


Housing Credit 101
Monitoring and Program Compliance

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HOUSING CREDIT CONNECT 2018



HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Minimum Set-Asides

Pre-March 23rd {


- Set aside at least **20% of units** in a project to be rent restricted for households with incomes at or below **50% of area median income**

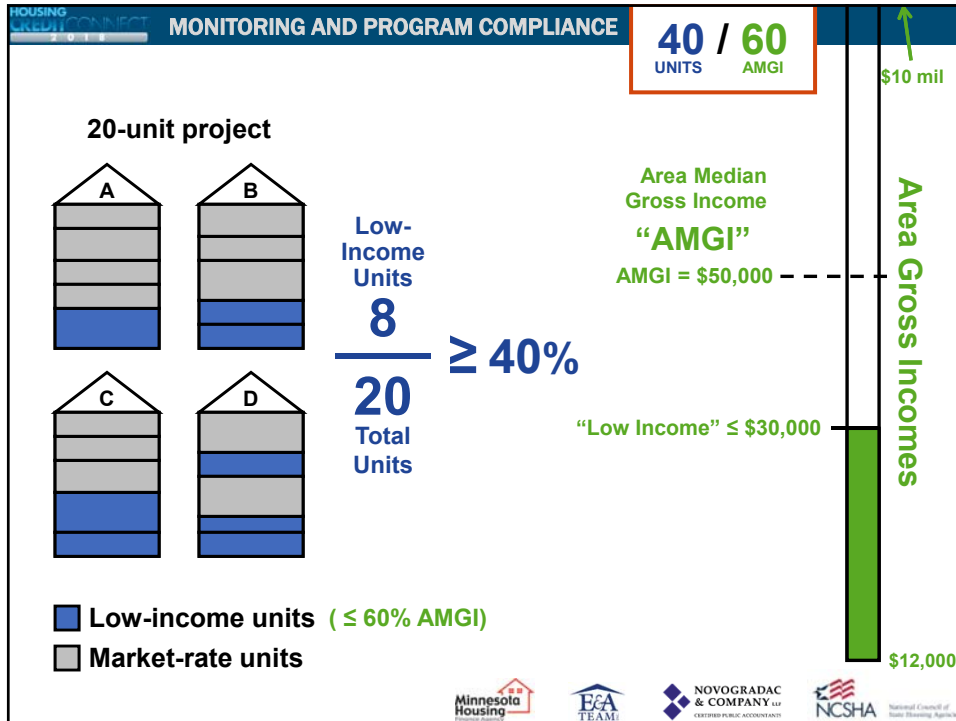
OR

- Set aside at least **40% of units** in a project to be rent restricted for households with incomes at or below **60% of area median income**

NOW! {

- Set aside at least **40% of units** in a project to be rent restricted and have household income limits (designated in 10% increments from 20% to 80%) that on average are at or below **60% of area median income**





MONITORING AND PROGRAM COMPLIANCE

Income Averaging

- Must be **20%, 30%, 40%, 50%, 60%, 70% or 80%** (both rent and income)
- Can reach **60% average** in a number of ways
- **No federal requirement** to designate a pro-rata share among bedroom sizes
- Agencies could adopt policies that are more restrictive

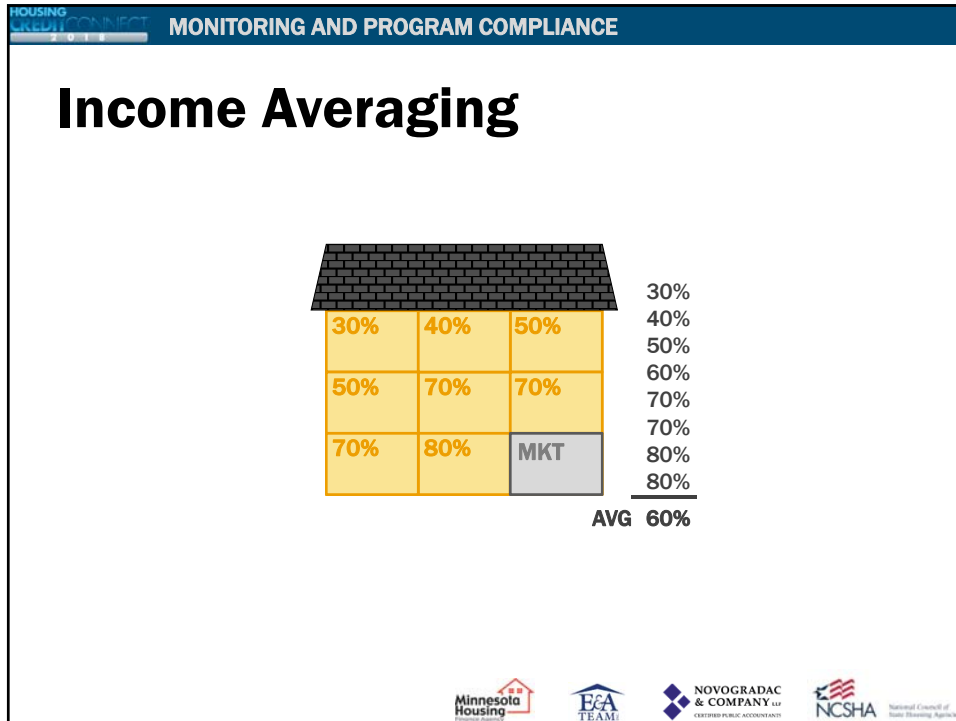
1 unit at 20 percent allows...

2 units at 80 percent

OR

4 units at 70 percent

OR...



HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

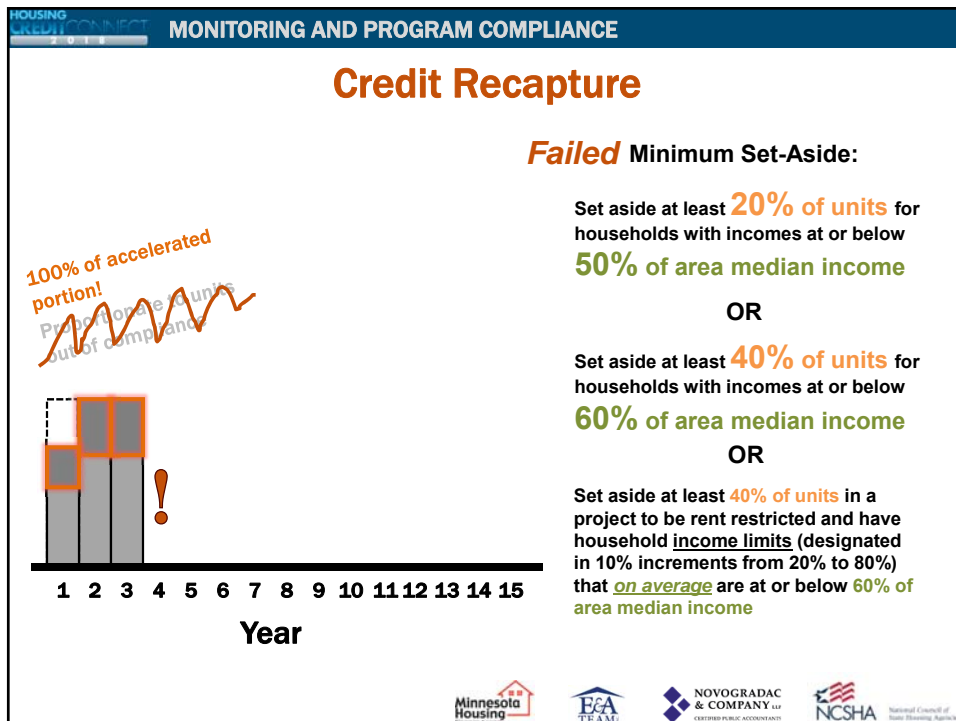
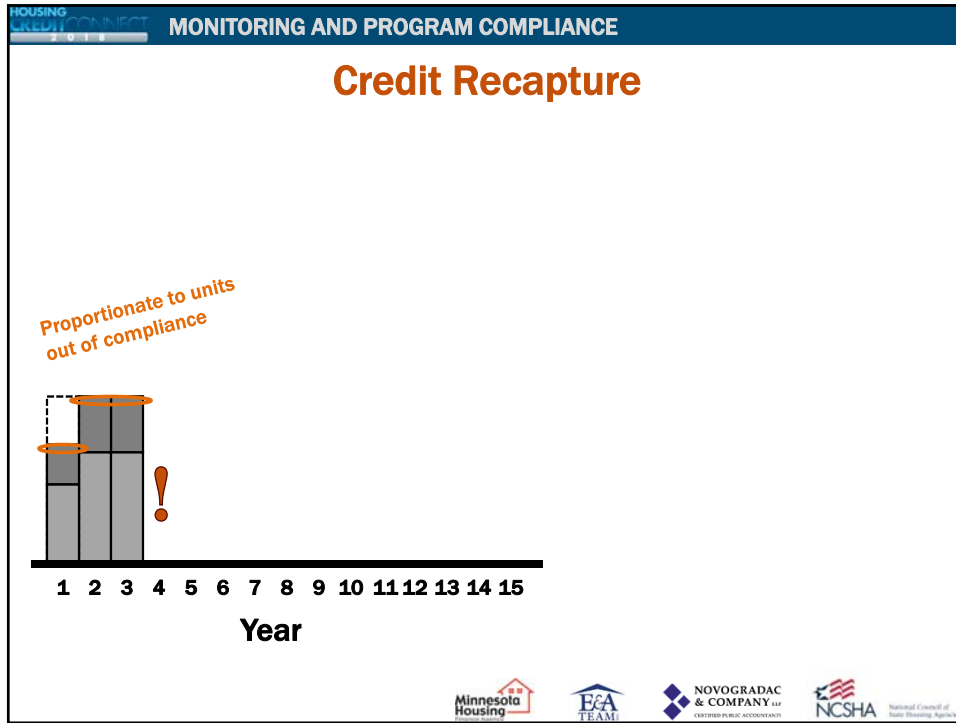
What's the *penalty* for not meeting the minimum set-aside?

Year 1: Building/project doesn't qualify for *any* credits...ever!

Year 2-15: *100% recapture* of accelerated credits

And failure to earn *any new credits* when minimum set-aside is not met

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Failed Minimum Set-Aside:

Set aside at least **20% of units** for households with incomes at or below **50% of area median income**

OR

Set aside at least **40% of units** for households with incomes at or below **60% of area median income**

OR

Set aside at least **40% of units** in a project to be rent restricted and have household **income limits** (designated in 10% increments from 20% to 80%) that **on average** are at or below **60% of area median income**

HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Wait, I'm a little confused by the applicable fraction and the minimum set-aside. They seem very similar.

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Applicable Fraction vs. Minimum Set-Aside

How many credits?	①	Any credits at all?
Individual buildings	②	Building –OR– Project
Lesser of “unit fraction” and “floor space fraction”	③	Unit % only

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MONITORING AND PROGRAM COMPLIANCE

Applicable Fraction vs. Minimum Set-Aside

Eligible basis	\$1 Mil	
<u>Applicable fraction</u>	x 30%	40 at 60 UNITS INCOME
Qualified basis	\$ 300k	
Tax credit percentage	x 9%	
Annual tax credits	\$27k	

Unit fraction = **40%**
 Floor space fraction = **30%**

The single-building project passes the minimum set-aside with a unit fraction of 40%, but the applicable fraction will be 30% (the lower of the unit fraction or floor space fraction).

