



ILLINOIS HOUSING DEVELOPMENT AUTHORITY

LIHTC & HOME COMPLIANCE MANUAL

March 2023



IHDA Combined LIHTC and HOME Manual for Owners and Managers

Contents

Chapter 1: Introduction	4
1.1 Program Description	4
1.2 How Awards Are Made	4
1.3 Regulatory Authority	8
Chapter 2: Establishing a Qualified Project	11
2.1 Program Qualifications	11
2.2 Project Commitments	13
Chapter 3: Marketing and Leasing Requirements	17
3.1 Fair Housing and Marketing	17
3.2 Tenant Selection Plans (TSP)	19
3.3 Lease Requirements	21
3.4 Initial Lease-Up	23
3.5 Maintaining Occupancy and Unit Mix	25
3.6 Maintaining Physical Condition	30
Chapter 4: Qualifying Tenants	31
4.1 Program Requirements	31
4.2 Income Limits	32
4.3 Household Size & Adding Household Members: LIHTC and HOME	35
4.4 Definition of Income	37
4.5 Income Determinations: Guidance and Best Practice	38
4.6 Documentation Requirements: LIHTC and HOME	39
4.7 Tenant Income Certifications	46
4.8 Over-Income Households and Fraud	50
4.9 Student Status	52
Chapter 5: Qualified Rents	57
5.1 Basic Requirements: Rent	57
5.2 Maximum Rent Limits	58

5.3	Gross Rent and Tenant Rent	60
5.4	Utility Allowances	62
5.5	Owners’ Rent Protections.....	63
5.6	Gross Rent Violations: LIHTC.....	64
5.7	Over-Income Households	64
Chapter 6: Compliance Reporting & Monitoring		68
6.1	Initial Year Compliance	68
6.2	Ongoing / Annual Compliance	73
6.3	Noncompliance.....	78
6.4	Record Keeping.....	83
Chapter 7: Post-Compliance Period -- Monitoring & Disposition		84
7.1	LIHTC: Post Year-15 Monitoring.....	84
7.2	HOME	90
7.3	Disposition /Termination of Agreement	90

Chapter 1: Introduction

- 1.1 Program Description
- 1.2 How Awards Are Made
- 1.3 Responsibilities, Governance, Regulatory Authority

1.1 Program Description

1.1.1 LIHTC

The **Low-income Housing Tax Credit (LIHTC)** is a dollar-for-dollar federal tax credit for affordable housing investments created under the Tax Reform Act of 1986. It gives incentives to raise private equity for the development of affordable housing for low-income households. The tax credits are claimed through the Internal Revenue Service (IRS), and the US Treasury Department is the final authority on the program, but the program is administered at the state level by housing finance agencies such as the Illinois Housing Development Authority (IHDA).

1.1.2 HOME

The **HOME Investment Partnership Program (HOME)** is a federal block grant program created by the National Affordable Housing Act of 1990. Block grants are made to state and local governments, known as Participating Jurisdictions (PJs), who distribute the funds through local affordable housing programs, including loans or grants for rental housing. PJs such as IHDA make project awards and monitor project compliance throughout the affordability period. PJs also make annual reports of project compliance to HUD's Office of Planning and Community Development (CPD) and may be required to repay HOME funds for projects that are not completed or maintained as HOME-qualified rental housing.

1.2 How Awards Are Made

1.2.1 LIHTC

In general, affordable housing generates lower rents than market-rate housing. With less revenue to support debt service payments, developers need to tap non-market sources to help cover construction costs. The federal Low-income Housing Tax Credit (LIHTC) program is intended to help developers raise equity and reduce the amount of debt financing needed to build a project.

Illinois is allocated LIHTCs based on population. Developers apply for tax credits with IHDA, and IHDA selects developments to receive LIHTC Awards based on competitive application criteria.

IHDA's application criteria are spelled out in its federally required **Qualified Allocation Plan, or QAP**.

The maximum award a project qualifies for is based on project costs, adjusted by the portion of the project that will be affordable.

The total of qualified project costs is the **eligible basis**. The portion of the project that will be affordable is the **applicable fraction**. The eligible basis multiplied by the applicable fraction yields the **qualified basis**, or the total cost basis of the project that qualifies for credits. The maximum credit amount is determined by applying the credit rate (9% annual credit or 4% annual credit) to the qualified basis to yield the maximum **annual credit** amount.

The federal code requires that allocating agencies limit tax credit awards to the amount required to make a project financially feasible, so IHDA does not necessarily award credits for the maximum qualified basis. But developers take the tax credits awarded each year for a 10-year **credit period**, so the projected total tax credit amount is 10 times the annual award amount.

Developers convert the LIHTC award into equity by selling them to investors who use the credits to offset their tax liability. The generated equity allows the developer to minimize the debt needed to pay project construction costs. Less debt means lower mortgage payments, which means the developer can afford to charge lower rents.

Owner Commitments:

In exchange for LIHTCs, developers commit to lease units to low-income households, charge affordable rents, and maintain the development in good condition.

To qualify to take *any* tax credits in any given year, the owner must meet a **minimum set aside**, under which either 20% of units are rented to households with incomes no more than 50% of the AMI or 40% of units are rented to households with incomes no more than 60% of the AMI. As of 2018, a 3rd election is allowable with state approval, under which 40% of units are rent-restricted with an average income of 60% AMI. The owner elects which minimum is set aside to guarantee through the credit period the first-year credits are claimed.

To take the *full amount* of tax credits in any given year, the owner must maintain the applicable fraction or the portion of units that were committed to affordable to low-income households during the application process.

Owners will receive credits each year of the 10-year credit period.

Owners must comply with these commitments for a 15-year **compliance period**. Failure to meet these commitments during the tax credit compliance period can result in the loss of some or all the project's tax credits, depending on how severe the failure is, and when it occurs.

In addition to the tax credit compliance period, since 1990, developers are required to commit to extending affordability commitments at least 15 years beyond the initial 15-year compliance period. The extension is known as the extended use period, and the Regulatory Agreement in which the owner makes these commitments is known as the Extended Use Agreement.

Compliance failures during the extended use period do not result in loss of tax credits but may result in other penalties imposed by IHDA as a state monitor.

At the end of the initial 15-year tax credit compliance period, many investment partners seek to dispose of their ownership interest in the property. The Extended Use Agreement remains in effect even if a building or ownership interest in the property changes hands.

1.2.1 HOME

HOME block grants are allocated to Participating Jurisdictions (PJs) by a formula that considers local housing and poverty conditions in addition to the total population. The total annual federal HOME budget available to fund block grants is determined as part of the federal budget process negotiated by the US President and Congress.

This is in contrast with the Federal LIHTC program, whose per capita allocation amount is written into the tax code, and it means the annual HOME budget may vary considerably from year to year. In FY2020, the federal HOME budget was \$1.35 billion – a fraction of the federal tax expenditure for LIHTC, which was estimated at \$20 billion that year. Yet LIHTC equity alone is often not enough to reduce project debt to a level that can be supported by low-income rents.

IHDA often uses its HOME funds as low-interest or soft loans to LIHTC projects to fill gaps between the actual cost of building a rental housing project, and development funds raised through tax credit equity plus the hard debt supported by affordable rents. IHDA also makes HOME awards to projects that do not have other sources of IHDA funding. Some of these may have LIHTC or other program awards from other allocating agencies; some may not.

Each award may cover some, or all, of the units of a project. The minimum number of HOME-assisted units at a project depends on the size of the HOME award relative to the project's program-eligible construction costs, just as the minimum number of LIHTC units depends on the applicable fraction used to calculate a LIHTC project's annual tax credit award. Owners may agree to provide larger numbers of affordable units in their agreements with IHDA. HOME requirements apply only to the HOME-assisted units as defined in the HOME Regulatory Agreement; LIHTC requirements apply only to affordable units defined in the LIHTC Extended Use Agreement.

Blended properties, with funding from more than one government program or source, require owners and their property management agents to take particular care to coordinate the commitments made under each award. Each program has distinct compliance requirements, including distinct rent and income limits, student restrictions, and leasing-related requirements.

HUD publishes separate sets of income and rents limits for HOME and for Multifamily Tax Subsidy Programs such as LIHTC. Owners of blended projects must compare HOME and LIHTC rent and income limits and use the most restrictive for those units with both designations.

Because many of IHDA's HOME awards are made to projects that also have LIHTC awards, IHDA has developed this manual to present requirements for both programs alongside one another, to clarify how to maintain compliance for each program both separately and in combination.

Owner Commitments:

In exchange for HOME funds, owners commit to create a certain mix of affordable units that charge rents within HOME program rent limits and agree to fill the HOME-assisted units with income-qualified households. The owner also agrees to terms related to the lease and affirmative marketing of HOME-assisted units.

All **HOME-assisted units** must serve low-income households with incomes no greater than 80% AMI. Owners also commit to maintaining a defined **unit mix** of High HOME and Low HOME units.

- **High HOME units** are subject to HOME rent limits calculated to be affordable to households at 65% AMI, as published by HUD, and occupied by households with incomes no higher than 80% AMI throughout the affordability period.

Initially, High HOME units must be occupied by households with incomes no greater than 60% AMI. The initial 60% AMI target is determined by the HOME program rule that requires PJs to target 90% of their annual HOME allocation to units at or below this income level. PJs must determine how they will maintain the target. [[HOME Guide for PJs, Pg. 20](#)]

IHDA requires that throughout the project affordability period, all new move-ins to High HOME units must income qualify at 60% AMI. Though occupants of High HOME units may have incomes that increase up to 80% AMI after move-in without being considered over-income.

- **Low HOME units** are subject to HUD HOME rent limits calculated to be affordable to households at 50% AMI and must be occupied by very low-income households with incomes at or below 50% AMI.

The HOME Project Rule requires that projects with 5 or more units must designate at least 20% of the HOME program units as Low HOME units. Owners may commit to a larger portion of their agreement with IHDA.

Fixed or Floating Designations: Unit designations may be fixed or floating, as determined at the time the award is made. If designations are fixed, that will be stated in the project's HOME Regulatory Agreement. If the fixed or floating status is not defined in the Regulatory Agreement, unit designations are floating by default.

If unit designations are fixed, a unit's status as HOME-assisted does not change for the duration of the affordability period, even if the unit is vacant, or if the existing tenant becomes over-income. Owners may shift High HOME and Low HOME designations among HOME-assisted units to maintain the unit mix commitment.

If unit designations are floating, HOME-assisted designations may be shifted among all physically comparable units, so that non-assisted units may be made HOME-assisted units, and vice versa, to maintain the mix of High and Low HOME units, if a tenant's income increases, for example.

Affordability Period: The owner agrees to maintain these commitments for the duration of an affordability period. The HOME program specifies minimum affordability periods of 5, 10, 15, or 20 years, depending on the type of project (Refinance or Rehab, or New Construction or Acquisition) and the amount of HOME funds awarded per unit, though owners may agree to longer affordability periods. A project's affordability period is defined in the HOME Regulatory Agreement between the project owner and IHDA.

1.3 Regulatory Authority

1.3.1 LIHTC

Project Owner: Most investors with tax liabilities large enough to benefit from large tax credit awards are corporations. Often, they buy LIHTCs through investment pools assembled by syndicators. To receive credits, and to maintain accountability, the investor must be part of the entity that owns the development.

Developers and investors, or investment funds, often create a limited partnership or limited liability company to serve as an ownership entity for the tax credit project. The investor often serves as the **limited partner** with the majority ownership portion, based on their large equity contribution (through the purchase of the tax credits), but little or no involvement in day-to-day operations.

The developer often serves as the **general partner** or managing member, with a small ownership portion, but is responsible for building and managing the project and ensuring compliance with tax credit regulations.

The roles and responsibilities of each party are spelled out in the **Partnership Agreement**, which governs the relationship of the partners with one another. Terms of the Partnership Agreement define the schedule for equity pay-in, responsibility for operation and compliance, investors' recourse in case of default or loss of credits, and terms governing the sale or final dissolution of the partnership.

Allocating and Monitoring Agent: Low-income Housing Tax Credits are claimed through the IRS, and the final authority for the program lies with the US Treasury. IHDA serves as an allocating and monitoring agent for the IRS. As an allocating agent, IHDA is responsible for making tax credit awards within the guidelines of the federal tax credit program and the priorities specified in IHDA's federally required QAP.

As a monitoring agent, IHDA makes sure that the project remains compliant with the owner's affordability commitments, and with federal program requirements. The owner's commitments under the tax credit program are spelled out in the **Extended Use Agreement** between the owner and IHDA. The Extended Use Agreement specifies the number of program units that will be affordable to low-income households and maximum income limits for tenants moving into those units, as well as commitments to other program requirements such as affordability of rents and property conditions.

IHDA monitors project completion, reviews the owner’s certification that it has achieved the qualified basis (i.e., spent the construction costs that qualify for tax credits), and issues the initial IRS Form 8609 that the owner will complete and file to claim its first year of tax credits. Once a project is online, IHDA monitors the owner’s ongoing compliance with its affordability commitments, and with the regulations of the tax credit program.

Regulatory Authority: Federal regulations governing the LIHTC program are defined in **Title 26 Section 42** of the US Legal Code (USC) and **Title 26 Section 1.42** of the Code of Federal Regulations (CFR).

Additional guidance for applying federal laws and regulations is issued through the US Treasury in the form of **Revenue Rulings, Revenue Procedures, and IRS Notices**.

The US Treasury refers to Chapter 5 of the **HUD 4350.3 Handbook** for determining tenant income and relies on state agencies such as IHDA to monitor LIHTC projects for compliance with federal rules throughout the compliance period.

The **IRS Guide to Completing Form 8823** guides state monitors for reporting owners for non-compliance with the program. IRS Form 8823 is the “Low-income Housing Credit Agencies Report of noncompliance definition.” The Guide is not intended to change Section 42 rules, but to provide definitions of what the IRS considers “in compliance,” “out of compliance,” and “back in compliance.”

The **IHDA LIHTC Manual** is intended to minimize regulatory uncertainty for owners and managers by clarifying how IHDA will monitor compliance with Section 42 and apply instructions in the Guide to Form 8823. However, it is not a substitute for legal and accounting advice as to compliance with Section 42 and applicable Treasury regulations. The IRS retains final authority for interpreting and applying the code.

1.3.2 HOME

The HOME Investment Partnership program is a program of **HUD’s Office of Community Planning and Development** (HUD CPD). As a Participating Jurisdiction (PJ), IHDA makes HOME awards to rental housing projects and monitors compliance with HOME program standards for the duration of the affordability period. IHDA also makes annual reports on project compliance with HUD.

If an owner fails to complete a HOME project or fails to maintain it as affordable housing occupied by qualified households for the duration of the affordability period, IHDA will be required to repay the project’s HOME award to HUD, and IHDA will require repayment from the project owner.

As part of its HOME monitoring function, IHDA monitors owner reports on income and rents, reviews tenant files and owner agent management practices, and conducts physical inspections of the property and HOME-assisted units. Where possible, IHDA coordinates HOME monitoring with monitoring for other programs.

The project owner's commitments under the HOME program are spelled out in the HOME **Regulatory Agreement** between the owner and IHDA. The Regulatory Agreement specifies the project's affordability commitments, including the number of affordable units, the specific income and rent targets, and the affordability period.

The project's affordability commitments are also recorded as a deed restriction or a comparable mechanism to guarantee that they remain in effect even if the property is transferred to a new owner, or if the HOME loan is repaid.

Regulatory Authority: Federal regulations governing the HOME program are defined in **Title 42 Section 12741 to 12756** of the US Legal Code and **Title 24 Section 92** of the Code of Federal Regulations.

Like the LIHTC program, the HOME program refers to the **HUD 4350.3 Handbook** for guidance on determining tenant income, particularly Chapter 5 and Appendix 3, but with some differences that will be highlighted in this manual.

HUD has published HOME-specific guidance for project owners in the manual titled *Compliance in HOME Rental Projects: A Guide for Property Owners* (2009).

IHDA's HOME manual is a summary of these regulations as they apply to HOME, including how HOME program requirements may interact with requirements of the federal LIHTC program. This manual is intended to help minimize regulatory uncertainty for owners and managers, but it is not a substitute for legal advice, federal regulations, or HUD guidance. HUD CDP retains final authority for interpreting and applying HOME program requirements.

Chapter 2: Establishing a Qualified Project

Both the LIHTC and HOME programs require that owners meet certain occupancy criteria within a defined timeline to establish that the affordable housing project is qualified to participate in the LIHTC or HOME program. Failure to achieve these qualifications may mean the owner is not eligible to receive or may be required to repay, the program award.

The number and composition of program units, the maximum income limit for qualified tenants, and the term of the affordability restrictions are determined by a combination of program elections and commitments the owner makes to IHDA to win a funding award for the project.

Chapter Sections:

2.1 Program Qualifications

2.2 Project Commitments

2.1 Program Qualifications

2.1.1 LIHTC

To qualify for federal tax credits *in any amount* under the federal Low-income Housing Tax Credit (LIHTC) program, an affordable housing project must have enough LIHTC-qualified units to meet the minimum set aside: either 20% or 40% of project units, as elected by the owner on IRS Form 8609.

To claim *the full amount* of tax credits allowed under the project's LIHTC award, the owner must have enough qualified units to achieve the applicable fraction, which may be anywhere from 20% to 100% of units, as proposed in the project application, and committed in the Extended Use Agreement.

To qualify as LIHTC eligible, units must be:

- occupied by qualified tenants, [described in **Chapter 4**]
- at qualified rents, [described in **Chapter 5**]
- maintained in a good physical condition that is suitable for occupancy, and
- leased as non-transient housing available to the general public. [described in **Chapter 3**]

To qualify for tax credits, a project must meet the minimum set aside test by the end of the first year in which tax credits are claimed. [26 USC 42(g)(3)]

The first year of credits may be either:

- the tax year in which the building is placed in service,
- or, at the election of the taxpayer, the following tax year.

The owner elects which year will be the first year of credits on line 10a of IRS Form 8609.

In the first year, the owner may pro-rate credits as units come online and are occupied by qualified tenants. That is, the owner may claim credits starting the first full month the building is placed in service and based on the number of qualified units as of the last day of each month for the remainder of the year. [26 USC 42(f)(2)]

To take advantage of this rule, an owner's managing partner may have made commitments to investment partners to achieve qualified occupancy according to a monthly schedule. Property managers should be aware that if scheduled occupancy targets are not met as of the last day of each month in the initial year, investors may not be able to claim the full amount of credits promised and managing partners may face penalties from their limited partner, according to the terms of their Partnership Agreement.

Owner/managers must maintain the applicable fraction of LIHTC-qualified units reached through the 15-year compliance period, and for the additional years of the extended use period. During the initial 15-year compliance period, if management moves in an unqualified tenant, charges rent more than the affordable limit, or allows changes in the use of common areas that affect qualified basis, the owner will be forced to claim fewer credits and may be forced to repay credits claimed in previous years until compliance is restored [as described in **Chapter 6**].

As the state LIHTC agency, IHDA is responsible for monitoring program activities, including:

- confirming the initial qualification of units
- monitoring ongoing compliance
- reporting noncompliance to the IRS, and
- determining when compliance has been restored.

2.1.2 HOME

Owner's access IHDA HOME awards upfront to fund the construction or acquisition and rehab of rental housing. Rental projects may include a mix of HOME-assisted and non-assisted units. HOME funds must be used only for the development of HOME-assisted units, and for a proportionate share of common areas.

Once construction is complete, HOME-assisted units must be occupied by HOME-eligible tenants within 18 months of project completion. If the owner fails to complete the project, or achieve occupancy with qualified tenants within 18 months, the HOME award will be subject to repayment.

HOME funds must also be repaid to HUD if the project does not meet the HOME requirements for affordable housing for the duration of the affordability period.

Rental projects demonstrate that they qualify as affordable housing under the HOME program when they are:

- occupied by eligible low-income families, [as described in **Chapter 4**]
- leased at affordable rents, [as described in **Chapter 5**],
- maintain property standards [as described in **Chapter 6**].

- maintain certain tenant selection criteria and tenant protections [as described in Chapter 6].

Throughout the affordability period, the HOME project must maintain the total number of HOME-assisted units and the unit mix of High HOME units and Low HOME units as defined in the project Regulatory Agreement.

2.2 Project Commitments

2.2.1 LIHTC Program

The income limit for tenants of qualified LIHTC units is determined by the owner's minimum set-aside election. Owners make the minimum set-aside election when submitting IRS Form 8609 to claim the first year of tax credits. In filing form 8609, owners must make an election that aligns with the income targets proposed in the project application approved by IHDA and incorporated into the Extended Use Agreement. Once a minimum set-aside election has been made, it is irrevocable throughout the compliance and extended use periods.

The **minimum set-aside** is a commitment to provide a minimum number of units at rents affordable to households with incomes at or below a maximum income limit. The minimum set-aside election determines the maximum income limit applied to ALL affordable LIHTC units at the project.

To qualify for credits, the owner chooses one of 3 options or minimum set-aside tests:

- 20-50 test: 20% of units to households with incomes at or below 50% of the area median income (AMI)
- 40-60 test: 40% of units to households with incomes at or below 60% AMI
- Average Income Test: at least 40% of units are rent-restricted, with an average income limit of 60% AMI, and a maximum income limit no higher than 80% AMI. The income limit of the unit included in the average must be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of the area's median gross income.

The minimum set aside determines the maximum income limit applied to ALL affordable housing units at the project including those units covered by the applicable fraction, which may be larger than the 20% or 40% of units required to meet the minimum set aside. [Guide 8823, Pg. 4-26]

The owner files a separate form 8609 for each building in a project, even if they are all funded under a single LIHTC award. When filing the 8609, the owner also elects on line 8b whether to treat the individual building as part of a multi-building project for purposes of the LIHTC program. If an owner elects not to treat a building as part of a multi-building project, that building must meet the minimum set-aside test on its own. Electing "no" also means that

tenants cannot transfer from other buildings in the project without being requalified as new move-ins.

Owners of multi-building projects that applied to use the average income test under IHDA's QAP are strongly encouraged to elect to treat each building as part of a multi-building project. Treating each building as a separate project could mean a greater risk of a minimum set-aside violation if a unit goes out of compliance, because there are fewer units to maintain the 60% average income, and the owner has less flexibility to transfer previously qualified tenants.

