

Every LIHTC property has a minimum set-aside. The minimum set-aside election is an irrevocable election in the initial application.

Part 10.1 Minimum Set-Aside

There are three minimum set-aside elections available in Missouri: the 20-50 test, the 40-60 test, and the Average Income test (AIT):

1. **20/50 Minimum Set-Aside:** At least 20% of its total residential units must be both rent-restricted and occupied by qualified low-income households who earn less than 50% of the area median gross income (AMGI) for that household size.
2. **40/60 Minimum Set-Aside:** At least 40% of its total residential units must be both rent-restricted and occupied by qualified low-income households who earn less than 60% of the AMGI for that household size.
3. **Average-Income Minimum Set-Aside:** At least 40% of its total residential units must be both rent-restricted and occupied by qualified low-income households whose income does not exceed the income limitation designated for the respective unit, where the average of the income-designated units may not exceed 60% AMGI. The unit designations will be made in 10 percent increments. Each unit may be designated at 30, 40, 50, 60, 70, or 80 percent AMGI.
 - **MHDC AI Policy:** If AI is the minimum set-aside election, the ownership entity must also elect that all buildings in the applicant's development are "part of a multiple building project" on IRS Form 8609, 8b.
 - **§42(g)(1), 8823 Guide chapter 10, IRS form 8609(s)-line 10C** shows the designation. The Minimum Set-Aside is a Project Rule defined by Line 8b in Part II on the IRS 8609 form.

The Land Use Restriction Agreement (LURA) for the property may require that the owner/agent meets additional income and rent limit restrictions and/or an additional number of low-income units.

If the project does not meet the minimum set-aside requirement during the first year of the credit period, the IRS states that the project is prohibited from ever claiming the tax credits for that project. Subsequent violations of the minimum set-aside result in the loss of credits for the year that the minimum set-aside is not met and recapture penalties.

Question: *Does the average of each individual Building have to meet the 60% average or lower for all unit designations, even if it is part of a multiple building project?*

Answer: The required 60% average of unit designations is a part of meeting the Minimum Set-Aside. The Minimum Set-Aside is a Project rule. Line 8b in Part II of the IRS 8609 form defines the Project for Tax Credit and 4% Tax-Exempt Bond projects. If Line 8b in Part II on the IRS form 8609 is "No," each Project must meet the 60% average of unit designations. If "Yes" is selected on Line 8b, the average of the designated income limitations across all assigned buildings (BINs) is used to calculate the average. The Tax-Exempt Bond Minimum Set-Aside requirements may be different (reference the Bond LURA).

In the example below, all units are low-income and designated at or below 80% Area Median Income (AMI). Because the Project includes both buildings, the project owner must select 40% or four units across the buildings in the Project that average 60% to meet the AIT.

Building A	Imputed Income Limitation	Square Feet
A1	80%	1100
A2	80%	1100
A3	*40%	900
A4	*40%	800
A5	*40%	900

Building A	Imputed Income Limitation	Square Feet
B1	*40%	900
B2	*40%	800
B3	80%	1100
B4	80%	1100
B5	80%	900

***The Tax-Exempt Bond 40% at or below 60% unit designation requirement is met.**

Average Building AMI: 56%
Total square feet: 4800

Average Building AMI: **64%**
Total square feet: 4800

**Average Project AMI:
60%**

Units A1, A4, B2, and B5 represent 40% of the Project and the unit designations average 60% AMI. In the example above, the average of the unit designations in Building B may exceed the 60% AMI average because both Buildings are a part of a multiple-Building Project, and the Project AIT is satisfied.

8609 Low-Income Housing Credit Allocation and Certification
OMB No. 1545-0047

Go to www.irs.gov/Form8609 for instructions and the latest information.

Part I Allocation of Credit

Check ☐ Addition to Qualified Basis ☐ Amended Form

10 Check the appropriate box for each election.
Caution: Once made, the following elections are irrevocable.

a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ☐ Yes ☐ No

b Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) ☐ Yes ☐ No

c Elect minimum set-aside requirement (section 42(o)) (see instructions):

☐ 20-50 ☐ 40-60 ☐ Average income ☐ 25-60 (N.Y.C. only)

20-50
20% of units, minimum, must be LIHTC
50% is the income and rent limit for ALL LIHTC units

40-60
40% of units, minimum, must be LIHTC
60% is the income and rent limit for ALL LIHTC units

Average Income
40% of units, minimum, must meet applicable designations and these designations must average no more than 60%.
60% is the **average** income and rent limit designation for ALL LIHTC units, which may be 20-80% (in 10% increments).

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

1a Original qualified basis of the building at close of first year of credit period ☐ Yes ☐ No

1b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? ☐ Yes ☐ No

1c If box 1a or box 1b is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)? ☐ Yes ☐ No

1d For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)? ☐ Yes ☐ No

10 **Caution:** Once made, the following elections are irrevocable.

Courtesy of Costello Compliance

Part 10.2 Average Income Test Limits

HUD publishes the LIHTC income limits, including the designations used for the Average Income Test (AIT). These designations are calculated from the 50% MTSP limits.

Calculation methodology of unit designations

HUD publishes the income limits for the various designations allowed by the AIT. Based on long-standing guidance from the IRS, 50% tax credit limits equal HUD's very low limits, 40% tax credit limits equal 80% of HUD's very low limit, and 60% tax credit limits equal 120% of HUD's very low limit. Extrapolating from this standard, the IRS and HUD calculate federal unit designations based on the HUD's very low-income 50% limit.

Important note: the 30% MTSP level under the AIT is not the same as the extremely low-income (ELI) restriction required under Section 8, Section 811, the National Housing Trust Fund, and other programs that use ELI limits. The adjustments required when calculating ELI limits could result in ELI limits that are equal to anywhere from 30% to 50% MTSP limits or more, depending on the HUD program. Similarly, the “Low-income” 80% AMI limits used by HUD for public housing and HOME purposes are also calculated differently than the AIT 80% MTSP limits. Owners of properties with these programs at an AIT property should be mindful of the differences.

Part 10.3 Calculating Designations

Rev. Rul. 89-24 *Rev. Rul. 2020-04* HUD publishes median income information for each county or metropolitan statistical area in the country annually. HUD metropolitan statistical areas are metropolitan areas that may include multiple counties in one “area.” HUD’s metropolitan statistical area is abbreviated MSA but is not to be confused, based on context, with the Minimum Set-Aside for a project, which is also abbreviated MSA at times by the IRS. The tax credit and tax-exempt bond programs’ income limits are referred to as Multifamily Tax Subsidy Program (MTSP) limits.

