

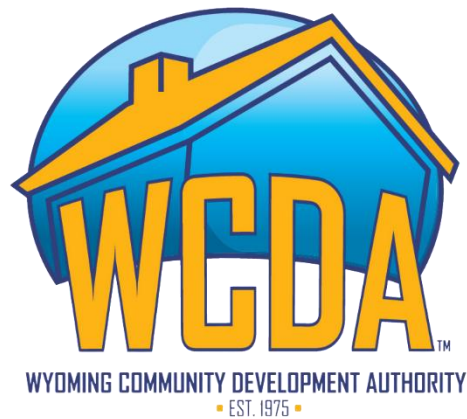
Affordable Rental Housing Compliance Manual

Tax Credit | Bond | HOME | NSP | NHTF

August 2025

Affordable Rental Housing Compliance Manual

LIHTC | Bond | HOME | NSP | NHTF Projects



Changes applicable to Wyoming properties no later than 1-01-2026

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Chapter 1 | Introduction

The Purpose of the Affordable Rental Housing Compliance Manual

The mission of the Wyoming Community Development Authority (WCDA) is to provide decent, safe, and affordable housing opportunities to Wyoming's low to moderate income families. This manual focuses on the responsibilities of owners and managers (owners/agents) of all WCDA affordable rental housing projects from the beginning of the lease up period through the end of the compliance period. Low-Income Housing Tax Credit (LIHTC) and tax-exempt bond (Bond) financed projects are governed by Sections 42 and 142 of the Internal Revenue Code, while Home Investment Partnerships Program (HOME) projects are governed by the rules and regulations under Title II of the Cranston-Gonzalez National Affordable Housing Act in 24 CFR Part 92. The Neighborhood Stabilization Program (NSP) was created by the Housing and Economic Recovery Act of 2008 (HERA) and is governed by 24 CFR Part 570, and the National Housing Trust Fund (NHTF) was also established by HERA and is governed by the regulations at 24 CFR Part 93. All projects are also governed by written restrictive agreements and any other more restrictive rules implemented by WCDA. These rules can be found in the Land Use Restrictive Agreement for LIHTC and Bond projects, and in HOME, NSP, and NHTF Agreements.

This manual was created to assist recipients of LIHTC, HOME, NSP, and/or NHTF funding to maintain a multi-family rental project during their periods of affordability. This manual is not a substitute for the federal requirements of the programs and should not be considered legal advice. Compliance with IRS and HUD requirements is the sole responsibility of the owner of the project.

Quick Tip

WCDA's Website Address | www.wyomingcda.com

The Low-Income Housing Tax Credit Program (LIHTC)

The Tax Reform Act of 1986 established a tax credit for low-income rental housing that is directly based on the amount of money spent on low-income units built or rehabbed. Section 42 of the Internal Revenue Code (IRC), the regulations at 26 CFR 1.42, various revenue rulings, procedures, and other IRS formal and informal guidance govern the LIHTC program. Tax credits are allocated and monitored on behalf of the IRS in each state by a Housing Finance Agency (HFA). WCDA is the HFA for Wyoming. The LIHTC program provides incentives for investment of equity capital in the development of affordable single family or multifamily rental housing. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity they provide in the construction or acquisition and rehabilitation of rental housing units that will remain income and rent restricted for an extended period.

Tax credits are allocated based on a federal formula with a "9% credit" for non-federally subsidized projects or a "4% credit" if the project is federally subsidized. For LIHTC purposes, the term "federally subsidized" refers to projects funded with tax-exempt bonds. An acquisition credit for existing buildings also results in a 4% credit. Developers serve as general partners or managing members and may be for-profit or nonprofit. Investors, often represented by limited partnerships or LLCs, use the tax credits to reduce their income tax liabilities.

Wyoming's Affordable Housing Allocation Plan includes guidelines for the competitive ranking of applications for tax credits. The amount of credits given to each state by U.S. Treasury for allocation is based on population, indexed for inflation, with a minimum for small states that is adjusted annually. This manual does not address how to obtain LIHTC funding. Parties interested in developing LIHTC funded projects should visit WCDA's website and review the current Wyoming Affordable Housing Allocation Plan for more information.

Many recognize the Low-Income Housing Tax Credit's influence on development, but its effect on management is also significant. To reduce the risk of disallowance of tax credits and the recapture of past-claimed credits, owners/agents must follow all LIHTC regulations throughout a 15-year compliance period. From an owner/agent's perspective, a thorough understanding of the tax regulations and other guidance governing the program is crucial.

The Home Investment Partnership Program (HOME)

HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act. Program regulations can be found at 24 CFR Part 92. HOME provides formula grants to States and localities that communities and



developers use, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income families. Federal rules require that projects with five or more HOME units have at least 20% of the HOME units occupied by families with incomes that do not exceed HUD's *very low* (VL) income limits. Very low limits are 50% of area median income (AMI). However, WCDA further requires that ALL HOME-assisted rental units be occupied by tenants that are initially at or below 50% of AMI.

The HOME program is administered by HUD and state and local Participating Jurisdictions (PJ's). The PJ for the State of Wyoming is WCDA. The PJ must ensure that HOME-funded housing units remain in HOME compliance for a specified period of affordability. Owners that do not keep their projects affordable for this period may be required to return some or all the HOME funds.

The Neighborhood Stabilization Program (NSP)

The NSP program was created by the Housing and Economic Recovery Act of 2008 (HERA). All the funding from this program has been appropriated, so there will be no new NSP projects. In Wyoming, there are two multi-family rental projects and four single-family rental homes that fall under the rules and regulations for NSP. The regulations can be found at 24 CFR Part 570. WCDA enforces compliance requirements for NSP in the same manner as the HOME program except that the HOME student restrictions do not apply to the NSP program.

The National Housing Trust Fund (NHTF)

The NHTF was also created by HERA and is governed by regulations found at 24 CFR Part 93. The compliance requirements for NHTF are like the HOME program in many ways. The major differences are that ALL NHTF units must be occupied by families with incomes that do not exceed the NHTF extremely-low income (ELI) limits, the rents cannot exceed the NHTF rent level, the minimum period of affordability is 30 years, and HOME student restrictions do not apply to the NHTF program.

Periods of Affordability

For an LIHTC project, the compliance period is the initial 15 years of the project starting the first year that the owner claims tax credits.

Tax credits are claimed annually on a building-by-building basis over a 10-year **credit period** beginning, at the election of the owner, with either the taxable year in which the building is placed in service, or the succeeding taxable year. The year elected to begin claiming credits, once made, is irrevocable.

No credits are allowed if the building does not comply with IRS regulations for meeting initial compliance, and eligible families must occupy the required number of units throughout a 15-year **compliance period**. Not only must LIHTC units be occupied by eligible families, but they must also be rent-restricted and meet HUD's NSPIRE physical standards for the entire compliance period. Even though credits are usually claimed over the initial 10-year credit period, owners are liable to the IRS for the full 15-year compliance period, as credits could be recaptured for noncompliance during the 5 years after the end of the credit period.

After the compliance period, there is an added commitment of 15 years. Thus, the project's **extended use period** consists of the original 15-year compliance period plus the additional 15-year commitment plus any extra period agreed to by the owner in their application for tax credits. Thus, often the extended use period for an LIHTC project can range from 30 to 75 years.

Quick Tip

The extended use period is not just the additional 15 years after the compliance period, but the entire 30 or more years beginning with the first year that credits are claimed.

Example

LIHTC Periods

An owner first claims credits in 2026. They have agreed to the federal minimum extended use period of 30 years.

When do the LIHTC periods end?

The credit period ends in 2035

The first year that credits are claimed, plus 9 for a total of 10 years

The compliance period ends in 2040

The first year that credits are claimed, plus 14 for a total of 15 years

The extended use period ends in 2055

The first year that credits are claimed, plus 29 for a total of 30 years

HOME, NSP and NHTF projects also have a required minimum **period of affordability** that is dictated by HUD. The HUD-required periods of affordability can range from 5 to 30 years depending on the funding source, amount of assistance received, and whether the project was new construction or rehabilitation of an existing building. The owner may agree to extend this period beyond the federal period of affordability in their application for funding.

Chart | Program Periods

Year	2026										2035					2040					2046						2055													
Year #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30										
LIHTC	Credit Period (10 years)																																							
	Compliance Period (15 years)																																							
	Minimum Extended Use Period (30 years)																																							
HOME			Period of Affordability (20 years)																																					
NHTF			Period of Affordability (30 years)																																					

The first year tax credits were claimed was 2025

The HOME and NHTF periods of affordability began in 2026

Regulation Changes Over Time

During the period that the LIHTC, Bond, HOME, NSP and NHTF programs have been in effect, WCDA, Congress, the IRS, and HUD have amended the rules and regulations governing each of these programs. These changes range, for example, from the way rent is calculated, the required extension of the compliance period, student rule exemptions, the student rule requirement for HOME funded projects, and multiple sets of income limits that affect the programs. It is the responsibility of owners/agents to educate themselves and be aware of these changes as they continue to occur.

Quick Tip

WCDA's Compliance Officer is Laurie Gray. She can be reached at gray@wyomingcda.com.

Chapter 2 | General Compliance and Monitoring

The LIHTC and tax-exempt bond programs are governed and regulated by the IRS (borrowing significantly from HUD rules), while the HOME, NSP, and NHTF programs are governed and regulated by HUD. Thus, there are different rules and regulations for each program, which at times can be conflicting. Even though WCDA only allocates, commits, or grants funding and monitors compliance for the LIHTC, Bond, HOME, NSP, and NHTF programs for the State of Wyoming, a project may have other sources of funding with additional compliance requirements. When rules conflict, following the most restrictive rule will often satisfy each program involved. However, there are times when families must be qualified using the rules for both funding sources independently. For example, in the case of the completely different and complex HUD and LIHTC student eligibility rules, families must be qualified using both rules for tenants that are in a combination LIHTC/HOME unit. The LIHTC, Bond, HOME, NSP and NHTF programs require that WCDA monitor each project for compliance. Monitoring is done on a regular schedule as dictated by each program.

Monitoring Requirements

LIHTC and Bonds | Currently, WCDA monitors at least 20% of the units and tenant files in LIHTC- and bond-funded projects at least once every 3 years. The first inspection must occur before the end of the second calendar year following the year the last building in the project is placed in service.

Example

First LIHTC Inspection Deadline

The last building in a project is placed in service on August 10, 2025.

What is the deadline for the first LIHTC inspection?

12/31/2027

Regulation requires that state agencies give owners/management no more than a 15-day notice of an upcoming LIHTC inspection and that at least one element of every building in a project is inspected. The number of units to be inspected is based on a chart as shown below.

HOME, NHTF, and NSP | HUD requires at least 4 units to be inspected for projects with up to 20 HOME or NHTF units. For projects that have more than 20 HOME or NHTF units, 20% of the HOME/NHTF units and tenant files in a project must be monitored. The first onsite HOME/NHTF inspection must occur within 12 months of project completion and at least once every 3 years thereafter. If health and safety compliance issues are found at any inspection, a follow-up onsite inspection must occur within 12 months or within a reasonable period established by WCDA. WCDA will monitor all NSP projects in the same period and to the same standards as required by the HOME program.

HUD also requires that upon completion of a HOME, NSP or NHTF project, WCDA or its agent must conduct an on-site inspection to confirm that contracted work is complete, and the property meets the property standards specified in HUD regulations.

All Programs | For all projects, WCDA will inspect the entire project site, common areas, all major systems, building exteriors, and project records. These will also be reviewed at the time of the on-site monitoring. Life threatening issues, as defined by NSPIRE, identified during an inspection visit must be corrected within 24 hours of the finding. For LIHTC projects, compliance violations that are discovered at the inspection are reported to the IRS on form 8823 after time is allowed to correct issues.

Owners are given no more than 15-days' notice via email and Procorem prior to a monitor arriving at the property. Because notice is given via email and Procorem, it is imperative that WCDA be kept updated on all pertinent email contact information for the owner, management company, and site manager. Owners/managers are notified of the date and approximate time that the monitor will be on site and will clarify that postponing or rescheduling the inspection is not permitted. Units to be inspected are randomly selected at the time the monitor arrives at the project. It is the owner or manager's responsibility to notify all the tenants of the possibility that the monitor may need to enter their unit on the specified day. The monitor will not enter any unit unless they are accompanied by a staff person from the project, preferably a manager and/or a maintenance person.

Starting in January 2021, while the low-income unit selection remains local to the project election, the number of low-income units to be inspected has changed. Instead of 20% of the low-income units in a project, it is the lesser of 20% of low-income units in the project or the number listed in the Table to Paragraph (C)(2)(III) found in Treasury Regulation Section 1.42-5 as follows:

Chart | Number of LIHTC or Bond Units to be Inspected

Number of Program Units at the Project | Number of Program Units & Files to be Reviewed

1	1
2	2
3	3
4	4
5 - 6	5
7	6
8 - 9	7
10 - 11	8
12 - 13	9
14 - 16	10
17 - 18	11
19 - 21	12
22 - 25	13
26 - 29	14
30 - 34	15
35 - 40	16
41 - 47	17
48 - 56	18
57 - 67	19
68 - 81	20
82 - 101	21
102-130	22
131-175	23
176-257	24
258-449	25

Compliance Monitoring Fees

LIHTC | WCDA is authorized by the IRC to charge reasonable monitoring fees to cover the cost of LIHTC monitoring.

HOME and NHTF | WCDA can also charge monitoring fees to any project with HOME funds committed since August 23, 2013 if the fees are incorporated into the projects' underwriting. Monitoring fees are also allowed for NHTF projects.

Chapter 3 | LIHTC Compliance

Year of Allocation

Different compliance regulations and Wyoming State allocation requirements are in force depending on the year the LIHTC allocation was awarded. All monitoring and compliance are based on the year of allocation. The year of allocation is the first two numbers following the "WY" in the Building Identification Number (BIN).

Quick Tip

The LIHTC Building Identification Number Format
[State] – [year of allocation] – [specific building identifier]
Example: WY-26-00001

A building in Wyoming that was allocated tax credits in 2026

Compliance by Building or Project

Monitoring and compliance are primarily done by buildings within a project by both WCDA and the IRS. Records must be kept by building and by unit number. Every building is assigned its own BIN, and all record keeping and reporting must be sorted and submitted by BIN.

While most rules are applied and tracked by building, the minimum set-aside, income limit selection, and the Vacant Unit Rule (VUR) are also project rules for both the LIHTC and Bond programs. However, for a project with bond-only financing, the Available Unit Rule (AUR – also known as the “over 140% rule”) is a project-wide rule, whereas in an LIHTC project, the AUR is applied at a building level. See later in this manual for more on the AUR.

Placed in Service Dates

Form 8609 (Rev. October 2014)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification
Information about Form 8609 and its separate instructions is at www.irs.gov/form8609. OMB No. 1545-0988

Part I Allocation of Credit
Addition to Qualified Basis Amended Form

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-)

5 Date building placed in service

6 Check the boxes that describe the allocation for the building (check those that apply):

A building is placed in-service (PIS) when it is ready for the building's intended purpose. For new construction and rehab tax credits, the PIS date marks the first year that tax credits may be claimed, or the start of the credit period may be deferred by the owner to the next year.

