



LOW INCOME HOUSING TAX CREDIT COMPLIANCE GUIDE

developed for the

Massachusetts

Executive Office of Housing and Livable Communities

2025

1.12

Spectrum Compliance

Disclaimer

This Guide is intended to assist property owners in meeting the requirements for complying with Internal Revenue Code [IRC] Section 42 and Section 1.42-5 of the Regulations thereunder. However, it is important to note that compliance with IRC 42 and the Regulations are solely the responsibility of the owner of the building for which Low-Income Housing Tax Credit (LIHTC) is allowable, and said owner is solely responsible for the consequences of any non-compliance. The information contained in this Guide is presented without any representation or warranty whatsoever regarding the accuracy, completeness, or currency of the information. The information contained in this Guide is subject to change without notice. Neither the Massachusetts Executive Office of Housing and Livable Communities (EOHLC) nor Spectrum Compliance shall be liable for any loss or damage caused by any inaccuracies in the information contained herein, and suggest you review such information for accuracy prior to implementation

Important Note

LIHTC is not administered by HUD. It is administered by the Internal Revenue Service, that delegates initial compliance monitoring to the states themselves. Each state may decide how to track compliance with IRS Requirements and delegate monitoring to authorized agents. They may also impose additional or more substantial requirements. This Guide is for Massachusetts, and is not intended to address every circumstance.

Function Of This Guide

The ultimate objective of the LIHTC program is to provide safe, clean and affordable housing. Such housing becomes an opportunity for working households to obtain affordable housing, and save money for their future. It can be used to help our most vulnerable households, to relieve homelessness, and provide housing stability. In doing so, these community members can focus on improving their lives. This strengthens our communities and makes them more resilient.

It is a forward-thinking program that incentivizes private sector involvement in helping to address just one of our nation's most egregious social problems.

This guide is intended to help the reader keep their communities in compliance with state and federal expectations, once the ribbon has been cut.

Owners and their agents are expected to maintain a sufficient degree of knowledge to keep their LIHTC properties in *continuous compliance* with both IRS and EOHLC obligations.

Updates To This Guide

When an update, clarification, or other improvement is made to this guide, it will be noted on <https://spectrumlihtc.com/state-monitoring/massachusetts/> . It will note the date of the most recent change.

Any content being replaced will ~~be crossed-out, but remain visible for a period of time.~~ **New content will appear in green.** These visual alterations will remain in place until another change is made. At that time, Spectrum's MA webpage will be updated again, as noted above. After that, the crossed-out portions will be deleted and what was previously green will become black.

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Part I - Resources

Those involved in LIHTC housing are encouraged to update their familiarity with requirements on at least an annual basis. This can be achieved through trainings and programs offered through various housing partners and organizations. Spectrum Compliance is the authorized agent and is responsible for overseeing and reporting LIHTC compliance issues to the EOHLIC.

- **Section 42 of the IRC can be found here:**

<https://www.irs.gov/pub/irs-utl/IRC42%20Low%20Income%20Housing%20Credit%20ATG%20Part%201.pdf>

The above is an excellent LIHTC resource by itself. While beneficial for everyone to review, the LIHTC introduction linked above includes a significant number of issues that are resolved before initial lease up and stabilization begins. By comparison, this guide is intended to be practical and easy to follow for anyone involved in the operation of an LIHTC property from the date it was placed in service until three years after the Extended Use Period has expired.

- **There are numerous reliable and free online resources for anyone involved in Section 42 housing. Among them:**

<https://www.huduser.gov/portal/datasets/mtsp.html>

<https://rent-income.novoco.com/no-login/login>

<https://www.law.cornell.edu/uscode/text/26/42>

www.federalregister.gov/documents/2024/01/31/2024-01873/federally-mandated-exclusions-from-income-updated-listing

<https://spectrumlihtc.com/state-monitoring/massachusetts/>

<https://www.federalregister.gov/documents/2022/10/12/2022-22070/section-42-low-income-housing-credit-average-income-test-regulations>

<https://www.hud.gov/reac/nspire-standards>

<https://www.hud.gov/hudclips/handbooks/housing-4350-3>

<https://ecfr.io/Title-24/Section-5.609>

<https://files.hudexchange.info/resources/documents/Income-and-Exclusions-Resource-Sheet.pdf>

<https://www.law.cornell.edu/cfr/text/26/1.42-10>

Required Documentation

Compliance with LIHTC laws requires knowing the Owner's obligations to the IRS and the State Allocating Agency (EOHLC). It is likely that any affordable housing development has multiple obligations to a number of different financial resources. The focus here is on Tax Credit Compliance under Section 42 of the IRC, and the Tax Credit Regulatory Agreement made with the EOHLC.

It is important to understand compliance at the site level is ultimately converted to spendable dollars. Despite this, the math needed to ensure compliance is fairly easy and examples are provided.

Access to the following is necessary to perform the due diligence required to stay in compliance and maximize the Owner's use of the tax credits:

Necessary Massachusetts Tax Credit Documents

- Copies of Original, Completed, and Signed 8609 Forms ([page 45](#))
- Utility Allowance Source Documentation (updated annually) (<https://www.law.cornell.edu/cfr/text/26/1.42-10>)
- Copy of the LIHTC Regulatory Agreement ([page 46](#))
- Certificates of Occupancy
- Income Limits at Allocation/and each year thereafter
- Waitlist protocols
- Tenant Selection Criteria

Part II - Important Terms/Concepts

Most terms are well defined in the IRS documentation linked above. There are other terms or abbreviations that require understanding to ensure good comprehension and compliance. This guide strives to explain the requirements in a practical manner useful to those obligated to meet them.

- 1) **Due Diligence:** The ability to identify omissions and discrepancies that leave credits vulnerable to recapture. In regard to LIHTC, too often the emphasis is on having all of the needed forms and not what all of the forms indicate when reviewed together. ***All standards are minimum standards. Striving for excellence, even when it is not ultimately achieved, is proof of diligent effort.*** Managers are hired in part to maximize LIHTC credits. Sometimes that can only be accomplished by doing more than the minimum.

- 2) **Qualified Basis (QB):** Any LIHTC apartment that is included in the calculation of applicable percentage. This is a dollar amount found on the Ownership's tax return, and is based on the lower of either the unit calculation or square footage calculation. Any reduction in the Qualified Basis is noncompliance.
 - a) **Unit Calculation** = LIHTC units/all units
 - b) **Square Footage Calculation** = sq ft of LIHTC units/sq ft of all units ([Page 49](#)).

- 3) **Applicable Percentage:** This is the basis for determining the amount of credit each year. It is also used to compare units when faced with LIHTC vacancies, or households with incomes that have exceeded 140% of the current maximum allowed for new move-ins. The portion of each building that consists of LIHTC units can go up, but should never go down.

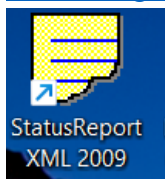
- 4) **Qualified Unit:** A low-income unit qualifies for the tax credit when the following conditions are met:
 - a) Tenant eligibility verified and certified
 - b) Tenant eligibility re-certified annually (EOHLC currently requires full recertifications at all LIHTC properties).
 - c) Restricted rent
 - d) Non-transient residency
 - e) Unit suitable for occupancy
 - f) Unit recorded as LIHTC unit
 - g) Available to the public on a non-discriminatory basis
 - h) Subject to student status rules

Units meeting these requirements *may* be counted in the **qualified basis** for tax credit purposes.

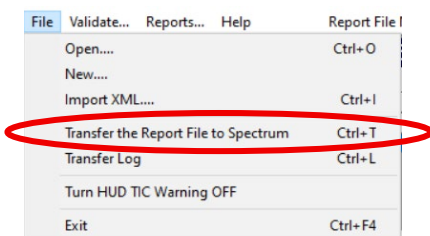
- 5) **2/3 credit:** An apartment that had its first LIHTC certified household move in after the first year of credit. These units generate less credit overall, and at a slower rate.
- 6) **“Extra” unit:** An apartment that is occupied by an LIHTC eligible household, that is certified, and has LIHTC restricted rent, but *their apartment is not considered part of the qualified basis*. It is not uncommon to keep at least one extra eligible unit in each building, in case a claimed unit is found to not be eligible. Qualified status can be swapped to an “extra” unit retroactively, thus mitigating a finding of noncompliance. *“Extra” units should not be reported as LIHTC unless/until they are needed.*
- 7) **Market unit:** Any unit not claimed as part of the qualified basis.
- 8) **Credit period:** Fifteen years. If compliance meets minimum standards, all of the available credits can be claimed in the first ten years of compliance. The credit period starts the first year Ownership elects to begin claiming credits, either the year a building placed in service or the year after.
- 9) **Compliance Period:** Compliance begins when the building is placed in service. This is found on line 10a of IRS form 8609. It ends three years after the LIHTC Regulatory Agreement expires.
- a) Households that have been certified LIHTC eligible, even if not reported as part of the Qualified Basis, cannot have their residency terminated for other than good cause, or their rent raised above the LIHTC maximum allowed, until three years after the expiration of the LIHTC Regulatory Agreement. (page 54)
 - b) There are times when conflicts between programs arise. Care must be exercised to ensure that the most restrictive of these competing program requirements is met.
- 10) **Unit History Report / Spectrum Status Report / UHR:** The entire history of an LIHTC property from the Placed In Service Date through the end of the extended use period. This is a record of every unit, LIHTC or otherwise, and includes information such as Move-ins, move-outs, recertifications, transfers, etc.
- a) **In the first 15 years**, it is expected that End Of Year reporting (The Owner’s Annual Certification of Compliance along with the Unit History Report a/k/a UHR) that is submitted for review each year will accurately reflect what is reported to the IRS.

Example: Owners of a ten-unit building have allocation for up to four LIHTC units (likely a 60/40 MSA) but certified an “extra unit” as LIHTC *in case a unit being claimed is found not to be eligible*. Ownership should report a qualified basis of 4/10 units to both the IRS and EOHLIC.

- b) **After 15 years**, Owners must still abide by the terms in the LIHTC Regulatory Agreement and report annually to EOHLC, but the IRS is no longer involved. Because LIHTC certified households have certain rights, it is important for Ownership's record keeping to show the number of households in place that were certified LIHTC eligible with restricted rent. *In the example above, Ownership should now be reporting a unit fraction of 5/10.* Remember: increases in the applicable percentage are never reported as noncompliance.
- c) As of this date, the UHR is a database that is copied and the copy is transferred annually, along with the Owner's Certification of Compliance. It is considered a part of the Owners Annual Certification of Compliance.
- d) Currently, the Database containing the UHR is stored locally, wherever ownership elects to store it.
- e) The report is intended to be cumulative, with events from every calendar year listed in a single report.
- f) It is maintained using software downloaded from <https://spectrumlihtc.com/state-monitoring/massachusetts/>. The software need only be downloaded once.