Several LIHTC Program Units: In choosing a minimum set aside, the owner commits to lease either 20% or 40% of project units to income-qualified households at affordable rents. This percentage defines the minimum number of units that must be qualified and maintained to claim any tax credits for that project at all.

If the number of affordable units leased to qualified households falls below 20%, or 40%, depending on the election, the owner is not eligible to claim any credits until the minimum set aside is restored. If the project fails to achieve the minimum set aside in the initial tax credit year, the owner loses the right to claim credits for all 10 years.

In addition to the minimum set aside, the owner has committed to lease an **applicable fraction** of units to qualified households. The applicable fraction may be as low as 20% of units (to meet the 20% of units at 50% AMI minimum set aside] and as high as 100% of project units.

The applicable fraction is first proposed as a scoring factor in the owner's application for a LIHTC award. The total number of LIHTC units codified in the project Extended Use Agreement. If the number of units leased to income-eligible households falls short of the applicable fraction, the owner cannot claim credits for the non-qualified units until they are occupied by eligible households.

The amount of credits lost is proportionate to the unit's impact on the project's qualified basis, as reported by the owner in its annual tax filings. IHDA reports non-compliance events to the IRS. The IRS monitors the accuracy of owner tax filings, and whether noncompliance requires the recapture of credits.

Affordability Period: The LIHTC compliance period is 15 years. Affordable units must be occupied by qualified households throughout the LIHTC compliance period. Failure to meet the applicable fraction during the compliance period may result in the loss of tax credits.

Additionally, since 1989, the federal LIHTC program requires owners to enter an agreement to extend the affordable use of the project for at least 15 years beyond the tax credit compliance period. Owners commit to maintaining the applicable fraction of low-income units at the same income limit elected under the minimum set aside for the duration of the extended use period. Detailed terms of the extended affordability period are specified in the Extended Use Agreement.

Penalties for non-compliance during the extended use period do not include recapture of tax credits or reporting non-compliance to the IRS. But IHDA will require corrections of

noncompliance and impose penalties, up to and including prohibition from future participation in IHDA programs. [\[Guide 8823, Pg. 4-26\]](#)

2.2.2 HOME Program:

The owner commits to maintain a total number of HOME-assisted units and the unit mix of High HOME units and Low HOME units defined in the project's HOME Regulatory Agreement. The Regulatory Agreement will specify if units are fixed. If it is not specified in the Regulatory Agreement, then the units are floating.

HOME-Assisted Units: HOME-assisted units must be occupied by households with incomes that are no more than 80% AMI. At initial move-in, tenants of HOME-assisted units must have incomes no greater than 60% AMI. Once they occupy a HOME unit, the household's income may increase to 80% AMI without being treated as over-income.

High HOME units are HOME-assisted units with rent limits calculated to be affordable to households at 65% AMI and occupied by low-income households – defined as households with incomes no more than 80% AMI (and no higher than 60% AMI at move-in).

Low HOME units are HOME-assisted units with rent limits calculated to be affordable to households at 50% AMI and occupied by very low-income households -- with incomes no more than 50% AMI.

If a tenant's income grows to exceed the limit for the unit they occupy, the household is considered "over-income" and the project is temporarily out of compliance with its unit mix requirement. Owners are not penalized for temporary non-compliance if they take measures to restore the unit mix at the earliest opportunity.

Specific measures required to restore compliance when households are over-income are addressed in **Sections 3.5 and 4.7** of this manual. In general, these measures will depend on whether a rental project's HOME-assisted units are fixed or floating.

Floating Units: If the HOME units are floating, then a unit's status as HOME-assisted may be switched with a non-assisted unit during the affordability period. For example, if an over-income household puts a HOME-assisted unit out of compliance, the owner may re-designate a vacant non-assisted unit as HOME-assisted. The noncompliant HOME units may be re-designated as non-assisted units only after the new HOME unit has been designated and occupied. Owners may also switch designations between High and Low HOME units.

Designations may only be switched to non-assisted units that are equal to or better than the non-compliant unit. However, if the switch is made to a better unit, the owner may switch it back to a unit that is equal to the original HOME-assisted unit to restore the original unit mix. [\[HUD HOME Guide for Owners, Page 75\]](#). In general, floating designations are only allowed at projects where units are comparable in size and amenities. [\[HUD PJ Manual, Page 48\]](#)

Fixed Units: If units are fixed, then a unit's status as HOME-assisted or non-assisted must remain constant throughout the affordability period. Owners may shift designations between High

HOME and Low HOME units to restore the unit mix. If all the units at a property are HOME-assisted, then unit designations must be fixed.

Unit designations, including the total number of HOME-assisted units, and the unit mix of Low and High HOME units, are specified in the project's HOME Regulatory Agreement and must be maintained throughout the affordability period. The owner may have made additional commitments to designate units by bedroom size as found in the HOME Commitment Letter or its exhibits.

Affordability Period: The owner agrees to maintain these commitments for the duration of an affordability period. The HOME program specifies minimum affordability periods of 5, 10, 15, or 20 years, depending on the type of project (Refinance or Rehab, or New Construction or Acquisition) and the amount of HOME funds awarded per unit, though owners may agree to longer affordability periods. A project's affordability period is defined in the HOME Regulatory Agreement between the project owner and IHDA.

Chapter 3: Marketing and Leasing Requirements

To be LIHTC eligible or to qualify as HOME-assisted, rental units must be leased to qualified low-income tenants at affordable rents. The project must also be maintained in good physical condition and follow additional leasing-related requirements. This chapter addresses the additional program requirements for marketing and leasing LIHTC-eligible and HOME-assisted units, and for maintaining the correct balance of qualified units throughout each program's compliance or affordability period. The process for determining if a tenant is qualified is addressed in **Chapter 4**. The process for determining affordable rents is addressed in **Chapter 5**.

Chapter Sections:

- 3.1 Fair Housing and Marketing
- 3.2 Tenant Selection Plans
- 3.3 Lease Requirements
- 3.4 Initial Lease-Up
- 3.5 Maintaining Occupancy and Unit Mix
- 3.6 Maintaining Physical Condition

3.1 Fair Housing and Marketing

3.1.1 Fair Housing and Non-Discrimination:

Both LIHTC and HOME programs require compliance with fair housing laws, including prohibitions against discrimination found in the Fair Housing Act, the Americans with Disabilities Act, and state and local fair housing laws. The HOME program is also subject to Section 504 of the Rehabilitation Act of 1973.

LIHTC: The LIHTC program specifies that rental units must be available for use by the general public to be eligible for tax credits. General public use is described as consistent with HUD policy governing non-discrimination as found in the HUD 4350.3 Handbook. Chapter 2 of the HUD 4350.3 addresses fair housing and non-discrimination. [\[26 CFR 2.42-9\]](#)

LIHTC regulations give examples of housing that does not qualify under the general public use requirement and certain specific tenant preferences that are permitted. These are described in more detail below under **Section 3.2.1** of this manual.

HOME: Projects with 5 or more units must provide accessible units per the Uniform Federal Accessibility Standard (UFAS) and develop procedures to market them. When an accessible unit becomes available, owners must offer it to households who need the accessible features, keeping a record to show the offers are made in HUD's prescribed order:

- First: the unit should be offered to a current resident who needs accessible features.
- Second: the unit should be offered to a qualified applicant on the project waitlist who needs accessible features.
- Third: the owner/manager should market the unit widely to the disabled community.

- Last: the accessible unit may be offered to a non-disabled person on the project waitlist.

When a non-disabled tenant leases an accessible unit, HUD strongly encourages owners to include a special addendum to the tenant lease that would require the non-disabled family to move to a non-accessible unit of the same size if a family that requires accessible features applies for an eligible unit. IHDA provides a model addendum in the Tenant Selection Plan.

3.1.2 Affirmative Fair Housing Marketing Plan (AFHMP):

Owners are required to prepare and follow an Affirmative Fair Housing Marketing Plan in which the owner identifies populations least likely to apply to their property and implements specific strategies for marketing to those populations.

The AFHMP is a federal requirement for the HOME program. IHDA requires that LIHTC projects prepare and use an AFHMP in its Qualified Allocation Plan. IHDA provides a model AFHMP that addresses federal requirements on the IHDA website.

As part of AFHMP, IHDA requires that all properties with IHDA awards list their available affordable units on Illinois Housing Search (ilhousingsearch.org), a free online resource designed to facilitate a connection between renters who need affordable and assisted housing with housing providers.

3.1.3 Reasonable Accommodation:

The Fair Housing Act prohibits discrimination against persons with disabilities and requires that all applicants be treated equally, except in limited circumstances where different treatment enables equal access or enjoyment. Owners and managers must be prepared to make reasonable accommodations to rules, policies, practices, and services to afford equal access and opportunity to persons with disabilities.

3.1.4 Tenants with Vouchers:

LIHTC regulations explicitly prohibit an owner from refusing to lease a unit in a LIHTC project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937. Both LIHTC and HOME are also subject to fair housing laws which prohibit discrimination against applicants or tenants based on their source of income. Rental assistance is a source of income.

3.1.5 Violence Against Women Act (VAWA):

Both LIHTC and HOME programs are subject to VAWA, which seeks to afford protections for, and prevent housing discrimination against, victims of domestic violence. Domestic violence covered by VAWA includes dating violence, sexual assault, or stalking, regardless of gender or marital status.

Project owners must notify tenants of their rights under VAWA. Owners must also establish an Emergency Transfer Plan for handling both internal and external requests for Emergency Transfer by tenants seeking protection from domestic violence.

HUD provides model documents for owners to meet VAWA requirements. Owners may use HUD's forms or may use them as a model to create their forms. The HUD forms include:

- HUD-91067 – Lease Addendum amending lease to include provisions of VAWA
- HUD 5380 – Notice of Occupancy Rights under VAWA – owners are required to provide all applicants and existing tenants a notice of their occupancy rights under VAWA. Applicants must be notified of their rights at the time their application is accepted or rejected.
- HUD 5381 – Model Emergency Transfer Plan – all owners of LIHTC properties must have an Emergency Transfer Plan, HUD's model addresses many, but not all, plan requirements.
- HUD 5382 – Certification for VAWA – if owners require documentation of domestic violence, they must accept a tenant's written certification as sufficient. HUD's form provides a model for tenant certification of domestic violence.
- HUD 5383 – Emergency Transfer Request form – owners may ask victims of domestic abuse to use a form to request an emergency transfer – HUD provides a model of such a form.

IHDA provides a model Emergency Transfer Plan that addresses federal requirements, including those that do not appear in the HUD 5381.

Finally, in its role as a Participating Jurisdiction under HOME, IHDA maintains a list of affordable properties in its jurisdiction for victims of domestic abuse looking for other housing.

Both IHDA's model Emergency Transfer Plan, and the list of affordable properties, are available on the Property Managers section of IHDA's website.

3.2 Tenant Selection Plans (TSP)

IHDA requires owners of projects with LIHTC or HOME awards to prepare a Tenant Selection Plan (TSP) to ensure managers use consistent procedures and criteria for screening tenants and leasing units. HOME program regulations require owners to prepare and maintain a written TSP. The TSP is also one of the mandatory requirements in IHDA's QAP for LIHTC projects. IHDA provides model Tenant Selection Plans: including one for Section 8 properties, and one for non-Section 8 properties. Both LIHTC and HOME awards should use the IHDA model template for non-Section 8 properties if they do not also have a Section 8 award.

Owners and managers should be aware of LIHTC, and HOME program rules related to tenant preferences, and should also follow federal guidance on mitigating discriminatory impacts if they use criminal records for screening purposes, as described in the sub-sections below.

3.2.1 LIHTC:

The LIHTC regulations that describe the general use requirement give examples of housing that does not qualify under this provision. For instance, if a residential unit is made available only to members of a particular social organization, or employees of a particular employer. Units that

are part of a nursing care facility or are restricted to persons with a specific medical condition or a specific disability are not considered to be available to the general public.

Units restricted to such populations may be part of a building or project that has LIHTC units, but the cost of those units must be excluded from the basis of costs considered eligible for tax credits and counted as non-program units when calculating the applicable fraction. [26 CFR 1.42-9]

LIHTC program regulations allow owners to give preference for 3 specific populations without violating the LIHTC general public use requirement, including:

- (1) persons with special needs,
- (2) persons who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group, or
- (3) persons who are involved in artistic or literary activities. [26 USC 42(g)(9)]

Owners sometimes propose to institute a preference for residents of the particular town or neighborhood where a project is located. IHDA maintains that such a preference would conflict with the project's Affirmative Fair Housing Marketing Plan, in which owners identify strategies for marketing to populations least likely to apply to their property.

3.2.2 HOME:

Tenant selection criteria identified in the TSP should be objective and should be directly relevant to household qualifications under the HOME program, or to the tenant's ability to meet the terms of the lease. Tenant income and student status are objective criteria related to a household's qualification under the HOME program.

Criteria such as credit history or criminal record may be applied as criteria related to a tenant's ability to meet the terms of the lease. However, owners or managers using criminal records as part of their eligibility criteria should follow HUD's guidance for use of such records, as well as any local guidance, to minimize potentially discriminatory effects (see **Section 3.2.3** below).

The HOME program expressly prohibits bias toward friends or relatives or other conflicts of interest.

IHDA may authorize the owner of a HOME project to establish a preference for tenants with special needs such as elderly or disabled households, provided that IHDA's current Consolidated Plan documents an unmet need for the population in question. The preference must not target a specific type of disability, to avoid discrimination. However, IHDA can approve exceptions for persons with a specific type of disability who need on-site services to reside in housing.

Owners and managers must maintain a written waitlist and select tenants from that waitlist in chronological order. The owner's tenant selection procedures should describe how the waitlist will be maintained and must state that the owner/manager will give prompt written notice of grounds for rejection.

3.2.3 Use of Criminal Records

Use of criminal records as screening criteria is allowed by both the LIHTC and HOME programs. However, HUD guidance issued since 2015 has called on owners and managers to be alert to the potential discriminatory effects of a blanket use of criminal records.

HUD's Office of General Counsel issued guidance on the use of criminal records on April 4, 2016, which finds that a housing provider violates the Fair Housing Act if its policy has a discriminatory effect, even if discrimination is not the intent.

HUD finds that blanket prohibitions on anyone with a criminal conviction record do not meet the burden for justifying the use of these records, because blanket prohibitions do not distinguish criminal conduct that poses a risk to the property or its tenants from criminal conduct that does not pose a risk.

To distinguish conduct that poses a real risk, HUD's guidance specifies that the housing provider's policy must consider the type of criminal conduct, including its:

- nature
- severity
- recency

HUD's Office of General Counsel goes on to observe that an individualized assessment of an applicant's criminal record, including any mitigating information beyond the criminal record itself, is less likely to have a discriminatory effect than categorical exclusions.

HUD Notice PIH 2015-19, issued by the Office of Public and Indian Housing on November 2, 2015, guides the use of arrest records for making housing decisions. HUD requires public housing authorities to give applicants notice and opportunity to dispute the accuracy and relevance of a criminal record before housing assistance is denied. IHDA encourages owners and managers to employ HUD's guidance for projects with LIHTC and HOME.

3.3 Lease Requirements

Both the LIHTC and HOME programs require that tenants have a written lease. Neither program provides a model lease, though both programs provide independent guidance on what the lease should contain.

3.3.1 LIHTC

Not Leased on a Transient Basis: The LIHTC program is intended to provide permanent housing and comes with a restriction against leasing units on a transient basis. All units should be leased for periods of no less than 6 months. However, there is an exception for single-room occupancy units which may be leased on a month-to-month basis, as provided for in the project's Extended Use Agreement. [[Guide 8823, Pg. 20-1](#)]

Good Cause for Terminating Tenancy: The LIHTC program prohibits owners or managers from terminating a tenancy for anything other than good cause. Owners and managers may consider incorporating language in the lease to support the termination of a tenancy when households no longer meet eligibility criteria. While income changes do not make a household ineligible under the LIHTC program, under Section 42 of the Internal Revenue Code, households comprised entirely of full-time students would result in ineligibility.

Student Status and Lease Renewal: Owners should make sure to re-certify the household's student status before lease renewal, because student status may disqualify the household and the unit from being eligible for tax credits. If the household is comprised entirely of full-time students as described in **Section 4.9** of this manual, the owner should not renew the lease.

LIHTC Unit Agreement: IHDA provides a LIHTC Unit Agreement that should be included either in the lease or as an addendum to the lease that is signed both by the owner or property management agent and by all the adults in the tenant household:

The lease between the above-mentioned and (Project Name) dated (Lease effective date) is hereby amended as follows effective (Certification/Recertification date):

FEDERAL LOW-INCOME HOUSING TAX CREDIT: The Tenant acknowledges that (Project Name) is operated according to the rules and regulations of the Federal Low-income Housing Tax Credit Program (the "Program"). The Program provides for a specific maximum monthly rent, which may be charged for the premises, which amount is subject to an annual adjustment based upon median incomes determined by HUD.

SECTION 42 OF THE INTERNAL REVENUE CODE of 1986: The Program requires the Lessor to lease to "Qualified Households" as defined by Section 42 of the Internal Revenue Code. At this property, Qualified Households must meet certain income and student status limitations. Tenant(s) agrees to notify the Landlord immediately if any material changes in income, number of persons residing within the premises, or the change in the student status of any occupant residing within the household. Failure to qualify with the prohibition of occupancy by households comprised entirely of full-time students as described in Section 42 of the Code constitutes a violation of this lease.

REQUIREMENT TO VACATE: The owner must not evict or terminate the tenancy of an existing tenant of any Low-Income unit other than for good cause. Violation of the terms of the lease, including this addendum, will constitute good cause for termination.

3.3.2 HOME

Every tenant of a HOME-assisted unit must have a written lease that must be approved by IHDA. IHDA reviews and approves the project's model lease at the time the project is financed. Any changes to the model lease used for HOME-assisted units that are made later during the affordability period must be provided to IHDA for review and approval prior to putting them into effect.

Minimum Lease Term: The lease of HOME-assisted units must be at least 12 months.

Rent Adjustments During Term: The lease must clearly state that the owner reserves the right to adjust tenant rents in the event a tenant's income increases so that the tenant is over-income. Adjusted rents must still comply with requirements of the HOME program described in **Section 5.7**.

Prohibited Lease Terms: The HOME program explicitly prohibits the incorporation of any of the following into the lease:

- Agreement to be sued
- Agreement regarding seizure of property
- Excusing owner from responsibility
- Waiver of notice
- Waiver of legal proceedings
- Waiver of jury trial
- Waiver of right to appeal court decision
- Agreement to pay legal costs, regardless of outcome

Terminating Tenancy: Owners may not terminate tenancy without good cause. Tenant income, or over-income status, does not constitute good cause.

Good cause for terminating the lease may include repeated violation of the terms of the lease, violation of the law, or completion of a tenancy period for transitional housing, as well as other causes as defined by the lease.

When good cause exists, the owner may terminate the lease or refuse to renew by issuing a 30-day written notice. The notice must specify the grounds for termination or non-renewal, and the justification and a copy of the notice must be documented in the property files.

3.4 Initial Lease-Up

Initial lease up of rental units with qualified tenants is essential for establishing a project's eligibility for program assistance under both the LIHTC and HOME programs. Under the HOME program, units must be occupied by qualified tenants within 18 months after project completion. The LIHTC program has more detailed requirements for initial lease up of new projects, depending on whether they are new construction or acquisition/rehab, and whether the project had a previous allocation of LIHTC or not.

3.4.1 LIHTC: New Construction

Owners and their property management agents should be aware of the timing commitments related to lease up. All units included in the project's applicable fraction must be leased to qualified tenants to qualify them for LIHTCs.

Units not qualified by the end of the year after the building has been placed in service, or by the end of the deferred year, will not be eligible for tax credits during the 10-year tax credit period. If the owner fails to qualify enough units to meet the minimum set aside by the end of the year

after the building has been placed in service, the property will not qualify as a LIHTC project, and will not be eligible for tax credits in any amount.

Property managers should be aware of the lease up schedule agreed upon in the owner's Partnership Agreement because investment partners may take credits for units as they come online on a month-by-month basis, and the managing partner may incur penalties for not achieving these targets. Additionally, project equity payments may be tied to qualified occupancy of the units.

3.4.2 LIHTC: Acquisition / Rehab

Existing residents of an acquisition/rehab project must be qualified within 120 days of the acquisition, with safe harbor exceptions for tenants who were qualified under a previous LIHTC award.

Owners may begin to qualify apartments for the LIHTC program immediately after acquisition even if the credit period will not begin until rehab is complete.

- Existing tenants who are determined to be qualified based on income certifications that occur within 120 days of acquisition will be considered income qualified even if they are over-income by the time the tax credit period starts. The effective date of their initial certification is the date of acquisition.
- Existing tenants who are not income certified within 120 days of acquisition will be treated as new move-ins at the time they are certified (unless they were previously qualified under an earlier LIHTC award as described in **Section 3.4.3** below). If they qualify when certified, they will also remain qualified even if they are over income by the start of the tax credit period. The effective date of initial certification is the date of the last adult household member's signature.
- New tenants who move-in after acquisition must be income certified prior to move-in, and will be considered income qualified, even if they are over income by the time the tax credit period starts, provided they were qualified at move-in. The effective date of their initial certification is the date the tenant moved into the unit.

To retain their qualified status, units must be rent restricted during the period between the effective date of their certification and the start of the tax credit period. If the initial certification occurred more than 120 days prior to the start of the tax credit period, household incomes must be tested within 120 days prior to the start of the new tax credit period for purposes of the next available unit rule described below in **Section 3.5.3** of this manual. [[Rev Proc 2003-82](#)] [[Guide to 8823, Pg. 4-25](#)]

The next Available Unit Rule test consists of confirming with the household if the information on the Initial Certification is still current. If the household has additional income, the TIC will be updated. Third-party verifications are not required. If the household is over income, the next Available Unit Rule applies. [[Guide 8823, Pg. 4-26](#)]

Changes to the updated certification should be dated as of the date they were made. The effective date of the certification remains unchanged.