Until 2020, HUD datasets contain income limits separated into two categories for each MSA or county, 50% (very low) and 60% MTSP Income Limits. Owner/agents select the 50% or 60% limits based on the property’s minimum set-aside. 20-50 properties use the 50% limits, and 40-60 properties use the 60% limits. Per prior IRS guidance (which establishes how to calculate 40, 50, and 60 limits), the IRS mandated in 2020 that the other designations for the average income test should be calculated as below:

Part 10.4 Calculating Income Limits

Sample income limits used for the below examples:

STATE:MISSOURI		-----I N C O M E L I M I T S-----							
	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Kansas City, MO-KS HMFA FY 2018 MFI: 80000	VERY LOW INCOME	28000	32000	36000	40000	43200	46400	49600	52800
	60% INCOME LIMIT	33600	38400	43200	48000	51840	55680	59520	63360
	HERA Special 50%*	28250	32300	36350	40350	43600	46850	50050	53300
	HERA Special 60%*	33900	38760	43620	48420	52320	56220	60060	63960

Calculating 20% - 80% HERA Special Income limits for 1-person households:

Designation	50% HERA Special limit x adjusting factor	= Designation Limit
20%	x 0.4	\$11,300
30%	x 0.6	\$16,950
40%	x 0.8	\$22,600
50%	x 1.0	\$28,250
60%	x 1.2	\$33,900
70%	x 1.4	\$39,550
80%	x 1.6	\$45,200

Part 10.5 Average Income Set-aside Training Requirement

Certification of additional training must be provided by the management company prior to lease-up of the development and going forward every two years. A property owner or a management company acting as an agent to the owner of a property that has elected average income designation must attend AIT training conducted by a nationally recognized industry professional. Training must take place before the first building is placed in service and every two years during the affordability period. A certificate of completion must be submitted to MHDC upon request. For additional information on MHDC training requirements: <https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/training/>. The third-party training provider must issue

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certificates of completion to attendees to be retained on file as evidence of completion and available upon request.

Part 10.6 Policy and Procedure Submission

Following the Form 8609 election for average income and before the first unit is leased, a property owner must submit their average income internal compliance monitoring policy and procedures to the MHDC. Property policy and procedures must include internal compliance monitoring processes for:

- Leases;
- Marketing plan;
- Tenant Selection Criteria;
- Vacancy tracking (with designation information);
- Relocation Plan;
- How units will be leased;
- AFHMP;
- Informing applicants of set-asides the development offers;
- Property waitlists;
- VAWA Emergency Transfer Plan (VET)
- Transfer requests;
- On-going training;
- Recertifications; and
- Monitoring of the Available Unit Rule.

The Average Income Test (AIT) The Consolidated Appropriations Act of 2018 permanently established the Average Income Test (AIT) as a new minimum set-aside election. Treasury Regulation 1.42-19 contains the final AIT regulation. Properties that select the average income set-aside must comply with the MHDC Average Income Tax Credit compliance monitoring requirements.

Under IRC Section 42 “average test” provisions, owners designate the income and rent limitation of each unit. These designations must be part of a qualified group that must average 60% or less. The average is of the designations assigned to units, not the average of tenant household incomes. Tenant-paid rent for a unit is determined by the average income designation and not tenant income. Rent must not exceed the designation’s rent but may be lower than the rent amount of the designation (*refer to Chapter 7, Part 7.2 for MHDC Rent Limit and Rent Increase requirements*). Income averaging will be allowed to range from 30% to 80% AMGI. The unit designations will be made in 10 percent increments. Each unit may be designated at 30, 40, 50, 60, 70, or 80 percent AMGI. HUD publishes the LIHTC income limits, including the designations used for the Average Income Test (AIT). These designations are calculated from the 50% MTSP limits.

The income and rent restriction on a unit must match. For example, a unit considered 40% AMI must be rented to a household at or below the 40% AMI income limit and gross rent must be at or below the 40% AMI rent limit. To meet the AIT minimum set-aside a property is qualified when at least 40% of the housing units’ designations average 60% or less. A property is in compliance if the combined average is met by the end of the first year of the owner’s credit period and continues to be met at the end of each taxable year throughout the compliance period.

As long as a unit is part of the qualified group of units that average no more than 60%, it can be used in the applicable fraction for the building it is in. Individual buildings do not have to average 60%. The units in the qualified group must:

1. Be rent restricted,
2. Be occupied by households that meet the income limitation for the unit, and
3. No other provision in Section 42 or the regulations denies LIHTC status to the unit.

The average income unit designations shall be made as follows:

- New projects – on or before initial occupancy.
- Vacant previously occupied units – prior to re-occupancy.
- Restoring project average – prior to the close of the taxable year.

The qualified group of units and any changes to this group and unit designations must be recorded by the owner in its books and records and the group of qualified units must be communicated to MHDC.

Part 10.7 Average Income Reporting and Tracking

Developments are required to report on their average income set aside tracking. The Owner/Agent is required to keep a compliance plan and average income (AI) tracking system. The AI reports are to be available on site at all times, including during compliance inspections.

The Owner/Agent is required to maintain, and regularly update, a list indicating AI set-aside unit designations, along with timely MHDC reporting requirements.

The Owner/Agent must report:

1. The Owner/Agent is required to report/enter data in the **Certification Portal (CP)** for AIT properties. The unit percentages **MUST** be entered for each unit upon initial unit set-up. Annual Reports are due based on the designated reporting period of the property.
2. Subsequent designation changes must be reported, as they occur to MHDC.
3. Annual Reporting: Reporting is required **in the CP and in AMRS for end of year reporting (December 31), and when required or requested by MHDC.**
4. The owner must report the grouping of qualified units for the minimum set-aside. This includes:
 - The qualified group of units for the AIT, including 40% or more of the residential low-income units designated between 20% and 80%, which collectively average 60% or less of AMI;
 - The qualified group of units for the applicable fraction, with all qualified and habitable designated units with income limitations from 20% and 80%, which collectively average 60% or less of AMI; and
 - All excluded units, which includes all ineligible units and eligible units removed to maintain compliance in a qualified group of units. Approved Exempt Units are also excluded units.

AIT designations must be initially determined by the number of designations per unit size (for example “seven 2-bedrooms at 50% and ten 1-bedrooms at 40%). Planned initial designations must be indicated in the funding application and MHDC Form 3345.

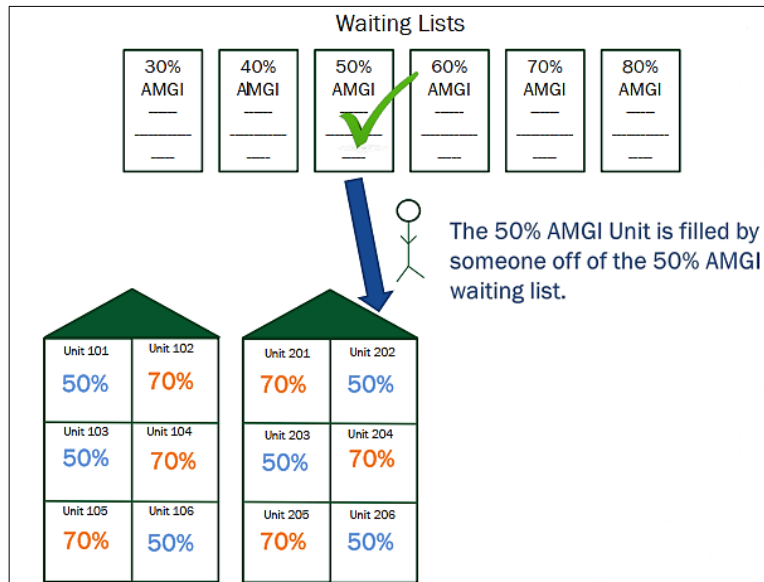
Section 42 requires the following reporting:

- The owner must annually report the grouping of qualified units for the 60% average income test (for the applicable fraction).
- The owner must report changes in unit designations upon making the change annually.
- Initial determination at application: The minimum set-aside election is an irrevocable election in the initial application.