Low-income-qualified units
 Market-rate units

MONITORING AND PROGRAM COMPLIANCE

Applicable Fraction vs. Minimum Set-Aside

Eligible basis	\$1 Mil	
<u>Applicable fraction</u>	x 35%	40 at 60 UNITS INCOME
Qualified basis	\$ 350k	
Tax credit percentage	x 9%	
Annual tax credits	\$31.5k	

Unit fraction = **35%**
 Floor space fraction = **40.83%**

59.17% **40.83%**

Low-income-qualified units
 Market-rate units

FAIL

HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

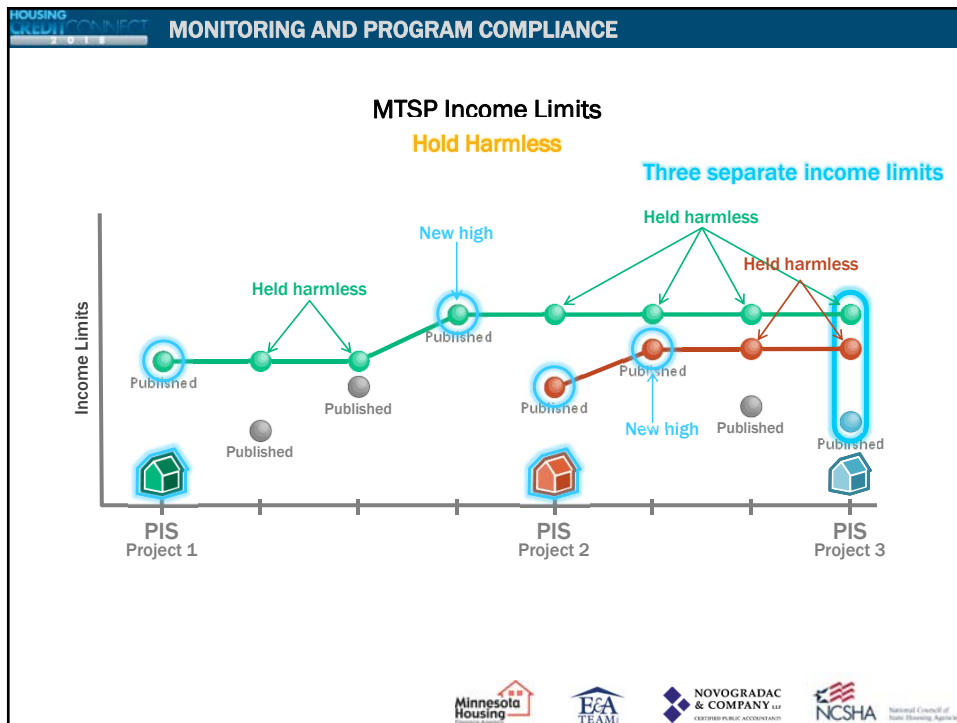
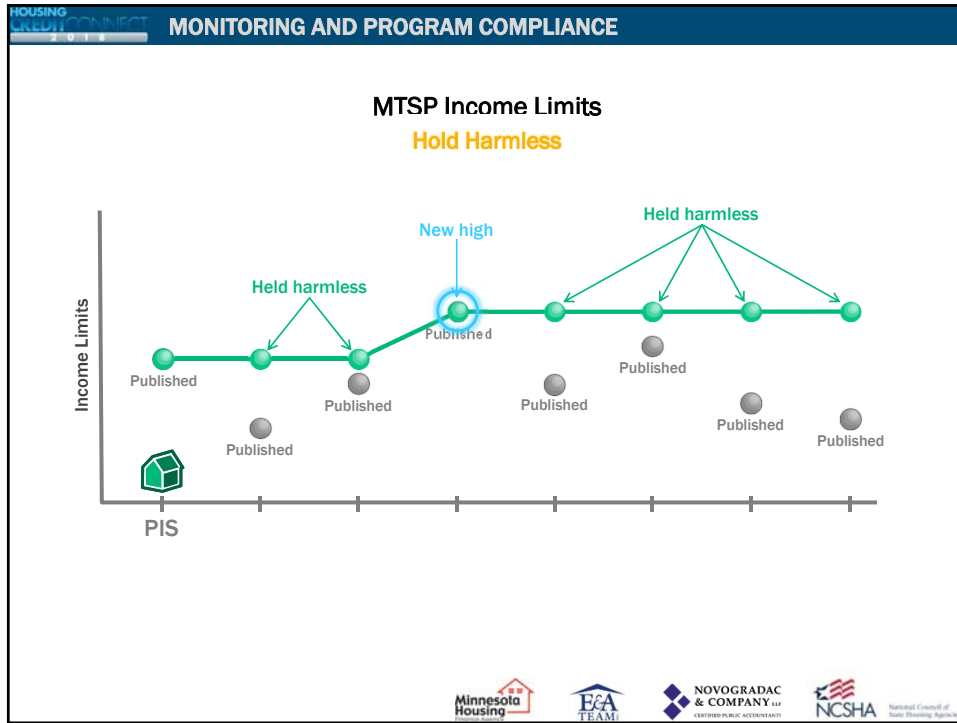
Income Limits

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- HUD/MTSP income limits are published for metro areas and non-metro counties throughout the country.
- Target release date of **April 1st** of each year
- Used to determine which households qualify and the maximum rent owners may charge low-income households occupying LIHTC units.


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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

You can only climb
UP the income
ladder,

You cannot climb
down....



