

# THE HFA INSTITUTE 2020

## Tenant Qualifications Part I & II

### Housing Credit and Section 8 Joint Session



National Council of  
State Housing Agencies

**HOME and  
Housing Trust  
Fund**  
JANUARY 12 – 14



**MRBs and  
Other Federal  
Homeownership  
Programs**  
JANUARY 15 – 17



**Section 8 and  
Other Federally  
Assisted  
Multifamily  
Housing**  
JANUARY 15 – 17



**Housing Credit**  
JANUARY 14 – 16



# Your Speakers

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# Introduction

Have been asked to provide  
A joint discussion about  
Resident Qualifications for  
HUD  
LIHTC &  
Layered Properties

# Specifically

Talk about

Rents

Eligibility

Income Determination

Student Rule

VAWA

Policy Development

# Addressing Conflicting Guidance

# Multiple Federal Programs

## HH 4350.3 - Paragraph 1-5

If more than one federal law applies to a situation, the laws should be read and applied together.

Where one law imposes a more restrictive requirement or standard on the owner than another, the more restrictive requirement or standard is controlling as to federal law.



# Use Agreements/Requirements



# General Public Use Requirements

Treas. Reg 1.42-9 – A  
unit is not considered  
LIHTC  
if unit is not available  
to general public

HERA – Allowable  
Preferences that do not  
violate GPU Rule  
Special Needs  
Specified group under federal or  
state program  
Artists

# RAD w/LIHTC & Senior Designations

PRAC to RAD

Senior Designation  
(Qualifier)

Not a Senior  
Preference



All other RAD

No Senior Designation

May Request a Senior  
Preference



# Rents

# LIHTC Rents





In order for a unit to be in compliance with LIHTC requirements, the **gross rent charged** for the unit **cannot exceed the LIHTC maximum rent limit**. The max rent is based on 30% of the imputed income limits.

## Gross Rent

### Gross Rent Calculation

Gross rent includes the following:

- Tenant Paid Rent
- + Utility Allowance
- + Non-optional fees
- Gross Rent

PART VI. RENT			
Tenant Paid Rent	\$		
Utility Allowance	\$		
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges)		\$	<div style="border: 2px solid black; width: 100px; height: 30px;"></div>
Rent Assistance:	\$		
Other non-optional charges:	\$		
Unit Meets Rent Restriction at:		<input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30%	

# LIHTC Rents & Federal Rental Assistance

## Federal Rental Assistance

Rental assistance, whether tenant-based or project-based, is **EXCLUDED** from the gross rent calculation.

## Special Rule Regarding Rental Assistance

The tenant rent portion paid by a household receiving Section 8 **CAN** exceed the maximum rent, as long as the owner is receiving Section 8 rental assistance on behalf of the tenant.

# Rents - HUD

Rent Setting

OCAFs

Rent Comp Studies

RAD &

PRAC To RAD

The Concern

# Rents – LIHTC/HUD Projects

Units with Subsidy

\$0 AP & LIHTC Max Rent

PBRA RAD Component 1,  
Zero or Negative AP and  
LIHTC Max Rent



# Utility Allowances

## LIHTC

RD/LIHTC: Use RD UA

**HUD/LIHTC: Use HUD UA**

LIHTC with no RD or HUD:

1. PHA UA – Must be used for Vouchers
2. Estimate form Utility Co.
3. Estimate from HFA
4. HUSM
5. Energy Consumption Model

## HUD

Baseline every 3 years

UA Factor

May submit new baseline



# Qualification

# Points of Qualification

New Contract LIHTC

New Contract HUD

(Generally, Existing Residents are Eligible)

Move-in/Initial Certification

Unit Transfer

(Different Buildings)

Annual Certification



# New Contract

Due Diligence

Make Sure All Residents are Eligible

100% LIHTC?

# Essential LIHTC & S8 Tenant Qualification Procedures

Move In

Re-Certification (Interim & Annual)

Rehab

Policy & Procedure



# Certification



# Tenant Income Certifications/50059



CERTIFIED

## The TIC

Some state agencies will use 50059 instead of TIC

HUD does not allow Use of TIC instead of 50059

50059 is Required Attachment to the HUD Lease

# Eligibility Factors

Income Limits

Income

Family Factors (student rule, senior housing, etc.)