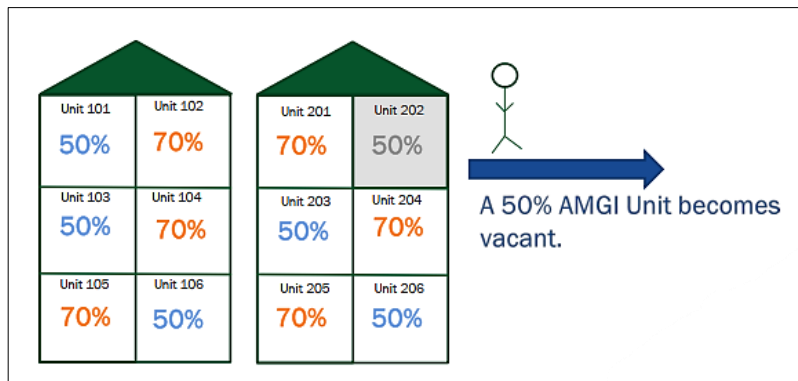
Vacancy Tracking

- Maintaining 60% AMGI by Tracking Unit Vacancies.
- Developments must maintain separate waiting lists for each of the AMGI designations offered.
- Vacancies should be filled from the waiting list corresponding with the previous income/rent AMGI designation of that unit.
- If there are no prospective tenants within the correct AMGI designation, the unit may be filled by the next tenant within the 20% deviation of the AMGI unit designation.

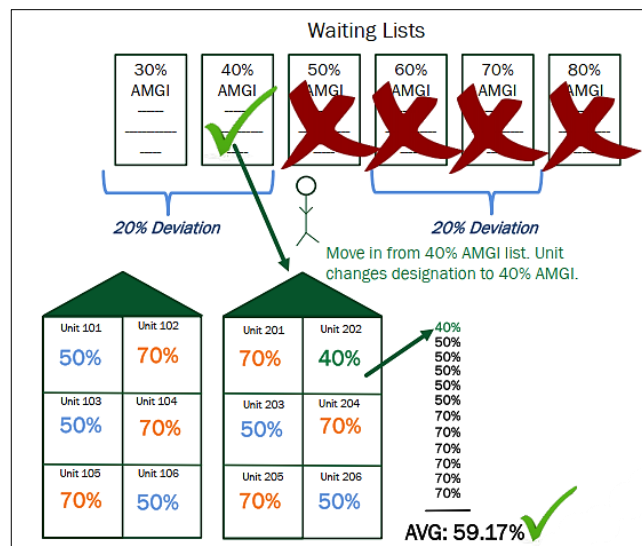
Example #1



Example #2



Example #3



MHDC will review compliance with the average income designations during:

- Regularly scheduled file audit reviews
- A quarterly compliance internal reporting analysis (AMRS)
- Annual Owner Certification (AOC)
- Annual reporting (AMRS and Certification Portal (CP))
CP data entry for AIT properties: the unit percentages MUST be entered for each unit upon unit set-up.
- Upon notice of unit designation changes

MHDC reserves the right to request a rent roll at any given time. If requested, each property that has elected average income designations shall submit a rent roll spreadsheet with the AOC, including the following:

- Unit Number;
- Square footage;
- Rental rate;
- Average income designation;
- Move-in date;
- Next Available Unit (NAU), if applicable; and
- Identification of any units that had to change designations for federal or state-allowed reasons.

The submission deadline for the Annual Owner's Certificate of Continuing Compliance (Exhibit A) and the Annual Occupancy Report (Exhibit H) are set forth in the schedule below. Properties with 12 units or less may manually submit this documentation. All other properties must submit all annual reports on-line through CP. The due dates for such reports are based on the year the last building was/is placed in service.

The link to the CP site is: <https://cp.mhdc.com/login.aspx>.

The link to the CP manual is: <https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/certification-portal-and-annual-reporting/>.

Properties that report through CP must also submit the original, signed and notarized annual owner certifications in CP and AMRS.

MHDC AIT

For applicants which elect the Average-Income Minimum Set-Aside:

- For tax credit re-syndication developments, the original LURA restrictions must be followed for the original LURA term.
- Applicants shall submit a statement from the following groups, acknowledging the intent of the proposed development to operate under the Average-Income Minimum Set-Aside:
 - Every non-MHDC funding source, including the state and federal syndicator(s) on behalf of the tax credit investors; and
 - The proposed Management Company.

In the application, the applicant shall acknowledge that if a development:

1. Contains market units; and
2. Intends to operate the development under the Average-Income Minimum Set-Aside.

The market study submitted as a part of the application must affirmatively support the demand for a development's units under the Average-Income Minimum Set-Aside. The Market Study must establish estimated LIHTC rents for all proposed unit types and rents at all AI minimum set-aside levels. For example, if the proposal has two and three bedroom units, the market study must provide rents for the two bedroom units at 30, 40, 50, 60, 70, and 80% levels and rents for the three bedroom units at 30, 40, 50, 60, 70, and 80% levels, even if the application only proposes rents at the 30%, 50%, 60%, and 80% AMI rent levels.

Developments which elect the Average-Income Minimum Set-Aside may be subject to an increased per-unit compliance monitoring fee, as detailed in the Qualified Allocation Plan.

The management company for developments which will operate under the Average-Income Minimum Set-Aside will be required to provide certification of training on the Average-Income Minimum Set-Aside prior to the lease-up of the development.

The unit designations will be allowed to float throughout the project. AMI designations and bedroom sizes can also float, but MHDC reserves the right to enforce a remediation plan if MHDC determines that the development has deviated from the approved development plan. At minimum, MHDC will review the AMI designations and bedroom sizes annually.

Floating Units

Allowed to float:

- Unit Designations
- AMGI designations (reviewed annually)
- Bedroom sizes (reviewed annually)

Remediation

MHDC reserves the right to enforce a remediation plan if MHDC determines that the development has deviated from the approved development plan.

Skewing the unit configuration, where unit AMI designations are not reasonably distributed throughout the development, will not be allowed in the initial unit designations and throughout the affordability period.

While the law did not change the minimum set-aside for Bond Developments, the Average-Income Minimum Set-Aside election is permissible to use with Bond Developments. The development must meet both the bond and the LIHTC requirements. Minimum set-aside requirements for Bond Developments remain 40/60 or 20/50.

The **MHDC 3345 form** will determine all approved rent levels for future rent increase and unit deviations.

The calculation method for determining income/rent limits for LIHTC units may not align with other programs, specifically HOME and the National Housing Trust Fund. MHDC will monitor those designated units for the most restrictive applicable funding source.

Minimum Set-Aside, *Treas. Reg. 1.42-19; IRC §42 (g)(1), as amended by the Omnibus Tax Act 2018; 8823 Guide Chapter 10*AI Election Requirements:

- The definition of “low income” at the property includes units designated in 10% increments - 20, 30, 40, 50, 60, 70, or 80% MTSP. These designations must average no more than **60%** MTSP. Therefore, **all** units that will be considered tax credit may include 70 and 80% units, but enough in the group must be designated below 60% to average 60% or less.
- A minimum of 40% of a project’s units must be assigned to a qualified group of units. These units must meet the designation assigned to each unit and these must average 60% or less to continually meet the minimum test.
- Must be met no later than the end of the first year of the credit period.
- At all times, the average income and rent of the occupied units must not exceed 60%.
- Developments that do not meet the 60% AMGI average income set aside at the end of the first year of the credit period, do not meet the minimum set test.
- Failure of a minimum set aside test is reportable on a Form 8823.
 - Example: If a 100-unit development only has 80 units occupied, then those 80 units must meet the minimum set aside of 60% AMGI by the end of the first year of the credit period.
- Still must meet applicable fraction on a building-by-building basis.