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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Hold Harmless

- LIHTC and Tax-Exempt Bond Projects' income limits are held harmless from decreases in AMGI.
- Hold Harmless is applied on a project basis; a project must be in service in the prior year to be held harmless at that prior year level.

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

E&A Team, Inc. Presents...

Conquering LIHTC Program Compliance



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CONQUERING LIHTC COMPLIANCE

TENANT ELIGIBILITY

Filling in the missing pieces regarding compliance





CONQUERING LIHTC COMPLIANCE

Fair Housing & VAWA Students Calculating Calculating Verification
 & VAWA g Assets Requireme

Fair Housing & VAWA



Violations of the Fair Housing Act are also considered LIHTC compliance violations

A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development, an adverse final decision by a substantially equivalent state or local fair housing agency,

THE FHA prohibits discrimination in housing based on seven federally protected classes.

Race	Sex was added as a protected class in 1974
Religion	Disability was added as a protected class in 1988
National Origin	Familial status added as a protected class in 1988
Color	

The above classes are considered federally protected classes. It is important to be aware that there may be additional protected classes based on the state or county where the housing is located

CONQUERING LIHTC COMPLIANCE

Fair Housing & VAWA



Fair Housing & VAWA

Fair Housing & Accessibility

The accessibility requirements under the FHA applies to any Multifamily residential construction with buildings containing four or more units designed and constructed for first time occupancy after March 13, 1991. The Act specifies certain **features of accessible design** and certain **features of adaptable design**.

There are seven design and construction requirements that covered projects must meet:

1. Accessible building entrance on an accessible route
2. Accessible and usable public and common use areas
3. Usable doors
4. Accessible routes into and through covered unit
5. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
6. Reinforced walls in bathrooms for later installation of grab bars
7. Usable kitchens and bathrooms



CONQUERING LIHTC COMPLIANCE




Fair Housing & VAWA

Fair Housing & VAWA

VAWA 2013

VAWA 2013 accomplished the following:

- Reauthorized funding for programs previously created under the Office on Violence Against Women (OVW)
- Modified and expanded grant conditions
- Added and expanded definitions of many terms used in the Act
- Expanded the housing programs that VAWA applies to: housing protections for applicant and tenants:



CONQUERING LIHTC COMPLIANCE



Fair Housing & VAWA

Fair Housing & VAWA

VAWA 2013

- ✓ Public Housing properties
- ✓ Section 8 properties
- ✓ USDA Rural Housing (RD) properties
- ✓ Low-Income Housing Tax Credit properties
- ✓ HUD's McKinney-Vento homeless programs
- ✓ HOME Investment Partnerships program
- ✓ Section 221(d)(3) Below Market Interest Rate (BMIR) Program
- ✓ Section 236 Rental Program
- ✓ HOPWA housing program
- ✓ Section 202 supportive housing for the elderly
- ✓ Section 811 supportive housing for people with disabilities
- ✓ Housing Trust Funds**

ADDED PROGRAMS VAWA 2013



CONQUERING LIHTC COMPLIANCE



Direction Students &

Determining Student Eligibility

In order for a household to be eligible to occupy a Low-Income Housing Tax Credit (LIHTC) unit, the household must meet the LIHTC program's student eligibility requirements.

A household comprised entirely of all **full-time** students (of any age) whom attend school at an **educational organization** are not eligible to occupy a LIHTC unit, unless the household meets one of **5 exceptions**.

If the household contains one member who is not a full-time student, the household is not considered a full-time student household.



CONQUERING LIHTC COMPLIANCE



Direction & Students

Full-time Student Defined

Full-time Student Defined

A full-time student is a student who attends school full-time for **all or parts of any 5 months out of the calendar year** in which the taxable year of the taxpayer begins. One day is considered "part of a month."

The assessment of whether a student is determined to be full-time or part-time is determined by the educational organization.



CONQUERING LIHTC COMPLIANCE



Direction & Students

Full-time Student Exceptions

A. Individual Student Exceptions:

1. **A single household member receives** assistance under Title IV of the Social Security Act, i.e., **Temporary Assistance for Needy Families (TANF)**.
2. **A single household member was previously** under the care and placement responsibility of the state agency responsible for administering a plan under Part B or part E of Title IV of the Social Security Act i.e., **foster care**.
3. **A single household member is enrolled** in a job training program receiving assistance under the **Job Training Partnership Act (JTPA)** or under other similar Federal, State, or local laws. The **Workforce Investment Act (WIA)** replaced JTPA in 2000.

For a program to be considered similar to JTPA, it should have a similar mission statement and receive government funding.





CONQUERING LIHTC COMPLIANCE

Direction & Students

Full-time Student Exceptions

B. Household Student Exceptions:

4. All adult students are single parents with dependent child(ren). In order to meet this exception, no household member (adult or child) can be claimed as dependent by another individual, other than the parent of such child(ren) who does not live in the unit.
5. All adult students are married and file a joint tax return. Per the 8823 guide, a married couple that is entitled to file a joint tax return, but has not filed one, still satisfies this exception.




CONQUERING LIHTC COMPLIANCE

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Full-time Student Exceptions

ASK YOUR HFA

Some state Housing Finance Agencies (HFA) have differing requirements regarding the exceptions to the student rules. Make sure to thoroughly read your HFA's requirements regarding student eligibility and find your HFA's stance on the following exceptions.



- Does your HFA allow a single student to meet the "single parent/dependent child" exception, instead of requiring all students to meet the exception?
- Does your HFA allow a single student to meet the or the "married and entitled to file" exception, instead of requiring all students to meet the exception?
- Does your HFA impose any time limits or age limits to the foster care exception? I.e. In some states, in order to meet the foster care exception, the student would need to be under age 24 and exited the foster care system within the previous 6 years.