The PIS date for each building is recorded on IRS form 8609, line 5.

- **For a newly constructed building**, it is PIS on the date the certificate of occupancy is received for the first unit.
- **For the acquisition of an existing occupied building**, it is PIS on the date the new owner purchases the building.
- **For rehabilitation of an existing building**, the rehabilitation is PIS on a date when the accountants determine that expenses are paid on the rehabilitation sufficient to meet LIHTC requirements.

Calculating Tax Credits | Eligible Basis

Form 8609 (Rev. October 2014)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification
Information about Form 8609 and its separate instructions is at www.irs.gov/form8609. OMB No. 1545-0988

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)

8a Original qualified basis of the building at close of first year of credit period

The equation that accountants use to calculate the tax credits for a building starts with how much money was spent on a building. This is called the eligible basis. Eligible basis consists of depreciable costs (which excludes land and some other expenses) of the cost of new construction, or the cost of rehabilitation, and/or the acquisition cost of existing buildings.

Included in eligible basis are the cost of the LIHTC and any market-rate units, facilities for use by the tenants, recreational facilities, and parking areas if there are no additional fees for the use of these items beyond tenant rent. Eligible basis does not include commercial space. Any reduction in the eligible basis for a building that results in a

decrease in qualified basis is noncompliance that must be reported to the IRS. For instance, the eligible basis can be violated if a fee is charged for the use of a common area.

Example

Fees Charged for Part of Building in Eligible Basis

An owner/agent has a policy that tenants pay a deposit to use the community room. The cost for the community room is included in the building's eligible basis. The owner justifies the deposit to be used in case the residents do not leave the room in a clean state. However, the state discovers that the owner always takes cleaning out of the deposit, regardless of the condition the room is left in.

Are there any implications to this policy?

This is a fee that is charged. Thus, all or most of the common area costs included in eligible basis may be disallowed and recaptured.

Example

Tax Credit Equation Part 1 | Eligible Basis

An owner spent \$1,500,000 on the depreciable portion of an LIHTC building.

What is the eligible basis?

\$1,500,000

Calculating Tax Credits | Applicable Fraction and Qualified Basis

In the equation that accountants use to calculate the tax credits, LIHTC units are included in an applicable fraction which is applied to the eligible basis to determine the qualified basis for each building.

For a unit to be counted for tax credits, it must at least meet the following criteria:

- The resident family's income eligibility at move-in is documented to be at or below the multifamily tax subsidy project (MTSP) income limits published by HUD.
- The resident family's continuous LIHTC student eligibility is documented.
- The rent is restricted at the appropriate MTSP level.
- A non-transient lease is in place, with an initial term of at least 6 months.
- The unit is suitable for occupancy under HUD's NSPIRE standard.
- The unit is available to the public on a non-discriminatory basis.

To know the qualified basis, the eligible basis is multiplied by the applicable fraction for the building. The applicable fraction is the lesser of:

1. The unit fraction - the proportion of LIHTC units to all rental units in the building; or
- 2.

The floor space fraction - the proportion of square footage of the floor space of the LIHTC units to the floor space of all rental units in the building.

Example

Tax Credit Equation Part 2 | Applicable Fraction

In the building above there are 10 units that are all the same size. Of these, 8 are LIHTC and two are market-rate.

What is the applicable fraction?

80% 8 out of 10 units

Example

Tax Credit Equation Part 3 | Qualified Basis

For the building above.

What is the qualified basis?

\$1,200,000

The \$1,500,000 eligible basis x the 80% applicable fraction

Calculating Tax Credits | Applicable Credit Percentages (4 or 9%)

2	Maximum applicable credit percentage allowable (see instructions)	2	%
	Maximum qualified basis	\$1,200,000	

To determine the amount of credit an owner can claim each year, the amount an owner can claim is the qualified basis multiplied by the project's particular LIHTC credit percentage. Projects without tax-exempt bond financing are calculated at 9% each year. Projects that are "federally subsidized" with bonds are calculated at 4% each year.

Example

Tax Credit Equation Part 4 | Credit Percentage

The building above is financed with tax-exempt bonds.

What is the applicable credit percentage?

4%

Example

Tax Credit Equation | Final Answer

For the building above.

What are the maximum tax credits that can be claimed?

\$48,000 a year

\$1,200,000 qualified basis x 4% applicable credit percentage

The owners will claim this for a 10-year credit period, resulting in total tax credits claimed of up to \$480,000.

Owners have until the end of the first year of the credit period to establish the project's applicable fraction and qualified basis for each building. The first year of the credit period is the year the building places in-service or the owner may elect to defer it to the next year. The low-income occupancy achieved by the end of the first year of the credit period establishes the project's original qualified basis. Only low-income units in the original qualified basis are eligible to receive the full tax credit during the 10-year credit period. Those units not established in the original qualified basis can be claimed using 2/3 of the value of the credit which is now "de-accelerated" and claimed through year 15. Due to the complexity of this issue, WCDA recommends that owners consult with a qualified tax professional to determine the amount of credit an owner can claim.

Minimum set-Aside

The image shows a portion of IRS Form 8609, titled "Low-Income Housing Credit Allocation and Certification". The form is from the Department of the Treasury, Internal Revenue Service, and is dated (Rev. October 2014). It includes the OMB No. 1545-0988. The section shown is "Part 2 Allocation of Credit".

Line 8a asks: "Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?" with "Yes" and "No" checkboxes. Line 8b asks: "If you have elected 'yes' on line 8a, do you elect to reduce eligible basis under section 42(d)(2)(B)?" with "Yes" and "No" checkboxes.

Line 10(c) asks: "Check the appropriate box for each election:" and lists four options with checkboxes:

- Elect minimum set-aside requirement (section 42(g)) (see instructions)
- Elect minimum set-aside requirement (section 42(g)) (see instructions) 20-50
- Elect minimum set-aside requirement (section 42(g)) (see instructions) 40-60
- Elect minimum set-aside requirement (section 42(g)) (see instructions) 25-60 (N.Y.C. only)
- Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) 15-40

All LIHTC properties must have a minimum set-aside elected by the owner on IRS form 8609, line 10(c). Specific minimum set-aside options are explained below. If the minimum set-aside is not met, the project is not eligible to claim tax credits. The owner must specify the minimum set-aside that is planned to be elected in the LIHTC application when applying for funding for the development. The form 8609 is issued by WCDA with Part 1 completed. Part 2 is completed by the owner, including the minimum set-aside election, and

submitted to the IRS when credits are first claimed. Once the minimum set-aside election has been made, the set-aside cannot be changed and is considered irrevocable.

To determine how the minimum set-aside will apply to a project, the owner must first decide if each building is a project or if multiple buildings are part of the project. The owner may group buildings within the same allocation into one or several projects. This is indicated by the owner on IRS form 8609 line 8(b) for each building. This line asks, "Are you treating this building as part of a multiple building project for purposes of section 42?" WCDA will issue an 8609 for EACH building and the owner must make this election per building. If the owner selects "no" on line 8b, each building is then considered its own project and must maintain compliance per building throughout the compliance period. If the owner indicates "yes" on line 8(b), then an attachment must be included with each 8609 that indicates which buildings are part of which projects. Without these attachments, the IRS and WCDA will disregard the "yes" and consider each building to be a separate project. This is harmful to most projects that are planned to be multiple-building projects, so it is important that owners who elect this also include the required list of buildings with each 8609.

When an owner groups multiple buildings into one project by answering "yes" on line 8b for all the buildings and attaches the separate document that identifies the buildings that should be included in the multi-building project, all the units within each project can be used to meet the minimum set-aside requirement.

Of the 5 minimum set-aside options on form 8609 line 10(c), only 3 are available in Wyoming. This is because two of the options apply only to New York City. The Wyoming options are the 20-50 test, the 40-60 test, and the Average Income Test (AIT). The 20-50 test means that a minimum of 20% of the units must be set-aside for low-income families whose incomes do not exceed 50% of the LIHTC MTSP income and rent limits. The 40-60 test means that a minimum of 40% of the units must be set aside for low-income families whose incomes do not exceed 60% MTSP income and rent limits. As a result of the 2018 Consolidated Appropriations Act, an additional set-aside known as the Average Income Test (AIT) was created. The AIT test means that at least 40% of the units must be set -aside for low-income families. Each LIHTC unit must have an MTSP income and rent limit designation. For these designations, an owner may select 20%, 30%, 40%, 50%, 60%, 70% or 80%. An owner is not required to select all these designation options for an individual project. These unit designations must not exceed an average of 60%.

Average Income Test [AIT] Specifics

To meet the AIT minimum set-aside test, at least 40% of the total units in the project constitute a "qualified group of units," which means: 1) each unit in the group must be occupied by an LIHTC-eligible family for the designation set for the unit; 2) each unit must be properly rent restricted at no more than the designation for the unit; 3) each unit must be suitable for occupancy; and 4) the average designations for the units must not exceed 60%. Additionally, to be included in the building's applicable fraction, a unit must be part of a qualified group of units that average no more than 60%. For this applicable fraction test, designations across the project, not individual buildings, must average 60%. This means that an owner's multiple-building election made on form 8609, line 8b, is imperative as to how an owner will maintain compliance with the AIT.

The average for the AIT is calculated based on the MTSP designation of the UNIT rather than the actual income of the family. A property is compliant if the combined average is met by the end of the first year of the owner's credit period and continues to be met at the end of each taxable year throughout the compliance period.

WCDA's policies for the Average Income Test:

1. AIT designations may float between units within the project.
2. An owner may float or change designations at will to meet the requirements of other housing programs, or to meet civil rights obligations, such as for the accommodations and transfers under the Fair Housing Act, VAWA, or Section 504.
3. Households that transfer within a project take the designation they were originally assigned with them to the new unit.
4. Adjusting designations is also appropriate when noncompliance is discovered, and this affects the average designations for the AIT.
5. Unit designations are made by the owner, documented in their books and records, and communicated to WCDA through the online reporting system.

Designation and redesignation of units for the AIT are made as follows:

- **New projects** | Units are designated/redesignated on or before initial occupancy for each unit.
 - **Vacant previously occupied units** | Units are designated/redesignated prior to next occupancy.
 - **Restoring the project average** | Before re-occupancy of a vacant unit or for in-place families if they are not charged more rent mid-lease to allow for redesignation of their unit for correction of noncompliance.
6. WCDA will work with owners to allow reasonable corrections to restore compliance with average income requirements ***whether the issue happened during the taxable year that the correction is made or in an earlier year***. Corrections may include redesignating units, adding units to the qualified groups, or removing units from the qualified groups. If the issue is discovered and corrected within the taxable year that the error occurs, the owner may correct the issue to ensure that there is a qualifying group that meets the minimum set-aside and inform WCDA of the redesignation. If the issue is not discovered and corrected within the taxable year that the error occurs, any retroactive corrections ***must be made within 180 days of the discovery*** by owner or WCDA, and the correcting redesignation reported to WCDA.

Record Keeping and Retention – Federal and WCDA Requirements

The owner is responsible to keep records for each qualified low-income building in the project that shows for each year of the LIHTC extended use period and/or the HOME or NHTF period of affordability: (1) the number of residential rental units; (2) the rent charged on each residential rental unit; (3) the utility allowance charged (if applicable); (4) the annual income certification and/or student status of each low-income family; and (5) the documentation to support each of these items. Owners must maintain applicant and resident information in a way that ensures confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages and seek other relief, as appropriate. Owners must dispose of paper or electronic records in a manner that will prevent any unauthorized access to personal information, such as pulverization, shredding, magnetic deletion, etc.

Owners must maintain records necessary for WCDA to conduct compliance monitoring and for the IRS or HUD to conduct any audits.

LIHTC | Records for the first year of the credit period must be retained for six years after the deadline for filing the tax return for the last year of the compliance period. Records for all other years in the fifteen-year compliance period must be kept for a minimum of six years following the deadline for filing that year's tax returns for the property. The records must include all of the following:

1. The total number of residential rental units in each building (including the number of bedrooms and the square footage of each residential rental unit).
2. The percentage of LIHTC residential rental units in each building.
3. The rent charged for each LIHTC unit in the building, supporting documentation, the applicable utility allowance, and the applicable unit percentage set aside.

4. The number of occupants in each LIHTC unit.
5. Unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, resident name, move-in and move-out dates for all residents, including market residents).
6. The annual income certification and/or student status documentation of each LIHTC household.
7. Documentation to support each LIHTC resident's certification.
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
9. The character and use of the nonresidential portion of any building included in the building's eligible basis that are resident facilities available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities (or facilities otherwise reasonably required by the development).

HOME/NHTF | For HOME and NHTF projects, records must be retained for five years after the project completion date. Records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent five-year period. Thus, the records for the last year must be retained for five years following the end of the period of affordability.

LIHTC with HOME or NHTF | LIHTC requirements are more restrictive and must be followed for LIHTC/HOME properties.

Electronic Document Policy

Owners/agents may comply with the record retention provisions required by the LIHTC regulations by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22, Revenue Ruling 2004-82, and HUD Notice H-2020-10, or updated versions of these.

WCDA will accept and permit the use of electronic signature systems provided that: 1) the electronic signature software has the capability to audit or authenticate the signature; and 2) there are no existing restrictions imposed by state or federal law. A solution such as DocuSign or Adobe software should be utilized in the signature process to satisfy E-SIGN Act and/or Uniform Electronic Transactions Act (UETA) requirements.

The owner/agent is responsible for ensuring that tenant files follow IRS and/or HUD rules and regulations and that the signature is that of the applicant/tenant. Additionally, the owner is responsible for ensuring investor and syndicator acceptance of the use of electronic signatures. Should issues arise because of electronically signed documents, WCDA reserves the right to require original 'wet' signatures. Owners/agents of properties being monitored by WCDA intending to take advantage of the Agency's electronic signature policy must take the following actions:

- **Owner/Management Policy.** Initially, and upon any change of the owner/agent, the owner/agent must develop and implement a policy and procedure for the use of electronic signatures. WCDA has no liability for owner/agent company electronic signature policies that do not meet IRS and/or HUD rules and regulations.
- **WCDA Request for Documents.** Hard copy printouts of the tenant files must be provided to WCDA upon request.
- **File Format.** All household files must be made available in a format compatible with WCDA software.
- **Hard Copies.** The owner/agent policy must provide accommodations to residents who request to review and sign hard copies of documents.

Maximum Gross LIHTC Rent and Utility Allowances

The maximum gross monthly rent for an LIHTC-qualified unit cannot exceed the LIHTC rent limit. The applicable income limit for calculating rent is based on the number of bedrooms in the unit. For the LIHTC program, Wyoming has adopted the IRS definition of gross rent.

Gross rent includes:

1. The tenant paid rent.
2. A utility allowance for utilities paid by the tenant.
3. Required payments for non-optional charges.
4. Minimal amounts paid by the tenant to the owner toward the purchase of the unit.



Gross rent excludes:

1. Section 8 rental assistance or any comparable rental assistance program payments.
2. Government-paid fees for supportive services.
3. Rental payments made by a family in a Rural Development (RD) project to the owner if an equivalent amount of overpayment is paid back to RD.