- g) The data is input/copied/encrypted/transferred no later than March 15th every year.



11) Owner's Certification of Compliance/OC: An authorized agent of the Ownership must certify annually regarding compliance with key provisions of Section 42 and related laws and regulations. Each question on this certification is covered by this guide. A copy of the current certification can be found at <https://spectrumlihtc.com/state-monitoring/massachusetts/>

12) Authorized Agent: An individual who is legally authorized by Ownership to complete required annual reporting documents and sign on their behalf. Documentation submitted on behalf of Ownership must be consistent with claims of credit each year, for the first fifteen years.

13) Direct third-party document: Completed by the source and returned to management without the involvement of the applicant/resident. This can be hand written or a generated report/document. Work Number printouts and mailed or emailed HR completed verification forms fall into this category.

14) Indirect third-party document: Completed by the source but carried by the applicant. This document can be used only if it consists of printouts or reports that cannot be readily changed. Paystubs and Social Security letters fall into this category.

15) Development: Any number of residential buildings covered under a single LIHTC Regulatory Agreement. A development may be a single building project, a multiple building project, or even multiple projects, all for purposes of claiming credits on qualified units. This is all done at the Ownership's election and is specified on the IRS forms 8609 and the required attachment.

- It is critical to know of Ownership's election to treat certain buildings as part of a project. This impacts transfers between buildings.
- These elections are documented as an attachment to the IRS form 8609 as part of Ownership's tax return.

16) Project: A building, or combination of buildings, that ownership elects to combine for purposes of claiming credits. To do so:

- a) The MSA is met utilizing all of the buildings in that project.
- b) The credit period begins the same year for each building in that project ([Page 45](#)).

17) Allocation Year: All monitoring/ compliance is *initially* based on the year of allocation. The year of allocation can be found on line 1a of the 8609(s)([page 45](#)).

18) Compliance is by Building: With the possible exception of Minimum Set Aside, All Compliance is a building issue. Records must be kept by building and by unit number. Every LIHTC building receives a separate IRS Form 8609 and is assigned its own BIN (Building Identification Number). The required UHR must be submitted by BIN.

19) Placed In Service Date: The date a building is made available for occupancy. This is found on IRS form 8609 line 5a.

20) Acquisition: The status assigned to an already existing building that has not yet been rehabbed or converted into housing, but has been awarded credits. Even though credits can't be claimed before the rehabilitation is substantially complete, the credits can be claimed all the way back to the allocation date (if in the same year) provided certain conditions are met:

- Pre-existing households are certified eligible within 120 days on either side of the acquisition date.
- All documentation must be current to 120 days of the effective date of the certification. *Think of the 120 days as a sliding window.*
- Owners may rely on that certification and are not required to complete another certification until the anniversary date of the household's prior LIHTC certification (no more than 12 months).

21) Safe Harbor: Intended to protect Ownership from sudden downturns in income and rent limits during renovation and lease-up. **This allows for Ownership to use the limits in place at allocation.**

22) Minimum Set-Aside (MSA): An irrevocable election, the minimum set-aside establishes both the minimum number of low-income units to be maintained in a project and the applicable income limit for households to qualify for all tax credit units. Currently EOHLC allows for 20/50, 40/60 and Income Averaging (IA) set asides. Massachusetts may offer additional credits for lower income set-asides. Where state set-asides at lower income percentages are in place, these limits would also need to be calculated.

23) 45 days: When HUD publishes new income limits, owners are required to implement the new income limits no later than 45 days after the effective date.

24) 90 days: When a new utility allowance is determined, Owners have 90 days after the effective date to enact it.

25) 120 Days: Verifications are considered timely if they are obtained within 120 days of the effective date of the certification. Such verification should document the time period immediately preceding the certification.

26) 5 Days: The maximum length of time recommended between the date the certification and move in lease are signed and the actual date of move in. This is to reduce the number of changes in income that go undocumented until after move in.

Part III – Ownership Obligations

As part of standard operating procedures, Owners are expected to perform /provide the following:

- 1) **Maximize LIHTC Occupancy:** The LIHTC program allows credit to be claimed on vacant LIHTC units. This generosity is based on the assumption that landlords will always focus on maximizing occupancy rates. After all, The LIHTC program is about helping to fix the problem of housing instability by providing private sector profit opportunity.
- 2) **Provide Security:** An apartment isn't a home if strangers roam the halls. Breakdowns in security contribute to increased crime, vandalism, and vacancy. Owners are expected to address issues quickly.
- 3) **Provide quality of life:** Clean common areas, invest in proper maintenance and upkeep, hire management companies with a commitment to excellence.
- 4) **Enforce the rules:** Lease violations erode quality of life and result in higher upkeep expenses. Quality of life is affected.
- 5) **Accurate Recordkeeping:** It's not enough to certify being in compliance every year, Owners must be able to prove it to both the IRS and EOHLC. IRS regulations list the LIHTC record keeping and record retention requirements for owners to follow to maintain compliance. These requirements coincide with the obligations listed on the Owner's Annual Certification of Compliance.
 - **In the first 15 years**, it is expected that End Of Year reporting (The Owner's Annual Certification of Compliance/OC along with the Unit History Report/UHR) that is submitted for review each year will accurately reflect what is reported to the IRS. For example:

Owners of a 40/60 MSA, ten-unit building have allocation for up to four LIHTC units but certified an "extra unit" as LIHTC in case a unit being claimed was found ineligible. Ownership should report a qualified basis based on 4/10 units to both the IRS and EOHLC.
 - **After 15 years**, Owners must still abide by the terms in the LIHTC Regulatory Agreement and report annually to EOHLC, but the IRS is no longer involved. Since LIHTC households have certain rights, it is important for Ownership's record keeping to show the number of households in place that were certified LIHTC eligible with restricted rent. *In the example above, Ownership should now be reporting a unit fraction of 5/10.* Remember: increases in the applicable percentage are not noncompliance.

- Project owners and managers should be familiar with the Ownership's Certification requirements and understand that required records could be subject to auditing at any time.
- The first-year records must be kept for 21 years. It is strongly recommended that these original physical documents be stored in a secure fireproof and waterproof location and stored electronically .

6) Be aware of all applicable federal and state rules and regulations that govern their properties.

- There are times when conflicts between programs arise. Care must be exercised to ensure that the most restrictive of these competing program requirements is met.
- Tax credit units must be rented to households that are certified as income eligible at move-in.
- Rent must be restricted according to the maximum limits imposed by using the appropriate formula and income limits.

7) Communicate effectively.

- A common cause of noncompliance stems from the owner's failure to inform management of the specific regulatory commitments that have been made. Once credits have been allocated for a property, management should be given copies of all regulatory and extended use documents to keep on file, including the Tax Credit Regulatory Agreement, IRS Form (s) 8609 [Section 10], and any third-party obligations related to tenant occupancy.
- Communication with the agents responsible for monitoring is an excellent means of avoiding noncompliance.
- Make certain to provide multiple channels of communication. The UHR provides for a General Partner, Partnership and Management point of contact.
- **Internal communication is the responsibility of Ownership and their Agents.** Be sure to forward reports as needed to ensure a timely response that adequately addresses the issues.
- **Owner is required to maintain and submit the records.** The Ownership is financially responsible for the consequences of late or inaccurate submissions, **Owners should prepare accordingly when changing management agents.**

Part IV- Issues of Noncompliance – Owner Annual Certifications

1) Failing to meet the Owner Elected Minimum Set Aside (MSA)

- §42(g)(1) of the IRC
- This noncompliance halts all credits on all units in all buildings until MSA is restored.
- This is most likely to occur if Ownership fails to keep more than the required minimum number of qualified units.
- Must be continually maintained throughout the year.
- Is always based on the unit calculation, never square footage.
- Can be remedied only by restoring the minimum number of LIHTC qualified units in the project.
- Cannot be remedied if not met by 12/31 of the first year of credit.

2) If Income Averaged:

- Owner has a qualified group of units for AI test.
- Owner must be able to show the average income designation of all LIHTC designated units is equal, or lesser than 60% of AMI. EOHLC requires 59% of AMI ([Page 50](#)).
- Owner has a qualified group of units to meet the applicable fraction required in the LIHTC Regulatory Agreement.
- Changes in unit designations- LIHTC units cannot be fixed in place and still maintain compliance with the Next Available and Vacant Unit Rules.
- Owners must make certain they can show continuous compliance with the LIHTC Regulatory Agreement unit designation requirements.

3) Changes in the Applicable Fraction

- The lesser of the number of LIHTC units compared to all units, versus the square footage of those same units ([Page 49](#)).
- The units reported as LIHTC in annual reporting to the state monitoring agent must match those used to calculate Ownership's claim of credits
- Frequent revisions to previously reported unit histories raise concerns that what is being reported to the State agency is not consistent with what was claimed in credits. This itself can result in a finding of inaccurate Owner certifications of Compliance.
- The percentage of LIHTC units should never go down.
- The fraction is calculated by building. Be mindful of this when transferring households between buildings.

4) **Owner has a certification and supporting documentation for each household.**

- Affidavits (including applications and questionnaires) must be received no more than 120 days prior to the effective date of the certification.
- Verifications must contain information that is no more than 120 days old prior to the effective date of the certification. For example, a third-party verification for a household that moved in on December 1st was obtained by Ownership in September, exactly 120 days prior to move in. The receipt of information complies with the 120-day window requirement, but if that verification provides information only from January, February and March, it will be considered out of date information, and the household not proven eligible. Conversely, if the information contained on that verification covered June, July, and August, the information would be considered current.

NOTE: Moving in a household based on information that is months old often results in households failing to disclose changes that occurred prior to, or shortly after move in.

Remember: *All standards are minimum standards.*

- a) Initial certifications and leases should be signed no more than 5 days prior to move in.
- b) Initial certifications must be focused on income that is reasonable to anticipate in the 12 months following the certification effective date. Do not ignore historical evidence of changes.
- c) If move-in is greater than five days after the certification is completed, households *should* be asked to confirm whether or not they have experienced or anticipate any changes in the near future.

5) **Student status**

- Section 42(i)(3)(D) and §152
- With certain exceptions, full-time student households are not eligible for LIHTC housing units. This is only a concern when everyone in the household is a full-time student.
- A full-time student is defined by the school usually as taking between 9 and 12 credit hours a semester, and having attended school full-time for 5 months in the year at an educational institution with regular facilities, other than a correspondence or night school.
- The IRS has made it clear that student status is to be **monitored on a tax-year basis**. Thus, an applicant would not be eligible if the person had been a full-time student for 5 months of the tax year, *even if they had graduated prior to applying for an LIHTC unit*. Owners and managers should adjust tenant certification procedures to consider student status according to this interpretation. In addition, there is no grandfathering of eligibility because the tenant was not a student when they moved in, and later became one. For this reason, tenant student status must be re-verified at

annual certifications to confirm continuing eligibility of the household. Failure to verify student status is noncompliance.