CONQUERING LIHTC COMPLIANCE

Direction & Students Calculating

Method of Determining Annual Income

LIHTC – Method of Annual Income Determination

Per IRS Notice 88-80, the Low-Income Housing Tax Credit Program (LIHTC) uses the Housing and Urban Development's (HUD) method of determining annual household income for HUD's Section 8 program. HUD's annual income rules can be found in Chapter 5 of the HUD 4350.3. These rules are based on **24 CFR 5.609**



CONQUERING LIHTC COMPLIANCE

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Earned Income v. Unearned Income

Earned Income:
Income received that is wages, tips, or other compensation for work performed.

1. Wages
2. Self-Employment
3. Military Pay

Minors (under 18): EXCLUDE ALL EARNINGS

Adult, Dependent, Full-time Students (not head, co-head, or spouse of head) EXCLUDE ALL EARNINGS IN EXCESS OF \$480



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Earned Income v. Unearned Income

Unearned Income:

Income received that is not wages, tips, or other compensation for work performed.

4. Income from Assets
5. Social Security, Pensions, etc.
6. Welfare
7. Periodic Allowances (Cash & Non Cash Contributions, Child Support, & Alimony)
8. Unemployment Compensation
9. Student Financial Assistance

**INCLUDE FOR ALL
HOUSEHOLD MEMBERS**

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

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

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at **45 CFR 260.31**; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus


(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.


HUD 4350,3 Exhibit 5-1 Income Inclusions



INCOME EXCLUSIONS:

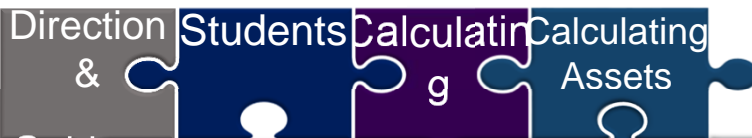
- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in 24 CFR 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
- (8) (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3
 (b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);
 (c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time; or
 (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
- (14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- (15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

**HUD 4350,3
 Exhibit 5-1
 Income
 Exclusions**



CONQUERING LIHTC COMPLIANCE



Direction & Students Calculating Assets



Calculating Income from Assets

Two Asset Income Calculations

- 1. Actual Income**
- 2. Imputed Income** (Only calculated when assets exceed 5K)

CONQUERING LIHTC COMPLIANCE



Direction &
Students
Calculating
Calculating Assets

Calculating Income from Assets

1. Actual Income from Assets

If the **Cash Value** of total assets of **\$5,000 or less**, the amount of **asset income** included in annual income is the **actual income** to be derived from these assets. Not all assets produce actual income. Below is a chart that provides the determination of Market Value, Cash Value and Actual Income from assets.

\leq 5K






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Calculating Income from Assets

Asset	Market Value	Cash Value	Actual Income Determination
Checking	6 month Average	6 month average	Market Value X interest rate
Savings Account	Current Balance	Current Balance	Market Value X interest rate
CD	Current Value	Market Value less cost to turn asset into cash	Market Value X interest rate
IRA, 401K, Keogh	Current Value	Market Value less penalty for early withdraw	Market Value X interest rate
Retirement/Pension	Current Value	Market Value less penalty for early withdraw	Market Value X interest rate
Bonds	Redeemable Value	Redeemable Value	Market Value X interest rate
Money Market	Current Value	Current Value	Market Value X interest rate
Revocable Trust	Amount accessible to household	Amount accessible to household	Actual income received in interest income
T-Bills	Purchase Price	Purchase Price	Difference between Face Value and Purchase Price
Stocks	# of shares X price per share	Market Value less cost to turn asset into cash	# shares owned X dividend earned per share
Mutual Funds	Current Value	Market Value less cost to turn asset into cash	Annual dividends earned * can be based on past performance
Whole Life	Surrender Value	Surrender Value	Surrender Value X Interest Rate
Mortgage / deed	Principal Balance	Principal Balance	12 months of interest payments
Real Estate	Value on open market	Market Value less the cost to sell	No actual income unless home is being rented and then the net rental income becomes the income from this asset
Personal Property	Value on open market	Market Value less the cost to sell	No actual income
Lump Sum receipts	Current amount of sum	Current amount of sum	No actual income

CONQUERING LIHTC COMPLIANCE

Direction & Students Calculating Assets

Calculating Income from Assets



Imputed Income

If the Cash Value of all household assets exceeds \$5,000, the amount of asset income included in the calculation of annual income, is the **greater of**:

1. **Actual income** to be derived from the assets; or
2. **Imputed income** from assets.

Imputed Income is calculated by multiplying the Cash Value of all household assets by the current HUD passbook rate of **.06** %.
HUD will publish the passbook rate annually.

>5K





CONQUERING LIHTC COMPLIANCE

Direction & Students Calculating Assets Verification Requirements

Legal Authority

Treasury Regulation
Verification requirements for the Low-Income Housing Tax Credit program can be found in Treasury Regulation 1.42-5, which states:

(vii) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42 (g);




CONQUERING LIHTC COMPLIANCE

Direction &StudentsCalculatingCalculatingVerification



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Additional Guidance:

8823 Guide



The preferred verification method is through third parties, and such verifications must be no older than 120 days before the effective date of the Tenant Income Certification. Verification may be written documentation (mail), oral (telephone), or electronic (facsimile, e-mail, or Internet). Where applicable, there should be further evidence to support the third party verifications; e.g., a copy of a divorce decree showing award of maintenance or child support, a realtor's statement of market value for a home, a self-employed tenant's tax return, etc. When third party verification has been delayed or attempted, but is not possible, documentation may be by check stubs, W-2's, bank statements, etc. Self-certification (notarized statement or signed affidavit) may be accepted if third party verification or other documentation cannot be obtained. Documentation of attempts to obtain verification, however, must be kept on file. Student Status - Depending upon the student status of each household member, student verification may be required.