3.4.3 LIHTC: Existing Tenants Qualified Under a Previous LIHTC Allocation

If the property was funded under a previous allocation of LIHTCs, existing households who qualified at move-in under the initial round of tax credits will remain income qualified for any subsequent allocation of tax credits, even if their income has increased and they would otherwise be over income.

Because these households are considered income qualified, their income does not need to be re-qualified within 120 days of acquisition. If the owner/agent has not been conducting annual re-certifications and the project will not be 100% LIHTC, the household's current income should be documented for purposes of the next Available Unit Rule.

A new "test" certification may be generated for this purpose that is effective as of the start of the new tax credit period. However, care should be taken to clarify that the test certification is not a qualifying certification. A clarification memo may be used for this purpose. The Initial Certification completed at move-in must be retained in the tenant file. The effective date of any annual re-certifications should reflect the first day of the anniversary month of the Initial Certification when the household was first qualified.

This Safe Harbor provision does not extend to student status. The household's student status must be re-certified as of the start of the new tax credit period. If the household is comprised entirely of full-time students and does not qualify for one of the exceptions identified in the LIHTC student rule [as described in **Section 4.9** of this manual], the household is not LIHTC qualified. [[Guide 8823, Pg. 4-27](#)]

The student rule is not in effect during the extended use period. Owners do not need to demonstrate that the household continued to qualify under the student rule during the extended use period, it is sufficient to show that they qualify at the start of the new tax credit period.

3.5 Maintaining Occupancy and Unit Mix

In addition to requirements related to initial lease up, both the LIHTC and HOME programs have requirement for recertifying tenant income and student status, and for maintaining the mix of qualified program units throughout the project affordability period.

Over-income households: In general, households are income qualified at move-in. Owners are not permitted to evict or terminate tenancy based on a change in income that occurs after move in. However, owners are required to take measures to restore project compliance as soon as possible. The LIHTC and HOME program differ in at what point they treat a household as over-income, and in what measures they apply to restore compliance. These measures are described in this section.

Student Status: Owners are also required to take action for changes in student status, described in **Section 3.10** below.

3.5.1 LIHTC

Lease LIHTC Units First: For projects that are not 100% affordable, owners must make reasonable attempts to lease any low-income units that may become vacant during the year to qualified low-income tenants before renting market units, or before renting any units to tenants with a non-qualifying income. [26 CFR 1.42(c)(ix)]

Income Recertifications: Re-certifications, if required, must be completed annually based on the anniversary of the move in date.

If fewer than 100% of the project units are LIHTC units, households must also be income certified each year to determine if household income has grown to exceed 140% of the applicable income limit, triggering implementation of the next available unit rule described in the paragraphs on over income households below.

Under IRC §142(d)(3)(A), if all the low-income buildings in the *project* are 100% low-income buildings, owners are not required to complete annual tenant income recertifications. “Projects” are identified based on the owner’s election as documented on Form 8609, line 8b.

If the property has only one BIN, recertifications are required for all program units.

If the property has more than one BIN, refer to form 8609 to determine the owner’s line 8b election.

- Example #1: the project has eight BINs. The owner answered Yes to question 8b, “Are you treating this building as part of a multiple building project for purposes of section 42?” All BINs are considered part of one project. Annual income recertifications are required for all program units since not all low-income buildings in the project are 100% low-income.
- Example #2: the project has eight BINs. The owner answered No to question 8b, “Are you treating this building as part of a multiple building project for purposes of section 42?” Each BIN is its own project. Six BINs have an applicable fraction of 100%, two have a fraction less than 100%. Annual income recertifications are required for program units in the BINs whose applicable fraction is less than 100%.

Waiver of Annual Income Recertification: At LIHTC projects where 100% of units are affordable under the program, annual Income Recertification is not required. Projects that are 100% LIHTC effectively implement the next available unit rule for every move-in, and households that have been qualified at move-in will continue to be treated as income qualified by the IRS so long as the owner/agent continues to implement rent restrictions.

Prior to 2008, owners of 100% Affordable LIHTC projects could request a waiver of annual income certification requirements. Since 2008, Housing and Economic Recovery Act (HERA) extended the waiver to all 100% affordable LIHTC projects without need for individual waiver.

This exemption from annual income re-certifications is a significant paperwork reduction measure that benefits tenants as well as owners and managers. IHDA encourages owners or agents to contact their Asset Manager if they have questions about implementing the exemption.

Student Status: The exemption from income certification requirements does not apply to Student Status. Households must continue to certify their student status each year. Student status should be verified annually for tenants of tax credit units at all LIHTC projects within 120 days before the anniversary of the original student verification, or move-in. [\[Guide 8823, Pg. 17-2\]](#)

Over-Income Households: If the income of a tenant of a low-income unit in a LIHTC project has increased above 140% of the LIHTC income limit, the tenant is considered over-income. The over-income tenant may remain in the unit, and the unit will still be eligible for tax credits, so long as:

- the unit remains rent restricted, and
- the next unit of comparable or smaller size to become available in that building is leased to a LIHTC qualified low-income household.

[\[26 CFR 1.42-15\(e\)\]](#)

The **next available unit rule** applies separately to each building in a project.

Properties that are 100% affordable are in effect always implementing the next available unit rule. In mixed income properties, the rule must be applied until the next available market unit can be leased to a qualified household.

Applying the next available unit rule thus restores the project's applicable fraction, or the percentage of the building that is treated as eligible for tax credits.

However, if the next market unit to become available is NOT leased to a LIHTC qualified tenant, all of the comparable Over-Income units in that building lose their status as qualified units. [\[26 CFR 1.42-15\(f\)\]](#) If the project is determined to have violated the next available unit rule and the owner has not been conducting annual income recertifications, the owner may need to recertify tenants to determine which, if any, households are over-income.

When the next available unit rule is applied at a mixed income property, the 2 units may, at the owner's discretion, effectively exchange status. The formerly market unit becomes a LIHTC unit going forward; the over-income unit does not need to be income or rent restricted.

On the other hand, by maintaining rent restrictions on the over-income unit, the owner may maintain its low-income status, giving the owner more flexibility in leasing market units in the future. [\[26 CFR 1.42-15 \(b\)\(1\) and \(d\)\]](#)

At 100% LIHTC projects, the over-income unit must remain rent restricted, and must be leased to a LIHTC qualified tenant when it next becomes available.

Unit Transfers: Qualified tenants may transfer to new units within the same building without being re-certified as new move-ins. The two units effectively trade status – with the new unit adopting the status of the vacated unit, and vice versa.

Transfers between buildings in the same project are only allowed if the owner indicated that the building is part of a multi-building project on Line 8b of the 8609 Tax Form.

If the owner indicated the building is NOT part of a multiple building project when filing the first 8609, then a tenant moving between buildings must be treated as a new move-in and must qualify based on their current income.

3.5.2 HOME

Income Recertifications: All tenants must be income qualified, using a fully verified income certification as well as a determination of student status prior to move-in to a HOME-assisted unit.

Tenants of HOME units are required to re-certify their income every year, and owners/agents are required examine their certification against HUD's updated income limits to determine if the household remains income-eligible to occupy their HOME unit.

For the initial determination, and in every 6th year of the affordability period, which starts with the project completion date, the owner is required to verify the tenant's certification with source documentation. For years in between, tenants may self-certify their income, using the Tenant Income Certification form, and owner/agents may rely on the tenant's self-certification. Owners/agents are not required to verify information provided by the tenant income certification for years 2-5 of the affordability period.

Owners/agents may also use the certification from another program for years after the Initial Certification. For example, if a HOME tenant also receives rental assistance from a public housing authority or another entity, and that entity certifies the tenant's income, the owner/manager may rely on the certification provided by the other entity. [24 CFR 92.203(a)(iii)]

As a PJ for HOME, IHDA will recognize the self-certification option, and encourages owners of properties with HOME that are also 100% LIHTC to have tenants self-certify using the Tenant Income Certification form. Owners should remember that fully verified income certifications are required every 6th year of the HOME affordability period.

For Example:

If a HOME project that is also 100% LIHTC has a project completion date in 2018, and has a 20-year compliance period under the HOME program, tenants may self-certify their income at lease renewal according to the following timeline:

- 2018:** 1st year of HOME Program Period [Project Completion]
All tenants must certify, and all income certifications must be fully verified, for both HOME & LIHTC Program.
- 2019 – 2022:** Year 2-5 of HOME Program Period
Any Initial Income Certifications must be fully verified prior to move-in, but renewing tenants self-certify their income.
- 2023:** 6th Program Year under HOME
All income certifications must be fully verified

Over-Income Households: If the tenant of a HOME assisted unit becomes over-income, the unit is considered temporarily out of compliance until the owner takes certain steps. These steps may include raising the over-income tenant's rent, as described in **Section 5.7** of this manual, as well as steps to restore the HOME unit mix as described in this section.

Actions required to restore unit mix depend on whether the over-income unit is a High or Low HOME unit, and whether the HOME-assisted unit designations are fixed or floating.

High HOME Units / Over-Income Tenants: If the tenant of a High HOME unit is over-income, they are no longer qualified to live in HOME-assisted unit. The owner must raise the tenant's rent as described in **Section 5.7** of this manual. If the project's HOME-assisted units are fixed, the unit will remain out of compliance until the unit is vacated and rented to another low-income household.

If the HOME-assisted units are floating, the unit mix may be restored by switching unit designations with a comparable non-assisted unit. To qualify for a switch, the new unit must be comparable or better in terms of size and amenities. The new unit also adopts the over-income unit's High HOME or Low HOME status.

The switch may be made immediately if the non-assisted unit is vacant, and can be leased to an income qualified tenant, or if the non-assisted unit is already occupied by a household who qualifies under the applicable High or Low HOME limits.

Once the non-assisted unit has been re-designated as HOME-assisted, the over-income unit is re-designated as non-assisted.

Low HOME Units / Over-Income Tenants / Still Low-income: If the income of a Low HOME tenant grows so that it exceeds 50% AMI, but does not exceed 80% AMI, the tenant is over-income, but is still low-income. The owner cannot raise the over-income household's rent while it retains its Low HOME status.

If the project's HOME assisted units are fixed, the unit mix may be restored by re-designating a High HOME unit as a Low HOME unit and re-designating the over-income unit as a High HOME unit. The switch may be made immediately if the High HOME unit is vacant, or if it is occupied by a household whose income falls at or below the Low HOME limit. Otherwise, it may occur when a High HOME unit becomes vacant.

The over-income Low HOME unit may not be re-designated a High HOME unit until another unit can be re-designated as Low HOME to replace it. Once the re-designation occurs, the over-income tenant now occupies a High HOME unit, and the owner may charge a High HOME rent.

If a High HOME unit does not become available to make a switch, the over-income Low HOME unit remains out of compliance until the over-income household vacates the unit.

Low HOME Units / Over-Income Tenants / No Longer Low-income: If the income of a Low HOME tenant grows so that it exceeds 80% AMI, the tenant is no longer low-income and no longer qualifies for HOME assistance. The owner must raise the tenant's rent as described in **Section 5.7** in this manual. The unit mix cannot be restored by switching status with a High

HOME unit, so the unit remains out of compliance until the over-income household vacates the unit.

3.6 Maintaining Physical Condition

UPCS Standards: Owners must maintain LIHTC and HOME program units and properties in good condition, as measured by federal and local standards. IHDA will conduct physical inspections of LIHTC properties using HUD's uniform physical condition standards (UPCS). The federal standards do not supersede local health, safety or building codes, and owners are required to share any local health, safety or building code violation reports or notices with IHDA for IHDA's review.

Lead Disclosures: The HOME program specifies requirements disclosures related to lead-based paint that apply to all properties built prior to 1978, and which IHDA also applies to LIHTC projects.

Prior to leasing a unit, owners must:

- Disclose any known lead hazards using the model lead disclosure form available on IHDA's website and including any records or reports on lead hazards available to the owner.
- Provide prospective tenants with the EPA pamphlet "Protect Your Family from Lead in Your HOME", regardless of whether any known lead hazards exist at the property.
- Attach to lease, or insert language in lease, a Lead Warning statement that confirms owner has complied with notification requirements. If an attachment is used, owners and tenants must sign and date it.

If interim controls were used to mitigate lead hazards at the property, owners and managers must continue to monitor the condition of those treatments as part of their on-going building maintenance, including:

- Visual assessment of deterioration or failure.
- Lead hazard reduction (if any deterioration or failure is identified).
- Clearance with dust sampling to ensure no dangerous dust hazards were created. Certified risk assessor must pass clearance.
- Notification of tenants of any work done with Notice of Lead Hazard.
- Record-keeping: HOME requires that records of inspections, repairs, reduction clearance and notification be kept for at least 3 years after activities cease. Recommends that they be kept indefinitely.

Chapter 4: Qualifying Tenants

Chapter Sections:

- 4.1 Program Requirements
- 4.2 Income Limits
- 4.3 Household Size
- 4.4 Definition of Income
- 4.5 Income Determinations: Guidance & Best Practice
- 4.6 Documentation
- 4.7 Certifications: Move-In and Annual
- 4.8 Over-Income Households
- 4.9 Student Status

4.1 Program Requirements

4.1.1 Basic Qualifications:

LIHTC: For an affordable unit to qualify for tax credits under the LIHTC program, the tenant household must be income qualified and must NOT be comprised entirely of full-time students, with some exceptions.

HOME: For a rental unit to qualify as HOME-assisted, it must be occupied by a household that is income qualified, and with no individual member who is a student of higher education, with some exceptions. Both income limits and student restrictions under the HOME program differ from those of the LIHTC program.

LIHTC + HOME: Units that are both HOME-assisted and LIHTC units must ensure that both HOME and LIHTC criteria are applied. In cases of income and rent limits, the HOME and LIHTC limits must be compared, and the owner must apply the most restrictive.

4.1.2 Additional Criteria:

Owners may have qualification criteria that are additional to requirements of the LIHTC, or HOME programs as spelled out in their Tenant Selection Plans, or under other funding programs used to develop the project, provided these do not conflict with fair housing or non-discrimination requirements described in **Section 3.1** of this manual.

LIHTC: IHDA will distinguish between noncompliance with the federal LIHTC program, which is reportable to the IRS, and noncompliance with additional commitments made to IHDA for application scoring purposes, or for other funding programs, which carry other penalties.

HOME: HOME regulations apply only to HOME-assisted units, as identified in the project's HOME Regulatory Agreement. Projects may have units without HOME assistance that are not subject to HOME criteria.

4.1.3 Citizenship:

US Citizenship is not a requirement for the LIHTC or the HOME program. Residents of LIHTC and/or HOME-assisted housing are not required to be United States citizens, or to have a social security number, under the regulations of those programs.

Certain other federal housing programs, such as Section 8, do carry citizenship requirements. Projects that layer LIHTC or HOME with other sources may need to verify citizenship status for those programs.

Some owners may also incorporate citizenship or social security number requirements into their tenant selection criteria - to facilitate background checks for example. Owners who choose to do so, however, must take care that their agents and staff apply any verification requirements consistently. Staff may not single out applicants who appear to be from foreign backgrounds for verification, for instance. Owners, managers, and their staff should be aware that inconsistent implementation of screening criteria can violate fair housing laws and potentially result in loss of tax credits.

Owners are also encouraged to use only the last 4 digits of social security numbers on Tenant Income Certifications or other forms that require them for informational security purposes. If the applicant does not have a social security number, the owner may use 000-00-0000 as a placeholder number on forms that use the social security number.

4.1.4 Simple and Accurate:

In general, IHDA intends to simplify procedures for making effective and accurate determinations of tenant qualifications, without making such determinations excessively onerous for tenants or owners, and without making qualification more restrictive than the LIHTC and HOME programs require.

4.2 Income Limits

HUD publishes maximum income limits for the LIHTC program, and a separate schedule of income limits for the HOME program on an annual basis. Each year, IHDA publishes updated the maximum income limits for counties and regions in Illinois and makes them available on the IHDA website.

Maximum limits for both programs are calculated as a percentage of the area median income for local geographic areas and adjusted for household size. However, differences in methodology and the use of hold harmless protections (as described below) may cause HOME income limits to differ from those used by the LIHTC program. Owners of blended projects must compare HOME and LIHTC rent and income limits and use the most restrictive for those units with both designations.

4.2.1 LIHTC Income Limits

In general, LIHTC projects use **Multifamily Tax Subsidy Project (MTSP)** income limits, developed to meet the requirements of the Housing and Economic Recovery Act (HERA) of 2008, and may

use **HERA special limits** if they are located in qualified counties and were placed in service before 2009.

HERA put in place two measures to protect LIHTC owners from falling median incomes that would otherwise force a drop in income and rent limits:

- First, it applies a **hold harmless policy** to all LIHTC projects that protects them from dropping income and rent limits, after they have been placed in service.

In effect, existing projects are not forced to apply lower income and rent limits in years when the area median income drops, causing that year's MTSP limits to decline. Existing projects may continue to use the MTSP limits they were using during the previous year.

However, the new, lower MTSP limits will be in effect for any new LIHTC projects that were not already in service during the previous year.

- Second, it creates **HERA special income and rent limits**.

HERA special limits apply only to projects in certain counties, where income and rent limits would have dropped in 2009, due to dropping area median incomes, but where an earlier hold harmless policy was applied on a regional basis to stop them from doing so.

Within those qualified counties, the HERA special limits apply only to those LIHTC projects that were in service before January 1, 2009, and so would have been affected if the hold harmless policy was not applied.

Projects that have been refinanced with a new round of tax credits after 2009 no longer qualify for HERA special incomes and rents, because their placed in-service date is re-established with the new LIHTC allocation, and they are no longer considered to have been in service prior to 2009.

Additionally, projects that qualify for HERA special limits under the LIHTC program may be required to apply more restrictive limits for units that are also HOME-assisted, or subject to the income limits of other funding programs. See paragraphs on "Most Restrictive Limits" below.

IHDA publishes both regular MTSP, and HERA special limit schedules when it publishes annual Rent and Income Limits. MTSP limits are referred to as "Regular" limits on the IHDA tables. Annual Limits for current and past years are available on IHDA's website.

Because all LIHTC projects qualify for HERA's hold harmless protection, HUD publishes special tables, that show which year's MTSP limits a project should use based on its placed in-service date, to help owners determine if they are eligible to use the higher limits from a previous year.

HUD's tables can be found [here](#). [*HUD Datasets, Multifamily Tax Subsidy Income Limits. Select the current year, and "Click Here" for the Query Tool. Select the state and county, or the metro areas. Scroll past the MTSP income limit table to see the HUD table specifying which year's limits apply.*]

If you are unsure which income limits apply to your project, please contact your IHDA Asset Manager for clarification.

Most Restrictive Limits: Where LIHTC projects have other sources that also carry income and rent limits, owners must use the most restrictive limits that apply to that unit.

For instance, a project that has both LIHTC and HOME funding may qualify to use HERA special limits for any LIHTC units. However, the project's HOME units are also bound to HOME income and rent limits. Any units that are covered by both HOME and LIHTCs must compare the HOME limits to the HERA special limits and use whichever is most restrictive.

Non-Compliance with Other Commitments: An owner may make commitments to make units affordable to households with incomes lower than the 50% or 60% AMI tax credit limits, either to score points on their original application for LIHTC funding, or in agreements for other funding programs. The owner must apply the most restrictive income limits to these units.

Non-compliance with these commitments will not be reported to the IRS. However, events that are not specifically reportable to the IRS may constitute noncompliance with respect to an owner's commitments to IHDA in the Extended Use Agreement. IHDA will require corrections of such noncompliance events. An owner's failure to make corrections will result in other penalties, up to and including prohibition from further participation in IHDA programs.

4.2.2 HOME Income Limits:

HUD publishes annual HOME income limits for counties and metro areas in each state, adjusted for household size from 1-8 people. IHDA publishes HOME limits in an Income & Rent Limit workbook on its website and announces the availability of HOME limits with a Management Bulletin.

For households with more than 8 persons, the owner or managing agent must calculate the income limit by adding 8% of the 4-person income limit for each additional household member.

For example:

- The income limit for a 9-person household may be calculated as the 4-person limit + (8% x 5), or as the 4-person limit x 1.4.
- The income limit for a 10-person household may be calculated as the 4-person limit + (8% x 6), or as the 4-person limit x [1.48].

Prior to 2009, HOME income limits were protected by a hold harmless provision that prevented them from dropping from one year to the next. Since 2009, HOME income limits are no longer held harmless.

4.2.3 LIHTC + HOME

HUD also publishes separate income and rent limits for the LIHTC program, which are also made available on as “Regular” income and rent limits IHDA’s Income/Rent workbook. For units that have both HOME and LIHTC, owners must compare the HOME and LIHTC income limits and apply the most restrictive limits.

4.3 Household Size & Adding Household Members: LIHTC and HOME

Maximum income limits are adjusted by household size. Therefore, household income qualification must take account of the number of people living in the household.

In general, household size includes everybody who lives in the unit, whether they are related or unrelated. There are some exceptions. Households do not include temporary guests or live-in aids.

[Guide 8823 Pg. 4-3 & 4-4]

On the other hand, a household may include adults or children who either split their residence at other locations, or do not currently reside in the unit, such as:

- children who are in foster care, away at school, or under joint custody arrangements where they are present 50% or more of the time,
- adults who work in a different state,
- children in the process of being adopted,
- unborn children of pregnant woman (based on the woman’s self-certification),
- family members in the hospital or rehab, including persons permanently confined to a hospital or nursing home if the family decides to include them as part of their household.

In the past, foster children and foster adults were not considered household members for purposes of calculating income limits, in keeping with guidance provided in HUD’s 4350.3 Manual. However, HUD has changed its guidance and no longer excludes foster children or adults when determining household size for income purposes. Since both the HOME and LIHTC program base income calculations on HUD’s methods, owners may include foster children or adults when determining household size if the household declares that they are members of the household.

In general, it is up to the household to declare who resides in their apartment unit, and the project owner may rely on the household’s declaration for purposes of determining household size and maximum income limit.

If an owner or agent has reason to suspect fraud, they may ask for verification that a household member resides in a unit. However, owners and managers must also take care to observe fair housing laws, and avoid selectively requiring verification from some households, but not from others, simply because the household strikes them as unconventional.

