

**Tenant
Eligibility for
LIHTC**

*Income and student
status must be
considered*

Household Size

DETERMINING TENANT ELIGIBILITY

3.1 Overview

Owners must determine and document the eligibility of potential low-income tenants in accordance with LIHTC requirements. A tenant's income eligibility is determined by comparing the household's gross annual anticipated income per HUD Section 8 guidelines to the LIHTC 50% or 60% area gross median income limits that apply to the project. As previously mentioned in Section 2.7(G) of this manual, student status may also affect the eligibility of a household. Owners must verify the household's income and the student status of all household members and the tenant and owner must certify the accuracy of the verified information. Since household composition, income, and student status may change over time, owners must re-certify the eligibility of tenants in tax credit units annually, on or before the anniversary date of the previous certification.

3.2 Household Size and Income Limits

Section 42 mandates that HUD Section 8 income limits as adjusted for household size be used in determining income eligibility for the LIHTC. A household can consist of one or more persons. Members do not need to be related to be considered a household. Count all household members and compare to the per person 50% or 60% income limits currently in effect. Full-time students residing together in a unit do not constitute a household under LIHTC requirements unless one of the exceptions listed in Section 2.7(G) applies.

Certain individuals are not considered members of the household in determining the income limits.

Do NOT count the following in determining income limits:

- Live-in Attendants
- Visitors or Guests
- Foster Children
- Foster Adults

Note: Spouses not currently residing with the applicant but who may return are counted as household members. Separation agreements, estrangement and divorce documents must all be on file to exclude income of spouses that are not expected to become members of the household.

Unborn children and children being adopted counted for income limits

Definition of Income

Temporarily absent members who *would* be included in the household size determination include:

- Children temporarily absent due to placement in a foster home
- Children away at school, but who live with the family during school recesses
- A person confined to a hospital or nursing home per family decision
- A son or daughter on active military duty *only* if this person leaves dependents or a spouse in the unit

Households may choose whether or not to count permanently absent family members. When HUD issued Change-27 on September 29, 1995, the following determination on household size appeared for the first time:

“Unborn children and children who are in the process of being adopted (who do not live in the unit) are considered household members for purposes of determining unit size and income limits....”

HUD 4350.3 CHG-27, Figure 3-6
Currently found in HUD Handbook 4350.3 REV-1, 3-7

Massachusetts recognizes unborn children and children in the process of being adopted as household members in determining income limits.

3.3 Gross Annual Income

The code states—“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 HUD Handbook 4350.3 REV-1, 5-3 annual income is defined as the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income.

Total Income from all Sources		=	Annual Income	
Gross Earned/ Unearned Income	+	Net Income from Assets	=	Annual Income

For information regarding what annual income includes/excludes and how to calculate annual income, see Section 23 for excerpts from HUD Handbook 4350.3 REV-1, 5-6. Note that LIHTC total income is gross annual income, *not* “adjusted” annual income. Allowances used in some government programs, such as childcare allowance and medical expense allowance, are not deducted from the household’s annual gross income to determine income eligibility for LIHTC units.

Net Asset Income

*Cash value of assets
and asset income
must be verified
for entire household*

*If net assets > \$5,000
use the greater of
actual income
of imputed income*

*If net assets <
\$5,000
Management may
use the Under
\$5,000 Asset Form.*

*Assets disposed of
for less than fair
market value
must be considered*

3.4 Assets

The net income from assets must be considered when determining the tax credit eligibility of a household. Asset information for all household members (including minors) should be obtained at the time of application. Information regarding what net family assets include/exclude is provided in Section 23 excerpts from HUD Handbook 4350.3 REV-1, 5-83, Exhibit 5-2.

The cash value for all assets and asset income must be verified by the owner obtaining third party documentation as specified by HUD verification procedures. Owners may use the sworn statement for assets referenced under IRS Revenue Procedure 94-65 [Section 17]. Assets must be verified for the initial certification of the household and for each recertification.

If utilizing the procedure 94-65, please be aware that the income from the asset must always be identified and included as income on the certification.

If net family assets exceed \$5,000, the asset income to be included in household income will be the greater of: (a) the actual asset income, or (b) an imputed income from assets, which is the net family assets multiplied by the passbook rate specified by HUD. Until further notice, owners must use a rate of 2 percent (.02).