CONQUERING LIHTC COMPLIANCE

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While the previously mentioned treasury regulation reflects the minimum documentation requirements, in order to practice due diligence and per the 8823 Guide, the following is the preferred method of verifying household information as it relates to eligibility requirements:

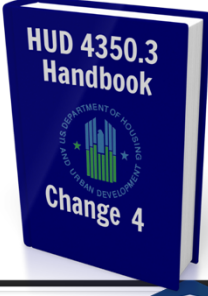
1. **Third-Party Verification**
2. **Review of Documents**
3. **Household Certification**





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Verification Requirements

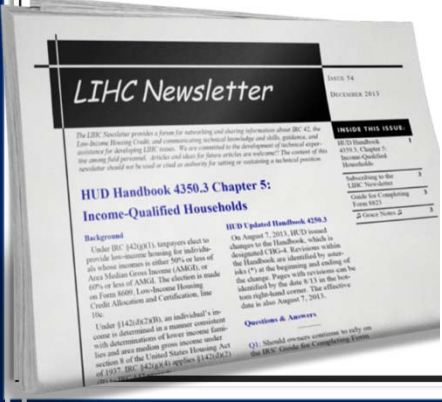
What about HUD Verification Requirements?



CONQUERING LIHTC COMPLIANCE



Direction &
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Verification Requirements



Issue 54

Q2: Must owners obtain documentation of income as described in Chapter 5, Section 3, of the Handbook?

A2: While the documentation requirements described in handbook are sufficient for IRC §42 purposes, Handbook 4250.3, Chapter 3, Section 3, Verification, is not the authority for documentation requirements.



CONQUERING LIHTC COMPLIANCE

Direction & Students Calculating Assets Verification Requirements

Challenges:

Some management companies, investors and Housing Finance Agencies do not allow HUD verification requirements. The reason being that using tenant provided documents may not paint the entire income picture needed to anticipate income for the 12-month period following certification, especially as it relates to wages.

- Paystubs do not show anticipated raises or other changes in the tenant's rate of pay.
- With the current state of technology, it is easier than ever to alter paystubs. LIHTC properties do not have the added benefit of using HUD's Enterprise Income Verification (EIV) System to help identify tenant fraud.



CONQUERING LIHTC COMPLIANCE

Direction & Students Calculating Assets Verification Requirements

Other Acceptable Forms of Verification



Section 8 Voucher Holders

If a tenant or applicant has a Section 8 housing assistance voucher, an owner may accept a **statement from the Public Housing Authority (PHA)** declaring that the applicant or tenant's **Self-Certification of Asset Income**

If the combined CASH value of ALL household assets is less than \$5,000, the owner may accept a self-certification from the household declaring value of all assets and the income from such assets. This is an HFA approved form, usually referred to as the "Under \$5,000 Asset Certification Form."

Social Security Benefit Letter

Generally, the annual benefit letter for social security benefit recipients is considered third-party verification and can be used as verification all year. This does not apply to Supplemental Social Security Benefits, as these benefits may fluctuate throughout the calendar year.



CONQUERING LIHTC COMPLIANCE

Direction & Requirements | Students | Calculating g | Calculating Assets | Verification Requirements

Other Acceptable Forms of Verification




Section 8 Voucher Holders

If a tenant or applicant has a Section 8 housing assistance voucher, an owner may accept a **statement from the Public Housing Authority (PHA)** declaring that the applicant or tenant's income does not exceed the applicable income limit applicable under the LIHTC program.

ASK YOUR HFA

- Can the annual Social Security benefit letter be used?

Some HFAs do not allow the annual social security benefit letter to be used.



CONQUERING LIHTC COMPLIANCE

Direction & Requirements | Students | Calculating g | Calculating Assets | Verification Requirements

Other Acceptable Forms of Verification




Self-Certification of Asset Income

If the combined CASH value of ALL household assets is less than \$5,000, the owner may accept a self-certification from the household declaring value of all assets and the income from such assets. This is an HFA approved form, usually referred to as the "Under \$5,000 Asset Certification Form."

ASK YOUR HFA

- Is self-certification of assets under \$5K permitted at initial certification?
- Is self-certification of assets under \$5K permitted at recertification?

Some HFAs do not permit self-certification of assets at initial certification but will allow this method to be used at annual recertification. Some HFAs may not allow the self-certification of assets at all, and instead require that all assets be verified regardless of value.



CONQUERING LIHTC COMPLIANCE

Direction & Requirements | Students | Calculating g | Calculating Assets | Verification Requirements

Other Acceptable Forms of Verification




Social Security Benefit Letter

Generally, the annual benefit letter for social security benefit recipients is considered third-party verification and can be used as verification all year. This does not apply to Supplemental Social Security Benefits, as these benefits may fluctuate throughout the calendar year.

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Some HFAs do not allow the annual social security benefit letter to be used.






CONQUERING LIHTC COMPLIANCE

Direction & Requirements | Students | Calculating g | Calculating Assets | Verification Requirements

Verification & Documentation Dates

Verifications and documentation must be no older than 120 days before the effective date of the Tenant Income Certification.






CONQUERING LIHTC COMPLIANCE

Direction & Requirements Students Calculating Calculating Assets Verification Requirements

Verification & Documentation Dates

Verifications and documentation must be no older than 120 days before the effective date of the Tenant Income Certification.



E&A Team, Inc. Presents...