Example

AIT Minimum Set-Aside & Applicable Fractions for a Two-Building Project

80% TC	40% TC	60% TC	70% TC	Market
80% TC	30% TC	60% TC	60% TC	Market

1. Minimum Set-Aside Analysis

- 40% of the total units in the project equals 8 units. The owner selects all 60%, 40%, and 30% units for the minimum set-aside qualified group. This is 9 units and exceeds 8.
- The average of those units is:

$$[5 \times 60\%] + [2 \times 40\%] + [2 \times 30\%] \div 9 = 48.9\% \quad \text{OK}$$

Conclusion | At least 40% of the units in the project are in a group that averages no more than 60%, so the project is eligible to be LIHTC.

80% TC	40% TC	60% TC	70% TC	Market
80% TC	30% TC	60% TC	Market	Market

2. Applicable Fraction Analysis

An **additional six units** (for a total of 15) are part of the qualified group that the owner selects to be used in the applicable fractions for the buildings.

$$[4 \times 80\%] + [2 \times 70\%] + [5 \times 60\%] + [2 \times 40\%] + [2 \times 30\%]$$

$$\div 15 = 60\% \quad \text{OK}$$

Conclusion | Each designated unit that is part of this qualified group is eligible to be used in the applicable fraction for the building it is in.

If all units are the same size, the applicable fraction is 80% for the top building (8/10) units and 70% for the lower building (7/10).

NOTE | The applicable fraction calculation is the same as for the other minimum set-asides, the AIT just determines which units qualify for the applicable fraction.

Courtesy of Costello Compliance

On the last day of each taxable year for a project, each project must determine which units will be counted as low-income and eligible for tax credits. Any units which cannot meet the criteria for LIHTC qualification, i.e., charging approved LIHTC rent, **NSPIRE** inspection compliance, unit occupied by a qualified household, or if the unit is vacant, last occupied by a qualified household, will not generate any credits for that entire year because it is excluded from the buildings Qualified Basis.

8823 Guide, Chapter 10

If a project failed the first-year minimum set-aside requirement at the close of the first taxable year of the credit period, the noncompliance cannot be corrected, and the owner is prohibited from ever claiming the LIHTC. The date of noncompliance is the last day of the first taxable year of the credit period for that project. The state agency should issue Form 8823 indicating Category 11f, Project failed to meet minimum set-aside requirements and Category 11p, Project is no longer in compliance and is no longer participating in the program. If the minimum set-aside violation occurs after the first taxable year of the compliance period, the project is back in compliance for the taxable year in the compliance period in which the minimum set-aside is met, determined as of the close of that taxable year.

Example 1: Rental to Ineligible Tenants Violates Minimum Set-Aside Requirement

Upon inspection, it is determined that the number of units qualifying as LIHC units did not satisfy the minimum set-aside requirement during a year following the first year of the credit period because the owner rented to ineligible tenants.

To correct the minimum set-aside violation, the owner must rent units to IRC §42 eligible income qualified households until the minimum set-aside is restored. At a minimum, documentation should include the tenant's application/eligibility questionnaire, income verifications, tenant income certification, and student verification, if necessary.

LIHTC Annual Recertification

Do units need to be re-designated at recertification with income increases or decreases?

Answer | No. As noted above, an owner will not be aware of changes in household income at 100% LIHTC projects that are exempt from income recertification by law. Even for owner/agents of projects that are aware of changes of income – because the project is less than 100% LIHTC or because state policy requires income recertification – the federal rules do not require re-designation (**Note: MHDC Ex. U usage approval policy, see table 6.1 in Chapter 6**). Following the Available Unit Rule is required (which may require re-designating market units), but nothing further.

See Chapter 4 for additional recertification information.

Q: Which Developments do an Annual Recertification?

A: Properties with market rate units and/or other MHDC monitored funding/programs that require annual recertification.

100% LIHTC properties with no market rate units (mixed-use/not 100% LIHTC only) and/or no other MHDC monitored funding/programs that require annual recertification, may request approval to use the MHDC Exhibit U: LIHTC Annual Resident Certification. Data may be submitted on Exhibit U, along with the MHDC Exhibit B: Tenant Income Certification, after the required first-year annual recertification, and annually thereafter, with approval from Asset Management.

100% LIHTC Properties wishing to adjust rent downward, which may be granted if:

- It is in accordance with all applicable lease terms.
- The income level of the household changes.
- The unit's AMGI designation changes.
- 60% AMGI Income Average is maintained.

Note: MHDC will not allow for the **upward** re-designation of units after initial income qualification.

If a project requires recertification and the household's income has increased at time of recertification, MHDC will continue to use the AMI level the household initially qualified under at time of move-in to calculate the Average Income Test, as long as the unit remains restricted at that rent level. **The unit is not "re-designated" due to income increases at recertification.**

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

Next Available Unit Rule (AUR); Treas. Reg. 1.42-15 This rule is the same and follows Section 42 requirements:

- If there is an increase in the income of the occupants of a low-income unit above the income limitation applicable under Section 42 (g) (1), as determined by the minimum set aside elected by the Owner, such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent restricted.

- If the income of tenants of a low-income building in the project increased above 140% of the applicable income limit, the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income.

Leasing to an over-income household does not automatically increase the unit's income percentage designation. For projects that have elected the Average Income Minimum Set-Aside, the Next Available Unit Rule is invoked if a household's income at recertification exceeds "140% of the greater of 60% of AMI or the designated limit applicable to the unit."

- For a unit designated at 30%, 40%, 50%, or 60% AMI, the Next Available Unit Rule is invoked if household income at recertification exceeds 140% of the 60% income limit.
- For a unit designated at 70% AMI, the Next Available Unit Rule is invoked if household income at recertification exceeds 140% of the 70% income limit.
- For a unit designated at 80% AMI, the Next Available Unit Rule is invoked if household income at recertification exceeds 140% of the 80% income limit.

Note: MHDC will not allow for the **upward** re-designation of units after initial income qualification.

For the Available Unit Rule, when more than one household is determined to be over-income, the next market unit that becomes available should be re-designated to the designation applicable to the lowest designated over-income unit. The next available market unit after that should be re-designated at the next highest designation, and so forth. The order that these re-designated units are rented is not relevant. See Chapter 3 for more details on the Available Unit Rule.

For 100% tax projects (100% LIHTC properties with no market rate units and/or no other MHDC monitored funding/programs that require recertification.) Owner /agents need to demonstrate due diligence when moving in all households to make sure that all available units are rented to qualified households. If an ineligible household is moved in and it cannot be demonstrated that due diligence measures were in place, the AUR is violated.

For projects with non-tax credit units (not 100% LIHTC) If a household's income increases at recertification to over 140% of the current qualifying income limit, they become "over-income." The unit can continue to support tax credits if the *next available unit of equal or smaller size* that becomes available in the same building is rented to a qualified household. This must continue until the applicable fraction is restored, not counting the over-income household. In the meantime, all over-income units must remain rent restricted until the applicable fraction is restored. If the rule is violated and a comparable or smaller market unit is rented, all comparable or larger over income units fall out of the applicable fraction and the minimum set-aside. A unit is no longer considered "available" for this rule if a legally binding agreement is in place, such as a reservation binder or lease.

