



# ELIGIBILITY101

An Introduction to Multiprogram Household  
Qualification

First Housing University  
Centennial

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## DISCLAIMER

Please note that many items throughout this guidebook is just a guide based on current interpretations of the HOTMA updates.

**\*\*much of the information presented is what has been interpreted from many industry trainers.**

**Please note that we await confirmation and further guidance from FHFC with most items related to HOTMA.\*\***

## Programs

Congress enacted Section 42 of the Internal Revenue Code as part of the Tax Reform Act of 1986. This was signed by Bill Clinton as part of the Reconciliation Act of 1993. The Credit replaced traditional tax benefits eliminated on multifamily real estate. The program was created to encourage production of affordable multifamily rental housing for low-to-moderate income persons.

Requirements of the LIHTC program are found in Section 42 of the Internal Revenue Code. Additionally, much of the LIHTC eligibility requirements regarding income and assets can be found in the **HUD 4350 Handbook**. It states that, “HUD subsidized multifamily properties represent an important and valuable resource in addressing the nation’s affordable housing needs. The successful delivery of this housing resource to the people who need it depends on effective occupancy policies and procedures. HUD’s occupancy requirements and procedures ensure that eligible applicants are selected for occupancy, that tenants receive the proper level of assistance, and that tenants are treated fairly and consistently. Without the Credit, cash flow from rent is often inadequate to support housing development. Tax credits increase the owner/investor down payment in a housing development by lowering mortgage and financing costs allowing lower rents.”

### Bond Basics

The Bond program regulations require that all regular sources of income (including assets and asset income) be verified. Verifications must include information acceptable with income determinations under Section 8 of the United States Housing Act of 1937, as amended.

General verification requirements are to:

Obtain signed consent forms from applicants/residents (for each adult household member) to authorize the owner and its agents to collect information to verify eligibility and income; **and,**

Properly verify **all** regular sources of income for each applicant/resident (including assets) **prior** to the execution of the Income Certification and/or move-in; **and,**

Retain all resident/applicant files and records for at least six years after an applicant is rejected (for Applicants) or after a unit has been vacated (for existing residents).

### HOME Basics

The HOME Investment Partnerships Program (HOME) is a type of United States federal assistance that the U.S. Department of Housing and Urban Development (HUD) provides to states to create decent and affordable housing, particularly housing for low and very low-income Americans.

A Participating Jurisdiction (PJ) is the entity responsible for monitoring compliance. In many cases, the state is the PJ.

## **REGULATORY AGREEMENT (EXTENDED USE AGREEMENT AND LAND USE RESTRICTION AGREEMENT)**

The Land Use Restriction Agreement is **an agreement between the State Agency and the property owner.**

Section 42 of the Internal Revenue Code as part of the Tax Reform Act of 1986 allows the State Agencies to issue Low Income Housing Tax Credits (LIHTC). The state agency maintains a “Qualified Allocation Plan.” This plan addresses the requirements to participate in that state’s Low-Income Housing Tax Credit Program. State agencies can award more points for agreeing to meet certain criteria. The requirements that the developer committed to will be found in the LURA and/or EUA for each specific property. Any additional requirements or set asides required by the state agency will also be indicated in these documents.

Please note: All requirements indicated in the EUA or LURA for each specific property must be adhered to for the term of the agreement. If it is discovered that any State requirement indicated in the EUA or LURA, including deeper skewed set-asides, has not been adhered to or provided, it could result in noncompliance and be reported to the IRS. This could cause recapture of the Low-Income Housing Tax Credits issued.

The owner agrees to all the terms and conditions the IRS sets forth for the 15-year compliance period and then commits to an extended use agreement for an additional 15 years.

### **REGULATORY AGREEMENT Test Your Knowledge**

1. What are some other items that are in the Regulatory Agreement?
2. Can a property be placed in noncompliance for not meeting any of the requirements during the extended use period?

## SET-ASIDE

Minimum set-aside (MSA) - the developer picks the set-aside, and it is irrevocable. No one can change this.

Below are some examples of set-asides.

**The Minimum set-aside must be determined on a project-wide basis. A project can be a single building or multiple buildings.**

**20/50:** the project meets the requirements of this test if 20% or more of the residential units in this project are both rent restricted and occupied by individuals whose income is 50% or less than the area median income.

**40/60:** the project meets the requirements of this test if 40% or more of the residential units in this project are both rent restricted and occupied by individuals whose income is 60% or less than the area median income. Keep in mind that many state agencies award Housing Tax Credits on a competitive bid cycle.

**HC: 100% at 60%**

**HOME: 20% @ 50%**

Many properties have multiple set-asides. When you have multiple, you must always meet the most restrictive first.

Example:

100-unit property has the above multiple set-aside requirement.

Since 50% is the most restrictive income limit, we would make sure we had enough households qualified at 50% before we qualify households at 60%.

So, the breakdown would be as follows: 20 units at 50% (HOME) and the remaining units could be at 60%.