4.3.1 Flexibility for Extenuating Situations

HUD encourages owners and managers to be as lenient as responsibly possible to support households with members that are called to active duty in the military. [HUD 4350.3, Section 5.6.C, Pg. 5-10]

The federal Violence Against Women Act [VAWA] also encourages flexibility to accommodate victims of domestic violence.

Actions an owner might take to show leniency while remaining in compliance include, but are not limited to, allowing a guardian to move-into a unit on a temporary basis to provide care without counting the guardian's income, or allowing a tenant in a low-income unit to provide care for dependents of persons called to active duty without counting the dependent's income.

4.3.2 Changes in Household Size

LIHTC: Household composition should not change within the first 6 months of tenancy. Exceptions may be made for dependents, or live-in aides, or extenuating circumstances. However, if a new adult wishes to join the household within the first 6 months, the household must be requalified. If the new person's income would put the household over the income limit, and that person is allowed to move-in, the unit will be considered out of compliance as of the household's original move-in date.

After the first 6 months of occupancy, new household members may move-in without affecting the household's qualification to live in a tax credit unit. However, their income may raise the overall household income sufficiently to trigger the next available unit rule [see **Section 3.5** of this manual on maintaining occupancy and unit mix]. Therefore, the new household member must certify their income, and the owner must verify it prior to move-in.

The new household member should be added to the household's most recent TIC and should sign and date the existing TIC as of the date they joined the household. The effective date of the household's TIC remains unchanged.

The household's original income qualification remains in place so long as at least 1 original household member remains in the unit, unless IHDA has reason to determine that the household manipulated the rules to qualify, such as by intentionally staggering the move-in of high earning individuals.

If **all** the original household members are replaced over time, the household must be treated as a new move-in, unless each new member was income qualified when independently certified at move-in. [Guide 8823, Pg. 4-4, 5 & 6]

For example:

If a 4-person household, including a parent and 3 children, was qualified at move-in during 2010, and the parent married in 2013, the spouse's income would be certified prior to move in and would be added to the household's most recent TIC.

If the spouse's income put the household's combined income more than the LIHTC income limit, the unit would remain qualified so long as the owner filled the next available market unit with a LIHTC qualified household.

If the 3 children each moved out over the ensuing years, the household's original qualifying certification would remain in place.

However, if the parent of the original 4-person household were to pass away, leaving the spouse, who was not a member of the original household as the sole occupant, then none of the original household members would be present in the unit.

Therefore, the spouse would need to be qualified as a new household to be eligible to remain in the unit.

HOME: Household composition should not change within the first 6 months of tenancy. Exceptions may be made for dependents, or live-in aides, or extenuating circumstances. However, if a new adult wishes to join the household within the first 6 months, the household must be requalified. If the income of the new adult household member would place the household over-income, the adult should not be admitted.

After the first 6 months of tenancy, new household member's income should be verified. If the new person's income puts the household over the income limit, the household is considered over-income and the unit is out of compliance. Owners must adjust the household's rent as described in **Section 5.7** and take other measures to restore the project's unit mix as described in **Section 3.5**.

4.4 Definition of Income

LIHTC: For purposes of determining a tenant's income, the LIHTC program requires that owners and managers use a definition of income sometimes called the Part 5 definition, or the Section 8 definition, found in 24 CFR 5.609.

HOME: The HOME program requires PJs to select one of 2 definitions of "annual income" and apply it to all projects funded within a particular program type for purposes of making tenant eligibility determinations.

IHDA requires use of the Part 5 definition for its HOME rental projects, ensuring compatibility with LIHTC awards. Income definition is used only to determine eligibility; it is not used to calculate rent for over-income tenants, as described below in **Section 5.7** of this manual.

Part 5 Definition: According to the Part 5 definition, "annual income" includes:

- income of all members of the household, whether present or temporarily absent,
- income that is anticipated to be received from a source outside the family during the 12 months following admission or the effective date of a recertification.

Part 5 provides detailed lists of sources that should be included and excluded from an annual income calculation, which include income from assets, and both monetary and non-monetary sources. The Part

5 inclusions and exclusions from income are included in Exhibit 5-1 of the HUD 4350.3 Manual. Exhibit 5-2 of the 4350.3 elaborates assets that are to be included and excluded as potential sources of income.

Sporadic or seasonal income: The Part 5 definition encourages owners to annualize short term income and re-certify when income changes even if that occurs in mid-year. For programs such as LIHTC and HOME that do not allow for interim recertifications, owners and managers should anticipate changes to annual income to the best of their ability based on information from the tenant and/or available source documents.

4.5 Income Determinations: Guidance and Best Practice

Under both the LIHTC and HOME programs, owners and managers must determine if a household is income qualified prior to move-in. Income determinations depend on defining what is included as income, rules for documenting income sources and the tenant's income certification.

4.5.1 HUD 4350.3

Instructions for applying the Part 5 definition of annual income to determine an applicant or tenant household's income are detailed in the *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs [HUD 4350.3]*. Owners and managers should be familiar with the following sections of the HUD 4350.3 and refer to them when determining tenant income qualifications:

- Chapter 5: Determining Income
- Appendix 3: Acceptable Forms of Verification
- Exhibit 5-1: Income Inclusions and Exclusions
- Exhibit 5-2: Asset Inclusions and Exclusions

There are some details in which requirements of the LIHTC and HOME programs diverge from rules in the HUD 4350.3. For instance, the LIHTC and HOME programs do not adjust income for medical or child-care expenses as described in the HUD Handbook.

This section of the IHDA's *Combined LIHTC and HOME Manual* does not reproduce the directions in the HUD 4350.3. Instead, it is intended to clarify how IHDA will monitor or interpret certain points where LIHTC or HOME program guidance differs from income determinations for other programs, or where practices are emerging in the affordable housing industry beyond those codified in federal regulations.

4.5.2 LIHTC

In response to the Change 4 to the HUD 4350.3, issued in 2013, the IRS reminded LIHTC program participants that Chapter 5 is to be used in guidance for verification, but that it is not codified as part of Section 42 (the federal regulations that create the LIHTC program), and that state agencies may be more specific in their verification requirements for LIHTC properties.

Furthermore, as the LIHTC industry grows over time, practices have emerged among industry participants that go above and beyond written regulations in the HUD 4350.3 or the federal regulations governing the LIHTC program. As the state Allocating Agency for LIHTCs, IHDA is responsible for project monitoring, and for interpreting and applying federal regulations to determine if LIHTC projects are compliant.

In general, IHDA intends to simplify procedures for making effective and accurate income determinations, without making such determinations excessively onerous for tenants or owners, and without making income qualification more restrictive than the LIHTC program requires.

Imperfections vs. Reportable Non-compliance: In determining if income documentation is adequate, the IRS recognizes a difference between noncompliance and documentation that is “imperfect, yet sufficient for the monitoring agency to make a reasonable determination that a household is eligible.” In such cases, the IRS states that the owner should be advised to use improved procedure in the future. But “Imperfections are not of a nature that would cause the unit to be considered out of compliance and will not result in reportable noncompliance.”

[Guide 8823, Pg. 4-31]

IHDA reminds owners that procedures that meet requirements as written in the legal code or written federal guidance will be sufficient to make a reasonable determination.

Owners and managers may ask their IHDA Asset Manager to clarify IHDA’s interpretation of regulations in cases where there may be disagreement among partners, or to request certain clarifications be incorporated into updated versions of this manual.

4.5.3 HOME

HUD CPD provides additional guidance for making income determinations specifically for the HOME program in the *Compliance for HOME Rental Projects – Guide for Property Owners*.

HUD CPD also provides a web-based [income eligibility calculator](#) that owners may use to calculate if a family’s income meets HOME requirements, as well as a manual called the *Technical Guide for Determining Income and Allowances for the HOME program*.

4.6 Documentation Requirements: LIHTC and HOME

Income verification begins with an application or a questionnaire that the owner will use to identify information related to eligibility. The owner or agent must obtain verification of all Income and Assets identified on the questionnaire. Once the household’s income and eligibility have been verified, all adults in the tenant household must sign a Tenant Income Certification (TIC), which certifies household composition and household income, effective as of the date that they move-in to the unit if it is an initial certification, or the anniversary of their move-in if it is a recertification.

4.6.1 Questionnaire

IHDA will accept either an application form or a questionnaire as fulfilling the first requirement, provided it is signed by all adults in the household over age 18, and it identifies the following information related to eligibility:

- Household composition [including number of persons in household and whether they are children, head of household, spouse, or other adults]
- Sources of Income
- Household Assets
- Student Status for any members of the household that are students

4.6.2 Verifications

The owner must verify all known income and assets, including any items identified on the questionnaire. In keeping with the HUD 4350.3, acceptable methods of verification include

- Information obtained by the owner directly from a third party, such as an employer, agency or banking institution.
- Third party documents provided by the tenant, such as paystubs or bank statements.
- Tenant certifications made under penalties of perjury.

Except that for LIHTC, self-certification is acceptable only if other methods have been attempted and cannot be obtained, and owners must keep documentation of attempts to obtain them on file, [\[Guide 8823, Pg. 4-31\]](#) and

For the HOME program tenant self-certifications are not allowed as documentation for initial eligibility determination made prior to move-in. HUD made a temporary exception to this requirement in response to hardship caused by the COVID-19 pandemic. The exception expires September 30, 2021. [\[HUD CPD Memo, 12/4/2020\]](#)

Forms of Third-Party Verification: Third-party verification is preferred. IHDA recognizes any one of the following as third-party verification:

- A letter written by the third-party.
- Verification form provided by the owner, filled out by the third party, and returned by US Mail, by fax, or by e-mail. Verification forms should request the name & position of the third-party verifier and the effective date of the information.
- Up Front income verification databases are acceptable, except for EIV. The IRS is not party to the information sharing agreement behind EIV, so EIV reports may not be used to verify income for the LIHTC program. If used for other programs, EIV reports should not be present in files provided to a LIHTC auditor for review.
- Under change 4 to HUD 4350.3, HUD recognizes “an original or authentic document generated by a third-party source” – such as paystubs as valid form of 3rd party verification for employment income, or bank statements for verification of assets. IHDA recognizes paystubs and bank statements as 3rd party verification for the LIHTC program.
- A third-party contact via phone or interview, documented in the tenant file, with date and time of contact, name, and position of third-party interviewer. [\[Guide to 8823 4-7\]](#)

In general, IHDA prefers written third-party verification wherever possible. A phone call documented with a memo to file may be used if the owner can demonstrate that written verification has been attempted. It may also be used to clarify incomplete information on a written verification. The memo should include the date and time of the phone call, the name and title of the person contacted, and the name of the project agent who made the call and authored the memo.

Additionally, both the LIHTC and HOME program allow use of income certifications completed by other funders as verification of income with some limitations.

- LIHTC recognizes the statement of a public housing authority as verification of income for a tenant receiving Section 8 housing assistance.
- HOME accepts a statement from a government program under which the tenant receives benefits for income recertifications only, not for initial certifications, provided that the statement indicates the household size, the current income limit for the program, and that the household's income does not exceed that limit. [[HOME Guide for PJs, Pg. 26](#)]

4.6.3 Timeliness of Documentation

The LIHTC and HOME programs both diverge from the HUD 4350.3, and from each other on the timeliness of verifications.

LIHTC: All verifications must be no older than 120 days prior to effective date of the Tenant Income Certification (TIC). However, the LIHTC program measures the timeliness of income and asset verifications against the effective date of the certification, not against the date of receipt by the owner as allowed in the [HUD 4350.3, Par. 5-16 B, Pg. 5-60.]

HOME: Verifications must be dated within 60 days after they have been requested by the owner/manager, or within 60 days prior to the date the owner/manager determines the applicant's eligibility. [HUD Guide for PJs, Par. 2.5.B. Pg. 24]

If verification is based on 2 months of paystubs, at least the first paystub should be dated within 60 days of the owner's request, or else at least the most recent one should be dated within 60 days before the eligibility determination. The documents should be consecutive.

The household's income-eligibility determination is good for up to 6 months after the determination is made. Verifications that were made within 60 days prior to the owner's determination do not need to be refreshed if the income determination is valid. However, if the applicant does not move in within 6 months, the applicant's income must be re-verified, and a new eligibility determination must be made. [HUD Guide for PJs, Par. 2.5.B. Pg. 25]

4.6.4 Paystubs

Paystubs provided by the tenant may be used as 3rd party verification, however they must meet certain criteria.

LIHTC: Paystubs must include the most recent 4-6 consecutive paystubs. Annual income should be calculated **by annualizing the average** of gross pay among all 4 to 6 paystubs.

Using year to date income represented on a paystub to annualize income is not required to determine income. Year to date income represents historical, as opposed to recent income. To the extent it reaches beyond the 120-day timeframe, it may be significantly out of date by program standards for LIHTC, as well as other program sources, such as HOME. It may unfairly disqualify households that would qualify under the strict application of the IRS description of anticipated income.

HOME: The HOME program requires 2 months of paystubs. Units that have both HOME and LIHTC assistance must meet the 2-month criteria. For example, if paystubs are issued bi-weekly, HOME requires a minimum of 4 paystubs, but if they are issued weekly, HOME requires a minimum of 8. Owners should apply the most restrictive rule based on programs that have funded the project and use 8 paystubs.

4.6.5 Third Party Verification Forms

Where third parties are asked to fill out a verification form, owners should use consistent forms, and ask each third-party to fill them out completely.

Incomplete Forms: In some cases, third parties filling out verification forms may leave items that do not apply, or that they are not able to estimate, blank. Owners should request clarification from the source. If the third-party source declines to speculate, the owner may use the information provided, so long as the verifier has signed a statement certifying that it is accurate to the best of his or her knowledge. The owner should add a memo to the tenant file that documents the owners' attempts to obtain clarification and explains the results.

Where the Third-Party Provides a Value Range: When asked to specify hours worked, or dollar amounts for wages, tips, bonuses, etc., some third parties may provide a range rather than a specific value. Owners should use the average within the range rather than the highest figure in the range. In most cases, using an average will yield a more reasonable estimate of expected income. The HOME program specifically requires that owners use the average, rather than the highest value in a range.

Sporadic or Seasonal Income: owners are expected to make a reasonable judgment based on information available to project probable annual income from sporadic or seasonal employment. [\[Guide to 8823, Pg. 4-7\]](#)

In most cases, owners should not follow the HUD 4350.3, which recommends annualizing seasonal or sporadic income as if it were consistent throughout the year. This method is used for HUD programs where the tenant may file an interim certification when their income changes in the middle of the year, but the LIHTC and HOME programs do not recognize interim certifications. Instead, owners should ask for information about the expected term or periods of employment to make an informed judgment.

4.6.6 Self-certification

LIHTC: If 3rd party verification cannot be obtained, tenants may self-certify their anticipated income, in the form of a notarized statement or signed affidavit. The owner should also retain documentation of attempts to obtain third-party verification in the tenant's file. [Guide 8823, Pg. 4-31]

HOME: Owners may accept tenant self-certifications in years after the initial income certification. [HOME Guide for PJs Pg. 16] However tenant self-certification is not an acceptable source of verification for the initial income determination conducted prior to tenant move-in. HUD extended a temporary waiver of this prohibition during the COVID-19 pandemic. That waiver expires September 30, 2021.

4.6.7 Corrections or clarifications

Tenants, applicants or third parties may make corrections to verification or certification forms to their answers or statements on forms they have previously submitted if they also initial and date the correction.

Additionally, an owner or agent may follow up with the respondent by telephone to seek clarification. Clarifications initiated by the owner or agent must document the name and title of the person contacted and the time and date of the clarification.

4.6.8 Tax Returns

LIHTC: If income cannot be readily determined based on current information, as in cases where a tenant currently has zero income, or is self-employed and income is irregular, an income determination may be based on actual income from last 12 months as reported on a tax return.

4.6.9 Social Security and SSI benefits

Income calculations from Social Security or SSI should be based on the gross amount of periodic Social Security payments before any deductions for health insurance or tenant repayments to the Social Security Administration. [Guide to 8823 – Pg. 4-16]

Lump sum payments from the Social Security Administration, such as back-payments or corrections of underpayments from the past, should be excluded from the calculation of a tenant's current income.

Timelines of verification: Because Social Security payments are consistent for 12 months, and because Social Security offices are not always responsive to requests for interim letters to third-parties, verifications may be older than the 60 or 120-day limits imposed by LIHTC or HOME.

However, because Supplemental Security Income (SSI) payments may change during the course of the year, SSI verifications must be dated within 120 days of the certification effective date for LIHTC, and within 60 days for HOME.

Except that both LIHTC and HOME may use streamlined verification procedures for fixed income described in **Section 4.6.10** below.

Cost of Living Adjustments: Certifications made in the months after the Social Security Administration has announced a cost-of-living adjustment (COLA) for the coming year must

adjust projected income to include the COLA for that portion of the certification year where it will apply.

Letters with Multiple Account Codes: Award letters from the Social Security Administration sometimes reference more than 1 account code. For instance, a separate account code with the same digits but a different suffix may indicate a recipient's disability status. IHDA accepts the award letter as a statement of the total income amount for the codes referenced on the letter. However, the letter must be present in its entirety.

4.6.10 Streamlined Verification for Fixed Income

The federal FAST Act permits owners of Section 8 Properties to streamline verification procedures, if 90% or more of the household's income comes from fixed sources. In such cases, the owner must complete a fully verified income certification for the first year, but may use the original verification, plus a COLA adjustment, in the 2nd and 3rd years, provided the household self certifies that the fixed income sources have not changed, and that fixed sources still comprise 90% of the household's total income.

Because the LIHTC and HOME programs apply the rules for Section 8 as guidance for making income determinations, IHDA will recognize the FAST Act's rules for verifying fixed income for LIHTC income certifications as well as HOME certifications. [[Federal Register 58355](#)] [[IRS Notice 88-80](#)]

4.6.11 Child Support

Alimony or Child Support that is court ordered or supported by written agreement should be included in the household income. Acceptable sources of verification include a copy of the court order, a written statement from the parent or source, copies of the checks or payments, or a notarized statement from the tenant or applicant. [HUD 4350.3, Appendix 3]

Non receipt of Child Support: If a tenant has been awarded child support payments but is not receiving them, the amount of the award must still be included in household income, UNLESS the tenant certifies that payments are not being made AND that he or she has taken all reasonable legal actions to collect.

Specifically, the statement should state clearly:

- that the tenant is not receiving payments,
- that reasonable efforts have been made to collect, including filing with courts or agencies responsible for enforcing payments,
- whether the tenant is seeking or expects to receive payments in next 12 months, and
- that the tenant will notify owner of changes in status.

Treasury regulations state that a signed sworn self-certification by tenant is sufficient for non-inclusion of child support payments in household income.

However, if there appears to be evidence contrary to the tenant's statement, such that a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant represents it to be, the owner / agent should not rely on the tenant's self-certification alone. Owners may ask for verification of efforts to collect payment and may determine to include payments as income if they are not provided. [\[Guide to 8823, pg. 4-20\]](#) [\[26 CFR 1.42-5\(b\)\(1\)\(vii\)\]](#)[\[Rev. Proc. 94-65\]](#) [\[HUD 4350.3, pg. 5-12\]](#)

4.6.12 Student Income

In general, the earned income of full-time students is counted toward household income, with the following caveats and exceptions:

- If the full-time student is over age 18 and is either the Head of Household, Spouse or Co-Head, all the student's income, whether earned or unearned, is included in household income.
- If the full-time student is over age 18 and a dependent, a token amount of the student's earned income – up to \$480 --- is counted toward household income. Unearned income and income from assets are counted in full. But any earned income more than \$480 is not counted.
- If the full-time student is under age 18, earned income is NOT counted at all. Only unearned income, and income from assets is counted toward household income.

4.6.13 Financial Aid

LIHTC: In general, for LIHTC properties, all forms of student financial assistance are excluded from income, unless the tenant is also receiving Section 8 assistance. [\[Guide to 8823, 4-18\]](#)

For tenants receiving **Section 8 assistance**, student financial assistance more than tuition must be counted as income. Student loans are not counted as financial assistance. Also, some students are exempt from this requirement, including:

- students who are over age 23 with dependent children, and
- students living with their parents who are receiving Section 8 assistance.

If a student receiving both Section 8 rental assistance and student financial assistance qualifies for one of these exceptions, the leasing agent should add a memo to file explaining the exemption. [\[Guide to 8823, 4-19\]](#)

HOME: HOME-assisted units should follow the Section 8 rules for counting student financial assistance more than tuition as income. [\[HUD 4350.3, pg. 5-11\]](#)

4.6.14 Income from Assets

A household's assets are listed on the Tenant Income Certification for the purpose of imputing potential interest income. In general, owners should follow HUD guidelines for verifying assets, for calculating actual and imputed income, and determining which to use in the household's total income calculation as found in Chapter 5 of the HUD 4350.3.

LIHTC: Under the LIHTC program, if a household's combined **assets are worth \$5,000 or less**, the household may self-certify their assets instead of providing 3rd party verification.

To qualify, the household must create a single certification that lists ALL assets, owned by ALL members of the household. All the adults in the household must sign the same form, because they are certifying that their collected assets fall under \$5,000.

Owners / managers may use the model form for declaring Less than \$5,000 in Assets available on IHDA's website.

If the household has combined assets that exceed \$5,000, the self-certification form is not applicable. Though the model form may still be used to meet the disposal of assets requirement described below. The owner must obtain verification for ALL the household's assets, not just those more than \$5,000. Owners should refer to the HUD 4350.3 for guidance in verifying assets.

HOME: The HOME program does not currently accept self-certification of assets under \$5,000. For LIHTC projects that also have HOME, tenant assets must be fully verified.

Federal FAST Act rules of streamlining income verifications do apply to the HOME program, including a provision allowing households with assets of \$5,000 or less to verify assets every 3rd year. Owners and managers of HOME-assisted units who verify income every year may apply the 3-year verification cycle for assets under \$5,000 authorized for HUD programs under the FAST Act.

Owners who are following the 6-year cycle for income verifications (as described in section 3.8.2 below) would be required to verify income from these sources every 6th year.

LIHTC Projects with Section 8: For projects with project-based Section 8 rental assistance, assets must be verified prior to move-in and at least once every 3 years thereafter, but under the FAST Act households with combined assets of less than \$5,000 may now self-certify those assets in the intermediate years.