Exceptions: Under Section 42(i)(3)(D), a unit would still be eligible for tax credits if the unit is occupied by an individual who is-

- i) a student and receiving assistance under title IV of the Social Security Act
 - ii) a student was previously a ward of the Foster Care Program
 - iii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or
 - iv) entirely by full-time students if such students are-
 - a) single parents and their children and such parents are not dependents (as defined in section 152) and the children are not dependents of another individual other than the parents, or
 - b) married and continue to file a joint return
- Don't confuse student eligibility with student income.

6) Gross rent limitations

- §42(g)(2)
- Rents are based on the number of bedrooms, and an average occupancy of 1.5 people in each bedroom.
- Compliance is measured based on monthly and annual calculations.
- Maximum Gross Rent (including utilities) = (Applicable Income Limit ÷ 12) x 30%

Formulas:

Studios- Use the one-person income limit, divide by 12 and multiply the result by 30% (.3)

1 bedroom gross rent max (1.5 persons x 1 bedroom) = Three person annual income limit + two person annual income limit divided by two. That result is then divided by 12 and the result is then multiplied by 30% (.3)

2 bedroom = Three person annual income limit (1.5 people x 2 bedrooms which equals the 3 persons) divided by 12 and then multiplied by 30% (.3)

3 bedroom = (1.5 people x 3 bedrooms = 4.5 persons) Four person limit + five person limit, divided by two, that result is then divided by 12 and then multiplied by 30% (.3)

4 bedrooms = (1.5 x 4 bedrooms = 6 persons) Six person limit divided by 12 and result is multiplied by 30% (.3)

NOTE: Always round down to the nearest dollar.

- **Rent Subsidies allow Owners to collect more money than the maximum LIHTC rent.**
Gross rent does not include any housing assistance payments made to an Owner to subsidize a tenant's rent, such as from Section 8 or any comparable federal or state rental assistance program to a unit or its occupants. Only the actual amount paid by the tenant, including tenant-paid utilities, is counted toward the maximum allowable gross rent. For example, if the LIHTC maximum gross rent was \$350, and the tenant share was \$250 with Rental Assistance paying an additional \$150 subsidy to reach a rent of \$400, there is no noncompliance. The rent exceeds the tax credit guidelines, but the total tenant payment inclusive of utilities does not exceed \$350.
- **Tenants may pay more than the max rent with Section 8 assistance.** The HUD Section 8 program protects subsidized tenants from ever paying more than 30% of their adjusted gross income for rent. For this reason, in 1989, the IRS ruled that if the tenant portion of rent increases above the LIHTC maximum gross rent, thereby reducing the Section 8 subsidy, the higher rent may be charged.
- In Rural Development Overage/RD 515 projects, overage rents may result when 30% of the tenant income minus the utility allowance exceeds the RD program's Basic Rent. If this overage rent exceeds the maximum LIHTC rent, then the overage cannot always be charged. For projects after 1991, the overage can be charged for amounts that are turned over to RD. Earlier projects cannot charge the overage to the tenant because this provision is not retroactive.
- See [Utility Allowances](#) for proper application requirements.
- See also Fees for Services (page 53).

7) All units are available to the General Public

- §1.42-9
- **Applies to buildings**
- Intended to ensure LIHTC units are available to anyone that is income eligible, the law requires compliance with the ADA and Fair Housing Acts.
- ~~Ownership is expected to attempt to maximize LIHTC occupancy rates, as part of standard business practice.~~
- ~~Extended vacancies may be considered evidence those units are not able to be rented by a qualified household in a reasonable amount of time.~~
- ~~Similar to the Vacant Unit Rule, Ownership is expected to make reasonable attempts to re-occupy vacant LIHTC units promptly. Owners are expected to maintain Up-to-date Waitlists, records of any and all advertisements, public outreach, and contacts with third-party partners to maximize LIHTC occupancy rates.~~
- ~~Involvement of third parties in acquiring, screening, and approving tenants and/or apartments does not exempt Ownership from the need for active involvement in maximizing LIHTC occupancy.~~
- ~~This is not to be confused with the Vacant Unit Rule, as that finding is only triggered when Market units are involved.~~

8) Fair Housing Violations

- Any determination of such a violation must be acknowledged in the annual Certification.
- Reported on IRS Form 8823 only when a finding is made by the Department of Justice.

9) Housing found not suitable for occupancy

- A unit must be continuously suitable for occupancy in accordance with state and local codes in order for credits to be claimed. If the unit is not habitable, no credits can be claimed. In a related situation, the IRS has ruled that if a unit is destroyed due to casualty loss (i.e., fire, flood, or any other disaster) for which credits cannot be claimed while the unit is being replaced, if the unit is restored within a reasonable time within a taxable year, credits can again be claimed and no recapture would occur. Tax credit units that are vacant must be made ready in a timely manner. Otherwise, they would not be considered suitable for occupancy and would not be eligible for credit.
- Do not leave vacant units dirty, in disrepair, or otherwise uninhabitable even if you have other units ready for rent. **An uninhabitable unit is not tax credit eligible.**

10) Changes in Eligible Basis

- Conversion of anything in Eligible Basis to non-residential rental use can result in issuance of IRS Form 8823.
- Removing or disabling amenities such as playgrounds, pools, laundry rooms, trash chutes and similar conveniences and features can result in issuance of an IRS Form 8823.

11) Facilities/amenities available to everyone

- Features and amenities that are included in the Eligible Basis must be available to all residents, without charge.
- Anything not included in the Eligible Basis can have an additional fee associated with its use, assuming there is a reasonable alternative nearby.

12) Reasonable attempts to re-rent vacant LIHTC units

- §1.42-5(c)(1)(ix)
- In part because a unit formerly occupied by an LIHTC household is still considered qualified for credits, Ownership is expected to make reasonable attempts to re-rent LIHTC units before renting similar or smaller market (non-LIHTC) units.
- Documentation related to make-ready time, marketing, community reach out, third party involvement, waitlist processing, and any other means of demonstrating due diligence, or explaining the causes of extended vacancies is expected.

13) 140% rule violations

- §42(g)(2)(ii)

- Based on income limits in place at the time of the recertification.
- LIHTC allows household income to increase substantially over time without rent increasing automatically.
- Allows Ownership to continue to claim the unit the household occupies as credit eligible, until LIHTC status is swapped to another unit, or the same household is re-certified again, below the 140% threshold.

14) Regulatory Agreement is in effect

- No credits without a state Regulatory Agreement. It must be fully executed and registered in the appropriate county.
- A copy should be kept on site for management reference.
- Requires continuous compliance.

15) Section 8 households

- Section 8 eligibility does not equate with LIHTC eligibility.
- Units cannot be denied to a household based on Section 8 status. This works two ways. Owners cannot deny a household solely on the basis of having a mobile Section 8 voucher; and units cannot be held vacant solely for households with mobile vouchers. Households in both groups are members of the general public.
- Additionally, units provided only for members of a social organization, employees of a company, or units which are parts of a hospital, nursing home, sanitarium, life-care facility, dormitory, trailer park, retirement home providing significant services other than housing, or intermediate care facility for the mentally and physically handicapped, are not eligible for LIHTC participation.

16) Credit for non-profit participation

Refer to the Forms 8609 line 6f ([page 45](#)) to see if allocation was given in part due to Ownership's promised, active involvement by a qualified 501(c)(3) or similarly recognized entity. If so, that involvement must be practical and ongoing.

17) No Changes in Ownership or Management

Changes in Ownership in the first 15 years must be reported on IRS form 8823. Changes in Management are only reported to EOHLC. EOHLC must be informed of any such changes in advance, and the change noted in the Certification.

18) VAWA Compliance

Owners are expected to show compliance with VAWA requirements with every LIHTC Certification.

19) Good Cause Eviction

- To encourage stability, Ownership is forbidden from terminating the residency of LIHTC certified eligible households for anything other than good cause. This usually means a serious, or repeated lease violations. The end of the LIHTC Regulatory Period does not qualify as good cause.
- After the credit period, Ownership must remember that “Extra” LIHTC households are entitled to the same protections as those households living in units that were previously claimed. Only through attrition can these units revert to market status. Similarly, their rents remain capped as well. These protections remain in place for an additional three years after expiration of the LIHTC Regulatory Agreement.

20) Compliance with State/Local/Agency mandated tenant protection-based laws or rules:

Participation in the LIHTC program can be lost by failing to abide by state and local laws, rules, and regulations related to landlord-tenant relations.

21) Property operated in accordance with the terms of the Regulatory Agreement

- A failure to maintain continuous compliance with all requirements set forth in the LIHTC Regulatory Agreement could lead to loss of credits.
- A failure to maintain continuous compliance with all requirements set forth in the LIHTC Regulatory Agreement could inhibit success in future credit allocations.

22) Property has not suffered a casualty loss

- All units must be continuously habitable for the whole year
- Fires, sewer backups, plumbing issues and tenant caused damages are common causes of this finding.
- Units that are re-occupied prior to the end of the year become eligible again to be included the calculation of the applicable percentage ([page 49](#)).

23) No foreclosure or similar action has been initiated

- Used to inform the IRS of any changes in Ownership’s disposition as the related to credits.
- No such changes can be made without EOHLC recognition.

24) Utility Allowances not updated as required

- [§1.42-10](#)
- Part of the gross rent calculation, the maximum gross rent includes the amount of tenant-paid utilities inclusive of costs for heat, lights, air conditioning, water, sewer, oil, and gas, where applicable. Utilities do not include telephone or internet (unless required to let guests in), or cable television. Whenever the tenant directly pays utility costs, a utility allowance must be applied to the gross rent calculation.
- The utility allowance must be updated at least annually.

- Allowance information must be posted in a public, commonly frequented area for households to review. Residents must be informed they have a right to obtain other estimates from allowable sources if they believe the posted estimates are too low. If the estimate they obtain from an allowed source is lower, it must be implemented for all units of similar size. Any costs associated with obtaining a legitimate alternative allowance can be borne by the person(s) making the request.
- Methodologies used must be well-documented, with the sources clearly identified and dates of implementation noted.
- Copies of utility allowance documentation must be submitted with EOHLC's annual year-end reports.
- Any new allowance must be implemented within 90 days.