The gross rent can exceed the applicable LIHTC rent limit if the tenant-paid rent portion exceeds the LIHTC limit as a requirement of the rental assistance program (rental assistance programs require that the family pays a certain percentage of its income on rent).

The applicable rent limit is calculated on unit size based on the number of bedrooms. An assumed 1.5 people per bedroom (1 person for studio or efficiency units) is used. This does not relate to the actual size of the families that may occupy the unit. The income limit for the assumed number of people is multiplied by 30% to get annual gross rent. Dividing this by twelve results in gross monthly rent.

For odd numbers of bedrooms, this calculation results in a half-person income limit. If this happens, the income limits on either side of the resulting number are added and divided by two. For example, to calculate an income limit for 4.5 people (as used for a 3-bedroom unit), the 4-person income limit is added to the 5-person income limit and divided by two. That applicable income limit is multiplied by 30% and divided by twelve. This results in the maximum gross monthly rent that can be charged for that unit.

When calculating maximum monthly rents, all monthly rents must be rounded *down* to the nearest dollar. Past LIHTC income and rent limits are posted on WCDA's website, although it is the owner's responsibility to verify accuracy. WCDA has posted the link to the Novogradac Rent and Income Calculator on WCDA's website, and owner/agents are required to go to that site for LIHTC rent limits. Rents on LIHTC units may be increased without prior permission from WCDA, but only as allowed by the tenant's lease. A 30-day prior notice of the increase must be given to the tenant.

Quick Tip

The Novogradac income and rent calculator can be accessed from the front page of www.novoco.com.

Overcharging of Rents

Charging more than the allowable rent constitutes non-compliance and loss of tax credits may result. A utility allowance is included in the gross monthly rent for any utilities paid by the tenant. Phone, cable, and internet are not considered utilities. IRS has taken the position that once a tenant has been overcharged for rent, the unit will not be considered back in compliance until the first day of the following taxable year. The IRS 8823 Guide indicates that an owner cannot avoid the disallowance of credits by rebating excess rents charged to tenants in any year of the compliance period.

The 8823 Guide [2011 edition] states: *"A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis"* (Page 11-8). *"A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees"* (Page 11-9). Once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge.

The 8823 Guide additionally states on page 11-10: *"Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHTC credit by rebating excess rent or fees to the affected tenants."*

Therefore, if WCDA discovers overcharged rent for a unit, an 8823 is issued and that unit is considered out of compliance for the remainder of the year. A corrected 8823 is issued at the beginning of the next year if the rent has been properly lowered and is now below the applicable limit. While refunding the overcharge does not prevent the 8823 from being issued, WCDA will still require the owner to reimburse the tenant for any overage before a corrected 8823 is issued for the unit.

Utility Allowances (UA)

If a tenant directly pays utility costs, a utility allowance must be used to determine the maximum rent paid by the tenant. The utility allowance and any non-optional charges are subtracted from the maximum gross rent allowed by a program to calculate the maximum tenant portion of the rent. Charges for truly optional services that the tenant has elected to take part in are not subtracted from the maximum rent allowable.

Treasury Regulation 1.42-10 covers LIHTC utility allowances. For all LIHTC, Bond, HOME, NHTF, and NSP-funded projects, utility allowances should be calculated as follows:

1. **Rural Housing Services (RHS)** | If a building receives assistance from the RHS Rural Development (RD) programs, the applicable utility allowance in the building is the RD-approved UA. Additionally, if any tenant in the building receives RD rental assistance the applicable UA for ALL units in the building (including those occupied by tenants receiving HUD assistance) is the RD allowance.
2. **HUD regulated buildings** | If neither a building nor any tenant receives RD assistance and the rents and utility allowances are regulated by HUD (such as PBRA Section 8 and HOME), the applicable UA for all units in the building is the HUD UA. Multifamily Notice H-2015-4 provides instructions to management for completing the required utility analysis for HUD PBRA projects. This Notice includes the required baseline utility analysis, the optional factor-based utility analysis, and the utility analysis sample size.
3. **Other buildings** | If a building is not subject to either 1 or 2 above, the applicable utility allowance for rent-restricted units in the building is determined using the owner's choice of the following methods:
 - **PHA Estimate** | For tenants receiving HUD Housing Choice Voucher (HCV) rental assistance, the applicable PHA utility allowance is used. For other tenants, the general rule is to use the PHA utility allowance. However, if a local utility company estimate is obtained per the below paragraph, that estimate becomes the appropriate utility allowance.
 - **Utility company estimate** | The estimate is obtained when an interested party receives information from a local utility company providing the estimated cost of a utility. The estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. If an owner opts to seek additional data in accord with the below HUSM or Energy consumption model, it is the HUSM or ECM that will be used over the utility company estimate. This is because the HUSM or ECM are based on actual factors applicable to the specific property, and not just the area where the property is found.
 - **The HUD Utility Schedule Model (HUSM)** | The HUSM is an energy consumption model designed by engineers commissioned by HUD to be used for LIHTC and HOME properties. The HUSM enables users to calculate utility schedules after entering utility rate information (tariffs). This model is based on climate and survey information from the U.S. Energy Information Administration of the Department of Energy, and it incorporates energy efficiency and Energy Star data.

Quick Tip

The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model. The HUSM, use instructions and other supplemental information is available at the huduser.gov website, key word search "utility allowances."

- **Energy Consumption Model (ECM)** | A building owner may calculate utility estimates using an energy, water, and/or sewage consumption analysis model. This estimate is done by an industry professional certified to make these calculations. Such professionals must be independent from the property owner.

HFA Estimate | WCDA does not calculate or provide UAs for projects that it monitors, although it does inform when state PHA UAs are published.

Submetering | Although submetering of utilities and including these costs in a UA is not disallowed by the IRS, the Wyoming Affordable Housing Plan does not allow submetering of utilities. Submetering is where the tenants pay the owner for the utilities, and the owner in turn pays the utility company.

RUBS | Neither the IRS nor WCDA allow utilities managed through Ratio Utility Billing Systems (RUBS) to be included in UAs. RUBS is when tenants pay part of a building's utility costs based on the portion of the building they occupy, not based on their estimated use.

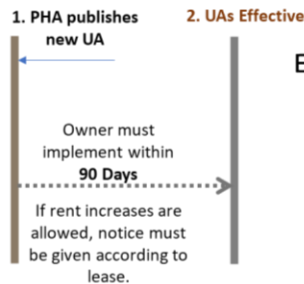
Updates | Utility allowances must be updated at least once every calendar year. Copies of utility allowance documentation must be submitted to WCDA annually. Any changes in utility allowances have a direct impact on the net allowable rent to the tenant. After the initial UAs are in place for a project, the UAs do not need to be analyzed for needed changes until the earlier of the project being 90% occupied for 90 days or the end of the second year of the credit period.

Any utility allowance cannot be implemented without 90-day notice of the new UAs to the residents and WCDA. For PHA estimates, the UA must be implemented within 90 days of the effective date of the change by the PHA. Each PHA publishes their utility allowance at different times during the year and may make more than one adjustment in a year. For these reasons, the IRS has indicated that owner/agents using PHA UAs need to request if any changes to PHA UAs have been made at least every 60 days.

Utility Allowance Timelines

For properties that are not RD- or HUD-Regulated

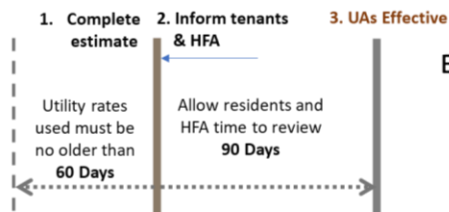
For PHA UAs



Example Dates

1. **June 1** The PHA makes available a new UA.
2. **Aug 29** UAs take effect and must be used for September rents.

For non-PHA UAs



Example Dates

1. **Oct 1** An estimate is conducted and completed or provided by HFA (Utility rates used must be in effect no earlier than on **August 2**).
2. **Oct 2** Residents are informed of new proposed UAs. (Estimate not provided by HFA must be submitted to HFA)
3. **Dec 30** UAs take effect and must be used for January rents.

Chapter 4 | Special LIHTC Rules

Vacant Unit Rule

If a low-income unit becomes vacant during the year, the unit remains compliant and eligible for all program purposes, provided: (1) the unit is made move-in ready within a reasonable period of time and reasonable attempts are made to rent the unit or the next available comparable or smaller size unit to an eligible household; AND (2) no other comparable or smaller size units in the project are rented to non-qualifying individuals before the reasonable efforts to rent the vacant LIHTC units are made. This is a "project rule" not a "building rule" and thus includes all vacant units in the project.

"Reasonable attempts" indicate that efforts toward marketing and renting a unit that is suitable for occupancy must be made, and proof of such marketing is made available to the compliance monitor. Tax credits cannot be claimed on the unit if this rule is violated at LIHTC projects. Concurrently, if an owner with vacant units violates this rule by renting to a non-eligible applicant while not marketing affordable units, all vacant units in the project are considered non-compliant and cannot be counted toward the LIHTC minimum set-aside for the project or the applicable fraction for each building.

Units that have never been occupied are sometimes referred to as "empty" rather than "vacant" and cannot be counted as low-income units. However, they must be included in the building's total unit count for purposes of calculating the applicable fraction.

Owners are required to keep records for each qualified low-income building in the project showing for each year of the compliance period the low-income unit vacancies and data for when, and to whom, the next available units were rented. Proof of marketing efforts must also be maintained.

Available Unit Rule / 140 % Rule

If the family income for residents in a qualified unit increases to more than 140% of the current applicable LIHTC income limit based on the project's minimum set-aside, the unit is considered an "over-income unit" but may continue to be counted as a qualified low-income unit as long as two conditions are met:

1. The unit must continue to be rent-restricted; and
2. The next comparable or smaller size unit in the building must be rented to a qualified low-income household.

The owner of an LIHTC building must rent to qualified families all comparable units that are available or that subsequently become available in the same building until the applicable fraction (excluding the over-income units) is restored to the percentage on which the credit is based.

Violating this rule means losing the credits on all 140% units. These units would no longer count toward the minimum set-aside for the project or the minimum set-aside for each building.

IRS regulations allow over-income tenants who were previously LIHTC-eligible to move to a different unit within the same building, because when a current resident moves to a different unit within the same building, the newly occupied unit adopts the status of the vacated unit and vice versa.

The Available Unit Rule is a building rule, so transferring a family with an income over 140% to another building based on their most recent income certification is not allowed. As discussed below, tenants who are not over the 140% limit may transfer to any building within the project and the two involved units swap status.

Relocating Existing Tenants / Unit Transfers

When any existing family moves to another unit within the same building, the status of the two units will swap. Thus, if a qualified tenant moves to an "empty" or "vacant" unit, the new unit ceases to be "empty" or "vacant" and becomes a qualified unit. The other unit will then be deemed "empty" or "vacant" starting at the time of transfer. When the transfer occurs between different buildings in the same project, the same rule applies. The status of the two units swap, if the income of the tenant that is transferring units did not exceed 140% of the current applicable income limit at the most recent certification. Transferring a family with income that exceeds 140% to another building is not allowed.

When a transfer is permitted, the household's lease and Tenant Income Certification (TIC) are moved over to the new unit. Management will need to update the tenant's current lease and TIC to reflect any change in address, unit number or rent amount and must enter the transfer in WCDA's Procorem Compliance Application on-line system. The household's annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

Please note that for transfer purposes, if on IRS form 8609 the owner elected to say 'No' to line 8b ("Are you treating this building as part of a multiple building project for purposes of section 42?"), the owner has chosen to treat each building as a separate project. In this case, any transfer between buildings is a transfer to another project and must be treated as a move-out and move-in, requiring the family to be re-income qualified at the time of transfer. Therefore, an owner/agent must know how the owner answered the question on Line 8b on IRS form 8609, because it is quite possible that buildings within a development are separate projects.

WCDA will consider all buildings in development that have passed the end of the first 15-year credit period to be part of a multiple building project. WCDA has consulted with the IRS regarding this rule, and the IRS has stated that after the first 15-year credit period, it has no opinion as to how multi-building projects are treated.

While all units are being initially occupied, existing families cannot be relocated for purposes of qualifying more than one LIHTC unit to count toward the minimum set-aside or applicable fraction. Under no circumstances can one family be used to initially qualify for more than one LIHTC unit at a time in a project.

Staff Units

Revenue Ruling 92-61 [Section 13] allows a unit for a full-time staff member to be 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 applicable fraction and qualified basis. If a project is going to have a staff unit in Wyoming, it must be designated in the original application for funding. Revenue Ruling 2004-82 further expanded staff units to include a unit occupied by a security officer for the project if the owner requires a security officer to live on site.

For employee units, two options apply:

1. If the unit occupied by staff is a rental unit and is to be counted as part of the qualified basis, then the staff must be income-eligible, certified, and sign a lease the same as any low-income tenant. In this case, if the staff member receives free rent or a rental discount, the imputed value of the rent discount must be included as income.
2. If the unit designated as a staff unit is treated as a common area, then the staff does not have to be income eligible, certified, leased, or considered a tenant. A management or maintenance employee does have to be a full-time employee. WCDA generally considers employees working 35 or more hours per week to be full-time employees. The Agency must approve exceptions. The owner's LIHTC application and the allocation documents should stipulate the number of common area units set aside for staff.

Reversing past guidance, the IRS has clarified that it does not legally matter whether the owner charges rent or utilities for a staff unit or include these as a benefit. Because free rent and utilities may be required to be included in taxable income which may have significant implications for the employees, the decision to charge rent/utilities or not should be made in consultation with qualified tax and employment law professionals and employees informed of the resulting tax burdens they may face before they accept the arrangement.

Moving staff units around the property is not allowed without WCDA approval. A written request must be submitted to WCDA which shows a need for the change. A staff unit must always remain the same bedroom size as originally designated in the application for funding.

Units designated as "common area" staff units at time of funding allocation may never be used as market rate tenant units. If a project doesn't need the designated staff unit for an employee in the future at a 100% LIHTC property (with no market rate units), the owner/agent can rent the unit to an income-qualified family at the MTSP limit level based on the minimum set-aside for the project and the rent should be restricted accordingly.

Non-Transient Occupancy

All units in a project must be used on a non-transient basis. A LIHTC or bond unit is used on a non-transient basis if the initial lease term is six months or greater. An exception to this requirement exists for Single Room Occupancy (SRO) housing or transitional housing for the homeless rented on a month-by-month basis (having a 30-day lease). HOME and NHTF leases must be at least for an initial term of twelve full months unless a lesser term is agreed upon by the owner/agent and the family.

WCDA realizes that there are special circumstances when a tenant may terminate occupancy prior to the end of the six-month term of the lease. A tenant could "skip out" on their lease, employment could be obtained in another city, tenants may be called to military duty, there could be medical reasons, or even death. In these circumstances, WCDA will not cite non-compliance if the original intent was to lease the unit for a period of six months (or a year for HOME/NHTF) and if the unit is made rent ready and marketed as soon as possible.