At each certification and annual certification, applicants and tenants must declare whether or not an asset has been disposed of

for less than fair market value during the two years preceding the date of application or the effective date of the recertification. An asset is considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the family received by more than \$1,000. If it does, for a period of two years owners must include in the total household assets the difference between the cash value of the asset and the amount received. See Section 23 HUD Handbook excerpts 5-33 for examples of assets disposed of for less than fair market value.

Application Procedure

3.5 Tenant Application Procedure

Because the LIHTC program uses special definitions for income, assets, and household composition, standard property management application forms may not collect sufficient information to determine tenant eligibility. A comprehensive housing application is critical to the accurate identification of full-time student status, all assets, and anticipated income sources to be verified in the determination of tenant eligibility for the LIHTC. *The application must be sufficiently detailed with regard to income, assets, and student status enabling an owner to effectively make a determination of eligibility for this program.*

The information furnished on the fully completed application is reviewed along with supplementary historical documents.

The application procedure *must* include an interview with all adult household members to review the application and historical documents and clarify any discrepancies or missing information. (For example, if the recent 1040 form and W-2s show 2 employers, but the application only lists one, question what happened to the second job and confirm its termination.) This interview is documented with the **recommended Interview Checklist**, also included in Section 6 which is signed and dated by management and all adult applicants.

Interview Checklist

One application and interview checklist signed by all co-applicants should be submitted per household. This document must be current to 120 days of the certification date.

Note: The stronger your verification procedures, the less likely you are to be found out of compliance. Do not default to the minimum standards of documentation.

Verifying Income

Note: As a means of comparison, Owners are encouraged to obtain pay stubs along with third party documents.

Note: The only way to protect your credits in the event of tenant fraud is to take action immediately. Do not wait until your monitoring agent points out what you already should have known.

3.6 Tenant Income Verification

Determination of annual income of individuals and area median gross income adjusted for family size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3 REV-1 is the reference guide to be used for identifying the income/assets to be included or excluded when determining household income and appropriate excerpts from the HUD Handbook 4350.3 REV-1 are included in Section 23 of this manual.

The anticipated earned income of every prospective household member 18 years of age or older must be verified. Unearned income, assets and asset income of all household members, including minors, must be verified. Verifications must be received by the owner/ management agent prior to the execution of the certification of tenant eligibility and lease. Information concerning acceptable forms of verification, the effective term of verifications, proper verification methods to follow, and how to calculate total income is provided in HUD Handbook 4350.3 REV-1 included in Section 23. To summarize:

A. Effective Term of Verifications

Third-party verifications are valid for 120 days following receipt. Owners may not rely on verifications that are more than 120 days old. After this time, a new written verification must be obtained.

B. Verification Methods

Written third party verifications are preferred. An authorization to release information must be signed by the applicant/tenant and must accompany verification requests. Owners must send verifications directly to the source and the source must return them directly to the owner.

Verifications must not be hand-carried by the applicant/tenant to or from the source. If written verification is not possible, direct contact with the source, in person or by phone, is acceptable. The owner must document this verbal verification in the tenant file and must obtain all information as requested on the written verification [See Section 23 HUD Handbook 4350.3 REV-1, 5-49].

C. Differences in Reported Income

Significant differences between the income/asset amounts

Note: When calculating income, be conservative. If you decide a lesser number is warranted explain why. Use of telephone clarifications when information is incomplete or vague is encouraged.

Certification of Income

Note: The purpose of the certification worksheet is to show the math that results in the amounts listed on the Tenant Income Certification. Consider highlighting the figures on the verification that are used.

Lease

reported on the application and amounts reported from third party verifications should be explained by the applicant/tenant and documented in the tenant file utilizing a form such as the Telephone Verification.

Sample recommended verification forms are included in Section 6. If forms currently in use at your property are comparable to the forms in this section, you may continue to use your current forms. However, since these forms are being provided only as examples, noncompliance will occur if forms in use do not adequately meet LIHTC and HUD certification or verification requirements.

3.7 Tenant Income Certification

Once all the income and asset information has been obtained, data should be recorded and computations done on a form similar to the **Certification Worksheet** found in Section 6. If the total 12-month projected household income is less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification, the household is income eligible for a tax credit unit. If the total household income exceeds the maximum allowable qualifying income, the household can not be certified eligible for a tax credit unit.