25) Household income above income limit upon initial occupancy

- The move-in certification should include all income that can be reasonably anticipated in the twelve months following the effective date of the certification.
- This issue is often raised at the first annual recertification. If household income at the first annual recertification shows an income above the move in limit applicable at the time, then Owners are expected to determine:
 - a) What changed as far as income sources and/or amounts?
 - b) When did this change occur?
 - c) Could this change have been foreseen?
 - d) Was this the result of the need for improvement at the application level, or the result of the tenant failing to disclose something of relevance?
 - e) Was follow-up initiated at the time this change was first disclosed/discovered, in order to determine the course of action?
 - f) Was income for the first twelve months of occupancy actually below the LIHTC limit?
 - g) Was appropriate legal action taken if needed, to preserve the credit status of the unit in question?
- At move-in in particular, historical evidence of changes in rate of pay should not be ignored.
- Determine if the increase was an unforeseen change, fraud, the result of using outdated verification forms, or an error made by management when calculations were completed. Due diligence is defined in part by being proactive when it is found by management or owners.
- If circumstances are expected to differ from historical norms, care should be taken to justify the certified amounts. This issue can be addressed after the fact by:
 - 1) Clearly documenting actual income for the first 12 months of occupancy was below the applicable limit (noncompliance cleared).
 - 2) Recertifying the existing household below the current applicable limit (noncompliance corrected).

- 3) Swapping status to another unit in the same building (cleared or corrected depending on circumstances).

26) Owner failed to correctly complete tenant's annual income recertification

- EOHLC currently requires all LIHTC households to be recertified annually.
- Recertifications are expected to be completed by the anniversary date of the most recent prior certification.
- Owners can complete a recertification early, so as to shift the due date of the next one to better fit internal procedures, or match the due dates for other programs.
- Failing to recertify households in 100% LIHTC buildings will not result in an IRS Form 8823 being issued, it will be reported as noncompliance to EOHLC.

This issue can be addressed by:

- 1) Completing a current certification (this returns the unit to compliance but does not document eligibility for the period in question).
- 2) Completing a retro-active certification (This shows the unit was qualified for the period in question and returns the unit to compliance).
- 3) Swap qualified status to an "Extra" qualified unit (this either corrects the noncompliance or clears it, depending on the circumstances).

NOTE: Retroactive recertifications must be based on documentation relevant to the period in question. They should be dated currently.

27) Violations of the NSPIRE or Local Inspection Standards

- There are some differences between a REAC inspection using [NSPIRE standards](#), and an inspection done for the EOHLC for the LIHTC program
- The inspections are not performed at the request of HUD or REAC. They are performed at the request of the EOHLC.
- There is no scoring or grading. The next LIHTC inspection is not dependent on the outcome of the previous one.
- LIHTC inspections in Massachusetts are not conducted by HUD or REAC inspectors. They are conducted by inspectors that receive training on NSPIRE standards on at least an annual basis.
- The inspectors are also instructed to report on quality-of-life issues normally outside of NSPIRE standards. Things like missing or damaged towel bars, tenant belongings creating a health and safety hazard, or minor graffiti are examples.
- All findings are expected to be addressed, regardless of their severity.
- Inspections for Tax Credits in Massachusetts currently happen once every three years, unless circumstances require re-inspection.
- LIHTC inspection issues in Massachusetts require either a 24-hour correction or confirmation the repairs were completed no more than 30 days after issuance of the Preliminary Report of Compliance.

- These issues can be addressed by prompt confirmation of repair of issues requiring 24-hour response, and confirmation of all other repairs when responding to the initial report, no later than 30 days after receipt of the Preliminary Report of Compliance.
- Issues are either cleared or corrected depending on the nature, severity, and frequency of the inspection issues, as well as any delays in confirming requested repairs were completed.

28) Owner failed to provide accurate or complete Annual Certifications

- This applies to all End of Year (EOY) documents
 - a) The Owner Annual Certification of Compliance,
 - b) The Unit History Report (UHR) and
 - c) Utility Allowance documentation.
- **While Credits are claimed**, the Qualified Basis reported in the UHR must match what Ownership reported to the IRS. **After the credit period has expired**, the UHR should report as LIHTC, all “Extra” LIHTC units with households that were certified LIHTC eligible, and had restricted rent. This usually means a sudden, slight increase in the number of LIHTC units being reported as LIHTC. This is not noncompliance and is intended to give EOHLC an accurate account of the number of households affected.
 - a) LIHTC certified households are entitled to restricted rent, and protection from eviction for other than good cause, without regard to whether or not the unit they occupy was claimed for credits.
 - b) These protections extend three years beyond the expiration of the LIHTC Regulatory Agreement. (Page 54)
 - c) Failing to report “extra” LIHTC households after 15 years is not noncompliance. The information is requested to ensure in-place Low Income households are not abruptly faced with eviction or increased rent in violation of Section 42 requirements.

29) Owner has failed to respond to agency requests for monitoring review.

Failure to cooperate with the monitoring process can result reported noncompliance.

30) Low Income Units used on a transient basis

- SROs are exempt from this finding.
- A rental agreement of six months or longer is evidence of non-transient use.
- Agreements must be signed in good faith.
- LIHTC units cannot be used for “respite care”.
- Signed leases are not by themselves proof of non-transient use. An unusual number of short tenancies must be explained sufficiently to avoid noncompliance.

31) Other noncompliance

- Vacancies lasting half a year or more are subject to review.
- Ownership is expected to attempt to maximize LIHTC occupancy rates, as part of standard business practice.
- Extended vacancies may be considered evidence those units are not able to be rented by a qualified household in a reasonable amount of time.
- Similar to the Vacant Unit Rule, Ownership is expected to make reasonable attempts to re-occupy vacant LIHTC units promptly. Owners are expected to maintain Up-to-date Waitlists, records of any and all advertisements, public outreach, and contacts with third-party partners to maximize LIHTC occupancy rates.
- Involvement of third parties in acquiring, screening, and approving tenants and/or apartments does not exempt Ownership from the need for active involvement in maximizing LIHTC occupancy.
- This is not to be confused with the Vacant Unit Rule, as that finding is only triggered when Market units are involved.

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Part V - Common Causes of Noncompliance

1) Gross rent violations:

- Not reporting Section 8 rental assistance in the Unit History Report (UHR).
- Charging fees for services mandated by law. Any mandatory service or amenity charge must be counted as part of the gross rent. Such costs may include parking fees, housekeeping, trash removal, meal service, or other required costs. Charges for optional services other than housing do not have to be included in gross rent, but such services must truly be optional.
- Most frequently cited in Assisted Living Facilities (ALFs), if state, federal law or local regulation requires certain services to be provided, any fee associated with those services must be counted in gross rent calculations.
- [651CMR 12.00](#) lists the services that are required to operate as an ALF in Massachusetts. Services like needs assessments, responses to calls for aid, and at least one meal per day are examples required by law.
- Failing to distinguish between optional and mandated services and ambiguity in lease and marketing materials is usually the cause.

Example: The maximum gross rent on a unit is \$525.00. The tenant pays utilities with an allowance of \$75.00, therefore, the maximum tenant portion of the rent is \$450.00 (\$525-\$75). If this tenant pays an additional mandatory fee of \$25.00 per month for housekeeping or activities participation, then the maximum tenant portion of the rent is \$475.00 (\$525-\$75+\$25), ***an amount that does not exceed the maximum allowed.***

2) Charging fees for areas/equipment in Basis

- Separate fees may not be charged for the use of anything in Eligible Basis
- Often fitness rooms, swimming pools and storage areas are in basis.
- Land is never in basis but improvements to land may be. Parking lots are an example.
- Renting out common areas (anything in Eligible Basis) is forbidden.
- While common areas cannot become a source of income, revenue can be generated by renting out things outside of basis like tables and chairs for special events. Storage spaces may be outside of basis, as are outside buildings that could be used for storage for a fee.

3) Failing to maintain up-to-date Utility Allowance Records.

- Treasury Regulation 1.42-10 clarifies utility allowances in LIHTC projects. [The current list of methods of calculating utilities can be found here.](#)
- Utility allowances **must be updated at least annually** because they are included in the maximum allowable rent calculations. Copies of utility allowance documentation must be submitted with EOHLC's requires annual year-end reports. Realize that any changes in utility allowances have a direct impact on the rent you can charge a tenant. *Any new allowance must be implemented within 90 days of the change.*
- The calculation methodology used for utilities can change from year to year. As long as the source meets the requirements set forth in 1.42-10, it can be incorporated.
- Changes in utility allowances must be posted in common areas so residents are made readily aware before they are implemented.
- Residents must be informed they have a right to obtain other estimates from allowable sources, if they believe the posted estimates are too low.
- If the estimate they obtain from an allowed source is lower, it must be implemented for all units of similar size.
- Any costs associated with obtaining a legitimate alternative allowance, can be borne by the person(s) making the request.

4) Vacant Unit Rule Violations

- Only applies in buildings with non-LIHTC units.
- If a low-income unit becomes vacant during the year, the unit remains LIHTC compliant and eligible for the tax credit, provided reasonable attempts are made to rent the unit or the next available comparable or smaller size unit to an eligible household and no other comparable or smaller size units in the project are rented to non-qualifying individuals (Page 50).

5) Units not available to the Public.

Intended to ensure LIHTC units are available to anyone that is income eligible, the law requires compliance with the ADA and Fair Housing Acts. It is also used to indicate units were not available to be rented by anyone, due to circumstances other than design.

- Extended Vacancies
 - i) Usually cited if units are not available to be rented due to causes other than catastrophic damage.
 - ii) Owners are obligated to take active measures to get vacant LIHTC unit re-occupied in a timely manner.
 - iii) Arrangements with third parties to provide or process qualified applicants and/or inspect and approve units does not absolve ownership of the responsibility to make reasonable attempts to get vacant LIHTC units re-occupied.
 - iv) This obligation does not apply solely to the Vacant Unit Rule, it applies to any LIHTC vacancy.
 - v) Insufficient resources available or applied is sometimes the cause.
 - vi) Identify any third-party involvement that is believed to have contributed to extended vacancies, and how. Note any actions taken by Ownership/management to address the issues.
 - vii) So called “Master” leases often pay Ownership for vacant units in order to keep them available for potential clients. These payments can result in Ownership failing to attempt to maximize LIHTC occupancy.
 - viii) Holding units vacant while waiting for a household with subsidy means otherwise qualified members of the public are effectively denied access.
 - ix) Inadequate waitlist management is sometimes the cause.
 - x) Allowing prospective households to “shop” multiple vacant units can sometimes result in a unit sitting vacant for too long.
 - xi) Vacancies of any length are subject to inquiry. **Currently, vacancies of half a year or more are likely to result in this finding.**
 - xii) Keep adequate records of efforts to address extended vacancies. Current occupancy rates may show proof of their effectiveness.

- Units provided only for members of a social organization, employees of a company, or units which are parts of a hospital, nursing home, sanitarium, life-care facility, dormitory, trailer park, retirement home providing significant services other than housing, or intermediate care facility for the mentally and physically handicapped, are not eligible for LIHTC participation.

6) Fair Housing Violations

- The Fair Housing Act mandates specific design and construction requirements for multifamily housing built after March 13, 1991 to provide accessible housing for individuals with disabilities.
- Owners are expected to be familiar with accessibility requirements applicable to their projects and be able to show compliance.
- Findings of Fair Housing Violations can affect credit eligibility. The failure of low-income housing credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the low-income housing tax credit on a per-unit basis.
- "Available to the general public" applies to all residential rental units (market-rate and tax credit).