Disposal of Assets: Owners of LIHTC properties must ask all households to certify if they have disposed of assets, as described in the HUD 4350.3. Households must comply with this requirement whether or not they are declaring less than \$5,000 in assets. Owners may use IHDA's model \$5,000 Asset Affidavit form to meet this requirement but are not required to use this form specifically. Assets that have been disposed for less than fair market value must be counted as household assets for 2 years from the date of disposal.

4.7 Tenant Income Certifications

Once the owner has documented the tenant's income, the tenant certifies their income using a Tenant Income Certification (TIC) prepared by the owner.

Section 3.5 of this manual addresses how income certifications are used to establish a household's qualifications and to maintain unit mix, including timing of the initial certification relative to leasing and move-in, and instances in which annual recertifications may be waived.

This section addresses the completion of the form, including timing of signatures and other details related to proper use of the TIC as a document.

The TIC is a joint form recognized by IHDA, the City of Chicago and Cook County, and can be generated using IHDA's online data portal, DMS Authority Online, for LIHTC developments. HOME developments can obtain a copy of the form by visiting www.ihda.org. It is a statement of household income and composition. It will be based on the information provided by the household and verified by the owner/agent. It must be signed by all adult household members prior to move-in, and at the time of annual recertification.

4.7.1 LIHTC

Move In Certification: To qualify to move-in to a LIHTC unit, applicants must be qualified with fully verified Income and Student Certifications prior to move-in.

Acquisition/ Rehab: Existing tenants in a property that has been acquired must have their LIHTC eligibility certified within 120 days of the acquisition date unless they were previously qualified under an earlier round of LIHTC. Details for making qualifying certifications are addressed in **Section 3.5** of this manual.

Recertification: Re-certifications, if required, must be completed annually based on the anniversary of the move in date. Student status must be verified annually as of the anniversary of move-in, or the original student verification. [[Guide 8823, Pg. 17-2](#)]

At LIHTC projects where a fraction of units that is less than 100% are affordable under the program, households must also be income certified each year to determine if household income has grown to exceed 140% of the applicable income limit, triggering implementation of the next available unit rule.

Waiver of Annual Income Recertification: At LIHTC projects where 100% of units are affordable under the program, annual Income Recertification is not required. Projects that are 100% LIHTC effectively implement the next available unit rule for every move-in, and households that have been qualified at move-in will continue to be treated as income qualified by the IRS so long as the owner/agent continues to implement rent restrictions.

Prior to 2008, owners of 100% Affordable LIHTC projects could request a waiver of annual income certification requirements. Since 2008, Housing and Economic Recovery Act (HERA) extended the waiver to all 100% affordable LIHTC projects without need for individual waiver.

This exemption from annual income re-certifications is a significant paperwork reduction measure that benefits tenants as well as owners and managers. IHDA encourages owners or agents to contact their Asset Manager if they have questions about implementing the exemption.

Next Available Unit Rule: The IRS indicates that for purposes of applying the next available unit rule, households that were income qualified at move will be treated as income qualified if the owner demonstrates due diligence. However, owners should be

aware that failure to demonstrate due diligence when completing the initial income certification or deliberately renting a unit as a market rate unit could result in loss of tax credit basis. [\[Guide 8823, Pg. 14-5, 14-6\]](#)

Student Status: The exemption from income certification requirements does not apply to Student Status. Households must continue to certify their student status each year.

Owners may also choose to ask tenants to self-certify their income at lease renewal, particularly if the project has other sources, such as HOME.

LIHTC Projects with Section 8: LIHTC Projects with Section 8 must continue to conduct annual and interim income re-certifications to meet requirements of the Section 8 program.

Income certifications under Section 8 require a different form and mode of calculating income and can access privileged information through the Enterprise Income Verification (EIV) system that cannot be made available to the IRS or anyone monitoring the LIHTC program. Some projects may choose to maintain a separate set of files for each program. However, the certifications can be conducted at the same time. For a 100% LIHTC project, income re-certifications are not required, though household qualification under the LIHTC student rule must be verified annually throughout the 15-year compliance period.

The HUD 4350.3 Handbook recognizes that owners may request HUD approval for alternative recertification anniversary dates for coordination purposes. [\[HUD 4350.3, Pg. 7-7\]](#) Where possible, IHDA encourages owners to ask HUD to align the HUD recertification date with the LIHTC recertification date.

Effective Dates and Signatures:

For new **move-ins**, the effective date of the **initial certification** is the date the tenant moves into the unit. Documents should be signed by all the adult members of a household prior to move-in. [\[Guide 8823, 4-22, 4-23\]](#)

In general, late signatures can be treated as self-corrected non-compliance, provided the signature date is prior to IHDA's notification of a compliance review. [\[Guide 8823, Pg. 5-1\]](#)

The greater risk in cases of late signatures on move-in certifications is that the owner may inadvertently move-in a non-qualified household before the household has fully certified to their income.

Acquisition / Rehab projects begin to qualify apartments for the LIHTC program within 120 days of acquisition to lock in certain benefits. Details are described in **Chapter 4: Leasing Requirements**.

Income Re-certifications should be completed within 120 days before the anniversary of the effective date of the original TIC. [\[Guide 8823, Pg. 4-22, 4-23\]](#)

Late re-certifications are out of compliance as of the date the recertification was due -- that is, the first day of the anniversary month of original move-in -- but are back in compliance as of the signature date.

If the owner can verify income as of the anniversary date, the effective date of the certification should be the 1st of that anniversary month. However, the signature dates must reflect the dates the tenants actually signed the document. Signature dates must not be backdated.

If the owner is unable to verify income as of the anniversary date, the tenant must self-certify their income as of the anniversary date. The effective date of the re-certification must remain the 1st day of the anniversary month of the original move-in. The signature dates will reflect the dates the tenants signed the document.

In both cases, the completed re-certification can be treated as self-corrected noncompliance if the re-certification is completed prior to IHDA's notification of a compliance review. [\[Guide 8823, Pg. 5-4, Pg. 5-5\]](#)

The greater risk of late re-certifications is that the owner may inadvertently violate the Available Unit Rule during the period before an income certification is complete.

Furthermore, a recurring pattern of late re-certifications demonstrates a lack of due diligence that may exacerbate penalties for accidentally renting a unit to a non-qualified household by triggering a determination of noncompliance with the next available unit rule, particularly at 100% LIHTC properties.

4.7.2 Certifications: HOME

All tenants must be income qualified, using a fully verified income certification as well as a determination of student status prior to move-in to a HOME-assisted unit.

Tenants of HOME units are required to re-certify their income and their student status every year, and owner/agents are required to examine their certification against HUD's updated income limits to determine if the household remains income-eligible to occupy the HOME unit.

For the initial determination, and in every 6th year of the affordability period, which starts with the project completion date, the owner is required to verify the tenant's certification with source documentation. For years in between, tenants may self-certify their income, using the Tenant Income Certification form, and owner/agents may rely on the tenant's self-certification. Owners/agents are not required to verify information provided by the tenant income certification for years 2-5 of the affordability period.

Owners/agents may also use the certification from another program for years after the Initial Certification. For example, if a HOME tenant also receives rental assistance from a public housing authority or another entity, and that entity certifies the tenant's income, the owner/manager may rely on the certification provided by the other entity. [\[24 CFR 92.203\(a\)\(iii\)\]](#)

As a PJ for HOME, IHDA will recognize the self-certification option, and encourages owners of properties with HOME that are also 100% LIHTC to have tenants self-certify using the Tenant Income Certification form at time of lease renewal.

Owners should remember that fully verified income certifications are required every 6th year of the HOME affordability period.

For Example:

If a HOME project that is also 100% LIHTC has a project completion date in 2018, and has a 20-year compliance period under the HOME program, tenants may self-certify their income at lease renewal according to the following timeline:

- 2018:** 1st year of HOME Program Period [Project Completion]
All tenants must certify, and all income certifications must be fully verified, for both the HOME & LIHTC Programs.
- 2019 – 2022:** Year 2-5 of HOME Program Period
Any Initial Income Certifications must be fully verified prior to move-in, but renewing tenants self-certify their income.
- 2023:** 6th Program Year under HOME
All income certifications must be fully verified.

Disabled Employment Income at Recertification

At recertification, if a previously unemployed disabled tenant reports having employment income, or income from a self-sufficiency program in accordance with the [Compliance with HOME Rental Projects: A Guide for Property Owners](#), Paragraph 3.2G1, Pg. 49 the following guidelines must be adhered to:

1. All income earned by the disabled tenant is excluded in the first year of reporting.
2. Half of the income earned is excluded in the second year of reporting.

Note: This applies regardless of the definition of annual income used.

4.8 Over-Income Households

In general, households are income qualified at move-in. Owners are not permitted to evict or terminate a tenancy based on a change in income that occurs after move in. However, owners are required to take measures to restore project compliance as soon as possible. The LIHTC and HOME program differ in at what point they treat a household as over-income, and in what measures they apply to restore compliance.

Owners are also required to take action for changes in student status, described in section 3.10 below.

4.8.1 LIHTC

If the household's income increases after move-in, the household remains income qualified so long as household income does not exceed 140% of the income limit elected on the project's IRS Form 8609.

For example:

- If the project's income limit, as elected on IRS Form 8609, is 50% AMI, and
- 50% AMI for the household size is \$50,000
- 140% limit = \$50,000 x 140% = \$70,000
- After move-in, a qualified household's income may increase up to \$70,000 without being considered over-income for purposes of the next available unit rule.

If the household's income grows to exceed 140% of the income limit elected on IRS Form 8609, the household is considered over-income. **However, the owner can still claim tax credits for that unit for as long as the rent remains restricted to the LIHTC maximum, and if the next available unit of comparable or smaller size is leased to a tax credit-eligible household.** All comparable units must continue to be leased to qualified low-income households until the applicable fraction is restored. [26 USC 42(g)(2)(D)(ii)]

For example, if 100% of the units at a property are tax credit units, vacant units must always be filled with qualified low-income households.

If 50% of the units at a property are tax credit units, and a household who was income qualified at move-in experiences an increase that brings their income to more than 140% of the low-income limit elected on IRS Form 8609, that household is over-income. However, the household does not need to move out, and the owner may continue to claim credits for that unit, so long as the next unit that becomes available is leased to a tax-credit-qualified household. Vacant units must continue to be leased to tax-credit-qualified households until 50% of the units are occupied by qualified low-income households. The next available unit rule is addressed further in **Section 3.5** of this manual.

4.8.2 HOME

Tenants of HOME units must certify their income every year because the HOME program requires owners to take specific actions if a household's income increases over the HOME income limits by any amount.

Any occupant of a HOME-assisted unit whose income exceeds 80% AMI, or any occupant of a Low HOME unit whose income exceeds 50% AMI, is considered over-income. Units occupied by over-income tenants are out of compliance.

Owners are not allowed to terminate tenancy solely because a household is over-income, and the non-compliance is considered temporary and acceptable if the owner takes certain defined actions to address the noncompliance as soon as the opportunity arises.

Actions required of owners to restore unit mix when a unit is out of compliance include raising the tenant's rent, as described in **Section 5.7** of this manual, and switching unit designations, as described in **Section 3.5**.

4.8.3 Fraud

LIHTC property owners should demonstrate due diligence to prevent tenant fraud. Fraud includes a deliberate misrepresentation of fact in order to induce someone else to part with something of value or surrender a legal right. In this case, the outcome of deliberate misrepresentation by a tenant can result in the property owner renting a residential unit to an ineligible tenant at a below-market rate.

If an owner discovers that a tenant has deliberately misrepresented their income level, student status, household size, or any other item used to determine eligibility, the owner should consult state or local landlord-tenant laws to determine whether the tenant can be asked to vacate the LIHTC unit, or the rent raised to the market rate. The owner is not expected to complete the annual recertification if a tenant is asked to leave, or an eviction proceeding is in process.

So that possible loss of low-income housing credit might be avoided if it is determined upon later review by the state agency that a tenant is not qualified for low-income housing, the state agency should encourage owners to immediately report any suspected deliberate misrepresentation of fraud by a tenant to the state agency.

An owner's **opportunity** to identify and self-correct misrepresentations or fraud by a tenant for purposes of the low-income housing credit terminates upon notification of a state agency's intended review/inspection of the LIHTC project. Any noncompliance arising from such misrepresentation or fraud discovered during a state agency's review/inspection should be reported to the IRS on Form 8823 under the appropriate category of noncompliance, regardless of the cause. As noted in Treas. Reg. §1.42-5(a), state agencies are required to report any noncompliance of which the agency becomes aware. Agencies should report all noncompliance, without regard to whether the identified outstanding noncompliance is subsequently corrected. See Chapter 3 of the 8823 Guide for full discussion. [[Guide to 8823, Chapter 25, Pg. 25-1 & 25-2](#)]

4.9 Student Status

Both LIHTC and HOME programs have restrictions on qualifying student households. Households must re-certify their student status every year, even if they are not required to re-certify their income.

The LIHTC Student Rule differs from the HUD Student Rule that applies to both Section 8 and HOME. Broadly speaking, these differences are as follows:

- Definition of student household
LIHTC: when **ALL members** of a household are **full time students**
HOME/Section 8: when **ANY member** of a household is a **Full Time or Part Time Student** at an institution of higher learning.
- Exceptions under which student households may qualify
HOME and Section 8 do not recognize the LIHTC student rule **exceptions** listed below, but they do make exceptions for students who meet other criteria.
- What happens if student household is not qualified
LIHTC: Unit is not eligible for LIHTCs
HOME: Household is treated as over-income
Section 8: the Household is not eligible for rent subsidy

Non-compliance with the HUD student rule does not affect LIHTC compliance, but owners should be aware that non-compliance under the HUD rules affect tenant rents under both the HOME and Section 8 program. Under the HOME program households that do not qualify under the student rule are treated as over-income. Rent increases for over-income households are addressed in **Section 5.7** of this manual.

4.9.1 LIHTC Student Rule

LIHTC eligible units may not be occupied by households composed entirely of full-time students unless they qualify for certain exemptions as identified on page 54 of this manual.

Households must be screened for student status at move-in, and every year of their tenancy. Unlike income qualification, where a household whose income changes may remain in the unit without threatening the unit's eligibility for tax credits, households must qualify under the student rule throughout their tenancy.

Properties that are 100% LIHTC, and are exempt from annual income re-certifications, must still verify student eligibility each year at lease renewal.

If, when recertifying a tenant or renewing their lease, an owner discovers that a household is comprised entirely of full-time students, and does not qualify for one of the exemptions, the owner should not renew their lease. Owners are required to adhere to non-compliance related to the LIHTC student status rule, which is cause for termination under the lease as described above in **Section 3.4** of this manual. If a tenant household is comprised entirely of full-time students, that unit does not qualify for tax credits.

Documentation: Owners must document student eligibility before move-in and each year as of the anniversary of the original student status certification. [\[Guide 8823, Pg. 17-2\]](#) Owners may use the IHDA Certification of Student Eligibility Form, or other comparable forms to ask that the household:

- Certify if all members of the household are full-time students or not, and if they are,
- Declare if the household qualifies for one of the exceptions to the rule described below.

Owners may use additional questionnaires and forms to ask individual adults to answer questions about their student status and to ask the educational institution to verify whether a student is full or part-time, and the months of their enrollment during the calendar year.

Unborn Children: An unborn child is considered a household member when determining eligibility based on student status. Therefore, if a self-certification is provided that a household member is pregnant, the unborn child is not a student, and the student rule is not triggered.

Defining Full-Time Status: School-age children from grades K-12 are considered full-time students. Preschool-age children are not. Adult students are counted as full-time students if they are enrolled full-time in school for any part of 5 calendar months during the Calendar year.

- Full-time enrollment is determined by the standards of the school where the student attends.

For instance, a school might define full-time enrollment as 12 credit hours during the spring and fall semesters, but only 9 during the summer months. If a student at that school is enrolled for 9 credit hours in the Fall Semester, their enrollment is not full-time during those months. But if they are enrolled for 9 credit hours during the Summer Semester, their enrollment during that term is full-time.

- A student does not need to be enrolled through the entire month for it to be counted. For instance, a student who is enrolled full-time from January 25th through May 1st has been enrolled for 5 calendar months, even though they have not been enrolled for 150 days.
- The months do not need to be consecutive. A student may be enrolled for 3 months in the spring, then re-enroll for 2 months in the fall, and therefore be counted as a full-time student for LIHTC purposes.
- However, because the 5 months are counted within a calendar year, not the school year, a single person who enrolls as a student for 4 months in the fall of 2017, and for 4 months in the spring of 2018, then graduates at the end of the spring semester, could still qualify to live in a LIHTC apartment for 2018, so long as they are enrolled during no more than 4 months of the 2018 calendar year.
- Owners should be aware, an adult who is not currently enrolled as a student at the time they report their status on an application or questionnaire may still be a full-time student for LIHTC purposes. For instance, an applicant who applies to move into an apartment in September 2017, and is no longer a student, but who was enrolled as a full-time student for the months of January through May of 2017, is still a full-time student for purposes of the LIHTC Program until the end of the 2017 calendar year.

Exemptions: If a household is comprised entirely of full-time students, the household may still qualify to live in LIHTC housing if they meet at least one of five exceptions. If a household declares it qualifies under an exception, the exception must be verified. [26 USC 42(i)(3)(D)] [Guide to 8823, Pg. 17-2]

1. At least one member of the household receives assistance under Title IV of the Social Security Act (for example, payments under AFDC).
2. At least one member of the household was previously in a Foster Care Program (administered under part B or part E of title IV of the Social Security Act).
3. At least one member of the household is enrolled in a job training program that receives assistance under the Job Training Partnership Act (JTPA) or similar federal, state, or local laws.

The JTPA was a federal program with a mission “to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the Nation.”

For purposes of this exception to the LIHTC student rule, IHDA will consider a job training program to be like the JTPA if:

- the training program has a mission like JTPA (or is a Workforce Investment program, which HUD says replaced JTPA) and
 - it receives some sort of government funding (local, state, or federal).
4. The students are comprised of a single parent and his or her children, and the children are not dependents of another individual other than a second parent. For verification of the exemption for single parents with children, self-certification of the parent is sufficient.
 5. The members of the household are married and are entitled to file a joint federal tax return. Married household members do not need to have filed a joint tax return; the exemption is based on their eligibility to file jointly.

4.9.2 HOME

The HOME program complies with HUD's student rule, which is distinct from the LIHTC student rule in that it prohibits owners from leasing to:

- Individuals who are under 24 years old
- Enrolled in an institute of higher education for purpose of obtaining a degree.
- Regardless of full-time or part-time status
- Exceptions are made for individuals who are
 - Married
 - Veterans
 - Have a dependent child
 - Persons with disabilities
 - Living with parents who are receiving Section 8
 - Individually eligible to receive section 8 assistance
 - AND whose parents are eligible to receive section 8 assistance
 - Is independent and individually eligible to receive section 8 assistance.

The LIHTC program, by contrast, prohibits owners from leasing to:

- Families comprised entirely of full-time students (part-time students are allowed)
- Regardless of the level of education (school-age children are counted as full-time students)
- Recognizes different exceptions (listed above).

Unborn Children: An unborn child **IS NOT** considered a household member for the HUD/HOME programs when determining eligibility based on student status.

4.9.3 Both LIHTC and HOME

If a unit is both HOME-assisted and LIHTC-assisted, it must comply with both sets of prohibitions.

Furthermore, under the LIHTC program, if the student status changes to a household comprised

of entirely full-time students, the unit is no longer eligible to receive tax credits and the owner/agent should proceed to terminate the tenancy.

The HOME program treats households whose student status changes to violate HUD's student rule as over-income households. Landlords are prohibited from terminating the tenancy on over-income status alone.

On the other hand, owners are required to take steps that include raising the tenant's rent, as described in **Section 5.7** of this manual.

Chapter 5: Qualified Rents

Chapter Sections:

- 5.1 Basic Requirements: Rents
- 5.2 Maximum Rent Limits
- 5.3 Gross Rent & Tenant Rent
- 5.4 Utility Allowances
- 5.5 Gross Rent Floor
- 5.6 Gross Rent Violations
- 5.7 Over-Income Households

5.1 Basic Requirements: Rents

5.1.1 LIHTC

Owners make a commitment to maintain a certain portion of project units as LIHTC-qualified affordable units in their minimum set aside election and in the applicable fraction that informs the basis for their LIHTC award.

To qualify as LIHTC eligible, units must be leased at affordable rents. Qualified rents are defined by a maximum gross rent limit calculated as 30% of the maximum household income, adjusted by unit size, and updated annually to reflect changes in area median incomes.

To be LIHTC eligible, units must also be leased to qualified low-income tenants, as addressed in **Chapter 2** of this manual. The units themselves must be in good condition, available to the general public, and leased on a non-transient basis, as addressed in **Chapter 4**.

Owners may make additional commitments to provide affordable units for deeper income targets than the LIHTC program requires. The owner's commitments to IHDA, including the number of units and affordable rent commitments, are specified in the Extended Use Agreement.

Under the LIHTC program, owners are responsible for ensuring they are charging LIHTC-qualified rents and may implement rent increases for LIHTC units without requesting IHDA's approval in advance.

Gross Rent Violations: Owners should be aware that they must be compliant with the maximum gross rents each month of the tax year: if a LIHTC tenant is charged rent excess of the maximum gross rent for any single month in the year, the unit ceases to be counted as a low-income unit for the remainder of the tax year if the tenant is back in compliance. [Guide 8823, 11-10]

5.1.2 HOME

Owners make a commitment to provide a certain number of HOME-assisted units, and a certain unit mix of High HOME and Low HOME rents. The owner's commitments are specified in the project's HOME Regulatory Agreement and the HOME loan agreement.

The HOME program uses more than one approach to calculate rent limits, as determined by HUD and the local PJ. Owners must refer to annual HOME rent limits published by HUD and made available by IHDA on its website.

Rent Increases: In contrast to the LIHTC program, owners of HOME projects must submit proposed rent increases to IHDA for advance approval.