General Public Use

All residential rental units in the LIHTC project must be available for use by the general public. LIHTC properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, prohibiting discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Violence Against Women Act adds special protections for survivors of certain types of violence.

The IRS 8823 Report of Noncompliance form states: "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."

In addition to compliance with Fair Housing requirements, general public use requires that LIHTC units may not be provided only for members of a social organization or provided by an employer for its employees. In addition, any residential rental unit that is part 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 disabled is not for use by the general public and is not eligible for tax credits.

However, as clarified in IRC subsection 42(g)(9), a qualified low-income project does not fail to meet the general public use requirement if it has occupancy restrictions or preferences that favor tenants: (1) with special needs; (2) who are members of a specified group under a federal program or state program or policy that supports housing for such specified group; or (3) who are involved in artistic or literary activities.

"Available to the general public" requirements apply to all residential rental units, whether the rate is market or LIHTC.

Students and Program Eligibility

Families comprised solely of full-time students are not LIHTC eligible, unless they meet one of the exceptions listed in Section 42. The LIHTC restriction on students is only a concern when every member of the family is a full-time student.

A student, as defined by the IRS, is "an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer occurs, is a full-time student at an educational organization described in the Internal Revenue Code or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in the Internal Revenue Code or of a state or political subdivision of a state."

1. The determination of full or part-time status is based on the criteria used by the educational organization, not a definition imposed by the IRS or the owner/agent.
2. An educational organization is one that normally maintains a regular faculty and curriculum and normally has an enrolled body of students at the place where the educational activities take place. This would include elementary schools, junior, middle, and senior high schools, colleges, universities, technical, trade and mechanical schools, but not on-the-job training. On-line colleges are educational organizations. A full-time student may also be someone who only attends night school if they meet the institution's definition of full-time.

3. One day of attendance in a month makes the student a student all month.
4. Kindergarten could be considered full-time if it is considered a full day by the educational organization.
5. There is no “grandfathering” of eligibility because the tenant was not a student when they moved in and later became one.

Student status is monitored on a calendar-year basis. Thus, an applicant would not be eligible if the person had been or will be a full-time student for any 5 months of the calendar year, January through December, even if they had graduated or are no longer enrolled in school prior to applying for an LIHTC unit.

A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a family income qualifies, they are considered income-eligible regardless of future changes in income (although the Available Unit Rule may go into effect). However, a family that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

Owners and managers must have tenant certification procedures to consider student status each year. Wording to this effect should be included in all leases. Most comprehensive LIHTC leases include the requirement that the family immediately alert management of any change in student status. In addition, family student status must be re-verified annually to confirm the continuing eligibility of the household. Failure to verify student status constitutes non-compliance. It is also important to remember that the HOME program has now implemented a student rule, so if a project has LIHTC and HOME funding, there are two different student rules that must be applied.

Student Status Exceptions for LIHTC units

A unit would not be disqualified for LIHTCs if it is occupied:

By an **individual** who is:

- A student and receiving assistance under Title IV of the Social Security Act. This includes federal TANF, foster care, and adoption assistance payments;
- A student who was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act (foster care assistance); or
- A student who is enrolled in a job training program receiving assistance under the Workforce Investment Act or under other similar federal, state, or local laws.

Entirely by full-time students if such students are:

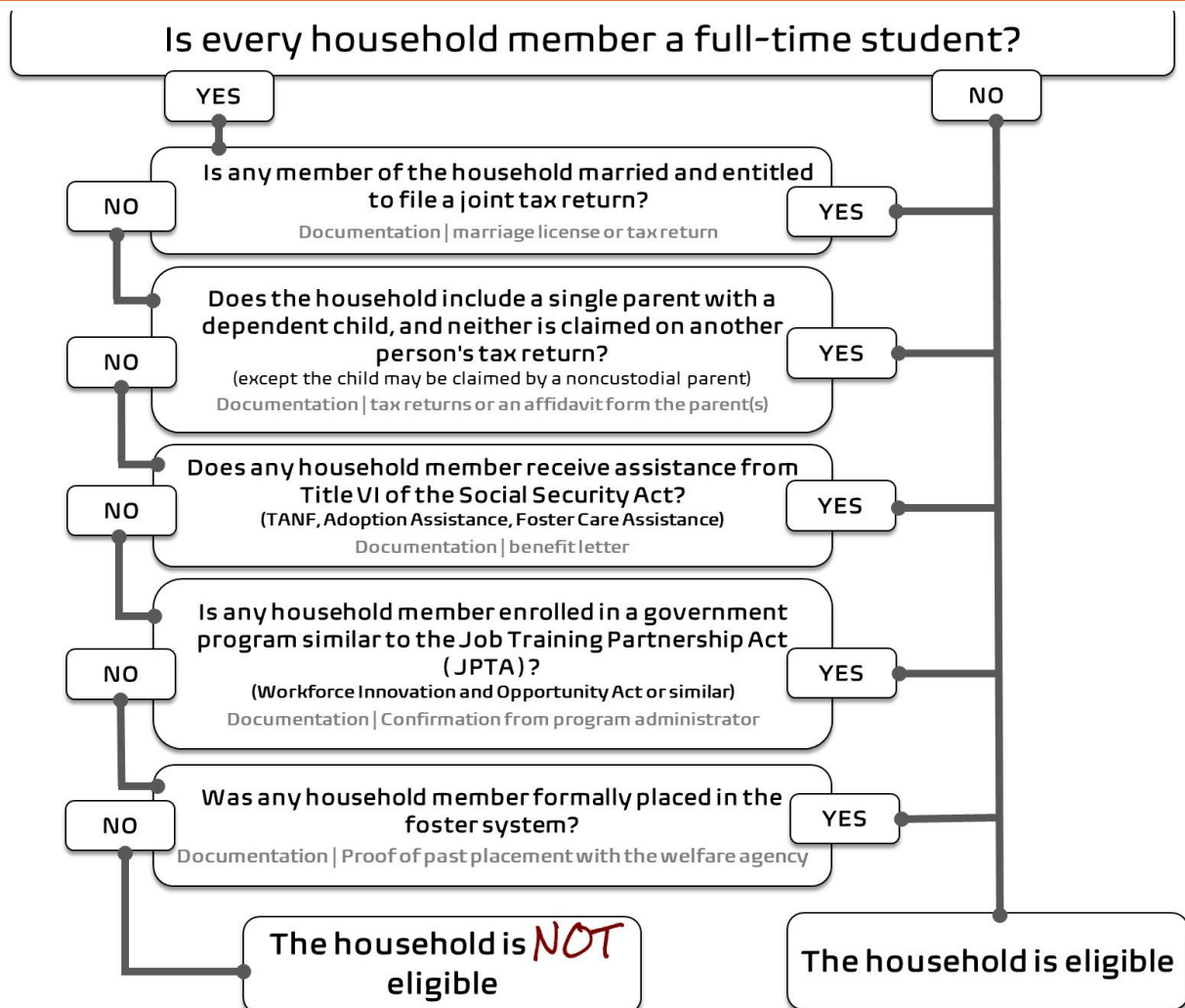
- Single parents and their children and such parents are not dependents claimed by another individual for tax purposes (as defined in IRC Section 152) and the children are not dependents of another individual other than one of the child’s parents; or
- Married under US law and are eligible to file a joint tax return. US law and the IRS recognize the marriage of same-sex partners.

IRS guidance indicates that a person who is married and entitled to file a joint tax return or one single parent with a child in the unit qualifies the household, even if other members of the family do not meet these exceptions.

For all families made up of full-time students, verification documenting the exception being claimed must be included in the tenant file and must be verified to apply on an annual basis.

In addition, WCDA requires owners to include a provision in all LIHTC and HOME leases requiring tenants to notify management of any change in student status during the lease term. If student status changes, the household’s eligibility must immediately be reevaluated.

Flow Chart | LIHTC Student Eligibility



Section 8 Voucher Holders

Section 42 states that LIHTC properties may not refuse Section 8 certificate or voucher holders simply based on their Section 8 status. However, this does not assure tenant qualification, because applicants eligible for Section 8 must also meet the project's resident selection criteria. These may include income limits, student status, previous landlord references, or criminal and credit selection criteria standards. Also, an owner is not required to accept lower rents when a PHA refuses to pay an otherwise permissible standard rent.

Tenant Data Collection

As mandated by Congress with passage of the Housing and Economic Recovery Act of 2008 (HERA), HUD requires that every state collect and submit specific demographic and economic information to HUD regarding households that reside in LIHTC-financed units. Some of this information is specific to tenants and some is property specific.

Every state is required to report to HUD information on tenants regarding race, ethnicity, family composition, age, annual income, use of rental assistance, disability, and amount of monthly rental payments. All this tenant-specific information can be noted on the TIC for LIHTC units, which can be accessed on WCDA's website. All information must be updated annually and uploaded to WCDA on or before February 28th of each year. The information provided should only be for the previous calendar year: January 1st through December 31st. This information is submitted via the Procorem Compliance on-line system.

A family revealing some sensitive tenant-specific data is voluntary, such as race, ethnicity, and disability. The family may choose not to disclose these items, and the owner/agent will not know or report on the missing information. Guessing is not required or advisable.

Suitable for Occupancy Requirement

A unit must be suitable for occupancy in accordance with state or local codes for credits to be claimed. If the unit is not habitable, no credits can be claimed. LIHTC units that are vacant must be made ready to rent as soon as possible. Units not available for occupancy in a reasonable period on the last day of a tax year would not be eligible for credits for that year.

In a related situation, the IRS has ruled that should a unit be destroyed due to casualty loss (i.e., fire, flood, or any other disaster not due to lack of care by an owner/agent), credits may not be claimed while the unit is out of service. If the unit is restored within a reasonable time within a taxable year, credits can be claimed, and no recapture would occur. However, if the unit is not rent-ready on or before the end of the taxable year, no credit can be claimed for that unit that year, although it may not be subject to recapture of past claimed credits. There are exceptions for major presidentially-declared disasters where credit loss and recapture might be avoided if the building or unit is restored in a reasonable period.

According to the IRS, casualty loss is defined as, “the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.” Casualty loss ranges from car accidents, fires, government demolitions, hurricanes, mine cave-ins, sonic booms, storms, tornados, vandalism, etc. Property damage is not considered a casualty loss if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or a progressive deterioration occurs, such as damage caused by termites.

The physical damage due to casualty loss must be reported to WCDA as non-compliance with NSPIRE or local standards and handled as follows:

- The owner/agent must report the damage to WCDA in writing within ten (10) business days of the incident.
- WCDA must file IRS Form 8823, taking the unit, or building offline, unless the loss resulted from a presidentially declared disaster.
- The owner/agent must notify WCDA in writing again when repairs are completed. For non-declared disasters, WCDA will then file IRS Form 8823 form putting the unit or building back into compliance.

The IRS states that credits are protected if a unit/building is restored within a reasonable period and each unit is occupied by qualified tenants by the last day of the taxable year the casualty occurred. If reasonable time takes an owner into the following year to get units back into service, credits are disallowed for the affected units for the year of casualty loss. However, recapture of past claimed credits can be avoided if the unit or building is restored no more than two years after the year the loss occurred. For a presidentially declared disaster, loss of credits can be avoided altogether if the unit or building is restored no more than 25 months after the month the disaster is declared.

Annual LIHTC and Bond Project Recertification Requirements

WCDA does not require that 100% LIHTC projects conduct a full third-party documentation recertification for every family on the first-year anniversary of their move-in date.

After the initial certification, the owner may elect at subsequent recertifications to allow the family to self-certify income, assets, student status, and demographic information using a recertification questionnaire.

Self-Certification

For self-certification, owners must use a questionnaire to obtain basic income and asset information from residents. A sample questionnaire is available on the WCDA website.

The owner will prepare the TIC based on the information provided by the family and obtain residents’ signatures on the TIC on or before the effective date of the certification. The TIC must indicate the family is self-certifying the information.

Even though full third-party income recertifications are no longer required after the first initial certification, owners/agents are still required to:

- Conduct third-party certifications of income and student status for any new family members when they join the family.
- Conduct third-party certifications of income and student status for all units upon a change in ownership.
- Continue to provide WCDA with annual compliance reports.
- Continue to certify units regarding the full-time student rules annually.

If WCDA discovers that residents at a 100% low-income property are not being properly initially qualified, WCDA may require that the owner reinstate third-party recertifications for all families every year, until the owner can prove that all families are being properly income qualified. WCDA reserves the right to require reinstatement of third-party recertifications for any property that fails to abide by all program requirements, or that WCDA determines to be an at-risk project.

Managers must be aware that if a new over-income family is moved in, they may have to demonstrate due diligence steps were taken to avoid mistakes or recertify all families to make sure that none have gone over the 140% limit to apply the Available Unit Rule. This makes it extremely important that owners/agents be careful when qualifying new move-ins.

LIHTC projects that have any market rate units are not 100% LIHTC and are still required to conduct third-party recertifications annually for all families in affordable (not market-rate) units, throughout the entire compliance period.

Changes in Family Size

Changes in the size of an existing family after initial certification must also be addressed. Tenants who reasonably believe (or know) that they will be adding members to their family are required to disclose this information at the initial move-in certification so that all relevant income sources can be considered. Failure to do so is considered tenant fraud.

There is no established safe harbor for adding family members after the initial move in of the family. The often-accepted practice is six months or more, however, adding members sooner does not automatically disqualify the unit if a reasonable person would determine there was no intent to mislead or manipulate the program. If WCDA concludes that tenants manipulated the income limitation requirements and owners failed to demonstrate ordinary business care and due diligence in their duties, or if there appears to be a systematic pattern of new family members being added soon after initial occupancy and the family would not have qualified if they were in the family at move-in, a unit may be considered out of compliance as of the date the family initially occupied the unit.

Additions to the family must be third-party income qualified, and an updated TIC needs to be created that includes the new member. A family may continue to add and subtract members and qualify under the original family's eligibility as long as at least one member of the original low-income family continues to live in the unit.

Once all the original family members have moved out of the unit, it is possible that the remaining tenants will have to be income certified as a new move-in family. However, if management can determine the remaining member independently qualified as a one-person family at the time they moved into the unit, they may remain as a qualified LIHTC household. If more than one tenant has been added to the household, then the total move-in income of all additional tenants would have had to income-qualify for the number of new family members for them to continue occupancy. If the total income for new members would have been over the income limit at move-in, they must either be certified as a qualified family at the time when only new members reside in the unit or will have to vacate the unit.

The requirement to complete an independent TIC when a new member is added to an existing household is due to management needing to determine if the tenant(s) independently qualify. This information should be in the lease, since it may be that at re-qualification, they may be over-income and cannot stay in the unit. Joining an already-qualified family does not guarantee a continuous right to occupy the unit.

Increases in family size often result in increased income, and increased income on an LIHTC project may trigger the Available Unit Rule, even with higher income limits for the larger family.

Post Year-15 Monitoring Procedures

Although the IRS no longer monitors for compliance after the end of the compliance period, in Wyoming there is no change in compliance requirements or monitoring procedures during the entire extended use period recorded in the LURA. The only exception is that buildings which had been considered separate projects in a multiple-building development due to the owner's answer of "No" on Line 8b of the 8609 will all be considered one project after the first 15-year compliance period has elapsed.