For AIT properties

The Available Unit Rule (AUR) works just a little differently than it does for other properties.

The first difference is the threshold at which the units are considered "over-income." For the original MSAs, the threshold is reached when a household at recertification exceeds 140% of the current minimum set-aside income limit. Thus, it is 140% of the 50% limit for 20-50 properties or 140% of the 60% limit for 40-60 properties. For the new average income test properties, the over-income test will be at 140% of the HIGHER of the 60% limit or the designation for a unit. Practically, this means that the limit is 140% of the 60% limit, except for 70 and 80% units. These will use 140% of the 70 or 80% limits, respectively, applicable to the unit.

The second adjustment to the AUR is the care that must be taken to re-rent the next available unit at the correct designation to satisfy the rule. The action to take will depend on whether the vacant unit is already tax credit or not.

1. If a unit becomes vacant and is **tax credit** while an over-income household is living in a comparable or larger unit in the building, the available vacant unit must be ***rented to a household at the set-aside the unit is designated.***

2. If a unit becomes vacant and is **market** while an over-income household is living in a comparable or larger unit in the building, the available vacant unit must be **rented to a household at a designation that will maintain the average for the qualified group used for the applicable fraction(s) for the project and the minimum set-aside, if applicable**. This replaces the over-income unit as LIHTC.

Scenario #1

- Single building project utilizing income averaging
- Nine units that are the same size; one unit is market rate
- One 70% AMI unit goes over 140% (of 70% AMI) at annual recertification
- One 30% AMI unit goes vacant

Question: At what rate should the vacant 30% unit be rented?

Answer: 30% (because that was its designation previously)

Scenario #2

- Single building project utilizing income averaging
- Nine units that are the same size; one unit is market rate
- One 30% AMI unit goes over 140% (of 60% AMI) at annual recertification
- One 70% AMI unit goes vacant

Question: At what rate should the vacant 70% unit be rented?

Answer: 70% (because that was its designation previously)

Scenario #3

- Single building project utilizing income averaging
- Nine units that are the same size; one unit is market rate
- All LIHTC units go over 140% (of 60%, 70%, 80% AMI) at annual recertification
- The 50% AMI unit goes vacant

Question: At what rate should the vacant 50% unit be rented?

Answer: 50% (because that was its designation previously)

Scenario #4

- Single building project utilizing income averaging
- Nine units that are the same size; one unit is market rate
- One 30% AMI unit goes over 140% (of 60% AMI) at annual recertification
- The single market rate unit goes vacant

Question: At what rate should the vacant market rate unit be rented?

Answer: 30% (because is the designation of the over 140% unit)

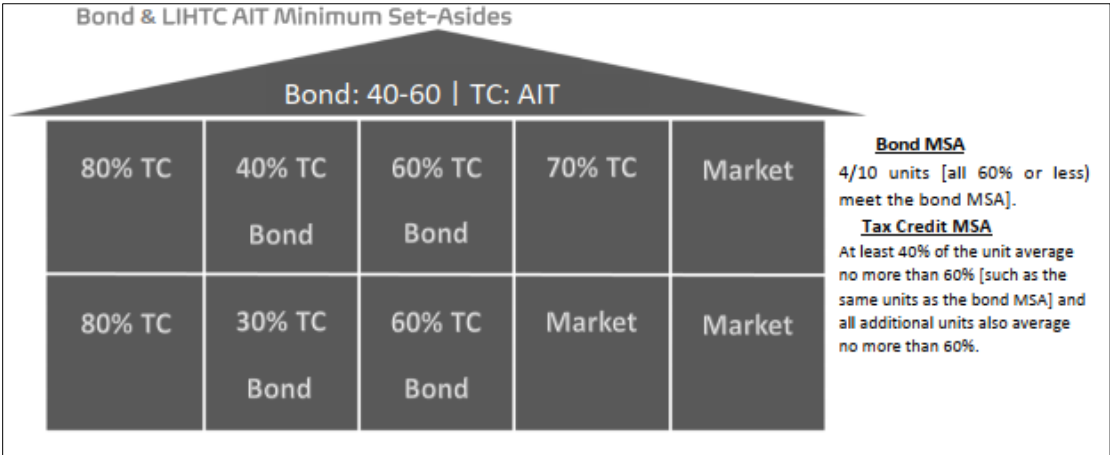
Tax Exempt Bond Minimum Set-Asides

Bonds have the same 20-50, 40-60, and 25-60 minimum set-aside options as the LIHTC. Unlike the tax credit MSA, which interacts with the applicable fraction to determine the level of tax credits to be claimed, bond properties simply have to house the required percentage of units (20, 25, or 40%) at or below the MTSP income limit (50 or 60%) to retain their tax-exempt status. Bonds do NOT have the AIT options that were added to the tax credit minimum set-aside in 2018. The bond minimum set-aside (per form IRS 8703) may not coincide with the LIHTC MSA. A project that elects the bond 40-60 average option will have to watch carefully to ensure that at least the minimum number of units will be below the 60% MTSP limits.

Congress modified the LIHTC minimum set-aside to allow for the Average Income Test, but it did not make any change in IRC Section 142, which covers tax-exempt bonds. However, the Average Income Test may still be used in bond financed LIHTC developments as long as the development satisfies both the Average Income Test minimum set-aside election and one of the minimum set-aside elections applicable to tax-exempt bond financing

(20-50 or 40-60). Thus, units with income limit designations above 50% or 60%, as applicable, do not count for purposes of bond compliance.

Example



Courtesy of Costello Compliance

During regularly scheduled audits, MHDC shall monitor for the correct application of income limits to tenant households and shall confirm qualified households at their respective move-in date.

Re-designation of Units, Treas. Reg. 1.42-19 Re-designation of units occurs when an owner/agent records the change in their books and records and reports these changes to the MHDC.

Under LIHTC regulation, AIT units may be re-designated for the following reasons:

- Per reasons allowed or required by any future IRS bulletin or other guidance.
- As allowed by future MHDC policy.
- To comply with certain federal laws, including:
 - The Americans with Disabilities Act (**ADA**)
 - The Fair Housing Act
 - The Violence Against Women Act (**VAWA**)
 - The Rehabilitation Act of 1973 (**Section 504**)
 - **Any other State, Federal, or local law or program that protects tenants** and that is identified by the IRS or MHDC.
 - **Other federal programs** that fund a property that require re-designation of a unit or a household to follow the rules of that program. Some example programs that this may apply to include HOME, the National Housing Trust Fund (NHTF), Section 8, Section 811, or Rural Development.

Some examples include:

- **Re-designating units** may be required when changing a vacant unit designation prior to the next occupancy to meet Section 8 income targeting requirements. Section 8 requires 40% of all units to be rented to ELI (30%) households and these units may have previously been designated to a higher AIT level.
- **Re-designating existing households** may occur when HOME requires increases of fixed rent from Low HOME to High HOME following household income increases after annual HOME recertification (and the new rents would exceed the existing AIT designation for the unit).