Conquering LIHTC Program Compliance



Presented by:
Amanda Lee Gross
amandalee@EandAteam.com



HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

AVAILABLE UNIT RULE

Treasury Regulation §1.42-15

- Applicable when tenant income goes over 140% of the federal income limit (20/50 or 40/60)
- Initial qualification required
- **Building-based rule**
- If tenant income rises above 140%, need to rent next available unit of comparable or smaller size to low-income tenant

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

Treasury Regulation 1.42-15

Income Limit

140% ✓ But...

Initial Certification (move in) Recertification

If a household is over the income limit at recertification, they are NOT unqualified and should NOT be evicted. However, the available unit rule will now have been triggered.

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MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

The unit whose household's income exceeds 140% of the income limit at recertification will remain LIHTC qualified until any newly available unit of comparable or smaller size in the same building is leased to a market-rate household.

Floor Space Fraction	Unit Fraction
$\frac{3,000 \text{ sq. ft.}}{5,400 \text{ sq. ft.}} = 55.56\%$	$\frac{5}{9} = 55.56\%$

MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

Neither the leasing of a LARGER available unit within the SAME building to a market-rate household nor the leasing of a market-rate unit of any size in ANOTHER building will cause the over-140-percent unit to be unqualified.

Floor Space Fraction	Unit Fraction
$\frac{3,600 \text{ sq. ft.}}{5,400 \text{ sq. ft.}} = 66.67\%$	$\frac{6}{9} = 66.67\%$

MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

700 sq ft 600 sq ft 500 sq ft

Market-Rate Unit
 Low-Income Qualified Unit

Floor Space Fraction	Unit Fraction
$\frac{3,500 \text{ sq. ft.}}{5,400 \text{ sq. ft.}} = 64.81\%$	$\frac{6}{9} = 66.67\%$

Assuming a vacant unit of lesser size is leased to a low-income qualified household, management may be tempted to raise rent for the over-140-percent and thereby make it a market-rate unit. Unfortunately, a smaller unit will not replace a larger unit in maintaining the applicable fraction for the building.

MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

700 sq ft 600 sq ft 500 sq ft

Market-Rate Unit
 Low-Income Qualified Unit

Floor Space Fraction	Unit Fraction
$\frac{4,100 \text{ sq. ft.}}{5,400 \text{ sq. ft.}} = 75.93\%$	$\frac{7}{9} = 77.78\%$

If another available unit (this time the size of the over-140-percent unit) is subsequently leased as a LIHTC-qualified unit, there'd now by enough LIHTC units to cover the over-140-percent unit if management decides to charge market-rate rents on that unit.

MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

Floor Space Fraction

$$\frac{1,700 \text{ sq. ft.}}{5,400 \text{ sq. ft.}} = 31.48\%$$

Unit Fraction

$$\frac{3}{9} = 33.33\%$$

Leasing an available unit of comparable or smaller size to a market rate household would cause ALL over-140-percent units in the building to now no longer be qualified (i.e. it wouldn't just disqualify one unit within the building).

MONITORING AND PROGRAM COMPLIANCE

Available Unit Rule

Noncompliance by 100% LIHC Projects

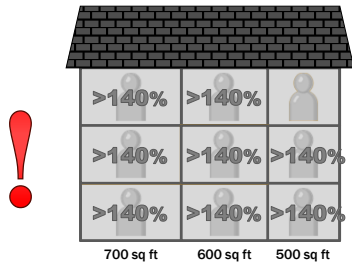
The Available Unit Rule is violated when an owner fails to rent a unit to an income-qualified household *and* cannot demonstrate due diligence when making that determination. The Available Unit Rule is also violated if an owner of a 100% LHC project deliberately rents a unit as a market-rate rent. In such cases of egregious noncompliance, the IRS concludes that the owner disregarded the Available Unit Rule and that the building's qualified basis is to zero; i.e., the building is not part of a qualified low-income project *at all times* during the 15-year compliance period under IRC §42(c)(2). No credit is allowable until such time as the owner can establish compliance with the Available Unit Rule.

www.taxcredithousing.com → Compliance → Guidance

Ctrl + F |

MONITORING AND PROGRAM COMPLIANCE





Available Unit Rule



if you “cannot demonstrate due diligence”

Floor Space Fraction	Unit Fraction
$\frac{0 \text{ sq. ft.}}{5,400 \text{ sq. ft.}} = 0\%$	$\frac{0}{9} = 0\%$

The Housing and Economic Recovery Act of 2008 (HERA) drops the requirement to perform annual income recertifications for buildings that are 100% LIHTC. However, if you lease the available unit to a market-rate household, if you cannot demonstrate due diligence in trying to lease the unit to a low-income household (i.e. it's the household's fault for being untruthful in the certification process) ALL units of comparable or larger size are deemed to be over 140% of the LIHTC income limit!

MONITORING AND PROGRAM COMPLIANCE

YouTube



Tax credits. Simplified.






HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

AVAILABLE UNIT RULE

Cheat Sheet

- Household \leq 140%:
 - Business as usual; even if vacant market-rate unit
- Household $>$ 140%:
 - IF vacant market-rate unit is larger than over-140% unit, THEN business as usual
 - IF vacant market-rate unit is comparable or smaller than over-140% unit, THEN rent market-rate unit to income-qualified household, but...
 - IF you can meet your applicable fraction without including any over-140% units or vacant units, THEN...
 - You can convert all over-140% units to market-rate rent and...
 - Rent any vacant units to market-rate tenants

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Calculating Recapture and Loss of Credits





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MONITORING AND PROGRAM COMPLIANCE

Triggering Credit Recapture

Eligible Basis	6,250,000		↓
x Applicable Fraction	x 80 %		↓
Qualified Basis	5,000,000		↓
x Tax Credit Percentage	x 9 %		
Annual LIHTCs	450,000		

Credit recapture occurs due to a reduction qualified basis when compared to the first year. Mathematically, a reduction in qualified basis comes from a reduction in eligible basis and/or the applicable fraction.