After year 15, monitoring inspections and tenant file reviews will continue on a three-year schedule, with the number of units/files reviewed performed in compliance with IRS regulations. Any project with open non-compliance findings not cleared within the correction period are charged a fee of \$25.00 per day and will also garner the owner negative points for future allocations. This project may also be subject to more frequent inspections and monitoring. Correction period extensions may be requested for compliance issues that involve extenuating circumstances and are evaluated on a case-by-case basis.

Chapter 5 | Shared LIHTC, HOME, NSP, and NHTF Regulations

Tenant Application Procedure

The LIHTC, Bond, HOME, NSP, and NHTF programs use special definitions for income, assets, and household composition. Standard property management application forms may not collect sufficient information to determine eligibility.

A comprehensive housing application is critical to the accurate identification of all necessary information required to effectively determine family eligibility for the LIHTC, Bond, HOME, NSP, and NHTF programs. WCDA does not require that a specific application form be used, but it does require WCDA approval of an application prior to implementation. The application must be detailed and include all sources of income, assets, and student status (LIHTC and HOME student rules separately, if applicable). This enables an owner/agent and the WCDA monitor to effectively determine family eligibility for these programs.

Applications can only be accepted when they are complete. All questions must be answered thoroughly, and it must be signed and dated by all adult family members.

If possible, the application process should include a face-to-face interview with all adult family members to review the application, collect documents, and clarify any discrepancies or missing information.

Project Policies and Procedures

There are two policies that every project is required to have in place: (1) **Resident Selection Criteria Policy**; and (2) **Occupancy Policy**. These two policies will help to maintain consistency and fairness at the project and should be readily accessible to applicants, tenants, owners, regional managers, state monitoring staff and every staff member at a project.

The Resident Selection Criteria Policy dictates the owner/agent requirements that the applicants must meet to reside at the project, in addition to the income and student limitations. All residents must be income-qualified and have their student status verified. The policy will dictate the more restrictive requirements set by the owner that will attract residents who will be an asset to the community. An owner can set requirements regarding:

- The ability to pay rent and utilities.
- Credit history.
- Previous landlord history.

None of the above are a protected class under the Fair Housing Act, so specific requirements can be set restricting eligibility based on these factors. Having these requirements in place and known to all staff will simplify tenant selection, create consistency, reduce resident turnover, and alleviate some managerial burdens.

Regarding criminal history policies, please note that HUD has created guidance to remove unnecessary barriers to housing for people with criminal records that do not discriminate under a US Supreme Court decision relating to the Fair Housing Act and the disparate impact criminal standards can impose. HUD has noted that statistics demonstrate that people involved in the justice system are disproportionately racial minorities or persons with disabilities and that exclusion from housing based upon criminal history can have a discriminatory impact on people relating to protected classes.

A blanket “no felony” policy, using arrest records only, or policies restricting entry to housing if convicted of a crime within a specific length of time (7 or 10 years for instance) regardless of type or severity of the crime, can leave an owner or owner/agent open to possible discrimination liability due to the disparate impact this has on protected classes under the Fair Housing Act. Not all crimes are the same and not all represent a direct threat to the business intent of the owner, the physical state of the property/asset, or the safety of the residents that reside in the community.

The list below is designed to be a tool for resident selection policy creation and can minimize the chance that the policy exposes a property to a fair housing violation due to restrictive criminal background policies. Please note, in addition to the list of “DOs” below, an owner may, but is not required to, deny housing/exclude persons subject to lifetime sex offender registry. Some HUD programs may require this.

Chart | Criminal History-Based Housing Policies and Practices

Dos



- ✓ Create tailored criminal history-based policies and practices.
- ✓ Be sure to have clear, specific reasoning for the criminal history-based policy or practice that can be supported by evidence.
- ✓ Exclude individuals only based on criminal convictions that present a demonstrable risk to resident or employee safety or property.
- ✓ Consider the nature and severity of an individual's conviction before excluding the individual based on the conviction.
- ✓ Consider the amount of time that has passed since the criminal conduct occurred.
- ✓ Consider criminal history uniformly regardless of an individual's status within a protected class.
- ✓ Treat all applicants for housing equally, regardless of protected characteristics.
- ✓ Conduct individualized assessments that consider mitigating factors, such as fact and circumstances surrounding the criminal conduct, age at the time of the conduct, evidence of good tenancy before or after the conduct, and rehabilitative efforts.
- ✓ Housing providers may exclude people convicted of the illegal manufacture or distribution of controlled substances.

Don'ts



- ✗ Don't create arbitrary or overly broad criminal history-based policies and practices.
- ✗ Don't maintain a policy, practice, or any portion thereof, that does not serve a substantial, legitimate, non-discriminatory business interest.
- ✗ Don't create exclusions based on **arrest** records alone.
- ✗ Don't create a blanket exclusion of any person with any conviction record.
- ✗ Don't provide inconsistent explanations for the denial of a housing application.
- ✗ Don't use criminal history as a pretext for the unequal treatment of individuals of a protected class.
- ✗ Don't use comparable criminal history differently for individuals with protected class differences.
- ✗ Don't make exceptions to a policy or practice for some individuals but not make the same exception for another individual with protected class differences.
- ✗ Don't include a blanket prohibition against individuals convicted of drug possession or use.

Once set, these policies and limits must be strictly and consistently adhered to. For example, if the owner/agent sets a minimum income limit or a credit history standard, they must adhere to that limit or that standard for every potential resident. Deviation from a set policy could lead to discrimination liability.

Discrimination occurs when different standards are applied to different people. The Fair Housing Act specifies seven protected classes that must not be discriminated against. These include race, color, national origin, religion, sex, familial status (children), and disability. The US Supreme Court has determined that sexual orientation and gender identity are covered under the "sex" protected class. The Violence Against Women Act (VAWA) has added survivors of violence as an added class monitored along with fair housing, with violations of VAWA carrying the exact same penalties as fair housing violations.

Occupancy Policy | This policy is set to prevent under-utilization and over-crowding of units. HUD's recommended maximum standard is two heartbeats per room. HUD states that this standard is reasonable for most units but may not apply to all properties or units. The actual size of the rooms and other factors may dictate what reasonable occupancy is. WCDA does not set occupancy standards. Responsibility for the development of occupancy standards and defending these legally rests with the owner.

It is acceptable to set a standard for the minimum number of occupants per bedroom, such as at least one person per bedroom, although owners/agents are not required to set a minimum occupancy level for the LIHTC, bond, HOME, NSP or NHTF programs.

Owners/agents must not restrict the age or sex of occupants when considering eligibility for a unit. If a family is of appropriate size based on carefully designed occupancy standards and the number of people in the family, the family decides who resides where within the unit.

VAWA

Wyoming requires that all projects must also have a written policy covering the requirements of the **Violence Against Women Act (VAWA)**. In March of 2022, the reauthorization of the Violence Against Women Act (VAWA) was passed by Congress as part of the Omnibus appropriations package. This act reauthorized funding for VAWA programs and added VAWA requirements to more HUD programs including the NHTF. In addition, it provided funding for more resources including establishing a gender-based Violence Prevention Office with a Violence Against Women Act Director. HUD has placed this function within the HUD office of Fair Housing Equal Opportunity (FHEO). This enforces VAWA in a manner that provides for the same rights and remedies as those provided by the Fair Housing Act.

VAWA resources are available at the FHEO VAWA website, which features FAQs on VAWA housing protections, VAWA training, related forms, and legal authorities, as well as referrals to direct services for survivors.

Quick Tip

The VAWA website is at www.hud.gov/vawa.

Fair Housing Accommodation and Grievances

WCDA requires that all owners have a Request for Reasonable Modifications/Accommodations Policy and a Grievance Procedure.

According to the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, all owners must allow reasonable modifications to physical properties and reasonable accommodations for persons with disabilities that request them for matters related to the disability (refer to the DOJ definition of a disabled person). Projects must pay for any reasonable accommodations. Projects with any federal funding (HUD, RD, HOME, NHTF) must also pay for modifications if they are reasonable and if they would not impose an undue financial or administrative burden on the housing provider and they would not fundamentally alter the nature of the provider's operations. Projects without any federal funding must allow these modifications, but they may be made at the expense of the tenant. LIHTC and bond funding are not considered federal funding and are not subject to Section 504.

It is up to the tenant to request a modification or accommodation. Although it is not required that the tenant make the request in writing, it is prudent to have a procedure in place whereby the tenant can make this request. This procedure should include all the steps and requirements throughout the process to accomplish the modification or accommodation. It should also be noted that there must be a "nexus" or identifiable relationship between the tenant's disability and the request.

On the FHEO website, HUD has provided fair housing-related tools. This includes an interactive tool to navigate reasonable accommodations for disability-related assistance animals which provides best practices for addressing requests by a housing applicant or tenant for those accommodations.

Tenant grievances will occur, even at well-run projects. To manage grievances prudently, a policy should be created specifying how grievances are addressed. On a regular basis, WCDA is contacted by tenants with concerns or complaints. It is the policy of WCDA to listen to tenant concerns and contact management staff for details. However, WCDA is not the Fair Housing Office for the State of Wyoming. WCDA staff are not attorneys and remains impartial in all tenant/landlord disputes. However, if WCDA has reason to believe that tenant complaints are credible, a special onsite review may be scheduled, or complainants may be referred to HUD.

Copies of the above key policies should be provided to each family prior to signing the lease. It is an owner's decision to supply these policies and procedures to all prospective applicants prior to the submission of the application and the application fees.

Other policies and procedures that project owners/agents should consider implementing include:

- Application Process
- Wait List Procedure
- Crime Enforcement
- Natural Disaster Plan
- Pet or No Pets Policy
- Service/Companion Animal Policy
- Smoking or No Smoking

Having these policies in writing can be valuable to reduce exposure to discrimination liability.

Restricted Rents

As noted in a prior section, one of the key components of affordable housing is restricted rents. Over charging of rents in an LIHTC project can cause loss of credits for up to a year even if the error was inadvertent. For example, if an agent is unaware of a utility allowance increase and it puts the gross rent over the maximum rent limit, the building will lose credits. LIHTC rent restrictions and calculations are discussed in this manual in Chapter 3. LIHTC Compliance, I. Maximum Gross Rent. When calculating maximum rents, all rents must be rounded *down* to the next dollar.

Because HOME, NSP and NHTF rents have their own rules and regulations, they are discussed later in the HOME, NSP and NHTF Compliance Section. An owner cannot raise the rents on HOME, NSP or NHTF units, as outlined in the Land Use Restrictive Agreement without written approval from WCDA.

In a project that has LIHTC and HOME units, it may be necessary to change a HOME unit into a higher income level LIHTC unit if the HOME unit's family income increases above the 80% HOME limit. The goal is to constantly have the agreed-upon number of HOME and LIHTC units at the agreed-upon income and rent levels. This requires that owner/agents pay constant attention to HOME tenant income levels and is one of the reasons that annual recertifications for HOME units are required in Wyoming. This is also one of the reasons that WCDA requires all LIHTC projects that also have HOME units to include the complete HUD verbiage or Affordable Housing Addendum and the Federal Privacy Act Statement in all tenant files.

Income Qualifying Families

As noted in a prior section, it is essential that a project maintain compliance with income-qualifying families. This is true for the LIHTC, bond, HOME, NSP and NHTF programs. Not only must owners/agents income qualify families, but they also must be able to produce the acceptable certifications and verifications necessary to prove the families are qualified. These programs' income-qualifying procedure requirements are the same. Income is calculated using Annual Income as defined under Section 8 in 24 CFR Part 5.609, as amended by the Housing Opportunities Through Modernization Act of 2016 (HOTMA) and the 2023 HOTMA Final Rule. Income qualification requirements can be found in the HUD Handbook 4350.3, Chapter 5, as amended by the HOTMA Notice 2023-10 (rev. 2/2024). A copy of the current HUD guidance can be downloaded from WCDA's website, and WCDA provides annual training in these rules, but it is the owner's responsibility to be aware of any updates and changes.

HUD regulations define Annual Income as the anticipated total periodic and sporadic income from all sources received by all persons in the family (even if temporarily absent), including all unearned income and all net income derived from assets for the 12-month period following the effective date of certification of income, exclusive of certain types of income.

Income limits are compared to gross, not adjusted, annual income. Allowances commonly used in some government programs to calculate adjusted income include: childcare, elderly household, dependent, disability assistance, and health and medical deductions. These are not permitted to be subtracted from the household's gross annual income to determine income eligibility for programs WCDA monitors.

Per HUD regulations, the owner must generally use current circumstances to anticipate income. However, if the family is aware of changes expected to occur during the year, the owner must use that information to determine the total anticipated income. Two common scenarios include:

1. Unsecured income: WCDA does not require owners to include unsecured income sources when calculating family income. For example, if an applicant or tenant is unemployed, WCDA does not require that individual

to anticipate income he or she may earn if a job is secured unless it is verifiable that a job has been secured with a future start date.

2. Sporadic or seasonal income: the owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates. If income cannot be determined using current information, the owner may anticipate income based on the income that was earned within the last twelve (12) months prior to the income determination.

Any income or asset source not specifically excluded in 24 CFR, Part 5, must be included. For information regarding annual income inclusions and exclusions and how to calculate annual income, see HUD HOTMA Notice 2023-10 and the HUD Handbook 4350.3 Chapter 5, both of which are available on WCDA's website.

It is important to remember that LIHTC, Bond, HOME, NSP and NHTF units have different income limits. LIHTC and Bond projects use Multifamily Tax Subsidy Project (MTSP) income limits. HOME and NSP projects use the same Area Median Income (AMI) income limits. NHTF units have separate income limits, which are also based on AMI. Income limits are accessible via WCDA's website. They are posted in different areas of the website, and they usually take effect at different times of the year. When a unit qualifies as both an LIHTC and HOME/NHTF unit, the lesser of the two income limits must be used to satisfy both programs.

Maximum family income limits are based on the number of people in a family. A family can consist of one or more people, and they do not have to be related by blood or marriage.

These family members must be included when calculating income limits:

- Unborn children
- Children who are in the process of being adopted

There are family members that may be temporarily absent, that should also be considered part of a household when calculating income levels. They include:

- Children temporarily placed in foster care who will be returning to the unit.
- Dependent children present in the unit at least 50% of the time.
- Children who are away at school but will be home during school breaks.
- People temporarily incarcerated or confined to a hospital or nursing home.
- A person away on active military duty if this person is the head or co-head, or if they are not the head or co-head, but they have a spouse in the unit. If a person on active duty has dependents in a unit, they and the children may or may not be counted, depending upon a reasonable examination of the facts per HUD and IRS guidance.

Families will make their own decision whether to include people permanently absent. If included in family size, their income must be included and count toward the income limits used, but they are not included in the number of bedrooms necessary.

There are certain individuals that are part of a "household" (all lawful occupants), but not part of the "family" (those used for income limit purposes). Non-family household members include:

- Live-in care attendants for persons with disabilities
- Foster children or adults
- Visitors or Guests

Non-Family Fosters and Live-in Care Attendants

Foster Members | Foster members are defined by state law. They are placed in the unit by the state welfare agency in exchange for foster care payments, which are excluded from family income. Foster members may include children or disabled adults who require care. They are considered when calculating the number of bedrooms needed by the household but not included in the family for any income determination purposes and are not counted as family members. Foster adults are subject to the same criminal background checks as other adults. All fosters are also subject to the rules for the property and subject to occupancy termination. They are listed on the TIC.