HOME & HTF and Increases in Income

Units that move from low HOME to high HOME or that go over the HOME limits altogether are subject to re-assigning to another HOME level and possible rent increases. Floating HOME units may have to do this among comparable units throughout a project. Floating Housing Trust Fund (HTF) units are similarly subject to changing designation and rent if the household exceeds HTF limits. The HTF designation may float to other comparable units. From a tax credit standpoint, income increases are not an issue with tax credit eligibility for a specific designation, as long as they were at the designation at move-in. However, increasing **rents** when no subsidy is involved can move a unit to a different designation, requiring a balancing of the designation average. At HOME and HTF projects, this will have to be monitored by the owner/agent with each recertification and new move-in. The owner will have to determine if the new HOME or HTF rent 1) pushes a unit to another tax credit designation; 2) if another unit, once re-designated for HOME/HTF reasons, will also need to change the tax credit designation formerly assigned; and 3) whether any of the above affects the average tax credit designations for the project.

MHDC will only monitor the effect of changes of designation on program(s) under its jurisdiction. The owner/agent must examine the implications of re-designations on all applicable program commitments for a project.

Regardless of unit designation changes, MHDC's rent increase policy applies.

When households transfer between units in a project, the AIT designations swap between the involved units. Other LIHTC transfer rules apply the same as for other LIHTC projects. See Chapter 3 for the general unit transfer rules.

Non-compliance and the AIT A determination of average income noncompliance may result in the loss of the management company's approved certification status

(<https://mhdc.com/programs/asset-management/program-compliance/compliance-resources/management-certification-and-fees/>) and shall impact scoring for future funding applications by the property owner.

If one or more units lose their low-income status or if there is a change in the designation of a unit and if either event would cause the average for the project to exceed 60%, then the owner/agent must address the noncompliance. Compliance may be restored prior to the close of a taxable year in which the average income designation is again met.

MHDC reserves the right to enforce a remediation plan if MHDC determines that the development has deviated from the approved development plan.

The following actions are acceptable for restoring compliance with the Average Income Test:

- Re-designating a noncompliant unit and one or more additional units' income limits so that the qualified units in the project average less than 60%.
- Removing the noncompliant unit and additional unit(s) from the applicable fraction for the grouping of qualified units to average 60%.

Federal noncompliance shall be reported on Form 8823 and submitted to the IRS in accordance with Section 42. If a housing unit no longer qualifies as a Tax Credit unit and the property fails the Average Income Test, MHDC shall submit Form 8823 to the IRS with box 11e selected.

If one or more units lose their low-income status or if there is a change in the designation of a unit and if either event would cause the average for the project to exceed 60%, then the owner/agent may designate a market rate unit or may reduce the existing designation of one or more other units in the project in order to restore compliance with the average income requirement. This can be applied to market-rate, vacant, or occupied units. In the case of occupied units, the current tenants must qualify under the new, lower designation and rent must also be appropriate to the new designation.

Several types of errors in designation, re-designation, or the average as it relates to the minimum set-aside or applicable fraction(s) if discovered in the future might be correctable through the re-designation of units. If so,

the correction must be within 180-days of the owner/agent or MHDC discovery of the issue. Re-designation may not prevent the loss of tax credits, especially when implemented retroactively.

An owner should consult with legal and tax professionals when addressing AIT noncompliance using the re-designation of units. MHDC will take into consideration an owner's timely reasonable efforts to correct such noncompliance when evaluating non-compliance with the Average Income Test. All state and federal noncompliance shall impact the property owner's future Qualified Application Plan (QAP) application scoring for compliance monitoring, the management company's status on the approved MHDC management company certification list, and the overall rating of the property's performance.

GLOSSARY

100% Tax Credit property: A property in which all units are LIHTC qualified units (i.e., there are no market rate units).

140% Rule: If upon recertification, a low-income household's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the property same building is rented to a qualified low-income household.

240-day Window: For acquisition/rehabilitation properties, the owner may certify households as eligible up to 120-days prior to the date of acquisition (using the current income limits) or up to 120-days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition.

20%/50% Test: Twenty percent (20%) or more of the residential units must be rented to households with gross annual income of 50% or less of the Area Median Income adjusted for family size.

40%/60% Test: Forty percent (40%) or more of the residential units must be rented to households with gross annual income of 60% or less of the Area Median Income adjusted for family size.

8609: The IRS Form entitled "Low-Income Housing Credit Allocation and Certification." Part I of the Form 8609 is completed by MHDC and issued to the owner so that credits may be claimed. Part II of the Form 8609 is completed by the owner and the elections made in Part II are important for ongoing compliance. The owner files Form 8609 with the IRS each year of the Credit Period.

8823: The IRS Form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition". Form 8823 is filed by MHDC to the IRS in order to report instances of noncompliance or building disposition.

8823 Guide: Common name for the IRS guidebook entitled Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised October 2009*. While the guide is not considered legal authority, it does provide valuable information regarding the state agency's responsibilities in determining noncompliance and reporting that noncompliance to the IRS.

Adjusted Basis: The cost basis of a building adjusted for capital improvements minus depreciation allowable.

Allowable Fee: A fee that may be charged to tax credit residents. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.

Annual Household Income: The combined anticipated, gross annual income of all persons who intend to reside in a unit.

Annual Income: Total current anticipated income to be received by a resident from all sources including assets for the next twelve (12) months.

Annual Income Recertification: Document by which the resident recertifies his/her income for the purpose of determining whether the resident will be considered low-income according to the provisions of the LIHTC Program.

Average Income Test (AIT): Forty percent (40%) or more of the units in a project must have a designated income limit (income and rent limitations in even 10% increments from 20% to 80%), where the average of the income limits for the LIHTC units does not exceed 60%.

Applicable Credit Percentage: Although the credits are commonly described as 9% and 4% credits, the percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month.

Applicable Fraction: The portion of a building that is occupied by low-income households. The Applicable Fraction is the lesser of a) the unit fraction, defined as the ratio of the number of low-income units to the total number of units in the building or b) the floor space fraction, defined as the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

Applicant: Any owner, principal, or participant, including any affiliate associated with a property, that is seeking an award of LIHTCs. A prospective resident who has applied for residency at a property.

Application: Form completed by a person or family seeking rental of a unit in a property. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and MHDC guidelines.

Assets: Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household.

Asset Income: The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

Available Unit: A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

Certification Year: The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

Compliance: The act of meeting the requirements and conditions specified under the law and the LIHTC program requirements.

Compliance Period: The time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance. The property's first fifteen (15) taxable years.

Correction Period: A reasonable time as determined by MHDC for an owner to correct any violation as a result of noncompliance.

Credit: Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Credit Period: The period of ten (10) taxable years during which credit may be claimed, beginning with:

- 1) the taxable year the building is placed-in-service; or
- 2) at the election of the taxpayer, the succeeding year, but only if the building is a Qualified Low-Income Building as of the close of the first year of such building and remains qualified throughout succeeding years.

Current Anticipated Income: Gross anticipated income for the next twelve (12) months as of the date of occupancy or recertification, including asset income.

Date of Acquisition: The date on which a building is acquired through purchase.

Declaration of Extended Low-Income Housing Commitment: The agreement between MHDC and the owner restricting the use of the property during the term of the LIHTC Extended Use Period.

Developer: Any individual and/or entity who develops or prepares a real estate site for residential use to be an LIHTC property.

Property: Rental housing property receiving a LIHTC allocation.