5.2 Maximum Rent Limits

5.2.1 LIHTC Rent Limits

IHDA publishes maximum rent limits each year and makes them available on the IHDA website. LIHTC projects reference several types of maximum rent limits:

Regular: IHDA calculates regular rent limits to be affordable at various income limits published by HUD, including the Multifamily Tax Subsidy Program (MTSP) income limits that apply to most LIHTC projects.

HERA: Projects placed in service prior to January 1, 2009, are eligible to use special limits created under the Housing and Economic Recovery Act (HERA) of 2008 if they are located in qualified counties, as described in **Section 4.2** of this manual. HERA special rents are higher than regular rents. IHDA only publishes HERA special rents for counties that are qualified to use them.

Hold Harmless: The LIHTC program protects owners from dropping income and rent limits after they have been placed in service. Existing projects are not forced to apply lower rent limits in years when the area median income drops, causing that year's rent limits to decline. [\[26 USC 42\(g\)\(2\)\(A\)\]](#)

HUD publishes a set of tables that show which year's MTSP limits a project should use based on its placed-in-service date to help owners determine if they are eligible to use the higher limits from a previous year. HUD's tables can be found [here](#). *[HUD Datasets, Multifamily Tax Subsidy Income Limits. Select the current year, and "Click Here" for the Query Tool. Select the state and county, or the metro areas. Scroll past the MTSP income limit table to see the HUD table specifying which year's limits apply.]*

Non-Metro: Non-Metro areas may use maximum rents specific to their area. But they may also use national non-metro rent limits or state non-metro rent limits if those are higher than their local limits.

Other Programs: LIHTC projects that are also funded by other affordable housing programs that come with rent restrictions must compare rent limits for all the applicable programs and use the most restrictive.

How LIHTC Maximum Rents are Calculated: Affordable rents for the LIHTC program are calculated as 30% of maximum household income, adjusted by unit size based on the assumption that each bedroom is occupied by 1.5 persons.

The Maximum Rent Limits at a LIHTC project are therefore informed by the owner's **minimum set aside** election to make units affordable to households at 60% or 50% of the Area Median Income (AMI).

The minimum set aside election determines the Maximum Limits for all a project's affordable LIHTC units, not just the 20% or 40% of the units in the minimum set aside. For example, a property may be 100% affordable, with a minimum set aside of 20% of units at 50% AMI. In that case, all 100% of affordable units must be affordable to households at 50% AMI.

Income Limits vary with the number of people in a household. Maximum Rent Limits vary by unit size, based on a presumed occupancy ratio of 1.5 people per bedroom. Efficiency units or units without separate bedrooms are treated as occupied by 1 person.

For Example: In the case of a 4-person household in a 2-bedroom apartment, in a project where the minimum set aside election is 60% AMI.

Occupancy Estimate = 1.5 people x 2 bedrooms = 3 people. [Not the actual number of people in the household.]

60% AMI for a 3-person household in that location for that year is \$45,060.

Monthly income = \$45,060/12 = \$3,755.

30% of Monthly = \$1,126.50, or \$1,126. Where the maximum rent must be rounded, it is always rounded down.

If the 1.5 people per bedroom ratio generate a count that is not a whole number, maximum rent is calculated by taking an average of the maximum incomes for the higher and lower whole numbers.

For Example: In the case of a 3-person household in a 3-bedroom apartment, in a project where the minimum set aside election is at 50% AMI.

Occupancy Estimate = 1.5 people x 3 bedrooms = 4.5 people.

Because the Occupancy Estimate is not a "whole" person, use the average income limit between 4 and 5 people to calculate the maximum gross rent.

50% AMI for a 4-person household is \$41,700.

50% AMI for a 5-person household is \$45,050.

The Income Limit for 4.5 persons = the average or \$43,375.

That yields a monthly income of \$3,615. (\$43,375/12)

30% of the monthly income is \$1,084.36, or \$1,084. Where the maximum rent must be rounded, it is always rounded down.

Maximum gross rent limits are adjusted annually when income limits are updated. IHDA publishes both regular and HERA special gross rent limits when it publishes income limits.

The maximum gross rent is a ceiling, it is not a floor. The owner may choose to charge rents below the maximum gross rent, if market conditions would not support the maximum allowable rent, for instance, or if the project is subject to deeper rent limits associated with another affordable housing program.

5.2.2 HOME Rent Limits

HUD publishes schedules of HOME maximum rent limits each year for High HOME and Low HOME units. IHDA makes HUD HOME rent limits for Illinois localities available on its website.

High HOME rent limits are the maximum rent that can be charged to low-income households (at or below 80% AMI). HUD determines High HOME rent limits using either the Section 8 Fair Market Rent, or 30% of the adjusted income for a household at 65% AMI, whichever is less.

Low HOME rent limits are the maximum rents that can be charged to very low-income households (at or below 50% AMI). HUD calculates Low HOME rent limits as 30% of adjusted income for a household at 50% AMI. PJs may elect to use an alternate calculation based on the very low-income household's actual income, but IHDA elects to use the rent limit targeted at 50% AMI as published by HUD. [[HOME Guide for PJs, Pg. 29](#)]

Properties with units that are both HOME-assisted and tax credit units must compare the applicable LIHTC and HOME rent limits and may not charge more than the most restrictive.

Furthermore, HOME rent limits are defined in part by the income qualification of the tenant household. If the tenant's income increases over the unit's income limit, whether it is High HOME or Low HOME, the rent limit may no longer apply. Owners may be required to raise rents as described in section 4.

5.3 Gross Rent and Tenant Rent

5.3.1 LIHTC

Maximum rent limits reflect gross rent, which includes:

- Tenant rent, paid by the tenant to the owner
- Tenant paid utilities
- Non optional fees, such as service fees that are required as a condition of occupancy

Owners must subtract an allowance for any tenant paid utilities and any non-optional fees from the maximum gross rent limit to arrive at the maximum limit for tenant paid rent.

Utilities paid by the owner are not included in gross rent for the LIHTC program.

Rental Subsidy: Gross rent does not include rental assistance payments made under Section 8 of the US Housing Act, or any comparable rental subsidy program. If the tenant receives rental assistance, whether it be tenant or project based, only the tenant paid portion must meet the LIHTC rent limit. [26 USC 42 (g)(2)(B)(i)]

Furthermore, the tenant paid portion may exceed the LIHTC income limit if the tenant's income has grown to exceed the LIHTC income limit so long as the tenant is still receiving rental assistance. The total contract rent (rental assistance plus tenant portion) must not exceed what it would be if the tenant's income had not come to exceed the limit. [26 USC 42 (g)(2)(E)(i)]

Tenant Services Impact on Rent: Owners of LIHTC projects may provide services other than housing without jeopardizing eligibility for LIHTCs. If services are required as a condition of tenancy at the project, any fees charged to tenants for these services must be included in gross rent for purposes of compliance with the maximum gross rent limit.

5.3.2 HOME

HOME maximum rent limits are the maximum gross rents that can be charged to an income qualified tenant in a HOME-assisted unit, including any amount the tenant pays for utilities.

The tenant rent payment may be no more than the maximum gross rent limit, less the allowance for tenant paid utilities.

Mandatory Fees: Owners are not allowed to charge non-optional fees or mandatory fees unless they have IHDA's written approval. Any approved mandatory fees must also be deducted from the maximum gross rent limit.

Rent Subsidy: Unlike LIHTC rent limits, HOME rent limits may apply to both rent subsidy and tenant rent portions of a total rent payment, depending on whether the rent subsidy is tenant or project based, and whether the tenant household is income qualified for a Low HOME unit or not.

If the rent subsidy is **tenant based** rental assistance, the combined subsidy and tenant rent cannot exceed HOME maximum rent limit. HUD applies this rule to prevent owners from charging a higher rent for tenants with vouchers than for comparable units that are occupied by households that are not voucher holders.

If the rent subsidy is **project based** rental assistance, use of the HOME rent limit depends on

- a) whether the unit is Low HOME unit or not, but also
- b) whether the tenant is a very low-income household (income at or below 50% AMI) or not.

For Low HOME units, the combined rent subsidy and tenant rent payment may exceed the Low HOME maximum rent limit in qualified cases. HUD makes no similar allowance for High HOME units, so in general, the combined subsidy and tenant rent payment in a High HOME unit must fall within the High HOME limit. [HOME Guide for PJs, Pg. 29]

A unit with a project-based subsidy is considered a Low HOME Rent unit so long as it is occupied by a very low-income tenant who pays no more than 30% of its adjusted gross income in rent. In such cases, the combined subsidy and tenant rent do not need to fall under a HOME rent limit. [[HOME guide for PJs, Pg. 35](#)]

However, if the tenant's income grows to exceed the Low HOME limit, then the unit no longer qualifies as a Low HOME unit and the total rent, including rent subsidy payment, can be adjusted up to no more than the High HOME rent.

5.4 Utility Allowances

Gross rent limits include allowances for tenant paid utilities. To calculate the maximum rent payable by the tenant, owners must subtract the utility allowance from the maximum gross rent. [[26 CFR 1.42-10](#)]

Utility allowances only include the cost of basic utilities paid by the tenant, such as gas, electric and water. They do not include services such as phone, internet or cable, or any basic utilities paid by the owner. Sub-metered utilities that are paid by the tenant directly to the owner are treated as utilities paid by the tenant. [[IRS Notice 2009-44](#)]

5.4.1 LIHTC

Owners must update utility allowances annually. In general, owners of LIHTC projects that are not specifically required to use a Rural Housing Service (RHS) or HUD model for calculating utility allowances are encouraged to use allowances published by the local Public Housing Authority (PHA).

In cases where another funding source requires a different method for any unit at the property, the LIHTC program requires that the owner use the same method for all units of the same size. [[26 CFR 1.42-10\(b\)\(ii\)](#)] For example, buildings with RHS should use the utility allowance determined by the method prescribed by RHS, while many HUD programs, such as HOME, require use of a HUD allowance method.

Other utility allowance sources identified as allowable under the LIHTC program regulations include:

- **Utility Company Estimate:** An interested party, such as an owner or a tenant, may obtain a written estimate of utility cost from the utility company for a unit of similar size and construction in same geographic area. If the owner uses a utility company estimate, they must make the information available to building tenants.
- **Agency Estimate:** Owners are allowed to use an estimate provided by the agency with jurisdiction over the unit if the agency agrees to provide it.
- **HUD Model:** A building owner may use the HUD utility schedule model to calculate an estimate, but rates must be current, no older than 60 days at the time they are implemented.
- **Consumption Model:** With approval from a monitoring agency, such as IHDA, a building owner may calculate an allowance based on a model created by a licensed engineer who

considers information about building orientation and design as well as unit size and historical information.

Annual updates to utility allowances, and any rent adjustments needed to comply with maximum gross rent limits, must be reviewed and adjusted as necessary at least once every calendar year, and 90-days be given for resident and HFA comment, as necessary. The PHA UA can change without notice and should be watched at least every 60-days. Also, the adjustments must be applied to new leases or lease renewals within 90 days of when they are issued.

5.4.2 HOME

Owners must update utility allowances annually. Utility allowances for HOME-assisted units must be determined using either the HUD Utility Schedule Model, or a project specific method, such as the HUD Multi-family Housing Utility Analysis, as mandated by the HOME Final Rule that went into effect as of August 23, 2013. [[HOMEfires – Vol 13, No 2, May 2016](#)]

Projects with HOME commitments made prior to August 23, 2013, may use PHA utility allowances, however projects whose HOME commitments were made after that date may not.

Participating Jurisdictions (PJs) are required to determine utility allowances but may do so by requiring property owners to use a specific method and submit the analysis for the PJ's review and determination.

As a HOME PJ, IHDA requires property owners to submit a utility allowance schedule for IHDA's determination. Projects whose HOME commitments were made on or after August 23, 2013, must submit utility allowance schedules based on one of the following methods:

- Multifamily Housing Utility Analysis following the instructions published by HUD in MF Notice H-2015-4, or
- Utility company estimates for each of the utilities used in the project, excluding telephone.

Once IHDA has made its determination based on the analysis submitted by the project owner, the schedule is applicable for both the HOME and the LIHTC programs for units of the same size.

Utility allowances must be updated annually. The HUD Multifamily Housing Utility Analysis requires a baseline analysis using actual utility usage of a defined sample of project units, but allows use for factor-based updates, in which the baseline is adjusted using a state specific increase factor, for 2 years after the baseline analysis.

5.5 Owners' Rent Protections

When financing a new project, underwriters typically project that operating expenses will rise with inflation, and that the owner will implement modest annual rent increases to cover projected expenses.

When area median incomes increase each year, program maximum rent limits also rise, and accommodate projected rent increases.

However, in some cases realities fall short. Area median incomes, and the maximum income limits derived from them, may drop from one year to the next. Both the HOME and the LIHTC programs protect owners from being forced to lower rents below a certain base level if stagnant incomes would otherwise force them to do so.

5.5.1 LIHTC: Gross Rent Floor

The LIHTC program recognizes a gross rent floor to protect owners from being forced to lower rents, potentially jeopardizing the project's ability to meet expenses. The gross rent floor is based on income limits effective at the time a project is qualified as a low-income project. [26 USC 42 (g)(2)(A)]

By default, the gross rent floor is the maximum gross rent in effect at the time at which LIHTCs are allocated. But the owner may choose to establish the floor based on gross rent limits in effect at the time the property is placed-in service by notifying IHDA of this preference.

Once established, the LIHTC program will never require the owner to reduce rents below the gross rent floor. Owners retain the option to lower rents below the floor, to meet realities of the rental market for instance, but they will never be required to do so to remain in compliance with the LIHTC program.

5.5.2 HOME: Rent Limits at Time of Project Commitment

The HOME program does not use the term gross rent floor. But the HOME program also provides that a project will never be required to be lower rents below the HOME rent limits in effect at the time the HOME funds were committed to the project. [24 CFR 92.252(f)]

Managers may find these initial rent limits as an attachment or exhibit to the HOME Commitment Letter, or to the HOME Regulatory Agreement.

5.6 Gross Rent Violations: LIHTC

LIHTC projects must be compliant with the maximum gross rents each month of the tax year.

Owners should be aware that if a LIHTC tenant is charged rent or fees more than the maximum gross rent for any single month in the year, the unit ceases to be counted as a low-income unit for the remainder of the owner's tax year, even if the owner corrects or rebates excess rent or fees.

The unit may be brought back in compliance on the first day of the owner's next tax year if the gross rent, including tenant rent, utilities and fees does not exceed the limit. [Guide 8823, Pg. 11-10]

5.7 Over-Income Households

Both the LIHTC and HOME program implement rules for bringing unit mix back in balance if households who qualified at move-in become over-income during their tenancy. They differ in how they treat rent restrictions during this process.

5.7.1 LIHTC

Under the LIHTC program, existing tenants who income qualified at move-in are not considered over-income unless their incomes grow to exceed 140% of the LIHTC income limit. For example, if the LIHTC income limit that applies to a particular household is \$30,000, the household is not treated as over-income until their income increases to \$42,000 (or \$30,000 x 140%).

To remain qualified to claim tax credits, LIHTC units occupied by over-income tenants must remain rent restricted under the LIHTC maximum rent limits.

If a property includes market rate or non-LIHTC units, the over-income unit must remain rent restricted until implementation of the next available unit rule (as described in **Section 3.5** of this manual) allows the over-income LIHTC unit to be replaced with a market unit.

Over-income units at 100% LIHTC projects that do not have market units must remain rent restricted throughout the extended use period.

5.7.2 HOME

In contrast to the LIHTC program, tenants of HOME-assisted units are treated as over-income as soon as their income exceeds the maximum income limit, and the owner is required to take corrective actions that include charging higher rent at the time of lease renewal. (Owners are required to take other measures to restore unit mix, as described in **Section 3.5**.)

If the tenant occupies a High HOME unit, the household is over-income if its income exceeds 80% AMI; if the tenant occupies a Low HOME unit, the household is over-income if its income exceeds 50% AMI. If the owner has made deeper income targeting commitments in its agreement with IHDA, the owner is only required to increase rent if the household's income exceeds the HOME limit.

The rent adjustment required depends on whether the unit is a Low HOME, or High HOME unit, and whether the tenant still qualifies as a low-income household (with income under 80% AMI). However, if the unit is also a LIHTC unit, the adjusted rent may not exceed the LIHTC maximum rent limit. [[HOME Guidebook for PJs, Pg. 57](#)]

High HOME Unit: If the household income grows to exceed 80% AMI, the household is no longer eligible to live in a HOME assisted unit. The owner may not terminate the household's tenancy based on their over-income status. However, the owner must raise the over-income tenant's rent to equal 30% of the tenant's monthly adjusted family income.

Adjusted family income is calculated using a different method than the method used to determine income qualification. The method for calculating adjusted income is defined in 24 CFR Part 5, Subpart 5, and described under "Adjusted Income" in this section.

If state or local law imposes a lower rent limit, or if the unit is a LIHTC unit, the rent should be raised as high as allowed under the constraints of local law or LIHTC limits.

Low HOME Unit / Low-income Household: If the household income grows to exceed 50% AMI but does not exceed 80% AMI, then the household is still considered low-income, and is eligible to live in a HOME assisted unit. The household is still over-income, and the project is out of compliance until another unit can be designated as a Low HOME unit.

Once another unit is redesignated Low HOME, and not before then, the over-income unit should be redesignated as a High HOME unit and the over-income household should be charged the High HOME rent.

However, until this re-designation can occur, the owner cannot raise the tenant's rent above the Low HOME limit even if they are over-income.

Low HOME Unit / Household is not Low-income: If the tenant's income grows to exceed 80% AMI, then the household is no longer qualified to live in a HOME-assisted unit. The owner is not permitted to terminate tenancy based on the household's over-income status. However, the owner must adjust the tenant's income to equal 30% of the family's monthly adjusted income as soon as the lease permits.

If state or local law imposes a lower rent limit, or if the unit is a LIHTC unit, the rent should be raised as high as allowed under the constraints of local law or LIHTC limits.

Adjusted Income: Adjusted household income is defined in 24 CFR 5 Subpart 5. It equals the household's annual gross income, less deductions for dependents, elderly or disabled household status, and certain expenses. Expenses must be anticipated to occur in the 12-month period for which the household's income is being calculated.

Dependents: Deduct \$480 for each dependent. Dependents include any of the following family members who are not the head of household or spouse: persons under 18, family member with a disability, or full-time students.

Child Care Expenses: Deduct reasonable annual child-care expenses for children 12 and under that enable a family member to work or go to school, if no adult is available in the household to provide child-care.

Medical Expenses: For elderly households only, deduct annual medical expenses, including medical insurance premiums, more than three percent of annual income that are not covered by insurance.

Disability Assistance Expenses: Deduct reasonable expenses more than three percent of annual income for the apparatus and care of a family member with a disability that enables that person or another person to work; and

Elderly or Disabled Household: Deduct \$400 for any elderly family. An elderly family is one where the head of household or spouse is 62 or older or has a disability.

Chapter 6: Compliance Reporting & Monitoring

IHDA monitors compliance with the LIHTC and HOME programs through a combination of:

- Owner Certifications and Reports to IHDA
- IHDA Management Reviews
- IHDA Tenant File Reviews
- IHDA Physical Inspections

Where IHDA finds noncompliance, IHDA will notify the owner of the finding and extend a correction period in which to cure the deficiencies.

Deficiencies may be related to federal program requirements, commitments the owner has made to IHDA in its Extended Use or Regulatory Agreement, or other management criteria that reflect best practices upheld by IHDA. Uncorrected deficiencies of any category may result in penalties imposed by IHDA.

For LIHTC projects, if the issues raised in a compliance review impact eligibility under the federal LIHTC program, and the project is within the 15-year compliance period, IHDA must file IRS Form 8823 Report of Noncompliance with the IRS. IHDA will make the filing after the correction period, and the report will indicate if the deficiency has been corrected or not. If it remains uncorrected, the IRS will notify the owner that it must consult with IHDA, as state monitor, to correct the noncompliance.

If the non-compliance is such that a unit or units are not qualified for tax credits, noncompliance may result in an IRS Audit, a reduction in tax credits, or a recapture of tax credits already taken.

Chapter Sections:

- 6.1 Initial Year Compliance
- 6.2 Ongoing / Annual Compliance
- 6.3 Noncompliance
- 6.4 Record Keeping

6.1 Initial Year Compliance

For both LIHTC and HOME awards, the IHDA Asset Management team holds an initial orientation meeting for the project owner and managers to review all program compliance requirements in effect at the property throughout the affordability period, including the initial year reports and reviews described below.

6.1.1 LIHTC

Initial Year compliance has special weight because it determines baseline qualification for the LIHTC program. Projects failing to qualify enough units to meet the minimum set aside by the end of the first year of the credit period do not qualify to participate in the LIHTC program and are not eligible to take tax credits in any amount. New projects have until the end of the year the project was placed in service, or to the end of the next taxable year, to achieve the minimum set aside, thus becoming a **qualified low-income project** eligible to claim tax credits. [\[26 USC 42\(f\)\(1\) & 42\(g\)\(1\)\]](#)

Initial Owner Certifications & Reports:

IRS Form 8609: The 8609 is the tax form used to allocate and claim credits under the LIHTC program. IHDA fills out Part I of the form and provides it to the owner. The owner completes Part II and files the form with the IRS. The owner is required to forward the completed 8609 to IHDA.

A separate form is used for each building in a multi-building project.

Part I of form 8609 is the Allocation of Credit, where IHDA records the Maximum Tax Credit that the owner may take. IHDA also records other information that Asset & Property Managers should be aware of, such as:

- the Building Identification Number (**BIN**) for that building [field E]
- the maximum **qualified basis** that an owner may claim if all units are qualified [line 3a]
- the **placed in-service** date, which determines the start of the tax credit and compliance periods. [line 5a] This is generally the date that:
 - New Construction – O/A must obtain a certificate of occupancy or temporary certificate of occupancy from the city.
 - Acquisition w/no Rehab – Once the building has been acquired.
 - Acquisition Rehab - The owner certification (8609 package) acts as the confirmation for the Placed in Service Date (PIS).
- whether the project is being counted toward the state’s **non-profit set aside**. [line 6f] Section 42(h)(5) of the federal Code requires that a certain portion of a State’s annual credit ceiling be allocated to projects in which a qualified nonprofit participates in ownership, development, and operation throughout the compliance period. Changes in non-profit participation are one of the items owners must declare in the annual owner’s Certification.