7) Available Unit Rule / 140% Rule

Violating this rule means losing the credits on all 140% units. These units would no longer count toward the applicable percentage.

- If an LIHTC household's income increases to more than 140% of the current applicable income limit, the unit is considered an "over-income unit" but may continue to be counted as a low-income unit for credit purposes, as long as two conditions are met.
 - a) The unit must continue to be rent restricted.
 - b) All comparable units that are available or that subsequently become available in the same building must be rented to qualified residents until the applicable fraction (excluding the over-income unit) is restored to the percentage on which the credit is based.

NOTE: Households that are over-income but were previously LIHTC eligible are allowed to move to a new unit **within the same building**, because when a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. When the transfer occurs between **different buildings in the same project**, a similar rule applies as long as the tenant's income did not exceed 140% of AMI at the most recent certification and the tenant moves into a unit already considered LIHTC qualified.

- Avoid making anything more than “de minimis” changes in the applicable percentage.

8) Misidentifying Staff Units

- Staff units must be recognized in the LIHTC Regulatory Agreement with EOHLA.
- A unit for a full-time staff member or full-time security officer is considered part of a project's "common area." Such units are not classified as residential rental units and thus are not included in either the numerator or denominator of the applicable fraction under Section 42(c)(1)(B) for purposes of determining the building's qualified basis.
- Staff units should be labeled “EMPLOYEE” in annual reporting.

- If the regulatory agreement does not recognize a staff/security unit, the property can still have such employees live on-site, but the occupants must either be in a market unit, or must meet normal income eligibility requirements and the unit labeled “LIHTC”.

9) Transient Occupancy

- With the exception of SROs, a **six-month minimum lease term** is required at initial occupancy of low-income units. Leases must be signed by both parties in good faith.
- Most often violated when LIHTC units are rented as “Respite Care” units in Assisted Living Facilities.
- A single household can qualify only one unit in a project’s Basis.

10) Over Income at Move-In

Most often the result of an inadequate application of due diligence at the first annual recertification. When a household’s income increases to an amount above the current income limit. The issue isn’t that the household’s income increased, it is whether or not the change could have been reasonably foreseen. This is best avoided by:

- a) Ensuring there is a limited time between completion of the certification process, and actual occupancy.
 - b) Having a well-documented interview with the applicant household prior to move in, showing attempts to clarify anything considered inadequate,
 - c) Using thoroughly developed forms.
 - d) Management looking for inconsistencies and performing follow up when needed.
 - e) Obtaining more than the minimum required documentation.
- Incomplete certifications. A missing signature is the same as a missing income verification. Don’t underestimate the importance of completed documents.
 - Checking for inconsistencies from one document source to another.
 - a) Do deposits generally match pay periods regarding amounts and frequency?
 - b) Are there a number of small, random deposits that might suggest a side-job?
 - c) Does the math work? Does the disclosed income meet known expenses?

Part VI – Household Eligibility

1) Overview

- <https://www.hud.gov/hudclips/handbooks/housing-4350-3>
- 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 applicable LIHTC area gross median income limits that apply to the building.
- **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.
- The **tenant and owner must certify** the accuracy of the verified information.
- Since household composition, income, and student status may change over time, owners of buildings with an applicable percentage of less than 100%, must re-certify the eligibility of tenants in tax credit units at least once every calendar year.
- **Noncompliance may be cited** for failing to complete the recertification within 365 days of the prior certification effective date, as the IRS has indicated.

2) Household Size and Income Limits

- 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 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 IRC §42(i)(3)(D).
- Certain individuals are not considered members of the household in determining the income limits.
- **Do not count** the following to determine income limits:
 1. Live-in Attendants
 2. Visitors or Guests
 3. Foster Children or adults
 4. Spouses not expected to become members of the household (Keep Separation Agreements, Estrangements, and Divorce documents on file)
- **Do count**
 1. Children temporarily absent due to placement in a foster home
 2. Children away at school, but live with family during school recesses
 3. A person confined to a hospital or nursing home per family decision**
 4. A son or daughter on active military duty if said person leaves a dependent or a spouse in the unit
 5. Unborn children and children in the process of being adopted [HUD 4350.3 CHG-27, Figure 3-6; currently found in HUD Handbook 4350.3, REV-1, Page 3-8]
 6. Spouses not currently residing with the applicant but are not undergoing divorce or legal separation

**Households may choose whether or not to count permanently absent family members for purposes of household size and income limits only.

3) Gross Annual Income

- Tenant income is calculated in a manner consistent with the determination of gross 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.
- **Anticipated Income** Managers must apply common sense and some general knowledge when it comes to anticipated income and whether to count it or not.

Example 1: A new to the area applicant has worked in the service industry for over a decade. Their last job was three months ago but while they are looking for stable housing, they are actively seeking a job as a waiter. In this example we would count anticipated income because the applicant has work history within the same field and is actively searching for work.

Example 2: A member of an applicant household is a college student with an art degree and will graduate in the spring. She has a job offer stating that she will work full time making \$40K a year. In this example we would count the anticipated income as she has a job offer.

Example 3: Same as above only, no job offer, and not actively looking. In this example, we would not anticipate income.

These are just examples and every situation should be considered individually.

- **HOTMA** defines income as all amounts of reasonably anticipated income, not specifically excluded, received by each member of the household who is the head, co-head, or spouse, or is 18 years or older. Income also includes all unearned income, including the unearned income of minors and that received on behalf of dependents under 18, such as SS, SSI etc.
- Gross earned and unearned income + NET income from assets = Annual Income.
- HUD Handbook 4350.3 REV-1, 5-6. The most current list of income clarifications, including income that is excluded can be found [here](#). 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.
- **Required Minimum Distributions** from retirement accounts must be counted as income.
- **Recurring, regular distributions** from retirement accounts are always counted. Only irregular distributions are excluded.

Examples of distributions from retirement accounts:

- 1- Applicant withdraws funds randomly throughout the year for expenses (income)
- 2- Withdraws funds once a year for expenses (income)
- 3- Withdraws funds regularly throughout the years (income) but takes an extra amount one year to take the grandchildren to the amusement park (not income)

4) Net Assets

- Information regarding what net family assets to include/exclude is provided in [HUD Handbook 4350.3 REV-1, 5-83, Exhibit 5-2](#).
- The cash value (Net value) for all assets and asset income must be verified by the owner by 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 \(updated\)](#).
- Assets must be verified for the initial certification of the household and for each recertification.

- If utilizing the procedure in 94-65, please be aware that the income from the asset *should* be identified and included as income on the certification.
- Some third-party management software fails to identify these assets as requested. The certifications these vendors generate can still be used as long as the internal calculations are made in accordance with current requirements.
- **Currently** - If the property has not implemented HOTMA yet due to the extension, then use the 0.06% All Assets must be third-party verified. Management may use the household affidavit of assets (below 5K form). Always check with other funding sources to see if self-certifications are allowed.
- **HOTMA - If net family assets exceed the current limit** (\$51,600 until 1/1/26, then \$52,787) or if the actual returns from a given asset cannot be calculated, use imputed returns on that asset based on the current passbook savings rate, as determined by HUD (currently .4%). All Assets must be third-party verified.
- The balance in retirement accounts (401k, IRA, etc.) are excluded from asset determination. Any regular distributions from these accounts will be included in household income.
- **HOTMA - If net assets are less than the current limit**, management may use the Household Affidavit of Assets Form (currently below \$51,600 until 1/1/26, then \$52,787).
- 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. Assets disposed of for less than fair market value must be considered.

5) Application Procedures

- 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 to effectively determine eligibility.
- 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 two employers, but the application only lists one, question what happened to the second job and confirm its termination). This interview is documented with an [Interview Checklist](#), which is signed and dated by management and all adult applicants.

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

6) Verifications

- **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.
- The anticipated earned income of every prospective household member 18 years of age or older (by the effective date of the certification) 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 no more than 120 days prior to the effective date 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.

7) Effective Term of Verifications

- Third-party verifications are valid for up to 120 days prior to the certification effective date.
- Owners may not rely on verifications that are received more than 120 days prior to the effective date of the certification.
- The information obtained must be no more than 120 days old. For example, a December move in cannot be supported by a verification obtained in November, if the verification itself consists of information from March and April, as those were more than 120 days prior to a December move-in.

8) 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 by mail, email, or similar electronic means.
- *Third party verifications should 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-I, 5-49).
 - i) This type of verification should identify the person providing the information, their employment relation to the applicant, the date and the name of the person obtaining the information.

- ii) Significant differences between income/asset amounts reported and the amounts verified by a third party should be explained by the applicant/tenant and documented in the tenant file using appropriate levels of due diligence.
- Sample recommended verification forms are available at [Spectrum's website](#). **If forms currently in use at your property are comparable to the forms in this section, you may continue to use your current forms.**
- Verification forms evolve for a number of reasons. Sometimes to make the forms more inclusive, other times to make them more granular.
- Due diligence is not based solely on having the right forms, but in making sure the answers are complete and all the right questions have been asked, and following up when necessary.

9) Lease Requirements

Except for SROs, EOHLC expects LIHTC units to be primary residences, and intended for long term use. This is demonstrated the following ways:

- A lease of at least six-months duration, and signed in good faith between both parties.
- Sufficient evidence is provided to show the tenant has continuously lived at the property at least six-months since it has placed in service.
- EOHLC does not specify a model dwelling lease to be used by owners. However, some leasing guidelines are listed below. The lease should include, but is not limited to:
 - i) The legal name of all parties to the agreement and all additional occupants.
 - ii) Identification of the unit to be rented (number, street address, etc.).
 - iii) The date the lease becomes effective.
 - iv) The term of the lease.
 - v) Utility allowance, if any.
 - vi) 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.
 - vii) The rights and obligations of the parties, including the obligation of the tenant to recertify income annually (or more frequently as required).
 - viii) 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.
 - ix) Signature dates.
 - x) The beginning term of the lease and effective date of the certification should be the same.
 - xi) Signatures should be no more than 5 days prior to these dates.
 - xii) The lease should not contain any clauses that would allow termination prior to the six-month tax credit requirement.

10) Annual Recertifications

- Currently, EOHLC requires full recertifications each year.

- **For 100% Tax Credit Properties** -EOHLC 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-Rate (non-LIHTC) 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 recertification does not determine continued eligibility, it does identify instances involving the 140% rule, student status, and possible household composition changes. Properties with non-LIHTC 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, but **Owners can shift the due dates of the next annual recertification** by completing a full recertification before the anniversary date established the year before.
- Annual recertifications completed late, but prior to notification of review, are evidence of due diligence and prevent the noncompliance from needing to be reported.
- Annual recertifications completed late and after notification of review are considered noncompliance and are reported to the appropriate agency
- Failing to complete an annual recertification one year, but completing one for the following year will end the noncompliance, but does not document the household was eligible the year in question.
- Completing a recertification retroactively requires documentation pertinent to the period in question. Retroactive recertification can help preserve the credit worthiness of a unit for the year in question, but might result in a later correction date if it is completed more than 365 days late.
- After the credit period has expired, returning the unit to compliance by completing a current certification is preferable to retroactive recertifications.