Live-in Attendants | Live-in attendants are also considered when calculating the number of bedrooms needed by the household but not included in the family for any income determination purposes. They are also included on the TIC.

A live-in care attendant (often called a “live-in aide”) is a person who resides with one or more elderly or near-elderly persons, or those with disabilities. To qualify as a live-in aide, the following must all be true of the individual. They:

- (a) Must be determined to be essential to the care and well-being of the person with a disability.
- (b) Must not be financially obligated to support the tenant, or vice versa.
- (c) Must not be living in the unit except to provide the necessary supportive services.

Relatives of a person with disabilities may qualify as their live-in aide if all the above are true. This may apply, for instance, to an adult child who cares for a parent. Far less commonly, it may also apply to an estranged spouse that returns to the household to care for a spouse with disabilities. An owner’s policy may also consider if children or spouses of the live-in aide who is necessary for a disabled person are allowed as other non-family household members. An owner must develop careful policies and evaluate the specific facts of a case, perhaps with legal counsel, to make a reasonable determination in these fair housing-sensitive situations.

A live-in care aide for a tenant cannot be counted as a family member for purposes of determining the applicable income limits, and the income of the aide is not counted as part of the total family income.

The need for a live-in care aide must be certified with documentation from a medical professional and included in the tenant file. The owner may verify whether the aide is necessary in order to document that the applicant/tenant has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records, provide detailed descriptions of the disability, or to submit to physical examination.

While the live-in care aide is not considered a family member, he/she is still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with house rules and regulations. An owner may deny an aide that does not pass criminal background checks or remove an aide who exhibits behavior that is disruptive, illegal, or endangering to other tenants and staff, as defined in the tenant selection criteria and lease. Sample forms to verify and document a live-in aide are available on WCDA’s website.

If the tenant with disabilities vacates the unit, the aide must vacate as well. If an aide would like to be certified as a qualified tenant and remain in the unit, normal certification and waitlist procedures must be performed. The individual must meet the applicable eligibility requirements of the program. This information should be clearly stated in all leases or as a lease addendum.

The status of non-family household members as such must be clearly documented in the file. This includes placement paperwork from the welfare agency and proof of the need for a live-in aide.

Income Qualifying Requirements, Tips and Hints

The following requirements exist for the LIHTC, Bond, HOME, NSP, and NHTF programs monitored by WCDA (unless specified differently below):

1. “Anticipated” gross income is used. Some government housing programs allow for adjustments, such as childcare or health and medical expenses. The programs administered by WCDA do not.
2. “Anticipated” income is based on current circumstances and includes any known changes the family is aware of for the 12 months after certification.
3. Income for a self-employed person is calculated based on net income as described in HOTMA guidance Notice 2023-10 and Chapter 5 of the HUD Handbook 4350.3.
4. Unearned income of all family members is counted, including adults and children who are not foster members or live-in aides. Funds paid by a government entity to the family for the care of foster children or adults are not included in family income.
5. Net income earned from assets held is counted, if the family has access to the asset. A family can self-certify the amount of their assets by completing an Asset Self-Certification form, if the value of their total assets is below an asset threshold (\$50,000 as adjusted each year since 2024 for inflation).
6. WCDA requires that owners/agents complete a full third-party income recertification for all HOME, NSP and NHTF families on an annual basis. This is done by the Section 8 method unless otherwise stated in the Land Use Restrictive Agreement. LIHTC recertification requirements are specified elsewhere in this manual.
7. Third-party documentation of income is required whenever possible. Third-party documentation is defined as documents prepared by a third party, most often supplied by the family. In order of priority, examples include:

- **Income determination by subsidy provider and PHAs.** A special rule exists for families that receive rental assistance from a local Public Housing Authority in the form of a Housing Choice Voucher (HCV) or who have some form of federal or state project-based assistance. The income determination of the subsidy provider **must** be used for HOME and NHTF purposes. Use of PHA determinations has also been allowed by the IRS from the beginning of the program and is encouraged for LIHTC purposes. Using this income determination rather than completing a new one simplifies the process and reduces the burden on the owner/agent and applicants/residents. Congress considers this method a “safe harbor.” The subsidy provider is a knowledgeable third party subject to federal inspection and is no more or less subject to error than any other third party. HOTMA has also reconciled HUD programs to eliminate all meaningful differences in program math methods. The total income on the determination is used, and not just one aspect, such as periodic income or asset income. This means that an owner/agent cannot take the asset determination from the PHA determination but verify employment themselves. The most effective way to establish the income determination is to obtain from the family copy of the certification form for the subsidy program. This is most often the HCV form 50058 or the project-based Section 8 form 50059. Any determination up to 12 months prior to the effective day of the LIHTC, HOME, or NHTF certification is acceptable. This means that the effective date of the form 50058 for an HCV-assisted family, for instance, must be no more than 12 months before the effective date of a HOME certification it is used for.
 - **Upfront Income Verification (UIV).** This method is preferred for households without rental subsidies. UIV is income information gathered and stored in a database that can be accessed by interested parties. Equifax’s **Work Number for Everyone**, various banks’ joint **Verification On Demand**, and various state retirement, and child support databases that an owner/agent may draw from are all considered UIV.
 - **Documents supplied by the family.** Examples include paystubs, offers of employment, bank statements, benefit letters, and tax returns with proof of transmittal to the IRS. If paystubs are used, WCDA requires stubs for 2 months. Amounts deposited into a bank account cannot be used as an amount for income as it may not be a gross amount.
 - **Forms designed by owners/agents and completed by third parties.** According to HUD, after analyzing and comparing millions of HUD certifications, these documents are *less reliable*, as they are *more subject to human error*. They are also more time-consuming to collect, delay occupancy and increase project financial vacancy. Faxed and emailed documents are acceptable if the owner/agent ensures the source of the document.
 - **Self-certification.** Despite this method being the least reliable, it is permitted by HUD in some circumstances.
8. The LIHTC and bond programs permit verifications are valid for 120 days following receipt by the owner/agent, while the HOME, NSP and NHTF programs permit income determinations and documentation for 6 months following the determination by the owner/agent. After this time, a new verification must be obtained. It is wise to date-stamp income verification documents as they are received.
 9. Every question on an application or verification must be answered. Do not consider an unanswered question to be “N/A,” “no,” or “yes.” The owner/agent must do a follow-up phone call or email in the case of unanswered questions or vague answers. There is a “telephone verification” form included under Other Forms on WCDA’s website. WCDA will accept emailed information from the source. The goal is to have a paper trail demonstrating due diligence. Significant differences in answers and amounts between the tenant application and the source verification must be investigated and explained.
 10. Assets disposed of for less than fair market value, where the difference between the value and what was received exceeds \$1,000, must be handled pursuant to HOTMA Notice 2023-10 and HUD Handbook 4350.3.
 11. HOTMA has changed how assets are handled. See the “Three Never-Fail Steps for Addressing Assets” below for more details.
 12. After total annual income and assets have been calculated, this information must be entered on the Tenant Income Certification (TIC) by the project representative. The TIC (and the lease) must be signed and dated by all tenants 18 years of age or over and the project representative at move-in.

13. Under no circumstances may "white-out" or correction cover-up tape be used on any documentation. When information needs to be changed or corrected, the owner/agent should cross through the incorrect information with a simple single line, write in the correct information, and all parties initial the change.
14. An owner/agent should conduct due diligence, create a paper trail, and prepare a narrative with any other documentation to explain "oddities" that occur to assist WCDA's monitor in understanding the determination of eligibility.

Chart | Three Never-Fail Steps to Address Assets

Examine the family's self-certification of asset values and income collected during the application process.

Important Note

Asset Threshold | Keep in mind the asset threshold applicable to the calendar year of certification. The threshold was \$50,000 in 2024 and has been adjusted for inflation each year since then. The 2025 threshold, for instance, was \$51,600. The asset threshold relates to three asset rules. These are: 1) if assets can be **self-certified**; 2) if **total NNPP is excluded** for a family; and 3) if any income will have to be **imputed** on individual assets.

Identify the three asset types listed:

1) Necessary personal property [NPP] 2) Non-necessary personal property [NNPP] 3) Real property.

Step 1 | Address any NPP & Excluded Assets

Identify and **exclude any necessary personal property or excluded assets** listed by the household.

Step 2 | Address NNPP

Based on self-certification, determine **if the value of all net non-necessary personal property exceeds the asset threshold**.

If yes | Since non-necessary personal property alone totals over the asset threshold, all family net assets also exceed the asset threshold. Verify all non-necessary and real property values and income with third-party documentation. List each asset's value and actual income on the TIC.

If no | List each non-necessary personal property asset as \$0 on the TIC but include actual income for each (subject to state policy).

Step 3 | Address Real Property and Determine if Imputing Asset Income is Necessary

Add the value of any real property to the NNPP (as counted in step 2) and determine if total net family assets exceed the asset threshold.

If yes | Verify all asset values and income with third-party documentation supplied by the household (to the extent not already done in Step 2). Impute income on non-financial account assets that have income that cannot otherwise be determined and add it to other income.

Note: If a federal or state tax refund or refundable credit was received in the last 12 months, subtract this amount from the value of total net assets before determining if assets can be self-certified and asset income must be imputed [this may be skipped if total net assets are already below the asset threshold].

If no | Use self-certification to verify asset values and income if allowed by company policy. Do not impute asset income on any assets. For HUD-funded properties only, full third-party documentation is required every 3 years.

Calculating Child Support and Alimony

WCDA follows the requirements of the HOTMA Notice 2023-10 F.1, which states: "annual income includes 'all amounts received, not the amount that a family may be legally entitled to receive but did not. For example, a family's child-support or alimony income must be based on payments received, not the amounts the family is entitled to receive based on any court or agency order. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family."

1. The owner may accept printouts from the court or agency responsible for enforcing support payments or other evidence indicating the frequency and amount of support payments received.
2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. Sometimes these payments are not identified as separate from the welfare grant. In these circumstances, it is important to determine which portion is child support to avoid counting it twice if it also shows up on child support

enforcement printouts. At other times, the payment may be listed as child support or as a "pass-through" payment. These amounts must be counted as annual income.

3. When no documentation of child support or alimony payments exists either because there is no agency involved or for another reason, the owner will verify amounts paid with the paying party.

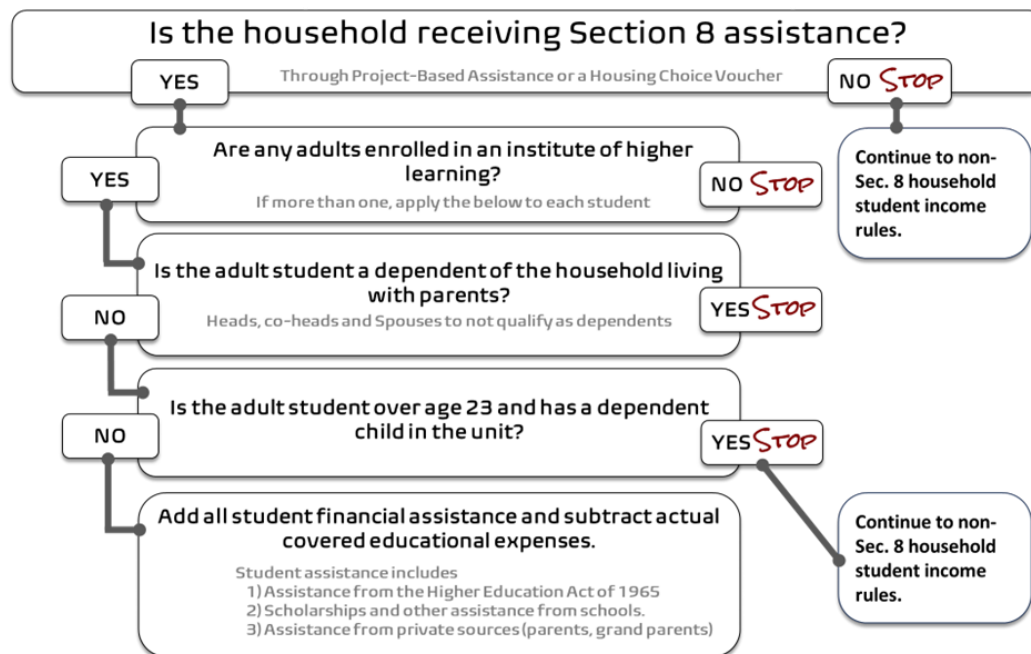
Student Financial Assistance for [Section 8-Assisted](#) Families

Prior to HOTMA, HUD had a special way to treat financial assistance for students who were also receiving Section 8 assistance. This continues to be true after HOTMA introduced a student income rule for other families for as long as HUD appropriations language requires it. Once that language is removed from future appropriation laws, this rule will end, and all families will be subject to the HOTMA student income rule. Currently, all student financial assistance that exceeds the covered educational expenses is considered income to families receiving Section 8 assistance, whether project- or tenant-based. To calculate the financial assistance, the total amount of assistance the student receives from the Higher Education Act of 1965 (HEA), from scholarships and grants, and from private sources (such as when parents or grandparents are paying toward schooling) is totaled. From this, the total assistance is subtracted from the actual covered student costs (defined below) for the time the assistance covers. Student loans are never counted as financial assistance.

There are two exceptions:

1. Dependent students living with parents who are receiving Section 8 assistance do not have student assistance counted.
2. If the student is over age 23 with a dependent child, any assistance they receive is addressed according to the non-Section 8 student assistance rule below.

Flow Chart | [Student Assistance Income](#) | [Section 8 Recipients](#)



Student Financial Assistance for Families [that Do Not Receive Section 8 Assistance](#)

There are two types of student financial assistance for families NOT receiving Section 8 rental assistance:

Student Assistance Type 1 | Any assistance under Title IV, 479B of the Higher Education Act of 1965 (HEA), as amended, is excluded from income. While certain language exists in HUD Appropriations Bills (as noted above), HEA assistance is included as student assistance for Section 8 assistance recipients.

HEA programs include:

- Grants to Students in Attendance at Institutions of Higher Education
 - Federal Pell Grants
 - Federal early outreach and student services programs
 - Federal TRIO Programs
 - Gaining Early Awareness and Readiness for Undergraduate Programs
 - Model Program Community Partnership and Counseling Grants
 - National Student Savings Demonstration Program
 - Federal supplemental educational opportunity grants
 - Leveraging Educational Assistance Partnership Program
 - Special programs for students whose families are engaged in migrant and seasonal farm work
 - Robert C. Byrd Honors Scholarship Program
 - Childcare access means parents in school program
 - TEACH Grants
 - Scholarships for veterans' dependents

- Federal Family Education Loan Programs
- Federal Work-Study Programs
- William D. Ford Federal Direct Loan Program
- Federal Perkins Loans
- Higher Education Relief Opportunities for Students
- Section 134 of the Workforce Innovation and Opportunity Act (WIOA).