Once IHDA has prepared and signed Part I, IHDA provides the 8609 to the owner for completion.

Part II of form 8609 is the owner’s First Year Certification, where the owner elects a **minimum set aside** [line 10c], which determines the minimum affordability requirements a project must achieve to be a Qualified Low-income Housing Project.

The owner also records other information that Asset and Property Managers should be aware of, including:

- the building’s **eligible basis** [Line 7] and original **qualified basis** [Line 8a] at the close of the first year of the tax credit period. These lines inform the project’s qualification for tax credits, based on eligible costs and the portion of the building that is Low-income. In every subsequent year of the tax credit period, the owner will be asked to re-calculate their tax credits based on the actual portion of the building that qualifies as Low-income as of the annual filing.

- whether the building is part of a **multi-building project**. [Line 8b] This will affect whether tenants can transfer between buildings without being re-qualified as new move-ins. Tenants may not transfer between different projects but may transfer between buildings of the same project.

Each building is considered a separate project under section 42(g)(3)(D) unless, before the close of the first calendar year in project period (defined in section 42(h)(1)(F)(ii)), each building that is (or will be) part of a multiple building project is identified by attaching the statement described below.

The statement must be attached to this Form 8609 and include:

- The name and address of the project and each building in the project,
- The BIN of each building in the project,
- The aggregate credit dollar amount for the project, and
- The credit allocated to each building in the project.

NOTE: Notwithstanding a checked “Yes” box on line 8b, failure to attach a statement providing the above-required information will result in each building being considered a separate project under section 42(g)(3)(D). The minimum set-aside requirement (see the instructions for line 10c) is a project-based test.

- which year the owner elects to begin taking credits: either the year the building is placed in service or the tax year immediately after the placed-in-service date. [10a] This year marks the 1st year of the **tax credit** and **compliance periods**.

IHDA Initial Project Forms:

When projects are transferred from IHDA’s Multi-Family Development Department to the Asset Management Department for monitoring, the Asset Management Team will send the owner/agent contacts an Initial Project Packet, requesting information that IHDA will use to set the Project up in our systems and facilitate accurate compliance monitoring. The accuracy of this information is particularly important for ensuring the owner/agent can use DMS Authority Online, IHDA’s online reporting portal, without errors or complications.

Low-income Housing Compliance Report form (TST-2B): Owners report occupancy and initial set-aside information. This form is completed once, as part of the owner’s initial report to IHDA’s Asset Management Department.

Low-income Housing Data for Tax Credit Projects form (TST-4): Owners report project data and units allocated by income level target. This form is completed once, as part of the owner’s initial report to IHDA’s Asset Management Department. It should agree with commitments in the Extended Use Agreement. In subsequent years, owners will be asked to certify that project data reported on this form is still accurate, or else to report any changes.

Low-income Housing Project Housing Data Report form (TST-4A): Owners submit a separate form for each BIN, reporting the unit number, address, number of bedrooms, total square feet, and income target for each unit. This form is completed once, as part of the owner’s initial report to Asset Management. Accuracy is imperative for the seamless use of DMS Authority Online

for future compliance reporting. Unit numbers must match the format used in the owner/agent's system of record.

Low-income Housing Tax Credit Initial Monitoring Form (TST-8): Owners report the type of credit requested, the minimum set aside election, construction information, and occupancy status, and the project owner and project manager. This form is submitted once as part of the owner's initial report to Asset Management. For the remainder of the compliance period, owners must certify annually that the information remains accurate, or else report any changes.

Registration for DMS Authority Online

Much of the owner's ongoing compliance reporting will be made through DMS Authority Online, an online data reporting portal. Owners must register for access to their project, using an Organization ID provided by IHDA, and using the LIHTC Award Number.

The owner's registration request must be approved by IHDA. IHDA staff will complete project set-up in DMS using the forms from the Initial Project Packet, prior to approving an owner's request. Once the owner is fully registered in DMS, the owner can manage and approve other users who request access to the Project.

For example, a Property Manager would submit a registration request through the system using the Organization Code for the Property Management Company and the same LIHTC Award Number. The owner can approve the registration request and grant the Property Manager access for the functions the Manager will perform.

Detailed instructions for registering and using DMS Authority Online are available in the *User Manual for Owners and managers* on the Property Manager's section of IHDA's website.

IHDA's Initial Inspection & Tenant File Review

For new LIHTC projects, IHDA will conduct an on-site Physical Inspection and Tenant File Review no later than the end of the second calendar year following the year when the last building is Placed-in-Service. [[Guide 8823, Pg. 3-1](#)]

Physical inspection: Units will be selected randomly, to include units in each building in the LIHTC project. Owners will not be notified in advance which units are chosen for inspection, so owners should notify tenants of all the project's low-income units that their apartments may be inspected. [[Rev Procedure 2016-15, Section 4](#)]

Tenant File Reviews: Tenant files must contain the following documents, completed in their entirety, to enable IHDA to determine the qualification of the household and the apartment unit:

- Tenant lease
- LIHTC lease addendum (if LIHTC language is not incorporated in the lease)
- Violence Against Women Act Addendum
- Application or eligibility questionnaire

- Any screening materials identified in the Tenant Selection Plan (Such as credit checks, criminal background checks)
- Tenant Income Certifications (TIC)
- Verification of income & assets
- Disposal of assets form (may be incorporated into another questionnaire or form)
- Student status certification and documentation
- Move-in Inspection

Waitlist: During the Initial File Review, IHDA will also review the Project Waitlist to verify that applicants were contacted in chronological order, and in order of preference(s).

Note: Tenant file reviews and physical inspections will be conducted at different times and cover different units.

6.1.2 HOME

Initial year compliance must demonstrate that the HOME-assisted units were occupied by qualified households within 18 months of project completion. If a project fails to achieve the 18-month benchmark, HUD will require IHDA to repay the project HOME funds, and IHDA in turn will require repayment from the project owner. IHDA will determine whether the 18-month benchmark is achieved during its initial on-site review.

Initial Owner Certification and Reports:

When projects are transferred from IHDA's Multi-Family Development Department to the Asset Management Department for monitoring, the Asset Management Team will send the owner / agent contacts an Initial Project Packet, requesting information that IHDA will use to set the Project up in our systems and facilitate accurate compliance monitoring.

Housing Data Report Form: Owner's list all the program and non-program units in each building, and provide the address, number of bedrooms, square footage, and the income target for each unit. This form is completed once, as part of the owner's initial report to IHDA's Asset Management Department.

Project Information Form: IHDA provides this form as part of the Initial Package, but owners submit it only if there has been a change in ownership or management entities.

Project Data Form: Owners provide project summary data, such as the total number of buildings and numbers of units that are restricted under HOME, and other funding programs. This form is completed once, as part of the owner's initial report to IHDA's Asset Management Department.

Tenant Profile Compliance Report (TST-2): Owners submit the initial Tenant Profile Compliance report, which lists each project unit, including both HOME-assisted and non-assisted units, and provides information about each tenant household, including their income and rent charged. This form will be updated and submitted each year of the project affordability period.

The Profile Compliance Report is a form IHDA developed jointly with other area funders to align reporting requirements. It contains a field for social security numbers, which are not required for IHDA's monitoring. To protect this personally identifying information, IHDA encourages owners / managers to include only the last 4 digits of the SSN rather than submitting a document with the complete SSN.

IHDA's Initial Physical Inspection and Management Review:

For new HOME projects, IHDA will conduct an on-site Physical Inspection and Management Review upon project completion, or after 25% of HOME-assisted units are occupied. The Management Review will include a tenant file audit.

Units will be selected randomly from among the project's HOME-assisted units. Owners will not be notified in advance which units are chosen for inspection, so owners should notify tenants of all the project's HOME-assisted units that their apartments may be inspected.

Management reviews and physical inspections may be conducted at different times and cover different units.

Tenant files must contain the following documents, completed in their entirety, to enable IHDA to determine the qualification of the household and the apartment unit:

- Tenant Lease
- HOME lease addendum
- Lead disclosure forms if the building was built prior to 1978
- Violence Against Women Act Addendum
- application or eligibility questionnaire
- any screening materials identified in the Tenant Selection Plan [such as credit checks, criminal background checks]
- Tenant Income Certifications (TIC)
- verification of Income & Assets
- Disposal of Assets Form [may be incorporated into another questionnaire or form]
- Student Status Certification and documentation
- Move-in Inspection

Waitlist: During the Initial File Review, IHDA will also review the Project Waitlist to verify that applicants were contacted in order.

6.2 Ongoing / Annual Compliance

6.2.1 LIHTC

IRS Form 8609-A: Owners submit the **Annual Statement for Low-income Housing Credits** to the IRS with their tax return each year of the 15-year compliance period. IHDA does not fill out any part of the 8609-A. owners submit a separate form for each BIN to report compliance with the

LIHTC program and to calculate the annual tax credit amount based on the current qualified basis.

IRS Form 8586: The Low-income Housing Credit Form is filed by the owner with the IRS to claim credits each year of the compliance period, starting with the first taxable year in which the credit is taken.

IRS Form 8703: Owner submits form 8703 to IRS related to bonds issued. This form is used by an operator of a residential rental project to provide annual information to IRS. It will be used to determine whether a project continues to be a qualified residential rental project under section 142(d). If so, and certain other requirements are met, bonds issued in connection with the project are considered “exempt facility bonds” and the interest paid on them is not taxable to the recipient. This form **is not** required to be submitted to IHDA.

Owner Certifications & Reports to IHDA:

Owners must also make annual reports to IHDA for LIHTC monitoring purposes. IHDA will notify owners of their annual IHDA reporting requirements each year through **Compliance Connection**, IHDA’s online compliance portal. This package contains all the IHDA requirements for the property, for all the IHDA programs or loans awarded to it.

Owners of projects with awards under TCAP and the Section 1602 equity replacement program are subject to the same requirements as LIHTC projects under Section 42 of the US Code, including the same annual reporting to IHDA.

Owner’s Annual Certification of Compliance: (formerly IHDA Form TST-1) The owner’s Certificate of Continuing Compliance must be filled out annually in DMS Authority Online, IHDA’s Online Portal to its Data Management System. To meet this requirement, the owner must register for access to the DMS Authority Online: see *Registration for DMS* in section 5.1 of this chapter, and the *DMS Authority Online User Guide* on the Property Managers section of IHDA’s website.

The owner of a federal LIHTC project must certify to IHDA that the project meets, and has met for the past 12 months, the requirements of Section 42 of the federal tax code, and the provisions of its Extended Use Agreement. These provisions include project information reported in IHDA’s forms:

- Low-income Housing Data on project composition (TST-4)
- Housing Data Report on individual units (TST-4A), and
- Initial Monitoring Form (TST-8)
- Form 8609 as filed with the IRS.

Tax Credit Program Project Information form (TST-1A) must be completed **ONLY** if there has been a change in the property’s applicable fraction, ownership Information and/or Management Company.

Annual Utility Allowance Reporting: Each year, owners are required to submit utility allowances, together with documentation that supports them, for IHDA's approval. Upon approval, owners must update utility allowances in DMS Authority Online.

Annual Tenant Event Reporting: Each year, owners / managers must report income, rent and student status for all households of the LIHTC project, using DMS Authority Online. Use of DMS Authority Online is mandatory. Forms submitted on paper or by e-mail will not be accepted for tenant event reporting for LIHTC projects.

This requirement also applies to projects funded under TCAP and Section 1602 equity replacement grants, and to projects that are 100% affordable.

Owners of 100% affordable projects, in which tenants are not required to complete annual income certifications, must still report updates to lease, rent and household information, including changes in student status using DMS Authority Online.

Detailed instructions for entering tenant event information and penalties for not using the DMS System are available in the *User Manual for DMS Authority Online*, available on IHDA's website.

Owners and managers should also be aware that they may use DMS Authority Online to complete and generate Tenant Income Certification's throughout the year. Doing so has the added benefit of ensuring this information is already entered in the DMS System, so that the owner / managers will not need to upload this information later.

Management Reviews:

IHDA will conduct on-site management reviews for all LIHTC projects at least once every third year during the compliance period, and at least once every five years during the extended use period. During the management review, the Asset Manager will review a sample of tenant files. However, if extensive noncompliance is found, IHDA may expand the sample.

The Asset Manager will review the following documents:

- application or Most Recent Eligibility questionnaire
- Tenant Lease
- LIHTC Lease Addendum
- VAWA Lease Addendum
- Initial Tenant Income Certification (IHDA Form TST-3)
- Verification of All Income & Assets on the TIC
- Disposal of Assets questionnaire: this may be an independent form or incorporated into another questionnaire.
- Most recent Income Recertification, if applicable.
- Student Status Form (TST-6), or comparable form
- Verification of exemption or part time status, as needed to demonstrate household eligibility.
- Annual Decent Safety and Sanitary Inspection performed by Management.

Physical Inspections:

IHDA is required to conduct Physical Inspections of LIHTC properties at least once every three years after the Initial Inspection to ensure habitability of the project. In general, LIHTC Annual Inspections will conform to the following:

- **Standards:** local health, safety & building codes, and HUD Uniform Physical Condition Standard (UPCS)
- **Scope:** examination of the grounds, the exterior of the building(s), common areas, and a random sample of the affordable units. [Guide to 8823, Pg. 3-3]
- **Sample Size:** a random sample based on project size, including no fewer than the minimum number of units set forth in 26 CFR 1.42-5(c)(2)(iii). If extensive noncompliance is found, IHDA may expand the sample. [Guide 8823, Pg. 3-3]
Extensive noncompliance might include:
 - Evidence of poor internal controls
 - A large number of inspection findings
 - A Significant number of non-qualified units or households
 - Or other credible information from a reliable source.
- **Timing:** IHDA will conduct physical inspections within one year of new buildings being placed in service, and at least once every three years throughout the compliance period. During the extended use period, physical inspections will be conducted at least once every 5 years.

For tax credit projects receiving mortgage financing from IHDA, the inspections may be more frequent and more detailed due to other monitoring requirements.

Where possible, IHDA will combine inspections for different programs. For instance, federal regulations allow use of the HUD REAC protocol for LIHTC inspections. If a REAC inspection has been conducted at the LIHTC property within the last 3 years, IHDA will use the REAC inspection.

6.2.2 HOME

Owner Certifications and Reports to IHDA

Owners must make annual reports to IHDA for HOME monitoring purposes throughout the project affordability period. IHDA will notify owners of their annual IHDA reporting requirements each year through **Compliance Connection**, IHDA's online compliance portal. This package contains all the IHDA requirements for the property, for all the IHDA programs or loans awarded to it.

Owner / Agent Rental Compliance Reporting is reviewed by Asset Managers and Compliance Analysts. Issues identified are incorporated into a Compliance Letter, along with required actions for correction, and a timeline for completion.

Consolidated Certificate of Compliance: Each year, Owners/Agents provide the following certifications in a combined document.

- a. **Income and Rent Certification:** Owner certifies that property has maintained breakdown of High and Low HOME units and was in continual compliance with HOME requirements as identified in the property Regulatory Agreement for the preceding calendar year.
- b. **Decent Safe and Sanitary Certification:** Owner certifies that the property has been inspected and each unit determined to be Decent, Safe and Sanitary condition, currently and for the prior year.
- c. **Lead Based Paint Certification:** Owner certifies necessary steps have been taken to assure that the development does not present a lead-based paint hazard to young children and follows HUD Guidelines for lead hazard evaluation and control.

Rent and Utility Allowance Request: Properties with HOME must obtain IHDA approval prior to implementing a change to rent or utility allowances. Owner/agents are required to update allowances for tenant paid utilities annually and may also request a rent increase annually.

Tenant Profile Compliance Report: Each year, property owner/agents report tenant household, income and rent information using the IHDA Tenant Profile Compliance Report form (TST-2).

The Profile Compliance Report is a form IHDA developed jointly with other area funders to align reporting requirements. It contains a field for social security numbers, which are not required for IHDA's monitoring. To protect this personally identifying information, IHDA encourages owners / managers to include only the last 4 digits of the SSN rather than submitting a document with the complete SSN.

Management Reviews:

IHDA will conduct full management reviews for all HOME projects, including a sample-based audit of project tenant files, at least once every third year during the affordability period. IHDA may determine more frequent review is necessary based on the project's overall performance.

For intermediate years, IHDA performs a more summary desk review of reports provided by the owner / agent.

IHDA staff will send project contacts notice of the management review including what type of review is required (full management review, or desk review); whether it will be performed on-site or remotely, and what documents are required. If the review is performed remotely, owners/managers will be required to provide documentation electronically.

During management reviews IHDA will review the most recent TST-2 Tenant Profile report, with up-to-date information about tenant incomes and rents, as well as the project's Tenant

Selection Plan, and Affirmative Fair Housing Marketing Plan, as well as other documentation requested by the IHDA Asset Manager or Compliance Analyst.

Tenant file documents, which contain personally identifying information must be submitted through IHDA's BDS secure document server, following instructions in IHDA's BDS Manual, available on IHDA's website.

Tenant file submissions should include the following documents:

- application or Most Recent Eligibility questionnaire
- Tenant Lease
- HOME Lease Addendum
- VAWA Lease Addendum
- Initial Tenant Income Certification (TIC)
- Verification of All Income & Assets on the TIC
- Disposal of Assets questionnaire: this may be an independent form or incorporated into another questionnaire
- Most recent Tenant Income Certification (TIC)
- Student status certification and documentation
- Property manager's unit inspection report

Physical Inspections:

IHDA conducts physical inspections of HOME properties and HOME-assisted units throughout the affordability period to verify that they are well maintained and meet the applicable housing quality standards. For projects originally built prior to 1978, IHDA will continue to monitor notifications and maintenance related to lead based paint.

IHDA will conduct physical inspections at least once every three years after the initial inspection and may determine to conduct more frequent inspections at its discretion of project conditions, compliance or management concerns warrant additional attention. In general, ongoing HOME inspections will conform to the following:

- **Standards:** local health, safety & building codes, and HUD Uniform Physical Condition Standard (UPCS)
- **Scope:** examination of the grounds, the exterior of the building(s), common areas, and a random sample of the affordable units.
- **Sample Size:** a random sample based on project size.
- **Timing:** IHDA will conduct physical inspections within one year of project completion, and at least once every three years thereafter.

Where possible, IHDA will combine inspections for different programs. For instance, many HOME projects also have LIHTC awards. IHDA will combine the LIHTC and HOME inspection to perform to meet the needs of both cycles, with the exception that noncompliance for HOME-assisted units that are not counted as tax credit units will not be reported to the IRS.

6.3 Noncompliance

6.3.1 LIHTC

IHDA differentiates between noncompliance that is directly related to requirements of the federal LIHTC Program and noncompliance is related to commitments the owner has made to IHDA in its Extended Use Agreement, or other management criteria that reflect best practices upheld by IHDA. IHDA will require correction of noncompliance in any of these categories, and may impose penalties for failure to do so, up to and including extra monitoring fees and prohibition from further participation in IHDA programs.

Noncompliance that is directly related to requirements of the federal LIHTC program must be reported to the IRS, using IRS form 8823. The IRS has published the Guide for Completing Form 8823 to give monitoring agencies guidance on how to identify noncompliance, how it may be corrected, and how and when it should be reported to the IRS.

The IRS Guide identifies categories of findings that it does not consider to be reportable non-compliance. IHDA includes some of these categories here to encourage owners / managers to make effective and accurate determinations of tenant qualification, without making such determinations more restrictive than the LIHTC program requires.

A. Findings that do not Constitute Reportable Non-Compliance:

Imperfections vs. noncompliance: Following the guidance of the IRS, IHDA will differentiate between imperfections and noncompliance. Imperfections are errors or problems of a nature that do not compromise IHDA's ability to make a reasonable determination about the qualification of the tenant and/or the unit. IHDA will respond to imperfections by giving verbal and/or written guidance but will not file a report with the IRS. [Guide 8823, Pg. 4-31]

For example:

1. If the owner has used an incorrect method to calculate income from assets, but household income is thousands of dollars below the income limit, the Asset Manager may make a reasonable determination that interest from household assets would not put household income over the limit. The owner should be instructed to implement the correct method through their written procedures, but the deficiency would not be reported on line 11a of the 8823.
2. However, if an adult household member's income has not been verified, the Asset Manager cannot make a reasonable determination that the household is income qualified and must assume the household is not income qualified and **must report** this on line 11a of the 8823.

Compliance with Other / Non-LIHTC Programs: For properties with sources in addition to LIHTCs, IHDA will differentiate between noncompliance with the LIHTC program, and noncompliance with **other programs**. Noncompliance with other programs, including failure to meet additional income or rent commitments, will not be reported to the IRS, or result in loss of federal tax credits.

Similarly, failure to meet management criteria or best practices upheld by IHDA but not specific

to federal LIHTC eligibility will not be reported to the IRS or result in loss of federal tax credits.

Owner Corrections: If the documentation at the time of an income certification was insufficient, but the owner corrects the insufficiency before IHDA's notice of a compliance review, IHDA will not report the corrected documentation as noncompliance to the IRS. [Guide 8823, Pg. 4-31]

Actual Income Exceeds Projected Income: Owners should also note that income certifications are statements of anticipated income. In some cases, a tenant's actual income may prove to be higher than anticipated at the time of certification. The IRS instructs IHDA and other HFAs to make its determination of compliance based on the best information available at the time of the certification. However, IHDA will consider expanding the sample of its tenant file review if evidence is found that income is under-anticipated repeatedly. [Guide 8823, Pg. 4-33]

Requests for Clarification: IHDA recognizes that multiple parties from an ownership team may review tenant files, especially files for the Initial Year which qualify units for Tax Credits. If the ownership parties have questions about whether a particular feature would amount to a finding of Non-Compliance, they may contact their IHDA Asset Manager for clarification without penalty or without forfeiting the owner's right to make a correction before notice of IHDA's file review.