# Income Limits

LIHTC

Timing

Location

Implementation

HUD

Timing

Location

Implementation



# Income Limits - HUD

Pre-Universe (1981)

Low

Very-low

Extremely-low

Post-Universe (1981)

Very-low

Extremely-low

# Income Limits & RAD

## PBRA RAD Component 1 & Component 2

(Pre-Universe – except  
PRAC to RAD)

Low (80%), Very-low (50%),  
Extremely-low (30%\*)

## PBRA RAD Component 2

PRAC to RAD

Very-low (50%),  
Extremely-low (30%\*)

# Income Limits - LIHTC

MTSP Limits - Published by HUD Annually

Effective the Date Published

45 Days to implement

Federal Income Limits are based on the Project's  
Minimum Set Aside.

# Minimum Set Aside - LIHTC

20-50 MSA: 20% of the units in the project have to be rented to households with incomes at or below 50% of the MTSP limit.

40-60 MSA: 40% of the units in the project must be rented to households with incomes at or below 60% of the MTSP limits.

AI MSA: 40% or more of the units in a project must have a designated income limit, where the average of the income limits for the LIHTC units does not exceed 60%. Units may be restricted to 20%, 30%, 40%, 50%, 60%, 70% and 80%





# Income

24 CFR

Notice 88-80

Different Standards set by States

# 88-80 – Follow HUD’s Rules

HUD Sets Standard

Some states override  
the standard

Key Difference

Income calculation

Assets

Verification



# Income Determination Calculations

Using Highest Range of Hours vs Average

EIV (Use & Security)

Assets Making Regular Periodic Payments





# Verification - HUD Traditional

New Verification Requirements  
Introduced in Change 4, 24 CFR  
& Streamlining



# Verification - LIHTC

*“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.”*

**So...What is the authority?**

# Verification - LIHTC

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

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);

# Verification - LIHTC

8823 Guide Page 4-7

Due Diligence Verification Method

- A. Third-Party Verification**
- B. Review of Documents**
- C. Household Certification**



# Verification - LIHTC

## Excerpt from 8823 Guide Page 4-7

Third party contacts are preferred. Owners should obtain the tenant's consent for the release of information before contacting third parties. Verification forms should be directly sent to and received from third parties. If third party contacts are by telephone or interview, the conversation should be documented in the tenant's file and include all the information that would have been included in a written verification. The owner may obtain acceptable third party written verification by facsimile, e-mail, or Internet.

Owners can accept tenant-provided documents (e.g., pay stubs, Forms W-2, bank statements, etc.) when third party contacts are impossible or delayed, or third party verifications are not needed (e.g., birth certificates or divorce decrees).<sup>16</sup>

# Verification - HUD Streamlining

Streamlining

Certify Every Year



# HUD Streamlining

Fixed Income – Application of COLA or Fixed Percentage

Self-Cert – Assets valued at \$5000 or less

Self-Cert Income – Fixed Income Family



# Student Rule

# Application Of Student Rules

Students	LIHTC	HUD
Basic Overview	A household is not considered an low-income household if ALL members, regardless of age, are full-time students, unless the household meets an exception.	A household is not eligible to recieve assistance if the household includes a student, full or part-time, between the ages of 18-23 that attend an institure of Higher Learning , unless the student meets an exception.
Age of Students	All Ages	18-23
Student Status	FT	Part-Time or Full-time
Type of School	Educational organization	Institure of Higher Education

# LIHTC Student Rule

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) who attend school at an **educational organization** is not eligible to occupy an LIHTC unit, unless the household meets one of the five **(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.

## 1. Full-time Student Defined

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A full-time student is a student who attends school full-time for **all or parts of any five (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.

# LIHTC Student Rule

## 2. “Educational Organization” Defined

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The IRS defines an educational organization to be “an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.”

This definition includes:

- ✓ Elementary schools
- ✓ Junior high schools (middle schools)
- ✓ High schools
- ✓ Colleges
- ✓ Universities
- ✓ Technical schools
- ✓ Trade schools
- ✓ Mechanical schools

This definition does not include on-the-job training courses.



# LIHTC Student Rule

## 3. Full-Time Student Household Exceptions

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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**.

This exception was added with the passing of the **Housing and Economic Recovery Act (HERA)**, enacted by President Bush on July 30, 2008. This exception became effective the day after enactment and only applies to eligibility determinations made after that date.

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.**

# LIHTC Student Rule

## 3. Full-Time Student Household Exceptions

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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 a dependent by another individual, other than the parent of such child(ren)** who does not live in the unit. The text of this exception was modified to include “other than the parent of such children” as a result of the enactment of the Mortgage Forgiveness Debt Relief Act of 2007 on December 20, 2007. This change to the code is applied retroactively.
  
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.
  - Verify that all household members meet this exception by obtaining copies of marriage certificates or copies of tax returns.