This includes income earned in employment and training programs, such as workforce investment activities for adults and workers dislocated as a result of permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster that results in mass job dislocation, to assist such adults or workers in obtaining reemployment as soon as possible.

Student Assistance Type 2 | Assistance from a grant or scholarship received from:

- (1) The federal government;
- (2) A state, tribe, or local government;
- (3) A private foundation registered as a 501(c)(3) nonprofit;
- (4) A business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a public benefit corporation, or nonprofit entity); or
- (5) An institution of higher education.

Type 2 student assistance does not include the following

- (1) Any assistance that is excluded pursuant to *HEA* Title IV, 479B (see above);
- (2) Financial support in the form of a fee for services performed (e.g., a *work study* or teaching fellowship that is not funded under the *HEA* Title IV 479B);
- (3) Gifts, including gifts from *family or friends*, (note that this is included in student assistance for Section 8 assistance recipients but not for others); or
- (4) Any amount of a scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or the *HEA* 479B (see above), exceeds the actual covered costs of the student.

Definition of “actual covered student costs”

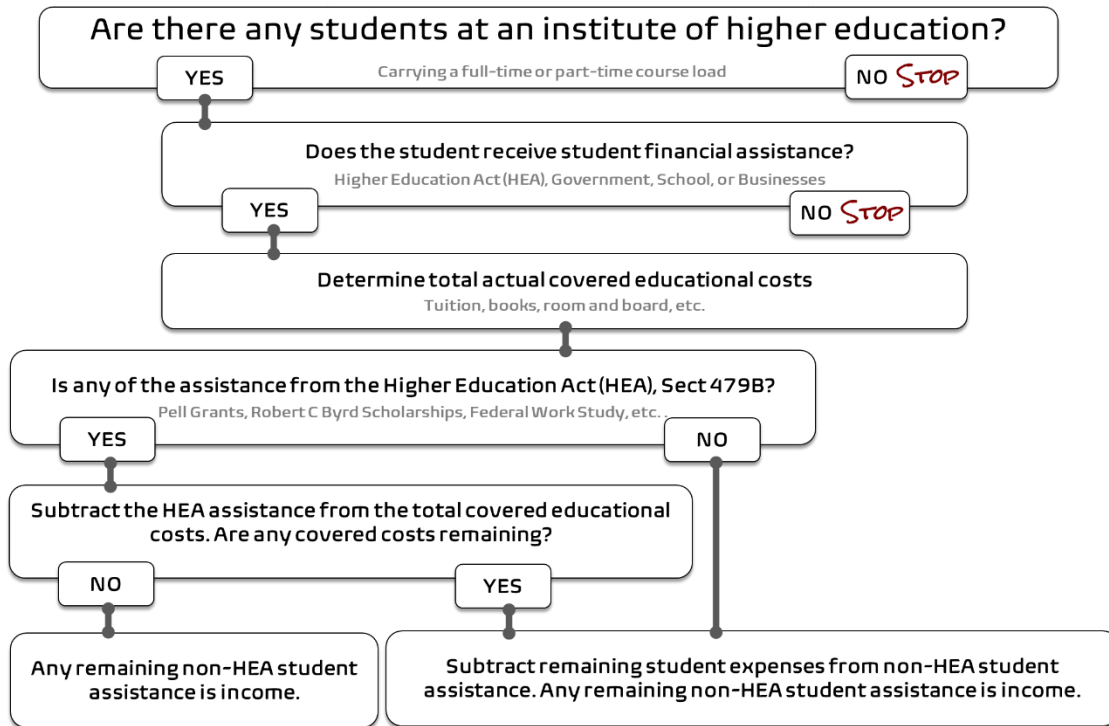
The actual costs of *tuition, books, and supplies* (including supplies and equipment to support students with learning disabilities or other disabilities), *room and board*, or *other fees required and charged to a student by the education institution*, and, for a student who is not the head of household or spouse, the *reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit*.

When a student is only receiving Type 2 assistance, the covered student costs are subtracted from the assistance. If there is any assistance left over that does not cover student expenses, it is counted as income.

When the student is also receiving assistance excluded under *HEA* Title IV 479B, the amount of student financial assistance that must be counted is determined by adding *HEA* 479 B assistance to the other assistance as follows:

- If the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual cost covered, all the other assistance is counted as income.
- If the amount of HEA 479B assistance excluded above is less than the actual covered costs, the amount of assistance that is considered student financial assistance is the amount by which the actual covered costs exceed both types of student assistance.

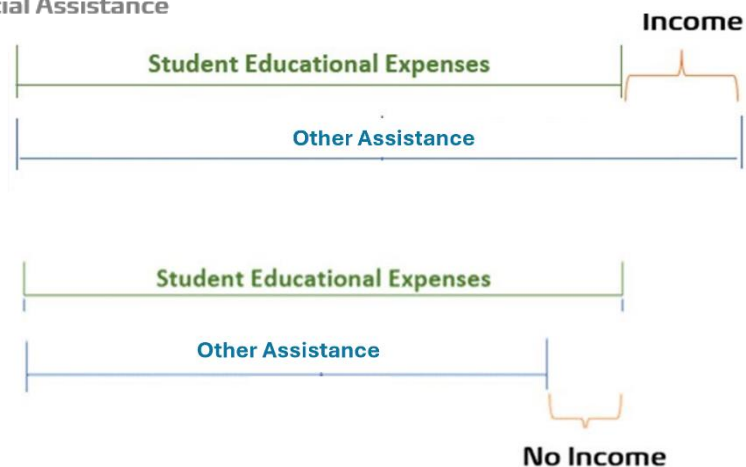
Flow Chart | Student Assistance Income | Non-Section 8 Assistance Recipients



If a student receives Type 2 [other] assistance only.

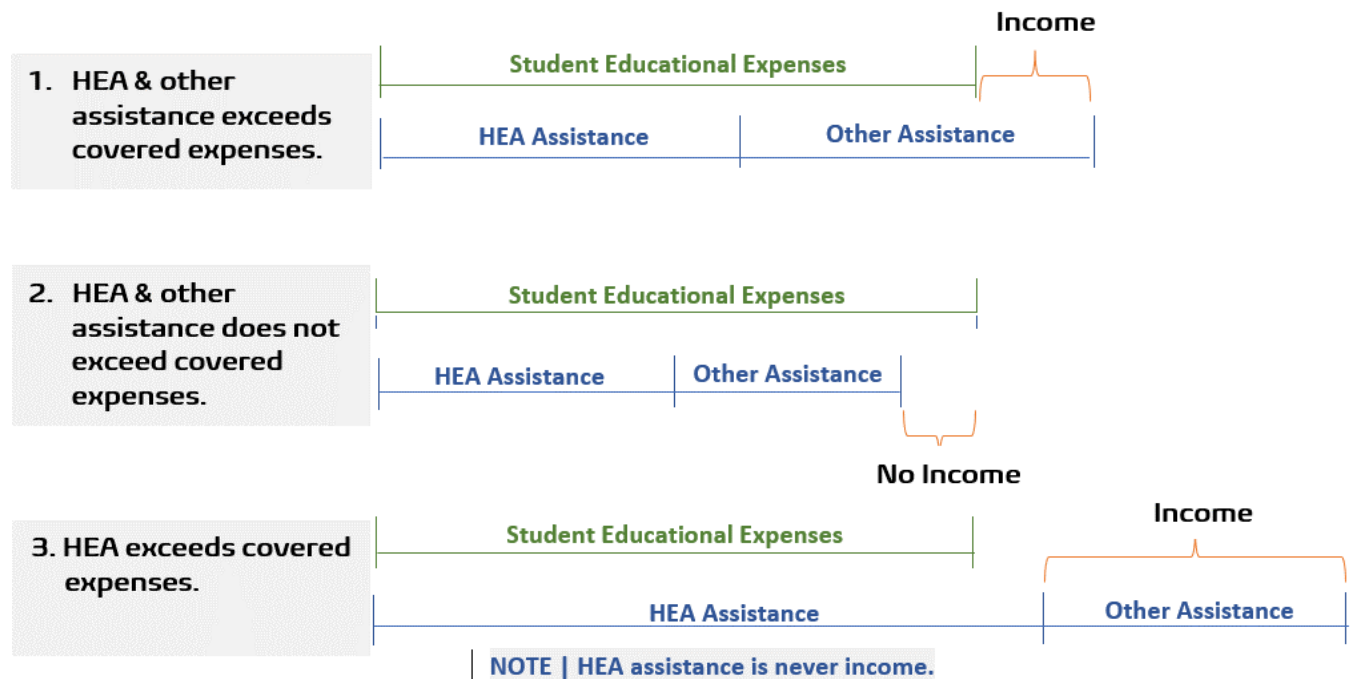
Examples

Student Financial Assistance



If a student receives Type 1 (HEA) and Type 2 (other) assistance

HEA assistance is NEVER income, but it is applied to expenses first, then other assistance is applied to determine if any of the type 2 income exceeds the expenses.



Correcting Documents

WCDA will not accept documents that are incomplete, that have been marked with correction fluids ("white out"), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms signed by management should be initialed by the management agent. Corrections on forms signed by the tenant should be initialed by the tenant. Corrections to the TIC, the lease, or its addendums should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents should be signed with the date signed but noted as being "true and effective" as of the certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification's effective date continues to be the anniversary date of the move-in, not the date the documents were completed retroactively.

Leases

All tenants occupying LIHTC, bond, HOME, NSP and NHTF units must be certified and under lease no later than the date the tenant takes possession of the unit. Initial LIHTC and Bond leases must be for a minimum of 6 months and all others must be for a minimum of one year, which is no less than 12 months. Successive leases are not subject to a minimum lease term.

WCDA does not require a specific model dwelling lease to be used by owners. However, the Wyoming Affordable Housing Plan requires that all leases must be reviewed and accepted by WCDA prior to the initial lease-up or any changes. Some required guidelines are listed below.

The lease should include [not all inclusive]:

1. The legal name of all parties to the agreement and all additional occupants.

2. Identification of the unit to be rented (number, street address, etc.).
3. The date the lease becomes effective.
4. The term period of the lease.
5. 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.
6. The rights and obligations of the tenants, including the obligation of the tenant to recertify income annually for HOME, NSP, NHTF, and at less than 100% LIHTC projects and for student status every year for all LIHTC and HOME projects.
7. Policies regarding guests and unauthorized occupants.
8. Policies about additions or changes to household members.
9. Student status requirements for LIHTC and HOME units (the NSP and NHTF programs do not have any student restrictions).
10. Unit inspection and maintenance requirements.
11. Fair Housing and VAWA policies (including the option of lease bifurcation).
12. Prohibition of subletting.
13. Tenant fraud consequences, including termination of tenancy.
14. The rights and obligations of the owner/agent.
15. The tenant-paid rent plus utility allowance and other mandatory fees must not exceed the maximum gross rent percentage allowed by the LURA, HOME, NSP or NHTF Agreement.
16. The lease should not contain any clauses that would allow termination prior to the 6-month LIHTC or 12-month HOME, NSP or NHTF requirement. WCDA considers a "lease break fee" an indication the tenant could terminate the lease and does not allow this fee to be charged. A lease break fee effectively gives the tenant the ability to buy their way out of the lease.
17. Required HUD verbiage on all leases for projects that have any HOME, NSP or NHTF units. WCDA can supply an approved Affordable Housing Addendum for leases that do not include the HUD required verbiage.
18. Beginning August 23, 2013, leases may not include terms that require tenants to accept supportive services (with an exception for residents of transitional housing).
19. Owners may only refuse to renew or terminate the lease of a tenant if there is good cause. Good cause is defined as: repeated violation of lease terms; violations of federal, state, or local law; or completion of the tenancy period for transitional housing. The 2013 Final HOME Rule expressly states that an increase in a tenant's income does NOT constitute good cause for termination of, or refusal to renew, a lease. The IRS also states that an increase in family income is not good cause for termination of, or refusal to renew, a lease.
20. All leases for all affordable units in the State of Wyoming must include a signed copy of the Federal Privacy Act Statement.
21. WCDA requires that all leases have the fair housing logo on the front page.
22. Signatures and dates.

Prohibited and Required Terms in Leases

No lease may contain any of the following provisions:

1. **Agreement to be sued.** Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
2. **Treatment of property.** Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law.
3. **Excusing owner from responsibility.** Agreement by the tenant not to hold the owner or the owner's agent legally responsible for any action or failure to act, whether intentional or negligent.
4. **Waiver of Notice.** Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.

5. **Waiver of legal proceedings.** An agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
6. **Waiver of a jury trial.** Agreement by the tenant to waive any right to a trial by jury.
7. **Waiver of right to appeal court decision.** Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease, and
8. **Tenant chargeable with cost of legal actions regardless of outcome.** Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

WCDA is willing to supply owner/agents with the "Affordable Housing Addendum" that incorporates all these requirements.

Fees and Deposits

WCDA only allows owners to charge reasonable fees and deposits to tenants. The difference between a fee and a deposit is a deposit refers to funds that could be refunded, whereas a fee is a monetary charge that will not be refunded.

WCDA allows the following reasonable fees and deposits:

1. Reasonable damage or security deposit no greater than the maximum applicable monthly gross rent.
2. Reimbursement for NSF check fees charged by a financial institution.
3. A reasonable credit or criminal history check fee at time of application which do not exceed the out-of-pocket expense to the owner/agent.
4. Pet fee. The State of Wyoming allows an initial "Non-refundable" pet fee. Because pets are optional, Wyoming will also allow owners to charge a monthly pet fee. Monthly pet fees cannot exceed \$30.00 per month per pet.
5. Optional fees for services such as washer/dryers, extra storage or garages not included in eligible basis that the tenant has elected to obtain or participate in.

WCDA does NOT allow the following fees and deposits:

1. Last month's rent at the time of move-in.
2. Transfer fees when a household moves from one unit to another. Transferring tenants from one unit to another is a cost of doing business that cannot be charged to the tenant. WCDA permits the original damage deposit to stay with the original unit and a new damage deposit being collected for the new unit.
3. Lease break fee. When a tenant vacates a unit prior to the end of the lease, an owner may not charge a fee. The owner already has the right to collect rent on the unit until the end of the lease period or until the unit is re-rented, whichever comes first.
4. Re-letting fee. When a tenant vacates a unit prior to the end of the lease, an owner may not charge a fee. Re-letting is a normal cost of doing business that cannot be charged to the tenant. The owner already has the right to collect rent on the unit until the end of the lease period or until the unit is re-rented, whichever comes first.
5. Pre-move-in cleaning fee. Owners are responsible for keeping all units in a rent ready status and cannot charge this fee to a tenant.
6. Deposits or fees for service/assistance/companion animals.

Federal Privacy Statement

The Federal Privacy Act Statement (see below) must be included in every lease in every project as part of the Affordable Housing Addendum. If the Affordable Housing Addendum is not used, then the Federal Privacy Act Statement must be added as an addendum to the lease.

Congress requires that WCDA submit specific demographic and economic information regarding HOME, NSP, NHTF, and LIHTC households to HUD on an annual basis. Tenants should read and sign the following Federal Privacy Act Statement acknowledging that they understand the purpose and use of this information. Understanding and signing the following statement is a requirement for occupancy at any LIHTC, Bond, HOME, NSP or NHTF project.