11) **Qualifying Section 8 Tenants**

- **Through the HUD Section 8 program only**, acceptable forms of income verification include:
 - a) a signed copy of the appropriate HUD form 50059,
 - b) 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
 - c) a Section 8 Income Verification form.
- These forms may be used as income verification documentation to support the **Tenant Income Certification** which must be executed for every LIHTC household. With a Section 8 tenant, the annual recertification folder could consist of just three documents: The certification, proof of student status and a Section 8 Income Verification Form. Be careful to ensure that the information is no more than 120 days old. A PHA statement that

the household was deemed eligible eleven months ago would not be considered valid, even if it was obtained within 120 days of move-in.

- Section 8 eligibility does **not** guarantee tax credit eligibility. Student requirements is not identified or verified by the local PHA. Proof of income eligibility, student eligibility, and tax credit eligibility is the responsibility of the owner.

12) **Recordkeeping and Retention**

- The LIHTC program requires owners to maintain project records and to provide annual reports to EOHLIC documenting project occupancy. IRS regulations set forth in 26 CFR Part I - 1.42-5(b) [Section 26-1] specify the tax credit recordkeeping and record retention provisions that owners must follow to maintain compliance. Recordkeeping responsibilities include three types of project records:
 - a) tenant data,
 - b) monthly unit data tracking, and
 - c) project files (including records regarding the use of facilities included in the project's eligible basis,
- An owner must keep records for each qualified low-income resident by building and unit number throughout the Compliance Period.
- Owners must also provide documents regarding a project's status:
 - a) LIHTC Owner's Compliance Certification (annually)
 - b) LIHTC Unit History Report (annually)
- Unit History information must be gathered and submitted electronically. Owners and managers will be updated on changing technology. Failure of the owner to provide reports in a timely manner when requested is regarded as non-compliance for failing to provide accurate or complete Owner Certifications.
- The owner must retain the above-described records for the first year of the credit period for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period, meaning original files must be retained for 21 years. All other records are required to be retained for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year.

13) **Forms**

- Verification forms evolve over time to improve ease of use, comprehension and to address any deficiencies that become apparent over time. Current examples of the following forms can be found [here](#).
- The combination of these forms is sufficient in most cases to meet the Section 42 code requirements for record-keeping and, in striving to reach a consistent standard of tenant file documentation, their use is recommended.
- In filling out each form, see that every line item is addressed. Make certain that all forms are filled out completely, including returned verification forms.
- Do not assume that a blank line means "Not Applicable."

- Third party verifications should be mailed or emailed to the source, and not hand-carried by the applicant.
- Pursue phone verification to clarify any missing or ambiguous information. Document **Who** was contacted, **What** they were contacted about, **When** they were contacted, and **Why** the information they provided is helpful
- Show the math.
- Fixing errors is Due Diligence. Never use correction tape or liquid to revise information on any document. If revision or correction is required on Tenant Income Certification,
 - a) draw a line through the change,
 - b) write the correct information above it.
 - c) All parties must initial the changes.

14) Annual Year-End Forms

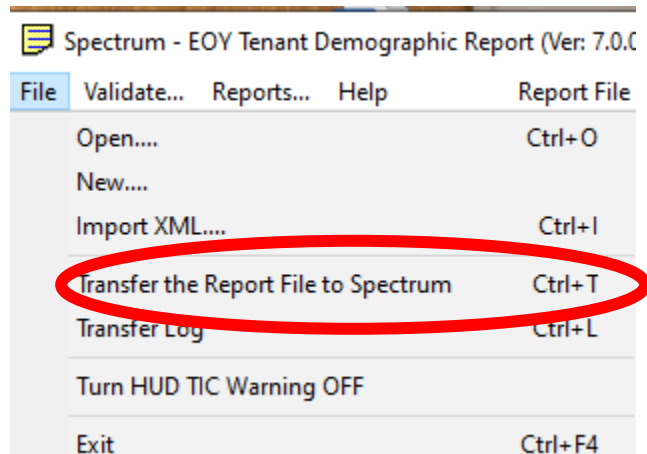
- These forms are required to be submitted by March 15th following the close of every calendar year of the compliance period for each building. They can be downloaded from the Spectrum website: <https://spectrumlihtc.com/state-monitoring/massachusetts/>
 - a) Owner's Annual Certification of LIHTC Compliance
 - b) Utility Allowance Information including proof the source and methods meets the requirements of §1.42-10
 - c) Unit History Report a/k/a: Status Report database
 - d) See Unit History Report in Part II
 - e) Software can be downloaded from [here](#).

15) Compliance Monitoring

- Compliance monitoring begins on the placed-in-service date (PISD). The IRS requires specific recordkeeping requirements that may be found in §1.42-5 of the IRC.
- A file review and physical inspection of 1/3 of the LIHTC properties annually is authorized by the IRS and in use in Massachusetts.
- Currently, Spectrum Compliance performs compliance monitoring under contract as the Authorized Agent for the Commonwealth of Massachusetts. On the Spectrum website: www.spectrumlihtc.com, Owners and management will find information regarding yearly submission requirements. Owners will need to contact Spectrum to receive specific details for the yearly submission requirements and to **notify Spectrum and EOHLC of newly placed-in-service buildings**. The development will be placed on the list of currently active LIHTC properties.
- It is important to understand that **the due date for annual LIHTC EOY submissions in Massachusetts is always March 15th of every year.**
- Failing to receive notification of the need to complete annual reporting does not absolve Ownership of meeting its annual reporting obligations.

16) Annual reporting requirements

- In short, Ownership is required to submit:
 - a) an annual certification of compliance and
 - b) unit history for all tax credits units. Unit history information is collected electronically for the previous year. You may download the [software](#) and instructions from the Spectrum website.
- This information is required by law, so it is very important that information submitted is timely and accurate. Failure to submit on time, incomplete submissions, or inaccurate submissions may be determined noncompliant.
- **Regarding Spectrum Status Report Software and the Unit History Report:**
 - i) The Spectrum Status Report Software only needs to be downloaded once.
 - ii) The first time the software is used, it creates a database. That database resides wherever the computer is instructed to save it. **It does not reside off-site unless it is saved there. Maintaining security of your data is Ownership’s responsibility.**
 - iii) Avoid making multiple copies of the same database. They will not synchronize and information can be lost or misplaced.
 - iv) Keep the Owner, General Partner, and Management contact information up-to-date. Reports will only be sent to the three contacts provided in the annual Unit History Report.
 - v) The Unit History Report must be uploaded securely to Spectrum by March 15th, every year.



Part VII – After Year 15

- 1) Begin reporting any “extra” LIHTC households as LIHTC. As they vacate voluntarily, the “extra units can revert to “market” if Ownership chooses. Keep records to show if households left of their own accord, or due to substantive, or repeated lease violations
- 2) No eviction for other than good cause.

- 3) The right to restricted rent and protection from eviction extends for three years beyond the expiration of the extended use period (Page 53).
- 4) EOHLC is concerned about preserving its investment in affordable housing for the long term. Additionally, EOHLC wants to ensure that any household that has cooperated with the process of annual recertifications as required, and benefitted from restricted rent, is not removed from their stable, affordable housing to which they are entitled.
- 5) Owners and managers should not lose sight of the underlying objective of the tax credit program: to provide affordable housing to people with low income.

Part VIII- Inspection and Review Details

- 1) **Properties will be subject to review** by December 31 of the second year after the last building places in service, and at least once every three years thereafter. The audit will include the number of units and inspect all the common area in all buildings. Management will be notified no more than fourteen days in advance of the site visit. While we can accommodate emergency situations, inspection dates are not negotiable. Schedules are tight and geographically coordinated. Normal procedures are as follows:
 - A Monitor will contact Management by phone and/or email to inform them of an upcoming on-site inspection and electronic tenant file review. The monitor will be glad to answer any questions or concerns about the review.
 - A Confirmation Letter will be sent verifying the requirements for submitting files to be reviewed electronically,
 - A separate confirmation will be sent no more than fourteen days prior, regarding the date, time, and requirements for the physical inspection.
 - The results of the physical inspection, and tenant file review are combined with the results of the analysis of the Unit History Report. These results are then compared to the Ownership's Annual Certification of Compliance for any discrepancies.
 - An Initial Report of Compliance Status is then written and forwarded to the three contacts provided in the Unit History Report that was submitted most recently. There is a thirty

(30) day period in which to respond. Late submissions are likely to extend the period of noncompliance. Submissions after an IRS Form 8823 is submitted to EOHLC will result in Submission of a separate 8823 to correct the previously reported noncompliance.

- The responses to the Initial Report of Compliance will be reviewed and a Summary Report of Compliance Status is issued. This report is emailed to the updated list of contacts provided in the response materials. If non-compliance is being reported, a draft copy of the generated Form 8823 will be included as an attachment.

2) How should a property prepare for a file review?

- Have uniformly organized files.
- Move-in certifications effective for the LIHTC move-in date and signed not more than 5 days prior to the effective date.
- Back-up verification for all income and asset sources.
- Clarifications when information is incomplete or inconsistent.
- Annual recertifications effective on or before the anniversary date of the prior certification.
- Student Status identified and/or verified for every annual certification.
- Worksheets showing calculations used on the certification.
- A documented tenant interview at move-in and clarifications where needed.
- An application sufficient to determine eligibility for a LIHTC property.
- A re-certification update or questionnaire for the annual certifications.
- Phone clarifications for any ambiguities or missing information on verifications (NO BLANKS).
- Child support and zero income affidavits addressing historical and anticipated income.
- Zero employment affidavits where needed.
- Third-party verification of gross pension benefits, including verification of changes.
- Verification of termination of employment where applicable.
- All HUD criteria for acceptable forms of verification satisfied.
- At minimum, a six-month lease in effect for the LIHTC move-in date without an early termination clause prior to six months.
- A review of initial eligibility when income at the first annual recertification exceeds what would be the applicable move in limit at the date of recertification.
- Utility allowance verification for each year of the credit that is documented as complying with the all of the requirements of §1.42-10 of the IRC.

Note: Spectrum will document and store all submissions on an annual basis. Annual submissions are checked for changes in contact information and stored for comparison when a complete physical inspection and file review is conducted, once every three years. The three-year inspection and review determine compliance with each of the obligations Ownership has certified to for each year under review. The obligations to the IRS are enumerated on the

Owner's Annual Certification of Compliance and on the LIHTC Regulatory Agreement between EOHLC and Ownership of the development.