Due Diligence: The appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of resident income, independent audits, and timely recordkeeping. MHDC expects all LIHTC Properties to demonstrate due diligence.

Earned Income: Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises and any other compensation. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included.

Educational Organization: An institution that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried out. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job training courses but does include online educational institutions.

Effective Date of Resident Certification: The date the TIC becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertification, this date must be the anniversary date of the move-in.

Effective Term of Verification: A period of time not to exceed one 120-days. After this time, if the resident has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at the time of Resident's Income Certification.

Eligible Basis: The Eligible Basis of a qualifying property generally includes those capital assets incurred with respect to the construction, rehabilitation, or acquisition in certain circumstances, of the property, minus non-depreciable costs such as land and certain other items such as financing fees. While it may not include any parts of the property used for commercial purposes, it may include the cost of facilities for use by residents to the extent there is no separate fee for their use, and they are available to all residents. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

Eligible Basis is reduced by an amount equal to the portion of a building's adjusted basis which is attributable to non-low-income units which exceed the average quality standard of the low-income units unless the cost of building the market rate units does not exceed the cost of the average low-income units by more than 15% and the excess cost is excluded from Eligible Basis.

Under IRC 42(d)(5)(A) the Eligible Basis is further reduced by the amount of any federal grants applied towards the property, and should the owner so elect, it may be reduced by "federal subsidies" to take advantage of the higher applicable LIHTC percentage. It is determined without regard to depreciation.

Eligible Resident: The current resident(s) of the unit, so long as that resident(s) is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a resident whose income would not currently qualify under Section 42, but who was qualified at the time of resident's original occupancy of the unit.

Employment Income: Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job.

Empty Unit: A unit that is designated as a tax credit unit but has never been occupied by a qualified LIHTC household.

Extended Use Period: The time frame which begins the first day of the initial fifteen (15) year Compliance Period, on which such building is part of a qualified low-income housing property and ends fifteen (15) years after the close of the initial Compliance Period, or the date specified by MHDC in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

Extended Use Policy: The set of compliance rules and monitoring procedures for Properties that have entered their Extended Use Period. For more information see Chapter 8.

Fair Market Value: An amount which represents the true value at which a property could be sold on the open market.

First Year of the Credit Period: Either the year a building is placed-in-service, or, at the owner's option, the following year.

Floor Space Fraction: The fraction, the numerator of which is the total floor space of the low-income units in the building, and the denominator of which is the total floor space of the residential rental units (whether occupied or not) in the building. The floor space fraction is compared to the unit fraction when computing the Applicable Fraction. The Applicable (Please correct the spacing of this sentence.)

Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Foster Adult: A foster adult is usually an adult with a disability who is unrelated to the tenant family and who is unable to live alone.

Foster Children: Children that are in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet are cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency. These children will generally remain in foster care until they are reunited with their parents, or until their parents voluntarily consent to their adoption by another family, or until the court involuntarily terminates or severs the parental right of their biological parents, so that they can become available to be adopted by another family. Therefore, the parental rights of the parents of these children may or may not have been terminated or severed, and the children may or may not be legally available for adoption.

Full-time Student: Any resident or applicant who is, was, or will be a full-time student at an educational organization for parts of five calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization at which the student is enrolled.

Full-time Student Household: A household in which all residents/applicants are full-time students.

Good-cause Eviction: Tax credit households cannot be evicted or have their tenancy terminated without “good-cause,” generally considered material violation of the lease. The actions that constitute good cause for eviction or termination of tenancy must be given to the resident in writing at the time of occupancy, preferably in the lease, as well as in the property’s Resident Selection Criteria.

Gross Income: See Annual Household Income.

Gross Rent Floor: The lowest rent limit that an owner will ever have to implement for a unit. For tax credit properties, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the property or on the allocation date. For bond properties, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the property or on the reservation letter date. If the HUD published rent limits decrease from year to year, the rent limit for a particular property never has to fall below its gross rent floor.

Gross Rent Floor Election Date: For tax credit properties, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the property or on the allocation date. For bond properties, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the property or on the reservation letter date.

Gross Rent: Resident-paid rent portion + utility allowance + any non-optional fees. The total gross rent must be at or below the applicable rent limit for the unit to be in compliance.

Guest: A visitor temporarily staying in a tax credit unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in Annual Household Income calculations.

HERA: The Housing and Economic Recovery Act passed by Congress on July 30, 2008. Among other things, this legislation added the HERA special income and rent limits, the recertification exemption for 100% tax credit properties, and the foster care student status exemption.

Household: The individual, family, or group of individuals living in the unit.

Imputed Income: The estimated earnings of assets held by a household using the potential earning rate (passbook rate) established by HUD.

Income Limits: The maximum income as published by HUD, used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction (30%, 40%, 50%, or 60%). For Average Income Test (AIT) see Chapter 10.

Initial Resident File: The file for the first household to occupy a unit. Initial resident files, also called first-year files, contain the records for the first year of the credit period and are important for demonstrating that the property was eligible to begin claiming credits. Initial resident files must be kept for twenty-one (21) years.

Initial Compliance Period: A fifteen (15) year period, beginning with the first taxable year in which credit is claimed, during which the appropriate number of units must be marketed and rented to LIHTC eligible households, at restricted rents.

In-place Household: A household that is already occupying a unit at the time of acquisition. **Inspection:** A review of a property made by MHDC or its agent, including an examination of records, a review of operating procedures, and a physical inspection of units.

Joint Venture: A combination of one or more independent entities that combine to form a new legal entity for the purpose of a property.

Lease: The legal agreement between the resident and the owner which delineates the terms and conditions of the rental of a unit.

LIHTC: Also, known as Low Income Housing Tax Credit (LIHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Live-in Care Attendant / Live-in Aide: A person who resides with one or more elderly, near- elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the resident, (b) must not be financially obligated to support the resident, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) & (c). A live-in care attendant for an LIHTC resident should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income.

Low-Income Household/Resident: Households whose incomes are not more than either 50% or 60% of the median family income for the local area adjusted for family size.

Low-Income Unit: Any unit in a building if:

1. Such unit is rent-restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code);
2. The individuals occupying such unit meet the income limitation applicable under subsection 42(g)(1) to the property of which such building is part;
3. The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

Management Company: A firm authorized by the owner to oversee the operation and management of the property and who accepts compliance responsibility.

Manager's Unit: Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the property. If the unit is considered a common area, the manager does not have to be income qualified, but no rent can be charged. If the unit is considered a tax credit rental unit, the resident manager must be income qualified, and rent can be charged for the unit.

Maximum Chargeable Rent (Net Rent): The applicable rent limit minus the utility allowance for resident-paid utilities and any other non-optional charges.

Median Income: A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

Minimum Set-Aside: The minimum number of units that the owner has elected and set forth in the Declaration of Low-Income Housing Commitment to be income and rent restricted.

Mixed-income: a 100% LIHTC project with state covenant set-asides at lower income limits than federally required or a Deep Rent Skewed Project.

Mixed-use: A project with LIHTC and non-LIHTC (market-rate) units.

Model Unit: A rental unit set aside to show prospective residents the desirability of the property's units without disturbing current residents in occupied units. The model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

Multi-building Property: A property in which multiple buildings are all considered to be part of one property. A property is a multi-building property only if the owner elected so by choosing "yes" on Line 8b of Part II of the Form 8609.