\*make sure you are always looking to see what the most restrictive rent would be\*

## INITIAL CERTIFICATION

### What are some of the Certification Steps to Qualifying Households?

1. COMPLETED APPLICATION
2. Determine the household size
3. Verify student status
4. Verify income and assets
5. Calculate gross income
6. Calculate Assets
7. Understand Income limits
8. Complete an Initial Certification
9. Sign and date documents
10. Recertification

### Completed Application:

A fully completed application is necessary for an accurate determination of eligibility. The information disclosed on the application will be used as a tool to determine all sources of income including total assets and asset income. It should be used to ask pertinent questions about everything related to eligibility. It is management's responsibility to obtain sufficient information on all applicants to completely process the application.

Upon initial contact with your applicant, do a quick interview. Advise the applicant of income and student restrictions. Inquire about the household's annual income. Finally, inform the applicant of verification requirements. In case the applicant does not want their income verified by a third party, or knows that they are not going to qualify, this is when you would want to let them know that verifying income via third party is a requirement to live in the community. Verifying this information is a condition that must be met to live at the property. While interviewing the applicant, confirm and update the information on the application.

This is management's opportunity to explain the programs and the requirements attached to each program.

1. NA's should not be used and there should be no blanks.
2. If the development's application for residency does not request information such as total assets and asset income, student status, and child support, an addendum to the application regarding such items shall be used.
3. Many states recommend that roommates complete separate applications.
4. If your state does not provide an application format, the application used by the owner should include at minimum:
  - a. The name, age, occupation, and student status of all persons expected to occupy the unit (legal name just as it appears on the Lease and Income Certification);
  - b. All sources and amounts of current and anticipated annual income including but not limited to employment, child support, retirement, etc. (including total assets and asset income) expected to be derived during the twelve-month certification period. The income questions should cover all of HUD's income inclusions, which are found in 4350 Exhibit 5-1 and 5-2;
  - c. Student eligibility;

- d. The signature of the applicant and the date the application was completed.
  - i. All household members 18 and older should sign if there is not a separate application for each adult.

Note: it is a good practice to ensure the application is complete and accurate. If the application is over 120 days old, it is a good practice to obtain a more current application. During the application process, use this time to explain program requirements, verification procedures and penalties for false information.

Some additional recommendations:

- Obtain all household composition information necessary to verify eligibility.
- Request that the applicant provide very detailed information regarding all sources of income.
- Follow up with specific questions to gain any necessary clarification.
- Have all members 18 and over, including emancipated minors, sign the Tenant Income Certification and any other necessary verification request.

It is necessary to explain to the applicant that all information provided on the application and all documents provided are considered sensitive and will be handled accordingly.

**What are some of the Certification Steps to Qualifying Households?**

1. Completed application
2. DETERMINE THE HOUSEHOLD SIZE
3. Verify student status
4. Verify income and assets
5. Calculate gross income
6. Calculate assets
7. Understand Income limits
8. Complete an Initial Certification
9. Sign and date documents
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**DETERMINE THE HOUSEHOLD SIZE:**

The household can be one or more persons. Do not confuse household with family. The individuals within the unit do not need to be related to be considered part of the household. It is anyone who resides in the unit. To determine what income limit to use, you must determine the number of persons within the household. If there are four people residing in the unit then the four-person income limit is used.

**Household Members:**

In general, all members who consider the unit their primary residence for the next 12 months should be considered household members.

<b>Included Household Members</b>	<b>Excluded Household Members</b>	<b>Might be Included</b>
Adults (even those who are away on military leave or in a nursing home who are expected to return to the unit)	Live-in Aides* see definition below	Permanently Confined Household Members
Those who are temporarily away and will return to the unit	Guests (check local and state rules on the length of time that a resident can be considered a guest)	Temporarily Absent Dependent Students
Children (children under joint custody who expect to return to the unit; children in the process of being adopted; children away at school)		Household Members in the Military
Unborn children *do not include any backup except for a voluntary statement from the resident		Joint Custody of Children
	Foster children/Foster Adults under the foster care program *do need to include backup documentation	
Future spouse or future roommate		
Head, co-head and spouse		



**\*\*please note that the Member composition and income of fosters changed with HOTMA. They should still be considered household members for occupancy standards to determine the size of the unit. They are just no longer identified as part of the composite for income limits.**

#### Explanations regarding some Household Members:

- Live-in Attendants: a live-in aide should not be counted as a household member for purposes of determining the applicable income limits, and they can never be a dependent.
  1. A live-in aide is a person who lives with an elderly, disabled or handicapped person; and who is essential to that individual's care and well-being; and
  2. who is not obligated for the individual's support and would not be living in the unit except to provide the support services.

*Two criteria must be met for the tenant to have a live-in aide*

- a. The tenant must have documentation showing the need for a live-in aide. An example is a letter from the doctor; however, the letter does not need to provide details of the need for the live-in aide.
  - b. The live-in aide must be in the unit solely for providing necessary services to the tenant and would not live there otherwise.
- Unborn children and children in the process of being adopted: these individuals \*can be counted as household members for purposes of determining the applicable income limit.
    - A self-statement from the tenant should be the only required form of documentation of pregnancy.
  - The head, co-head and spouse must always be considered household members and included on the LIHTC documentation, even if they are temporarily absent.
    - An example of this is a spouse who is deployed. They are considered a household member, and their income must be counted in full, even if they are not currently residing in the unit.