# S8 Student Rule - Eligibility

Section 8 assistance shall be provided when the student:

Is living with his or her parents who are receiving Section 8 assistance

Is individually eligible to receive Section 8 assistance and has parents who are income eligible to receive Section 8 assistance.

Is a graduate or professional student

Is a veteran of the United States military or is an active member of the United States military;

Is married;

Has a dependent other than a spouse (e.g. dependent child);

Is at least 24 years of age;

Is a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was receiving assistance under section 8 of the 1937 Act as of November 30, 2005;

Is classified as Vulnerable Youth; A student meets HUD's definition of a vulnerable youth when:

# Vulnerable Youth

The individual is an orphan, in foster care, or a ward of the court or was an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older;

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth or as unaccompanied, at risk of homelessness, and self-supporting, (certain rules apply)

The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

# Application Of Student Rules

S8 Student Eligibility Standards Change

Also Consider

When there is HUD “Layering”

MI/Recert/Acquisition Rehab

Uniform Relocation Act



# Application Of Student Rules



## Student Eligibility

Student Meets:



LIHTC Student Rules



S8 Student Rules

Student must meet both sets of rules in order to move-in to a LIHTC/Section 8 Unit

**LIHTC & HUD Section 8 Units – Cannot Evict Due to Failure to Meet LIHTC Student Rules**



# Changes



# Changes Coming from HUD

TRACS  
2.0.3.A

HOTMA – Section II

# Possible Other Changes

NonCitizen  
Eligibility

# Part I Summary

Reviewed Rules

General Use

Certification

Eligibility

Income



thank you!

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# Part II

# Your Speakers

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Talk about  
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Fair Housing

VAWA

# Addressing Conflicting Guidance

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## HH 4350.3 - Paragraph 1-5

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# Tenant Selection

# Tenant Selection

## Required Topics

Discussed in Handbook (released December 2013)

Additional Requirements

# Topics of Special Interest

Taking Applications

Electronic Application

Security

# Topics of Special Interest

Waiting List Management

Single Residency

Other





# Screening

# General Screening - HUD

Criminal History (Required and Optional)

Credit History

Landlord History

Presence of Bed Bugs

Eviction History

# General Screening - LIHTC

The LIHTC program  
does not require  
that the owner/agent  
conduct any criminal screening.

# Screening & Disparate Impact

Criminal Screening

Eviction Screening

Occupancy Standards

# Criminal Screening

Memo from OGC

Disparate Impact (Black & Hispanic Men)

OAs are allowed to deny based on criminal history

Standards should be reviewed

# Eviction Screening

Disparate Impact (Women/Women w/ Children)

Reviewing Eviction Filings instead of Outcome

Standards should be reviewed

# Occupancy Standards

Keating Memo

Disparate Impact (Families with Children)

New Acceptable Standard



# Occupancy Standards

## Traditional

Minimum of One per BR

Maximum of Two per BR

## Updated

Minimum of One per BR

Maximum of Two per BR

Plus one additional



# Fair Housing & VAWA

# Required to Describe FH Protections

Fair Housing

Title VI

Section 504

LEP

Equal Access

Sexual Harassment in Housing

# VAWA Requirements

Release of Final Rule

When there is funding “Layering” (HUD/LIHTC)



VAWA Emergency Transfer Plan

# VAWA Required Forms

5380 – VAWA Certification

5382 – VAWA Certification as a Victim

5381 – VAWA Emergency Transfer Plan

(not to be distributed)

5383 – VAWA Emergency Transfer Request

# VAWA 2013



## Lease Addendum Current 91067 (HUD)

- For non-S8?
- Not Compliant
- Victims of Sexual Assault
- Affiliated Individuals
- Disclosure of Accused Perpetrator

# VAWA Emergency Transfer

## Applicants

Resident requesting internal VET

Resident requesting external VET From Property

Resident requesting external VET To Property





# HOTMA

Housing Opportunity Through Modernization Act

Effective at Beginning of a Year (Which One?)

Supposedly 2021

**COMING SOON**

# HOTMA Changes (High Level)

Asset Cap (\$100,000.00)

Home Ownership

Use of Past Income

Deduction affected by COLA

Increase in Elderly Disabled Deduction

Increase in Medical Deduction %

Imputed Income From Assets

Change to IR Requirements

Change to AR Requirements

Deminimus Errors

# HOTMA

## Housing Opportunity Through Modernization Act

### Effect on LIHTC

**COMING SOON**

# eSignature/eTransmission/eStorage

Draft Notice

Concerns from the Industry

Current Guidance



## Discussed

- Current requirements and special consideration for “layered” properties
- Recent changes
- Policy Development
- Future change
  - Near future
  - No implementation date







thank you!