MONITORING AND PROGRAM COMPLIANCE

Triggering Credit Recapture

Eligible Basis	6,250,000		
x Applicable Fraction	x 80%		<ul style="list-style-type: none"> • Casualty loss • Reconfiguring space • Disrepair • Building disposition
Qualified Basis	5,000,000		<ul style="list-style-type: none"> • Over-income tenants • Bad files • Rent too high • Violate Available Unit Rule, Full-Time Student Rule, Vacant Unit Rule
x Tax Credit Percentage	x 9%		
Annual LIHTCs	450,000		

Disallowance of current-year credits and recapture of previously claimed credits occurs with a reduction in a building's qualified basis from one year to the next. Qualified basis is reduced when eligible basis and/or the applicable fraction is reduced.

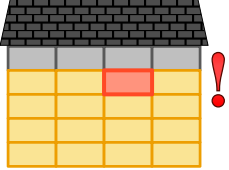
MONITORING AND PROGRAM COMPLIANCE

Calculating Recapture

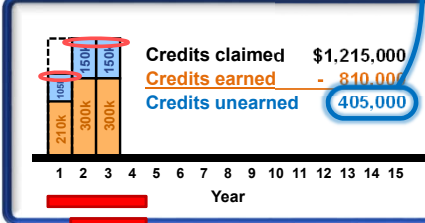
	Year 4	
Eligible Basis	6,250,000	6,250,000
x Applicable Fraction	x 80% x <u>75%</u>	
Qualified Basis	5,000,000	4,687,500
x Tax Credit Percentage	x 9%	x 9%
Annual LIHTCs	450,000	421,875

Recapture
\$405,000
 Reduction in qualified basis x 6.25%
Recapture = \$25,313
Plus Interest

Loss of **\$28,125** in credits for year 4




■ Low-Income Qualified Units
■ Market-Rate Units



Credits claimed \$1,215,000
Credits earned - 810,000
Credits unearned 405,000

Interest



MONITORING AND PROGRAM COMPLIANCE



Monitoring Program Compliance

NCSHA Housing Credit Connect
 June 2018


Minnesota Housing | mnhousing.gov

HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Our Mission:

Minnesota Housing finances affordable housing for low- and moderate-income households while fostering strong communities.

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

LIHTC Monitoring Required by Treas. Reg. 1.42-5

- 1992 Compliance Monitoring Regulations enacted
- Required by Regulations:
 - Monitoring plan by state agency
 - Annual compliance certification by owner
 - Regular inspections by state agency
 - Recordkeeping by owner and by state agency
 - Notification by state agency

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Compliance Period

- Credit Period – 10 years
- Compliance Period – 15 years
- Extended Use Period –30 years (or more)
- *Three year tenant protection period upon expiration or termination of Extended Use Period*

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Owner's Certification of Continuing Program Compliance

- Certification statements made upon penalty of perjury
- Supported by occupancy report
- Monitoring fees prepaid or paid annually

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Physical Inspection

- Conducted at least every 3 years
- Uniform Physical Conditions Standards (UPCS)
 1. site
 2. building exterior
 3. building systems
 4. common areas
 5. Minimum Units - lesser of 20% of low income units or sample size set forth in chart in Rev. Proc. 2016-15

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

1.42-5T & Rev. Proc. 2016-15

- Temporary regulations effective 2/25/2016
 - Must inspect all buildings
 - Vacant Units must be included in sampling
 - Unit list cannot be provided more than 30 days in advance unless extraordinary circumstances

REAC Inspections satisfy LIHTC physical inspection requirements

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

File Inspection

- 20% of Tenant Files (may be different units)
- Administrative Records
 - Utility Allowance
 - AFHMP
 - VAWA
 - Tenant Selection Plan/Occupancy Policy
 - Advertising/Marketing
 - Rent ledgers

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE


Inspect Projects not Properties

- Based on owner's line 8b election
- Must inspect 20% of units in each *project*
 - May be more than one project in a property

Line 8b. Each building is considered a separate project under section 42(g)(3)(D) unless, before the close of the first calendar year in the 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.

 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.

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Record Retention

From due date for filing the federal income tax return (with extensions):

- First year records – 21 years
- Other records – 6 years

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

Noncompliance

- Owner Notification
 - Correction Period
- File form 8823 within 45 days after end of correction period
 - Guide for Completing Form 8823: Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition

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MONITORING AND PROGRAM COMPLIANCE

Best Practices for Responding to Notice of Noncompliance

- Don't wait until the last minute to correct/respond
- Request extension, if needed, before due date
- When in doubt, ask questions
- Read and follow instructions from state agency
- Coordinate response if different people are responsible for corrections
- Provide as much detail as possible so inspector can determine if proper correction was made
- Use Industry Standard Repairs
- Include photos whenever possible

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MONITORING AND PROGRAM COMPLIANCE

Non-Industry Standard Repairs



Door, surface damage



H&S - Electrical Hazard - Opening in electrical panel

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MONITORING AND PROGRAM COMPLIANCE



Nothing wrong with sprinkler itself

Hole in ceiling

but the hole is bigger than the escutcheon



Hole in door

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MONITORING AND PROGRAM COMPLIANCE

Monitoring in Extended Use Period

- Monitoring regulations do not apply in EUP
- State agency determines requirements and frequency of inspections
- Many states have relaxed or waived certain requirements for ease of administration

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HOUSING CREDIT CONNECT MONITORING AND PROGRAM COMPLIANCE

For More Information

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Housing Credit 101

Monitoring and Program Compliance

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