Next Available Unit Rule: (See definition under 140% Rule).

Noncompliance: The period of time that a property, specific building, or unit is ineligible for LIHTC because of failure to satisfy program requirements.

Non-optional fee: A fee charged for services/amenities that are mandatory (i.e., services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

Optional fee: A fee charged for an extra service or amenity that is elected by a resident. If the service or amenity is truly optional (i.e., it is not a condition of occupancy that the resident accept the service), then a fee may be charged without being included in the gross rent calculation.

Over-income Unit: Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

Owner: Any individual, association, corporation, joint venture, or partnership that owns a LIHTC property.

Passbook Rate: The HUD approved rate for imputing assets. The rate may change annually and can be found on the HUD website.

Placed-in-Service (PIS) Date: For buildings, this is the date on which the building is ready and available for its specifically assigned function, as set forth on IRS Form 8609. For new construction, the placed-in-service date is generally the date a building receives its Certificate of Occupancy. For acquisition, the placed-in-service date is the date of acquisition.

PHA: Public Housing Authority.

Property: A property may be all of the buildings in a property, or one particular building within a property, depending on the election made by the owner on Line 8b on Part II of Form 8609. If Line 8b is marked yes, then the building is part of a multi-building property. If Line 8b is marked no, then the building is considered its own property.

Protected Class: One of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are race, national origin, religion, sex, disability, and familial status.

Qualified Allocation Plan: The plan developed and promulgated from time to time by MHDC, which sets out the guidelines and selection criteria by which MHDC allocates LIHTC.

Qualified Basis: The portion of the Eligible Basis attributable to low-income rental units. It is equal to the Eligible Basis multiplied by the Applicable Fraction. The amount of Qualified Basis is determined annually on the last day of each taxable year. Note: This is the lesser of the Applicable Fraction/Occupancy Percentage:

- a. the proportion of low-income units to all residential rental units; or
- b. the proportion of floor space of the low-income units to the floor space of all residential rental units.

Qualified Low-Income Building: Any building that is part of a qualified low-income housing property at all times during the period beginning on the first day in the compliance period on which such building is part of such a property and ending on the last day of the compliance period with respect to such building (Section 42(c)(2)(A) of the Code).

Qualified Unit: A unit in a Qualified Low-Income Building occupied by qualified persons at a qualified rent.

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

Reasonable Modification: A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the resident, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will be responsible for paying for the modifications.

Recapture: An increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements.

Referral Agreement: A property that includes units set-aside for Permanent Supportive and Vulnerable Populations must enter into a Referral Agreement with a qualified organization that will provide services to the Permanent Supportive and Vulnerable Population. The owner must agree to: (a) set aside a number of units for the Permanent Supportive and Vulnerable Population and (b) notify the qualified organization when vacancies of the set aside units occur at the property. The qualified organization must agree to: (a) refer qualified households to the property and (b) notify households of the vacancies of the set-aside units at the property.

Rent Limit: The HUD published the maximum amount that a resident can pay for rent, including a utility allowance and any non-optional fees.

Section 8: Section 8 of the United States Housing Act of 1937, as Amended.

Section 42: Section 42 of the Internal Revenue Code of 1986, as Amended, which establishes the Low-Income Housing Tax Credit Program.

Set-aside: Shall mean and require that units designated as "set-aside" for a specific population may be used only for the identified population and for no other. If qualified residents in the designated population are not available, the unit(s) must remain vacant.

Permanent Supportive Housing/Vulnerable populations:: Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit property may have committed in writing to set aside a percentage of total units in the property to qualified residents who meet the state definition of the Set-aside Preference (Permanent Supportive Housing/ Vulnerable Populations) Housing Priority, and must equip each unit to meet a particular person's need at no cost to the resident.

Permanent Supportive Housing /Vulnerable Populations include:

1. Persons with physical or developmental disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

Student: Any resident or applicant who is, was, or will be a full-time student at an educational organization for parts of 5 calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization in which the student is enrolled.

Subsequent Credit Allocation: A set of rehabilitation credits allocated to a property that has already completed an original credit period and fifteen-year compliance period. A property receiving a subsequent credit allocation begins a new ten-year credit period and fifteen-year compliance period. Existing residents are grandfathered into the new allocation without being recertified as new move-in events.

Tax Credit: A tax credit is a dollar-for-dollar reduction in the federal or state income tax liability of the owner. The tax credit amount is calculated by multiplying the Qualified Basis by the Applicable Credit Percentage. The credit percentage, determined monthly, changes so as to yield over a ten (10) year period, a credit equal to either 30% or 70% of the present value of the Qualified Basis of the building. An owner may elect to lock in the Applicable Credit Percentage either at the time a Commitment is made by MHDC, or at the time the allocation is made.

Resident: Any person occupying the unit.

Resident/Unit File: Complete and accurate records pertaining to each dwelling unit, containing the application for each resident, verification of income and assets of each resident, the annual TIC for the household, utility schedules, rent records, all leases and lease addenda, etc. Any authorized representative of MHDC or the Department of Treasury shall be permitted access to these files.

Transient Use: A LIHTC unit is considered transient use and is out of compliance if the initial lease term is less than six (6) months. There are some exceptions where units with less than a 6-month term are considered non-transient (See page 42 of this manual).

Unearned Income: Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

Unit Fraction: The fraction, the numerator of which is the number of low-income units in the building, and the denominator of which is the number of residential rental units (whether or not occupied) in the building. The unit fraction is compared to the floor space fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Utility Allowance: An allowance representing the average monthly cost of resident-paid utilities for a particular unit size and type. Utility allowances include costs of heat, unit electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include the costs of telephone, cable television, or internet services. The utility allowance is added to resident-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit (utility allowance inclusive) must be at or below the applicable published rent limit. Acceptable utility allowance methods include a utility schedule published by HUD, Rural Property, or the PHA, or established by a letter from the utility company which states the rates, an MHDC estimate, the HUD Utility Schedule Model, or an Energy Consumption Model as calculated by an approved engineer or licensed professional.

The IRS requires that Utility Allowances be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146 "Section 42 Utility Allowance Regulations Update."

Vacant Unit: A unit that is currently unoccupied but was formerly occupied by a qualified LIHTC household.

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

Verification: Information from a third-party that is collected in order to corroborate the accuracy of information about income and/or assets as provided by applicants to a property.

ADDITIONAL RESOURCES

MHDC Website: www.mhdc.com

HOTMA Resources: (hud.gov):

https://www.hud.gov/program_offices/public_indian_housing/hotmaresources

HOTMA Pre and Post HOTMA Regulatory Citation Matrix (hud.gov):

https://www.hud.gov/sites/dfiles/PIH/documents/HOTMA_Pre_and_Post_HOTMA_Regulatory_Citation_Matrix.pdf

National Standards for the Physical Inspection of Real Estate (NSPIRE), HUD.gov, U.S. Department of Housing and Urban Development: https://www.hud.gov/program_offices/public_indian_housing/reac/nspire

If you or someone you know served in the U.S. Armed Forces, we encourage you to visit:

<http://veteranbenefits.mo.gov> or call (573) 751-3779 to learn about available resources.

APPENDIX

All forms may be accessed in either Word or PDF formats under Extended Use Period Forms on the MHDC website, located at Asset Management Exhibits at MHDC.com.