Upon receipt of all verifications, owners/managers should review all documentation and calculations. If it is determined that all requirements for eligibility are met, the **Certification of Tenant Eligibility** found in Section 6 must be filled out and executed along with the lease prior to move-in. All adult members of the household must sign the Certification form. It is preferred that the Certification be executed by tenants and owner/manager no earlier than 5 calendar days prior to move-in and in no event after the execution of the lease.

3.8 Lease

All tenants occupying tax credit units must be certified and under lease (as specified in the Code) no later than the date the tenant takes possession of the unit. The lease must be signed by all parties to the agreement by the beginning lease term date to be properly in effect and the unit in compliance.

Note: Leases must be signed in good faith. A number of short tenancies despite a six month lease can raise questions about procedures. If a tenant vacates early, consider including an explanation (if known) in the file.

Note: Only when a tenant receives section 8 subsidy can the tenant portion of rent exceed the LIHTC maximum rent limit.

DHCD does not specify a model dwelling lease to be used by owners however, some leasing guidelines are listed below.

- A. The lease should include, but is not limited to:
- The legal name of all parties to the agreement and all additional occupants
 - Identification of the unit to be rented (number, street address, etc.)
 - The date the lease becomes effective
 - The term of the lease
 - The amount for rent—If this reflects a contract rent amount which may include a subsidy payment, rather than just the tenant portion of the rent, a lease addendum listing only the tenant share of rent is recommended.
 - The rights and obligations of the parties, including the obligation of the tenant to recertify income annually (or more frequently as required)
 - Language addressing changes in income, utility allowance, income limits, basic rent (RD or HUD 236 projects), family composition or any other change and its impact on the tenant's rent
 - Signature dates
- B. The tenant portion of rent plus utility allowance and other mandatory fees must not exceed the maximum gross rent allowed by Section 42 of the Code.
- C. The initial lease term must be at least 6 months on all tax credit units, except for SRO housing which may have a 30-day lease or transitional housing for the homeless (as specified in Section 2.7(E) of this manual) which provides “temporary housing” and has no lease requirement. Succeeding leases are not subject to a minimum lease term.

The beginning term of the lease and effective date of the certification should be concurrent. Signatures should be no greater than 5 days prior to these dates.

Additionally, the lease should not contain any clauses that would allow termination prior to the six month tax credit requirement.

Recertification

Annual certifications ensure affordable housing units are occupied by income eligible households, and provide a means to ensure compliance with the Next Available Unit Rule and student status.

3.9 Recertification

Recent changes in IRS regulations no longer require annual certifications for properties that are 100% tax credit. Allocating agencies can still require them and DHCD is no exception.

FOR 100% TAX CREDIT PROPERTIES:

DHCD requires that recertification of residents be completed on at least an annual basis (though failure to recertify tenants on an annual basis is no longer cause for the issuance of IRS Form 8823).

FOR PROPERTIES WITH MARKET UNITS:

Section 42 states: “The determination of whether the income of a resident exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident.” While the recert does not determine continued eligibility, it does identify the 140% rule situation, student status, and possible household composition changes. Properties with market units must complete a full annual recertification every year.

FOR ALL PROPERTIES:

The timing of the recertification is critical. Recertification must be completed within 12 months from the initial certification date, or 12 months from the most recent full certification. Interim certifications are not recognized under Section 42 of the IRC

3.10 Qualifying Section 8 Tenants

Additional forms of income verification may be used for tenants who receive housing assistance through the HUD Section 8 program. For these tenants only, acceptable forms of income verification include a signed copy of the appropriate HUD form 50058 or 50059, a letter from the HUD Contract Administrator (e.g., local PHA) stating that the tenant’s annual gross income is less than the applicable LIHTC income limit, OR a Section 8 verification form as found in Section 6. These forms may be used as income verification documentation to support the **Tenant Income Certification** which must be executed for every LIHTC household.

Section 8 Qualification

Note: With a Section 8 tenant your annual recertification folder could consist of just two documents. The certification and a section 8 income verification Form. Be careful to ensure that the information provided is no more than 120 days old.

Proof of tax credit eligibility must be on file for all Section 8 tenants. Section 8 eligibility does not guarantee tax credit eligibility. Student requirements will never be identified or verified by the local PHA. Proof of income eligibility and tax credit eligibility is the responsibility of the owner.