B. Reportable Noncompliance:

IHDA is responsible for reporting noncompliance to the IRS, including noncompliance that affects any change in the project's applicable fraction or eligible basis. **Owners** are responsible for calculating the tax credits they are eligible for each year based on the project's current qualified basis when making their tax filings with the IRS. The **IRS** is responsible for determining whether owners have claimed the correct number of credits each year, or whether an owner is subject to recapture of credits. IHDA does not determine if noncompliance requires recapture of credits, but the IRS relies on IHDA's filings of IRS Form 8823 to identify noncompliance.

Notice to Owner: In cases where reportable noncompliance is identified, IHDA must provide the owner with written notice that identifies the specific deficiency and give the owner a correction period to address the noncompliance.

Correction Period: In general, IHDA provides a 30-day correction period from the date of IHDA's written notice. Owners may request an extension if they are unable to make corrections within that timeframe. Requests for extension must meet these requirements:

- Must be made in writing
- Must be received by IHDA no later than the last day of the initial correction period
- Must describe the owner's efforts to correct the deficiency
- Must explain why an extension is needed.

IHDA will acknowledge in writing the term of any extension if it is granted. The IRS limits any extension period to no more than 6 months from the date of IHDA's notice to the owner.

IHDA Review: At the end of the correction period, including any IHDA approved extension, IHDA will decide whether:

- The unit or property was always in compliance

- The unit or property was out of compliance but has made corrections that put it back in compliance.
- The unit or property or remains out of compliance. [\[Guide 8823, Pg. 1-1\]](#)

If IHDA concludes that the unit was always in compliance, no report will be made to the IRS. IHDA will notify the owner that no 8823 will be filed and that the finding is closed. [\[Guide 8823, Pg. 1-6\]](#)

If IHDA concludes that the tenant or unit was not always in compliance, IHDA must report the noncompliance to the IRS, even if the noncompliance has been corrected.

IHDA’s Report to the IRS: IHDA will file the Report of Noncompliance, Form 8823, within 45 days of the end of the correction period or approved extension and will indicate on the 8823 if the noncompliance has been corrected.

If noncompliance is corrected after the 8823 has been filed, but within 3 years, IHDA will file a new Form 8823 to indicate that the property is back in compliance. [\[Guide 8823, Pg. 1-1\]](#)

IRS Notice to Owner: On receipt of the 8823, the IRS will send a notification letter to the owner, indicating the type of noncompliance reported, and instructing the owner to contact IHDA to resolve the issue. The IRS notice instructs the owner not to include any non-qualified low-income housing units in its tax credit filing and notifies the owner that noncompliance may result in recapture of previously claimed credits.

Owner’s Tax Filing: Owners are responsible to report any reduction in qualified basis when filing their annual 8609A. In cases where tax credits are being recaptured, the owner must submit a Form 8611 with their tax return, following the instructions on the form.

C. Loss of Tax Credits

Property managers should be aware of how noncompliance translates into recapture of a project’s tax credits. Recapture is triggered when noncompliance results in a decrease in a project’s qualified basis. Recapture may also be triggered if an owner disposes of its ownership interest in a LIHTC project without following federal rules.

Disposition of Ownership Interest: Owners that dispose of their interest in a LIHTC property during the project compliance period may be subject to recapture of tax credits, unless they sell their interest to a new owner who agrees to maintain the affordability commitments. Owners who retain an ownership interest but change the amount for which they are financially at risk may also be subject to recapture. [\[Instructions to Form 8611; 26 USC 42\(j\)\(6\)\]](#)

Changes in Qualified Basis: Qualified basis is the calculation of project costs that are eligible for tax credits, as described in the Introduction. It reflects the **eligible basis**, or qualified costs from the construction budget, and the **applicable fraction**, or portion of project units that are qualified affordable units.

Changes in eligible basis are caused by changes to the building, such as the conversion of common areas to commercial space. Changes in applicable fraction reflect changes to the

proportion of units that are qualified for tax credits. They can be caused by the leasing of low-income units to households who are not income qualified, or not qualified under the LIHTC student rule. Qualified basis may also be affected by physical problems that make a unit uninhabitable.

Start of Noncompliance: When a tenant is found to be unqualified to live in a low-income unit, the unit is out of compliance as of the date an ineligible household moved into the unit through the date it is determined that an income-qualified household occupies the unit. A unit will also be considered out of compliance if the initial certification is inaccurate, documentation of eligibility is insufficient, or no tenant file is on record. If a tenant is charged rent that does not qualify under the LIHTC rent limits, the unit will be out of compliance as of the date the rent exceeds the rent limit, and until the first day of the first calendar year when qualified rent is charged.

Back in Compliance: Units that were out of compliance because they were occupied by an unqualified tenant are back in compliance when it is determined that an income-qualified household occupies the unit. The owner may adjust their credit amount on the next tax return.

Noncompliance due to inadequate documentation of income eligibility may be cured by:

1. A new certification, using current income and income limits. If the household is eligible, the unit would be out of compliance as of the date of move-in, and back in compliance as of the date the new certification is signed. In this case, since the unit was out of compliance, IHDA will file form 8823.
2. A retroactive certification documenting income at the time of initial certification, using income limits in effect at that time. If certification documents that the household was qualified as of move-in, the owner has clarified the unit's compliance and IHDA will not file a form 8823.

Noncompliance due to the move-in of an over-income household may be cured by re-certifying the household as if it is a new move-in if the household's income has dropped. If the household is eligible for the new certification, the unit is considered "back in compliance." [Guide 8823, Pg. 4-35]

Noncompliance due to a late Initial Certification can be cured by completing the certification. The unit is considered out of compliance as of the date of the tenant's move-in, and back in compliance on the date the Initial Certification, indicating that the household is qualified, is signed by all the adults in the tenant's household. [Guide 8823, Pg. 4-36.]

Recapture Determination: IHDA must report changes in qualified basis to the IRS as part of the Report on noncompliance, Form 8823. [Guide 8823, Pg. 3-2] However, IHDA is not responsible for determining if noncompliance will result in recapture of tax credits. Owners are responsible to re-calculate their tax credits based on the project's current qualified basis when preparing their tax filings each year. The IRS is responsible for determining if their filing is accurate, or if noncompliance requires a recapture event.

6.3.2 HOME

Noncompliance puts the owner in violation of its agreements with IHDA, and if left unaddressed will be subject to remedies identified in the HOME Regulatory Agreement.

When noncompliance is identified, whether through review of owner reports, management reviews or physical inspections, provides the owner and manager a written notice of outstanding findings and any corrective actions required, along with the timeframe in which corrective actions must be completed. Owners / managers must address corrective actions within and return any documentation required prior to the due date. IHDA will provide an all-clear letter when all the corrections are made.

6.4 Record Keeping

6.4.1 LIHTC

Federal LIHTC regulations require that owners retain records for each building in the project for at least 6 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, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

Owners who may want to re-syndicate should retain move-in files longer, because owners may qualify existing tenants based on their initial move-in if they have retained these files.

6.4.2 HOME

Owners are responsible for retaining project and tenant records to demonstrate compliance with the HOME program and to make them accessible to IHDA at IHDA's request.

Federal HOME regulations require that owners of rental projects retain records for five years after the project completion date. [\[24 CFR 92.508\]](#)

Records of individual tenant income, rent and unit inspection records must be retained for the most recent five-year period and until five years after the affordability period terminates.

In addition, IHDA requires that owners retain each tenant's initial certification with all documents and verifications demonstrating tenant eligibility for as long as the tenant occupies the HOME assisted unit.

Chapter 7: Post-Compliance Period -- Monitoring & Disposition

Chapter Sections

- 7.1 LIHTC: Post Year-15 Monitoring
- 7.2 HOME: Post Affordability Period Monitoring
- 7.3 Disposition / Termination of Agreement

7.1 LIHTC: Post Year-15 Monitoring

7.1.1 General Requirements

Federal law requires new LIHTC projects placed in service since 1990 to enter an extended low-income housing commitment for at least 15 years beyond the original 15-year tax credit compliance period.

During this extended use period owners are required to meet basic affordability requirements including:

- Leasing tax credit units to qualified low-income households,
- Maintaining affordable rents, and
- Maintaining fair housing and other leasing and occupancy protections.

Other aspects of tax credit compliance are relaxed during this period when the owner is no longer receiving a tax benefit to offset program restrictions. For instance:

- The student rule is not in effect.
 - Note that properties that opted for longer compliance periods (i.e., 30-year period) must continue to enforce the student rule and obtain the annual certification throughout the compliance period. This requirement is NOT waived after year 15.
- Annual income recertifications, where required, are simplified. Every fifth year of the extended use period, the owner/manager must verify income and assets with source documentation. For years in between, tenants may self-certify their income, using the income self-certification form, owner/agents may rely on the self-certification.
- Tenant file audits will be performed by the HFA every fifth year.

Federal requirements for the extended use period are defined in 26 USC 42(h)(6). Details of the owner's commitments to remain in compliance are defined in the Extended Use Agreement between the project owner and IHDA.

In general, the owner's commitments remain defined by the owner's original minimum set aside election and the project's applicable fraction.

Qualified Households: Throughout the extended use period, owner/managers must continue to maintain the same number of affordable units defined in the project's applicable fraction and lease these affordable units to low-income households who qualify under the maximum income

defined in the minimum set aside election. Owners must also maintain any deeper affordability commitments made in the Extended Use Agreement during this period. However, the LIHTC student rule does not apply during the extended use period. If the project receives an additional round of tax credits, households that were previously income qualified at the time of move-in are income qualified for any subsequent allocation of tax credits. **However, each household must also qualify under the tax credit student rule as of the date of the new allocation.** It is not necessary that the household have qualified under the student rule throughout the extended use period prior to the new allocation of tax credits. [Guide 8823, Pg. 4-27]

Income Certifications: Throughout the extended use period, each household must certify their income using the Tenant Income Certification (TIC) prior to move-in. Owners must fully verify the information provided on the Initial TIC, except for student status, which is not required.

During the extended use period, mixed income properties [properties that are **not** 100% affordable] must continue to monitor household income after move-in to ensure compliance with the next available unit rule. After move-in, households must self-certify their income on an annual basis, effective as of the 1st of the month of their original move-in date. However, during the extended use period, owners are not required to verify income certified in the TIC, except prior to move-in, and every 5th year thereafter.

If household income increases, the household does not become ineligible to remain in the affordable unit, but if the household income increases to 140% or more of the maximum income limit, the owner must lease the next market unit that becomes available to an income qualified household at a qualified or restricted rent.

Properties that are 100% Affordable will not be required to monitor household income for purposes of the LIHTC program after move-in, because they always apply the next available unit rule by default. Households at these properties are not required to complete a Tenant Income Certification after move-in for the term of the extended use period. They may be required to monitor incomes for other programs tied to the project.

Qualified Rents: Owners are prohibited from increasing gross rents for affordable units more than the LIHTC maximum rents throughout the extended use period. The sole exception is affordable units that have been converted to market units, by application of the next available unit rule, for which LIHTC program rent restrictions no longer apply.

Owners should be aware that federal regulations allow individuals who would qualify for a project's affordable units to enforce the continued affordability provisions in state court. The enforceable provisions include prohibitions against increasing gross rent over the affordable rent limits. The individual does not have to be a current tenant to seek enforcement through the courts, he or she may be a prospective, present, or former occupant of the project.

Other Occupancy Provisions: Other laws and regulations that continue to apply throughout the extended use period include:

- Prohibition against evictions of existing low-income tenants for other than good cause. This prohibition is one of the guarantees that an individual might seek to enforce through the state courts.
- Fair housing laws
- Prohibition against discriminating against tenants holding Section 8 Vouchers
- All parts of the project included as a basis for the original LIHTC award, whether in residential, commercial, or common areas, must be available to the general public.

7.1.2 IHDA Monitoring – Extended Use Period

Annual Owner’s Certification: Owners must continue to submit the annual owner’s Certification that the project has maintained compliance with its Extended Use Agreement.

Tenant Event Reporting: Owners must continue to enter annual Tenant Event Information in DMS as required. For example, mixed-income projects will still report tenant income certifications as well as rents; 100% affordable projects must enter lease renewals, including lease dates, rents, utility allowance, and subsidy amounts. Projects with other IHDA program awards may be required to report additional tenant event information for those awards.

Ongoing Inspection / Tenant File Review: IHDA will continue to conduct compliance inspections once every 5 years, including unit inspections and tenant file reviews.

Training Requirements: IHDA requirements for regular staff training continue to apply during the LIHTC extended use period.

Compliance Fees: Compliance fees will be assessed during the extended use period in accordance with the IHDA-approved fee schedule. Owners who fail to report or correct substantial noncompliance will be charged substantial penalty fees.

Penalty Fees: Owners that fail to report or to make themselves available for Management Reviews and Inspections will be subject to penalty fees and may be placed on IHDA’s No Further Participation List. IHDA may also take legal action to collect fees from owners that fail to pay.

Correction of Findings: Where IHDA finds noncompliance, IHDA will send a letter notifying the owner of the noncompliance along with a cure period for corrections. Owners must make corrections and send evidence to IHDA within the correction period. Failure to address noncompliance may cause IHDA to place the owner on its No Further Participation list, causing the owner to be barred from any further IHDA funding.

7.1.3 IHDA Monitoring – Post-Qualified Contract

Projects whose extended use period is terminated through the qualified contract process are required to maintain project affordability for 3 years from the date of termination or release of the Extended Use Agreement.

As low-income tenants move out during this period, the owner/agent may lease the vacant unit to market applicants. However, owners are not permitted to evict or terminate tenancy for other than good cause of any existing tenant of a low-income unit and may not raise rents above the LIHTC rent limit.

Certain compliance requirements remain in effect. Owner/agents must continue to:

- submit annual rent and utility allowance reports,
- submit IHDA's Annual Consolidated Cert of Compliance,
- report tenant events and complete the LIHTC program Annual Owners Certification in DMS Authority Online.
- pay annual tax credit compliance fees, based on the number of tax credit units at the end of each calendar year.

7.1.4 Resyndication

Upon receipt of credit allocation, owners make a long-term commitment to maintain the buildings as low-income housing for at least 30 years beginning with the first day of the 15-year compliance period. Any subsequent allocation of IRC §42 credit is known as **resyndication**.

The subsequent allocation of credits will have a new extended use agreement for at least 30 years or more that will start with the new credits. In other words, the extended use periods will overlap by several years. The Building Identification Number(s) (BIN) assigned for the first allocation will continue to be used for subsequent allocations.

Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit. In other words, people who income qualify for tax credits for the first set of credits who are in place at the start of the second set of credits automatically continue to qualify as tax credit qualified for the second set, regardless of income at the time of the start of new credits. Sometimes this is referred to as "Safe Harbor" or "grandfathering" those residents into the new credits.

Income Qualifying Households During First Year of the 10-Year Credit Period

Under IRC §42(f)(2), the applicable fraction for the first year of the credit period is computed based on a month-by-month accounting of units or floor space occupied by income-qualified households. In the case of buildings that were acquired and then rehabilitated, there are two separate allocations of credit documented on two Forms 8609: one for the acquisition credit and a separate allocation for the rehabilitation credit. However, the owner is not required to determine two applicable fractions. Under IRC §42(e)(4)(B), the applicable fraction for the substantial rehabilitation credit will be the same as the applicable fraction for the acquisition credit. Therefore, for purposes of computing the applicable fraction under IRC §42(f)(2), the following units are considered low-income units:

1. Units occupied before the beginning of the credit period, which are determined to be low-income at the beginning of the credit period under Rev. Proc. 2003-82.
2. Units initially occupied after the beginning of the credit period by newly certified income-qualified households (regardless of whether rehabilitation costs have been incurred for the unit).
3. Units occupied by income-qualified households that moved from other units within the project. The household's lease and tenant income certification (with effective date) move with the household (See 8823 Guide Pg. 4-23 for more information).

Units are *not* included in the numerator of computation of the applicable fraction if:

1. The unit is occupied by a nonqualified household.
2. The unit is vacant and was last occupied by a nonqualified household.
3. The unit is not suitable for occupancy under IRC §42(i)(3)(B)(ii). These units, including units being rehabilitated, are considered "out of compliance." The noncompliance is corrected when the unit is again suitable for occupancy. The unit's character will be determined based on the household that occupied the unit immediately preceding the rehabilitation during the first year of the credit period.

Documentation Requirements

For a unit to be included as a low-income unit, documentation of the household's initial eligibility must be on file with the owner. Under IRC §6001, every taxpayer is required to maintain records sufficiently detailed to prepare a proper tax return. This requires the maintenance of such permanent books and records sufficient to establish the amounts of gross income, deductions, credits, or other matters to be shown on the taxpayer's return. This requirement extends to the preparation and maintenance of tenant files sufficiently documented to support household eligibility for purposes of claiming the low-income housing credit under IRC §42 (Refer to Section 4.6 on Page 39).

In order to establish a unit as a qualified housing tax credit unit, the household's Gross Annual Household Income must be at or below the elected area median income (AMI) limit or national nonmetropolitan median gross income (NNMGI) limit when applicable, adjusted for family size. Household income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937. Therefore, the definitions of the income of individuals and AMI for purposes of IRC §42(g)(1) include items of income that are not included in a taxpayer's gross income for purposes of computing a federal tax liability. The initial tenant income certification must be completed and signed by all the tenants 18 years and older on or before the move-in date.

The compliance monitoring regulations under Treas. Reg. §1.42-5 establish the minimum monitoring requirements. State agencies can determine how documents are maintained and may mandate the use of standardized forms to document an owner's compliance with the requirements under Treas. Reg. §1.42-5.

At minimum, IHDA requires that the original file proving that the household qualified for the first set of credits should be retained with the files establishing the second set of credits.

The 8823 Guide pages 4-35 & 36 states "If the original file is not available, principle for move-in file paperwork compliance ...indicate that a subsequent recertification file demonstrating that the household qualified under the limits in effect at the time of recertification establishes a point that the household qualified, even if after move-in. Alternatively, a certification created retroactively back to the move-in date can accomplish the same thing.

To ensure a clean file that meets today's standards, an owner may consider doing a complete recertification on in-place households. If the household qualifies under current income limits for the new credits, no further work is necessary. If they do not qualify, then the above paperwork, along with a note explaining why the older paperwork is being used, can be placed in the file to take advantage of the grandfathering provision.

Grandfathered households continue to qualify based on their original certification, income limits at the time of the start of the new credits are not fundamentally relevant to their status with the new credits. However, if a household is being certified under current limits, then current limit will be used. Households who move in after the start of the new credits will also be held to the current income limits.

Resyndication established a new placed in-service date for the second set of credits. The rent restrictions will be calculated based on the **current income limits** applicable to the property, or the gross rent floor in place with the second allocation, whichever is higher. Income limits will hold harmless from the **new placed in-service date** on. Households in place may automatically income-qualify for the new credits, but their rent may not be correct and will need to be adjusted to be eligible for the tax credits.

The project will no longer be eligible for the HERA limits.

Household who qualified at move-in are income-eligible, this does not indicate that they are grandfathered in regardless of **student status**.

When the new credits affordability period begins, an income test will be done on all residents. This is generally a self-certification with additional supporting documentation provided by the household if necessary (see 8823 Guide guidance on income testing when credits start). If a household is over-income (over 140% of the current income limits) at the start of credits, the Available Unit Rule is invoked. The next available unit of the same or lesser size will need to be rented to an eligible household until the over-income unit is replaced and the applicable fraction for the building is restored.

If eligibility documentation is imperfect, yet sufficient for the monitoring agency to make a reasonable determination that a household is eligible, the owner should be advised of the

imperfections and the need to implement procedures ensuring that similar imperfections do not occur in the future. Imperfections are not of a nature that would cause the unit to be considered out of compliance and will not result in reportable noncompliance.

Units are considered out of compliance as of the date an ineligible household moves into a unit. A unit will also be considered out of compliance if the initial tenant income certification is inaccurate, documentation of initial eligibility is insufficient, or no initial tenant file is on record.

Note: Rev. Proc. 2003-82, 2003-2 C.B. 1097, provides a safe harbor under which, if certain conditions are met, a residential rental unit in an existing building acquired by a new owner or in a rehabilitated building will be treated as a low-income unit even though the occupants' incomes exceed the income limit at the beginning of the building's 10-year credit period. In order to qualify, the household must have been income-qualified at the time the owner acquired the building or the date the household started occupying the unit, whichever is later. The owner must maintain documentation of the income qualification and the unit must be rent restricted.

7.2 HOME

HOME program requirements are in force for the full term of the affordability period as defined in the HOME Regulatory Agreement.

Additionally, project owners have entered a loan agreement with IHDA whose term may extend beyond the HOME affordability period. In years after the HOME affordability period has expired but before the loan has come to term, projects will continue to be subject to terms of loan agreement and the IHDA Act.

- The owner must continue to lease new units to low-income households, with incomes no greater than 80% AMI. Tenants are not required to re-certify their incomes after move-in during this period.
- IHDA will continue to conduct periodic management reviews, including reviews of tenant income certifications for new move-ins and other compliance requirements.
- The project will also be subject to periodic IHDA physical inspections.

7.3 Disposition /Termination of Agreement

7.3.1 LIHTC

Terms of the Extended Use Agreement are in force for the full term of the Agreement.

Foreclosure may result in termination of Extended Use Agreement commitments, unless the Treasury determines that acquisition by foreclosure is part of an arrangement with the taxpayer to escape the Extended Use Agreement.

Owners who seek to terminate their extended use agreement period are required by federal rules to give IHDA the opportunity to present a qualified contract for the purchase of the building by a buyer that would maintain the LIHTC project's affordability.

If IHDA is unable to present such a qualified contract within 1 year from the date of the owner's request, the extended use period can be terminated. However, certain provisions, such as the income targeting, rent restrictions and prohibitions on evictions without cause are, by law, in effect for 3 years from the last date of the 1-year qualified contract search period. [26 USC 42(h)(6)(E)]

Owners remain responsible for tax credit fees and for the annual compliance requirements as described above in **Section 7.1.3** of this manual throughout the 3-year continued affordability period after IHDA's search for a qualified contract.

7.3.2 HOME

Project affordability commitments are guaranteed by recorded restrictions running with the title to the land and remain in effect for the duration of the affordability period, even if the loan is repaid, or the property is sold or transferred to new ownership. Notice requirements for the sale or transfer of the property are addressed in the project's HOME regulatory agreement.