3) Physical Inspection

Physical inspection issues at LIHTC properties in Massachusetts are conducted in a manner that is consistent with NSPIRE standards with the following exceptions:

- The next LIHTC inspection is not dependent on the results. There is no scoring.
- These inspections are not done for HUD, REAC or any other federal agency, they are completed at the request of EOHLC, and include areas of concern outside of NSPIRE standards.
- The inspection is not performed by REAC certified inspectors, they are performed by inspectors that are trained on NSPIRE standards, and the inspections are tailored to meet the expectations of EOHLC, particularly in regard to marketability, tenant experience, public impression, and long-term preservation of the housing asset.
- The results are not shared with HUD.
- State and Local building codes are considered. Statements from Local Code Enforcement and/or the Local Fire Department are often enough to clear issues that may be ambiguous.
- Levels of severity fall under two categories:
 - i) Those that require corrective action in the next 24 hours and,
 - ii) Those that must be documented as corrected no more than 30 days after receipt of the Initial Report of Compliance.
- Quality of life issues not included in the NSPIRE standard will still require corrective action. Things like broken towel bars, missing covers, and nonfunctioning dishwashers are all expected to be addressed.
- The response should include evidence the work was completed. Generally, pictures are not necessary, but completed work orders are.
- All LIHTC residents should be notified of the upcoming site inspection
- An Owner's **representative must be present at all times** during the site inspection, preferably a maintenance staff person familiar with the building systems **and an administrative person** familiar to the residents. Spectrum Monitors will not enter a unit or a room in any building unaccompanied
- **Circuit breakers for emergency lighting must be identified**, labeled, and accessible at the time of inspection
- All common area emergency lighting will be tested during the inspection by tripping the circuit breakers and walking the hallways. This system test is the most accurate portrayal of an emergency situation. This type of system test will be conducted unless loss of power to the building would automatically bring the fire department or if the building has a generator back up.
- Units where admittance is not possible for any reason may be failed and/or subject to re-inspection at the owner's expense.

- Standards for the physical inspection do not change relative to the credit period.
- Prior to the inspection/review, Owners/management will be notified of the upcoming review.

After the review, a report will be prepared and submitted to the Owner and EOHLC for consideration. EOHLC or the Owner may request a re-review. If a re-review is requested, the scope of the review will be limited to those areas that were previously found to be deficient. A second report will be prepared and submitted. Ownership may be required to bear any additional costs associated with the re-review.

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TENANT INCOME CERTIFICATION - TC 100

Initial Certification Recertification
 Other _____

Effective Date: _____
 Move-in Date: _____
 (YYYY-MM-DD)

PART I - DEVELOPMENT DATA

Property Name:	County:	BIN #:	PISD:
BIN Address:		City:	Zip:
Unit Number:	# Bedrooms:	Square Footage:	

PART II. HOUSEHOLD COMPOSITION (DEMOGRAPHIC INFORMATION IS FOR LIHTC ONLY)

HH Mbr#	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YY)	F/T Student?	SS# Last 4 Digits	Race	Ethnic	Disabled?
1				HEAD						
2										
3										
4										
5										
6										
7										

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$
Add totals from (A) through (D), above				TOTAL INCOME (E):
				\$

PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) Cash Value	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		
If over \$5,000		\$ _____ X .06%	= (J) Imputed Income	\$
Enter the greater of the total of column I, or J: imputed income			TOTAL INCOME FROM ASSETS (K)	\$
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_____ Signature	_____ (Date)	_____ Signature	_____ (Date)
_____ Signature	_____ (Date)	_____ Signature	_____ (Date)

Low-Income Housing Credit Allocation and Certification

OMB No. 1545-0988

▶ Go to www.irs.gov/Form8609 for instructions and the latest information.

Part I Allocation of Credit

Check if: Addition to Qualified Basis Amended Form

A Address of building (do not use P.O. box) (see instructions)	B Name and address of housing credit agency
C Name, address, and TIN of building owner receiving allocation	D Employer identification number of agency E Building identification number (BIN)

TIN ▶

1a Date of allocation ▶ _____	b Maximum housing credit dollar amount allowable	1b	
2 Maximum applicable credit percentage allowable (see instructions)		2	%
3a Maximum qualified basis		3a	
b Check here <input type="checkbox"/> if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions)		3b	1 _____ %
4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.)		4	%
5a Date building placed in service ▶			
b Check here <input type="checkbox"/> if the date of allocation on line 1a is in calendar year 2021 or 2022 and the building is located in a qualified disaster zone (see instructions).			
6 Check the boxes that describe the allocation for the building (check those that apply):			
a <input type="checkbox"/> Newly constructed and federally subsidized		b <input type="checkbox"/> Newly constructed and not federally subsidized	
c <input type="checkbox"/> Existing building			
d <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures federally subsidized		e <input type="checkbox"/> Sec. 42(e) rehabilitation expenditures not federally subsidized	
f <input type="checkbox"/> Allocation subject to nonprofit set-aside under sec. 42(h)(5)			

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

Signature of authorized official	Name (please type or print)	Date
----------------------------------	-----------------------------	------

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions)	7	
8a Original qualified basis of the building at close of first year of credit period		8a
b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)?		<input type="checkbox"/> Yes <input type="checkbox"/> No
10 Check the appropriate box for each election.		
Caution: Once made, the following elections are irrevocable.		
a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶		<input type="checkbox"/> Yes <input type="checkbox"/> No
b Elect not to treat large partnership as taxpayer (section 42(j)(5)) ▶		<input type="checkbox"/> Yes
c Elect minimum set-aside requirement (section 42(g)) (see instructions):		
<input type="checkbox"/> 20-50 <input type="checkbox"/> 40-60 <input type="checkbox"/> Average income <input type="checkbox"/> 25-60 (N.Y.C. only)		
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)		<input type="checkbox"/> 15-40

Under penalties of perjury, I declare that I have examined this form and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature	Taxpayer identification number	Date
Name (please type or print)	First year of the credit period	

X 7



TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS TAX CREDIT REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Restriction") is made and entered into as of the 2nd day of October, 2023 by and between the Commonwealth of Massachusetts, acting by and through its Executive Office of Housing and Livable Communities ("EOHLC"), and SEHC Elizabeth Brook Apartments Limited Partnership, a Massachusetts limited partnership, and its successors and assigns (the "Grantor") and [REDACTED], a Massachusetts nonprofit corporation (the "Ground Lessor"). The Ground Lessor joins in this Restriction for the purposes set forth in Section 13 below.

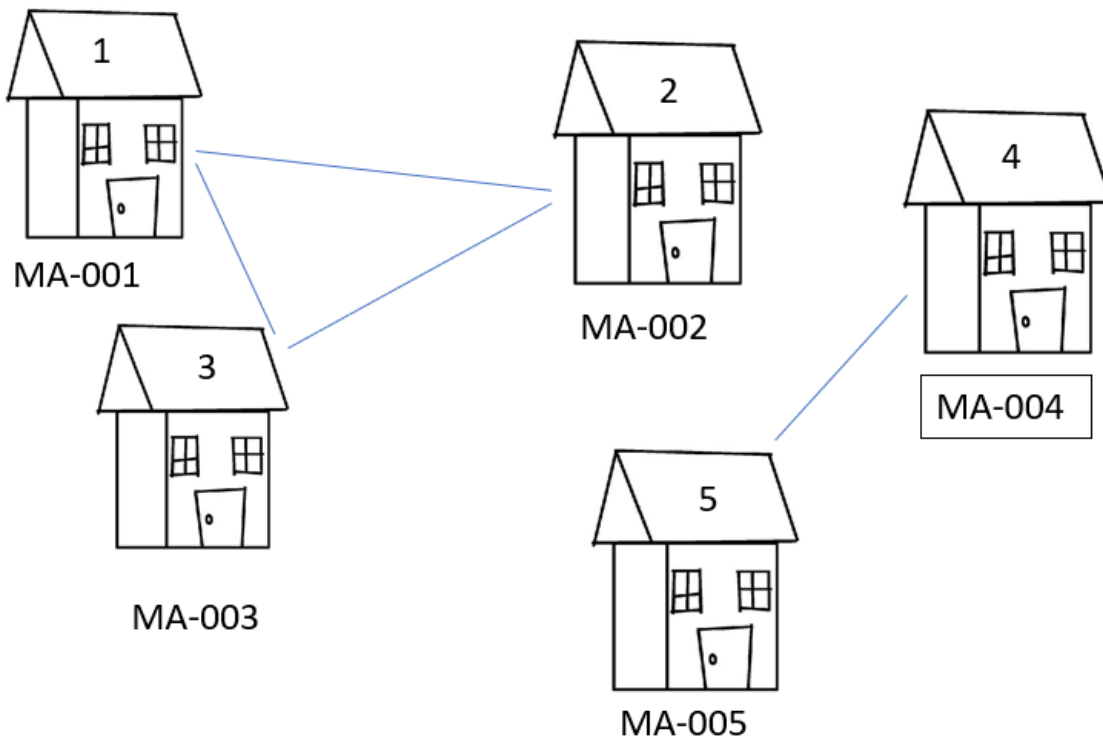
BACKGROUND

- A. EOHLC, as successor to the former Executive Office of Communities and Development ("EOCD"), is authorized by Executive Order 291 signed by the Governor of the Commonwealth of Massachusetts to administer the State Housing Credit Ceiling as defined in Section 42 of the United States Internal Revenue Code of 1986 as amended, (the "Code") in connection with the allocation and administration of low-income housing tax credits (the "Low-Income Housing Tax Credit").
- B. EOHLC has adopted a [REDACTED] Low Income Housing Tax Credit Allocation Plan (the "Allocation Plan") and certain Low-Income Housing Tax Credit Guidelines (the "Guidelines"), which govern the process and standards for allocation of the Low-Income Housing Tax Credit.
- C. EOHLC is authorized pursuant to M.G.L. c.23B sec.3, M.G.L. c.62 sec.6I, and M.G.L. c.63 sec.31H (collectively, the "Massachusetts Act") to allocate, administer, and determine eligibility for a Massachusetts low-income housing tax credit ("State Credit").
- D. The Grantor is the developer of [REDACTED] rental unit housing development located or to be located on the Property leased by the Grantor from the Ground Lessor pursuant to the Ground Lease, which housing development is known as or to be known as [REDACTED] (the "Project").
- E. The Massachusetts Development Finance Agency (the "Bond Agency") has approved the making of a mortgage loan (the "Mortgage Loan") to the Grantor for the purposes of financing a portion of the costs of the Project, a portion of such Mortgage Loan to be funded with all or a portion of the proceeds of an issue of tax exempt bonds or notes of the Bond Agency subject to the provisions of Section 146 of the Code, and in connection therewith EOHLC has approved the use of the Low Income Housing Tax Credit by the Grantor.
- F. The Grantor has applied to and received from EOHLC a binding commitment of State Credit and will receive in the future from EOHLC an allocation of State Credit (subject to pertinent conditions) for the Project.

