THE HFA INSTITUTE 2020 **Tenant Qualifications** Part | & II

HOME and **Housing Trust** Fund **JANUARY 12 – 14 Housing Credit JANUARY 14 – 16 MRBs** and **Other Federal** Homeownership Programs **JANUARY 15 – 17** Section 8 and **Other Federally** Assisted Multifamily

Housing Credit and Section 8 **Joint Session**



National Council of State Housing Agencies



Housing **JANUARY 15 – 17**







Your Speakers



Mary Ross President Ross Business Development Mary.ross@rbdnow.com





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

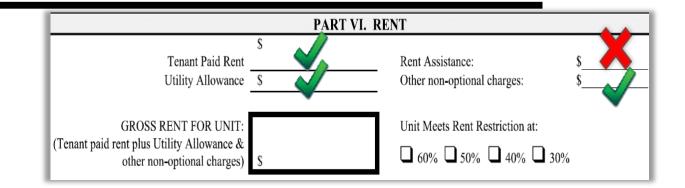
Gross Rent Calculation

Gross rent includes the following:

Tenant Paid Rent

- + Utility Allowance
- + Non-optional fees

Gross Rent







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



PRAC To RAD

The Concern





Rents – LITHC/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



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

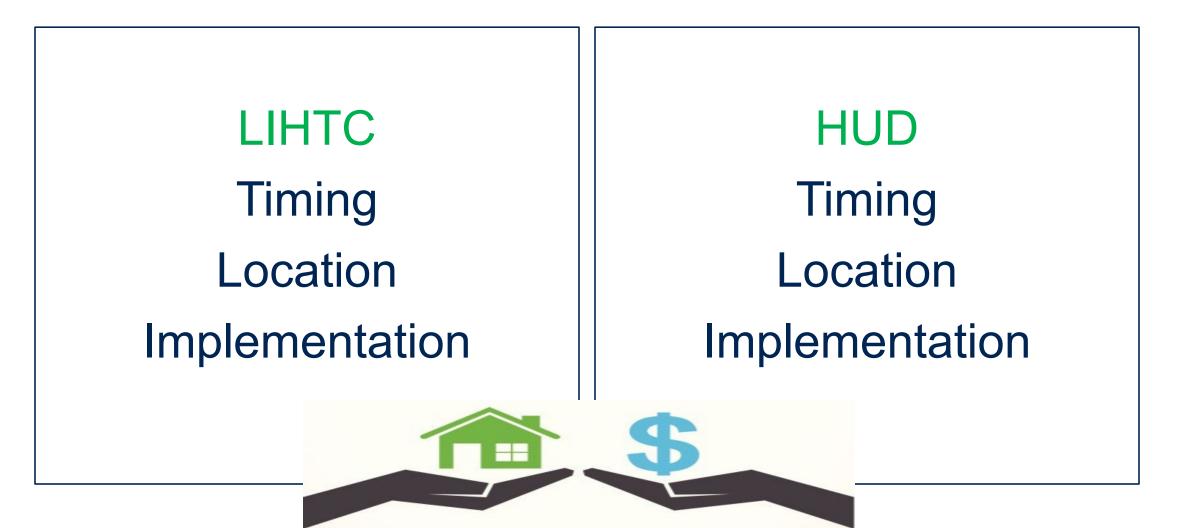
Income Limits Income

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





Income Limits







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 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%















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







"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 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 lowincome 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);





8823 Guide Page 4-7 Due Diligence Verification Method

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





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).¹⁶





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
		A household is not eligible to recieve
		assistance if the household includes a
	A household is not considered an low-income	student, full or part-time, between the ages
	household if ALL members, regardless of age, are	of 18-23 that attend an institure of Higher
	full-time students, unless the household meets an	Learning, unless the student meets an
Basic Overview	exception.	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





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

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.





2."Educational Organization" Defined

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.





3. Full-Time Student Household 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.

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.





3. Full-Time Student Household 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 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 of 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

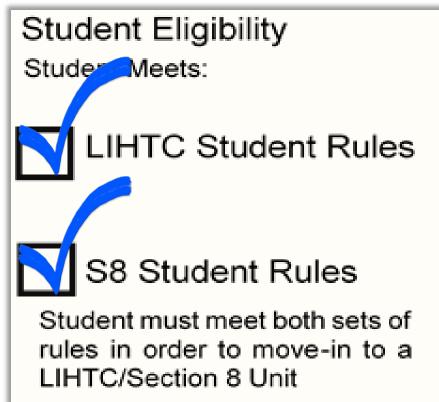
Uniform Relocation Act





Application Of Student Rules





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











Changes





Changes Coming from HUD



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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Specifically

Talk about Tenant Selection

Fair Housing

VAWA





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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	Updated
Minimum of One per BR	Minimum of One per BR
Maximum of Two 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





into this LEASE

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











ΗΟΤΜΑ

Housing Opportunity Through Modernization Act

Effective at Beginning of a Year (Which One?) Supposedly 2021







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







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!