*If a household member is separated and the separation is permanent, the owner can document the file with documentation such as:*

- ✓ Divorce filing or legal separation documents
- ✓ Attorney statement showing the tenant has filed for separation or divorce
- ✓ A sworn statement from the tenant claiming them and their spouse will be operating as two separate households and that the separation is permanent
- ✓ Official documents showing two separate residences for the spouses

#### Changes in Household Size:

Additional Household Member – Though the IRS states that once a household is income qualified, they are always income qualified, they still require owners to verify the new member's income and add it to the household's most recent certification. The Next Available Unit Rule is also applied at this time.

A Household member leaves the unit – it is advised that the owner collects a self-declaration move-out form from the member leaving the unit. At next recertification, the member will be taken off the TIC.

A household does not have to initially qualify again as household members change, if one original member remains in the unit. If at any point all original household members leave, the remaining members will need to initially qualify under the current income limits, unless:

1. For mixed-used projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.
2. For 100% LIHC buildings, the remaining tenants were independently income qualified at the time they moved into the unit.

*Reference 8823 Guide 4-5*

**INITIAL CERTIFICATION: Determine the Household Size**  
**Test Your Knowledge**

1. Jason is the head of the household and his wife, Sam is in this military but will be stationed overseas for the next 19 months. How many members are considered part of the household for purposes of determining income limits?
2. Rob is head of household and Caroline is co-head. Caroline has her daughter, Laura, every other weekend. During those weekends, Laura will be residing with Rob and Caroline. How many members are considered part of the household for purposes of determining income limits?

Answer Key:

Determining Household Members

1. Two

2. Two

*Note: Owners must count all income of household members permitted to reside in the unit, even if some members are temporarily absent. If it is determined that an absent person is no longer a household member, the individual must be removed from the lease and the Certification. An individual on active military duty that will not be residing in the unit in the upcoming certification year, must be removed from the household, and his or her income must not be counted unless that person is the head of the household, spouse, or co-head. However, even if the military member on active duty is not the head, co-head, or spouse of the head of the household and the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.*

*Reference: Novogradac*

*Additionally, to be eligible for a tax credit unit, an entire household must be income eligible and Income eligibility is based on the income of the household compared to the max income allowed for a household of that size.*

*To mitigate the eligibility being questioned because the custody of minor children, it is important that custody is adequately verified for eligibility purposes. An applicant must have at least 50% custody of a child to count that child as a household member and thus be eligible for the higher income limit. When an applicant needs the child to qualify, the manager should strongly consider verifying custody.*

### What are some of the Certification Steps to Qualifying Households?

1. Completed application
2. Determine the household size
3. VERIFY STUDENT STATUS
4. Verify income and assets
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### VERIFY STUDENT STATUS:

A household comprised entirely of full-time students for five or more months during the calendar year is not eligible for an LIHTC unit. The five months do not have to be consecutive, and it is considered a month even if the student is only active for one day during that month. It is up to the school to tell you what constitutes full-time. The student eligibility requirement includes students in elementary, middle/junior/senior high school and institutes of higher learning.

Checking full-time student status is an ongoing LIHTC requirement, not just an initial occupancy restriction. A household may be income qualified, but if they if the household is comprised entirely of full-time students and does not meet an exception, they do not qualify for an LIHTC unit.

There are five exceptions to this rule. If the household is comprised of:

1. A single parent and his/her children, and such parent is not a dependent of another individual other than a parent of such children.
  - a. Verify by a tax return.
2. Students who are married that are entitled to file a joint federal income tax return with a spouse.
  - a. Verify by a tax return or a marriage certificate.
3. Receiving assistance under the Title IV of the Social Security Act, including TANF.
  - a. This can be verified by an award letter.
4. Enrolled in and receiving assistance under the Job Training Partnership Act (JTPA), or a similar governmental job training program such as Workforce Investment Act (WIA).
  - a. Mission statement must be like the one for the JTPA program.
5. A household member has been a part of the foster care program and is in transition to independence.
  - a. Verify by foster care or welfare agency.

The student rule that we are familiar with is triggered when **ALL** members are **full-time** students, but the Section 8 student rule is triggered when **ANY** member (see exclusions below) is a student, be it **part-time or full-time**. So, Section 8 makes no distinction between PT and FT.

<b>Question</b>	<b>LIHTC, MMRB, SAIL</b>	<b>Sec 8, HOME</b>
What triggers the rule?	When ALL members are FT students	When ANY member is a student
Students of what age are affected by the rule?	All ages	All adults under the age of 24 (18-23)
What types of schools trigger the rule?	Any institute of learning	Institutes of higher learning
What types of students trigger the rule?	Full-time	Full-time or Part-time

*Reference: Novogradac Journal*