Development vs Project vs Building

- The IRS defines a project as one, or a group of buildings that begin taking credits the same year.
- EOHLIC defines a Development as one or more buildings to be built/rebuilt, and is described in the LIHTC Regulatory Agreement.
- A building can be either or part of both, a development and a project.

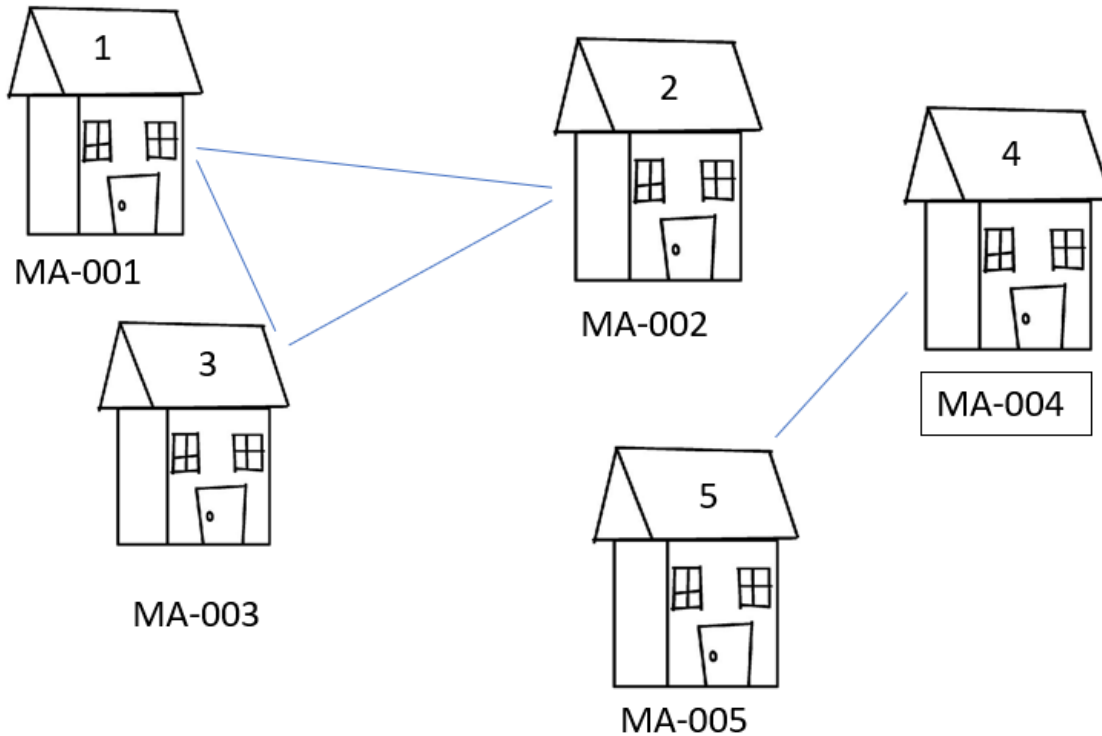
“Each building is considered a separate project under IRC §42(g)(3)(D) unless, before the close of the first calendar year in the project period, each building that is, or will be, part of a multiple-building project is identified as such by checking the “yes” box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b. The minimum set-aside documented on Form 8609, line 10c, must be the same for all buildings in a multiple-building project.”



In this example,

- A) EOHLIC has allocated credits and issued a single regulatory agreement covering five buildings. That's Five BINS issued by EOHLIC on IRS forms 8609.
- B) Owner checks box 8b on the 8609s for all five buildings, indicating each is a part of a multi-building project. Three of the buildings as one LIHTC project, and the other two as another, separate project. The Owner includes a list indicating the associations.

Transfers Between Buildings:



Example: Household in MA-003 wants to re-locate to another building

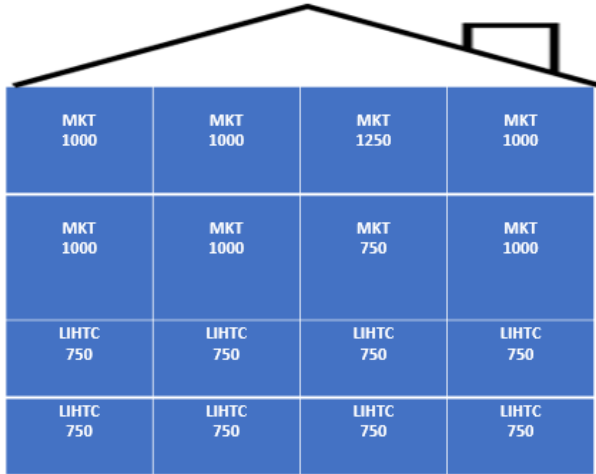
Same as before, five buildings covered by a single LIHTC Regulatory Agreement. Ownership has opted to begin the credit period for three buildings in one year, and the other two in the next year. A household in BIN MA-003 wishes to relocate to either MA-002 or MA-004 because of reasons.

If they move to MA-002: Management copies the most recent certification and supporting paperwork for their current unit, and places it in the file for their new unit in building MA-002. The next certification is due by the anniversary date of the current cert.

If they move to MA-004: Ownership is treating this building as part of a different stream of credits. For LIHTC purposes, this is a separate project. The household must re-apply and re-qualify as a new move-in

When they move to any building: The applicable percentage must not go down as a result. Credits are claimed by building. An increase in the applicable fraction in one building does not offset a decrease in another.

Square footage Vs. Unit Calculations



MKT 1000	MKT 1000	MKT 1250	MKT 1000
MKT 1000	MKT 1000	MKT 750	MKT 1000
LIHTC 750	LIHTC 750	LIHTC 750	LIHTC 750
LIHTC 750	LIHTC 750	LIHTC 750	LIHTC 750

$$\begin{array}{r}
 8 \text{ tax credit units} \\
 \div \\
 16 \text{ total units} \\
 = \\
 .50 \text{ or } 50\%
 \end{array}$$

Unit percentage is 50% LIHTC

Determining Applicable Percentage and comparable units



MKT 1000	MKT 1000	MKT 1250	MKT 1000
MKT 1000	MKT 1000	MKT 750	MKT 1000
LIHTC 750	LIHTC 750	LIHTC 750	LIHTC 750
LIHTC 750	LIHTC 750	LIHTC 750	LIHTC 750

$$\begin{array}{r}
 \text{LIHTC } 6,000 \\
 \div \\
 \text{ALL } 14,000 \\
 = \\
 .4285 \\
 \text{42.85\% is the Square footage} \\
 \text{Calculation.}
 \end{array}$$

Determining Applicable Percentage and comparable units

50% of the units but only 42.85% of the floor space. In this example, the Applicable Percentage is based on floor space. That means, If you have vacant* LIHTC units or units over 140%, you can rent market units that are larger, measured the same way the applicable fraction is measured, and not worry about reducing the credit amount.

*With vacant LIHTC units, Ownership must make **reasonable attempts to re-rent** before renting non-LIHTC units of same or smaller size. With households over 140% of the current adjusted AMI, **no, non-LIHTC units of same or smaller size can be rented** until the required number of LIHTC households below 140% is restored.

Calculating Average Income Designation

80%	80%	80%	30%
60%	60%	60%	60%
30%	80%	80%	60%
30%	30%	80%	MKT
80%	30%	80%	30%

units at 80% = 8 calculated as: 8 x 80 = 640

units at 60% = 5 5 x 60 = 300

units at 30% = 6 6 x 30 = 180

Total LIHTC = 19

$640 + 300 + 180 = 1120 \div 19 = 58.94\%$

Comparable Units and the Vacant and Next Available Unit Rules

Unit Calculation = 6/10 or 60% LIHTC

Sq Ft Calculation = 2600/5600 or 46.4% LIHTC

Therefore, units are compared based on square footage, with no regard the number of bedrooms.

VACANT UNIT RULE

If one of the 500 sq ft LIHTC units were to become vacant at the same time, management would have to prove they were actively marketing the LIHTC vacancies before committing to rent a market unit of the same size.

MKT 1,000	Mkt 1,000
Mkt Vacant 500	Mkt Vacant 500
Lihtc 500	Lihtc 500
Lihtc 400	Lihtc 400
Lihtc 400	Lihtc 400

140% /NAUR

If a household in one of these 500 Sq ft LIHTC units were to get certified over 140% of the LIHTC move in limit- Neither 500 sq ft market unit could be rented to an unqualified household.

Ownership can swap LIHTC designation if they convert one of these currently market into an LIHTC unit (by renting it to a qualified household) and then convert the 140% to market.



8823 Guide and Due Diligence

By itself, the fact that a tenant's actual income exceeds the anticipated income identified during the income certification is not a reportable noncompliance event (hindsight is always perfect). However, the state agency should consider expanding the sample size if multiple instances are identified. Collectively, multiple errors are indicative of poor internal control and increased risk of noncompliance.

The tenant income certification should be based on the best information available at the time of the certification. It represents the income the household anticipates it will receive in the 12-month period following the effective date of certification of income. If information is available on changes expected to occur during the year, that information should be used to most accurately determine the anticipated income from all known sources during the year. If the household reports little or zero income, or sporadic income, owners may use estimates based on actual income earned or received during the twelve month period immediately preceding the certification. Owners should use due diligence by asking follow-up questions when the income certification process reveals unusual circumstances suggesting additional sources of income.

Fees for Services

§ 1.42-11 Provision of services.

(a) **General rule.** The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as residential rental property eligible for credit under section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of section 42(g).

(b) **Services that are optional**—(1) *General rule.* A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.

(2) **Continual or frequent services.** If continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also § 1.42-9(b).

(3) **Required services**—(i) *General rule.* The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by building owners.

(ii) **Exceptions**—(A) *Supportive services.* Section 42(g)(2)(B)(iii) provides an exception for certain fees paid for supportive services. For purposes of section 42(g)(2)(B)(iii), a supportive service is any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. For a building described in section 42(i)(3)(B)(iii) (relating to transitional housing for the homeless) or section 42(i)(3)(B)(iv) (relating to single-room occupancy), a supportive service includes any service provided to assist tenants in locating and retaining permanent housing.

(B) **Specific project exception.** Gross rent does not include the cost of mandatory meals in any federally-assisted project for the elderly and handicapped (in existence on or before January 9, 1989) that is authorized by 24 CFR 278 to provide a mandatory meals program.

Rent Restricted an Additional Three Years

§42(g)(6)(E)(ii)

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general, the extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who

will continue to operate such portion as a qualified low-income building. Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) **Eviction, etc. of existing low-income tenants not permitted.** The termination of an extended use period under clause (i) shall not be construed to permit **before the close of the 3-year period following such termination—**

(I) **the eviction or the termination of tenancy (other than for good cause)** of an existing tenant of any low-income unit, or

(II) **any increase in the gross rent with respect to such unit not otherwise permitted** under this section.