It is possible that the unit for which you are applying has been assisted with federal funds and is governed by the HOME Investment Partnerships Program 24 CFR Part 92 or the National Housing Trust Fund Program (NHTF) 24 CFR Part 93, as amended. The HOME program requires that in order to be eligible for admittance into this unit, your total household annual income must be at or below 50% of median income (very low-income as defined under 24 CFR Part 92). The National Housing Trust Fund program requires that in order to be eligible for admittance into this unit, your total household annual income must be at or below 30% of median income (extremely low-income as defined under 24 CFR Part 93).

If your unit is initially designated as a HOME unit and after initial occupancy and income determination, your total household annual income increases above 80% of median income (low-income as defined under 24 CFR Part 92), you will be required to pay the lesser of current market rate rent for a comparable unit in the area or 30% of your adjusted gross monthly income for rent and utilities, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C.42) must pay rent governed by section 42.

If your unit is initially designated as a NHTF unit and after initial occupancy and income determination, your total household annual income increases above 30% of median income (household is no longer extremely low income), you may stay in your NHTF assisted unit. However, the next available unit of comparable size must be rented to an NHTF eligible household, at which time the first unit will be re-classified at the appropriate income and rent level as appropriate for other restrictions on the property.

The size of the dwelling unit must be appropriate to the Lessee's needs, Lessee agrees to transfer, within a reasonable time, to an appropriate size dwelling unit based on family composition, if the Lessor determines that the size of the dwelling unit is no longer appropriate.

If it is found that the Lessee has misrepresented to the Lessor the facts upon which his rent is based, so that the rent he is paying is less than what he should have been charged, the lessor may then terminate this agreement and an increase in rent will be made retroactive, due and payable within 30 days from the date of notice of the increase. In the event of any rent adjustment pursuant to the above, the Lessor will mail or deliver a Notice of Rent Adjustment to Lessee.

The information given to the Lessor on household composition, income, net family assets and allowances and deductions is accurate and complete to the best of my knowledge and belief. I understand that false statement or information are punishable under Federal law, and that if I knowingly falsify or omit information I may be:

- Evicted from my apartment or house
- Required to repay all overpaid assistance my family received
- Fined up to \$10,000
- Imprisoned for up to 5 years; and/or
- Prohibited from receiving future assistance

Federal Privacy Act Statement

The U.S. Department of Housing and Urban Development collects information on tenants in Low Income Housing Tax Credit and HUD-assisted rental housing. The U.S. Privacy Act of 1974 established requirements governing HUD's use and disclosure of the information it collects on individuals and families.

For affordable housing assisted units, the Wyoming Community Development Authority is required to send HUD information on the tenants' income, family composition, rent, etc. This information was already given by the tenants to the Lessor when applying or being re-examined. It is transferred to HUD via on-line data transmission.

USE: HUD uses the information for budget development, program evaluation and planning, and reports to the President and Congress. HUD also uses the information to monitor compliance with Federal requirements on eligibility and rent and to verify the accuracy and completeness of the income information.

PUBLIC ACCESS: Summaries of tenant data are available to the public. Disclosure of information about individuals and families is restricted by the Privacy Act of 1974. Such information is released to appropriate Federal, State or local agencies to verify information relevant to eligibility and rent determinations and when applicable to other civil, criminal or regulatory matters.

INFORMATION REQUIREMENTS: The information requirements must be provided to HUD so that it can carry out its monitoring and data collection responsibilities.

AUTHORITY: HUD is permitted to ask for the information by the U.S. Housing Act of 1937 as amended, 41 U.S.C., 1437 et seq., the Housing and Community Development Act of 1981, Public Law 97-35, 85 Stat., 348,408.

I have read this Federal Privacy Act Statement on _____, 20_____

If you believe you have been discriminated against, you may call the Fair Housing and Equal Opportunity Hotline at 800 877-7353.

Fair Housing

The Wyoming Community Development Authority (WCDA) is not the Fair Housing Authority for the State of Wyoming. Any discrimination claims or grievances should be directed to the HUD Office of Fair Housing and Equal Opportunity (FHEO). The FHEO may be contacted by calling 800-877-7353.

Fair Housing Law applies to all phases of housing in the United States. Therefore, it applies to the LIHTC, Bond, HOME, NSP and NHTF programs. This law stems from the Fair Housing Act of 1968 (FHA) which was amended in 1974, and 1988. The FHA pertains to anti-discrimination. Currently, there are seven protected classes under this law and an additional related class introduced by VAWA. Therefore, owners/agents cannot discriminate against anyone or any group of people because of **race, color, religion, sex, disability, familial status, national origin**, or status as a **survivor of violence** covered by VAWA. As mentioned previously, the US Supreme Court has affirmed that discrimination based on sexual orientation and gender identity are illegal under the protected class sex. Fair housing seeks to prevent discrimination in the sale, rental, financing, appraising, advertising, and brokerage services in all phases of housing. It is required that owners display the Fair Housing Poster in all projects' common areas and WCDA requires that the fair housing logo be included on the first page of all leases and policies.

One of the major components of the Fair Housing Act is accessibility to housing. Housing should be as accessible to members of the protected classes as it is to every eligible person or household. Just being a member of a protected class does not make every person or household eligible. Eligibility is based on income, student status, and any other project requirements as defined in the owner's Tenant Selection Criteria Policy.

Providing fair housing is vital in all affordable housing business. All projects must have an Affirmative Fair Housing Marketing Plan. This plan must specify what the owner will do to attract tenants who are not likely to apply for housing without special outreach, such as minorities, families with children, persons with disabilities, or other persons protected by fair housing laws. HUD and WCDA require that owners review this plan at least once every 5



years. If an owner/agent finds that the plan needs to be changed or updated, they must re-submit the plan to WCDA for approval.

One key to avoiding fair housing liability is education. WCDA promotes fair housing and makes training available to all interested parties annually. WCDA requires all owners, management companies and site managers to attend fair housing training and be well versed in the requirements. WCDA considers an adverse judgment against an owner/agent for a violation of fair housing laws to be non-compliance. Providing specific guidance and all the rules and regulations covered by the Fair Housing Act is not practical for this manual. However, on the HUD website at hud.gov, there is a massive amount of information using search key words "Fair Housing."

Violation of the Fair Housing Act can result in the loss of tax credits when there is a final adverse determination of actual discrimination by an agency, including HUD, a state or local fair housing agency substantially equivalent to HUD, or a federal court. A violation will not be cited when there is only an accusation of discrimination without a finding or when there is a conciliation agreement between an owner, an applicant/resident and HUD.

Another topic that often falls under the discussion of fair housing is dictated by Section 504 of the Rehabilitation Act of 1973. Section 504 applies to the protected class of persons with disabilities. One of the major components of Section 504 is accessibility to housing. Housing should be as accessible to persons with disabilities as it is to every eligible person or household. Therefore, owner/agents must make reasonable accommodations or modifications to make the application and verification process or the physical access to the project and units accessible to persons with disabilities. Therefore, if an applicant or tenant cannot read or sign a consent form or lease document due to a disability, the owner must provide a reasonable alternative which could include, but is not limited to:

- Forms in larger print.
- Someone to read to people with visual disabilities.
- Allowing for a designated signatory.
- Meeting with the person off site if the applicant or tenant is unable to travel to the office to complete the forms.
- Providing an interpreter if English is not the applicant's first language.
- Having someone present who can explain the documents being signed.

Such reasonable accommodations should be fully documented and maintained as part of the tenant's record.

Merely having a disability does not make every person or household eligible. Eligibility is based on income, student status, and any other project requirements. These may include credit, previous landlord, and criminal history.

Under section 504, all projects bear the financial burden for reasonable accommodations, and federally-funded (HUD, RD, HOME, NHTF, NSP, etc.) projects bear the financial burden for reasonable modifications. The LIHTC and Bond programs are not considered to be federally funded since no funds come directly from the federal government. Therefore, an LIHTC or Bond project must allow for reasonable accommodations and modifications and must pay for accommodations but is not responsible for paying for modifications. The tenant bears the financial responsibility for modifications. However, it is important to remember that if a project has any HOME, RD, HUD, Bond, NSP, NHTF or other federal funding associated with it, the entire project is considered to have federal funding and Section 504 applies to the entire project.

It is up to the owner/agent to know the differing requirements of each law when dealing with these requests. One common request for accommodation is the ability to have an assistance animal (a disability-related companion or service animal). It is up to the owner to understand there is a difference between pets and assistance animals. If a person's disability is not obvious, most owners will want to see documentation from a professional that a person has a disabling condition and that establishes a person's need for an animal. HUD has stated that assistance animal verifications "purchased" from an internet site are not valid justification for the need of assistance animals. The State of Wyoming has also established fake service animal laws.

A tenant must meet the federal definition of disabled to be granted a request for modification or accommodation. Again, the HUD website explains the differences very well.

Although the Americans with Disabilities Act (ADA) does not apply to individual housing units, it does apply to any area of the property that may be used by the general public. This could include playgrounds, swimming pools, BBQ

areas, walkways, parking lots, grassy areas, accessible parking, and offices. It is the owner's responsibility to ensure that all areas open to the general public are ADA-accessible.

Violence Against Women Act (VAWA)

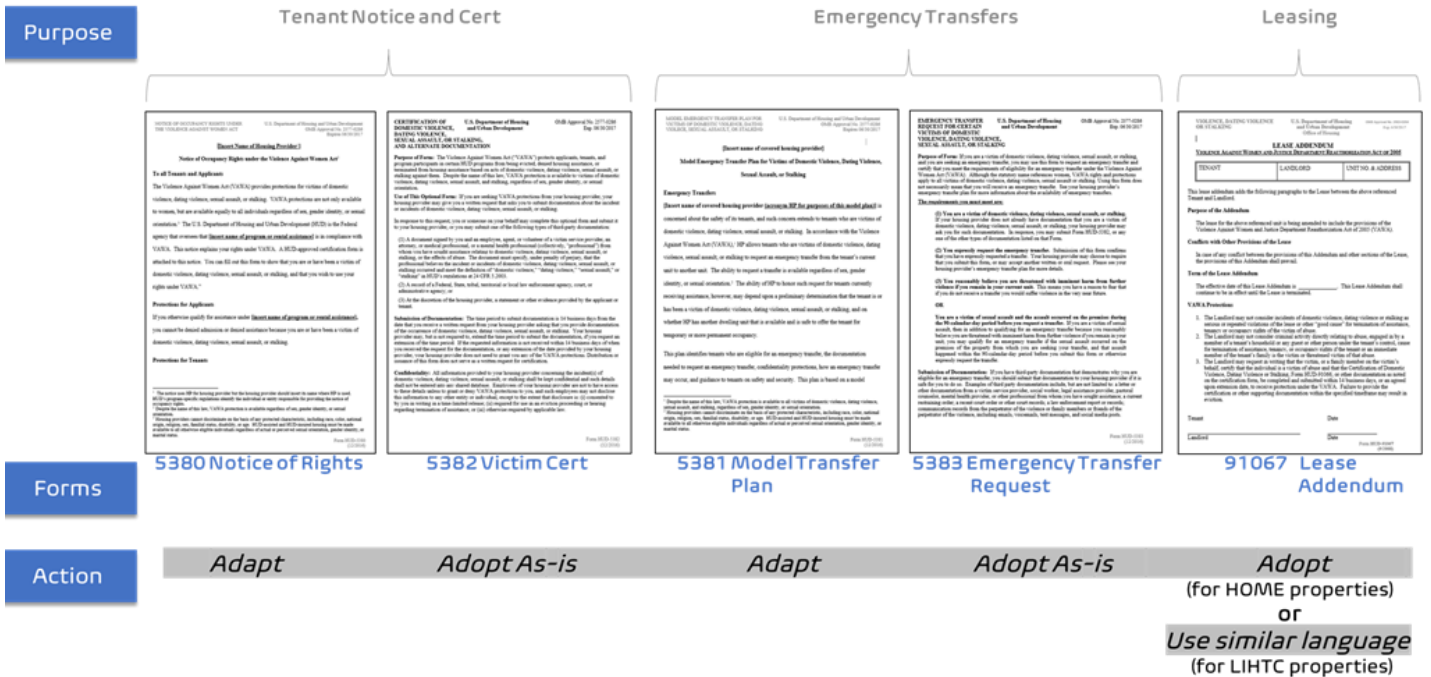
The Violence Against Women Act of 2022 (VAWA) continued many of the housing protections that had been provided by the prior 2005 and 2013 versions of the Act and further expanded these safeguards in several crucial ways, as explained earlier in this manual.

VAWA rights apply to both males and females and apply to projects with all funding sources that create housing based on US laws that implement income and rent restrictions for low- or moderate-income families. All programs covered in this manual are included, other than Bond housing without LIHTC funding.

1. VAWA prohibits the denial of housing or rental assistance based on factors directly relating to the fact that the applicant is/has been a victim of domestic violence, dating violence, sexual assault, or stalking.
2. VAWA bars eviction and lease termination based strictly on factors directly relating to a tenant's status as a domestic violence survivor and requires owners to maintain survivor-tenant confidentiality.
3. If an owner denies housing or starts eviction proceedings for any reason on an individual or family, the owner must inform them of their VAWA rights with HUD's Notice of Rights and provide them a Victim Certification form. They must also provide a dated letter, which serves as the start of a 14-business day period discussed below.
4. If a survivor feels that the action taken by the owner results from a factor that directly relates to their status as a victim of VAWA violence, they have fourteen business days (excluding weekends and holidays) to provide documentation of their status as a survivor. If they do not do so, the owner/agent is under no obligation and may uphold the denial of housing or continue the eviction. The victim may document their status through self-certification on HUD's Victim Certification form, with a letter from a doctor, social worker or other third party who is assisting them to address the violence, or court or tribal paperwork. The survivor decides how to best and most efficiently document their status, and self-certification is most often the preferred choice and must be accepted by the owner/agent. This Certification: a) states the applicant or tenant is/was a victim of an incident or incidents of domestic violence, dating violence, sexual assault or stalking; and b) states that the incident(s) meet the applicable definition of such incident under VAWA and must include the name of the perpetrator of the offense if known and safe to disclose. The owner/agent cannot require verification with a third party unless conflicting Victim Certifications or other documentation of VAWA status are received. In those cases, the owner/agent can request third-party verification to establish who has rights under VAWA.
5. VAWA allows lease bifurcation, so a lessee who engages in criminal acts of physical violence against a co-lessee or others in the household may be evicted or removed from the lease without evicting or removing the victim(s). It also provides a victim a reasonable period to establish eligibility or find new housing if necessary.
6. VAWA requires owners to establish an emergency transfer plan if the victim reasonably believes that they are threatened with imminent harm if they remain in a unit.
7. VAWA requires that owners notify every tenant of their rights if their application is denied, at time of entry to the project, and at time of notice of eviction or termination of a lease.
8. If a survivor of violence is requesting a unit transfer or requesting to be released from their lease, VAWA requires them to complete a certification form that: a) states the applicant or tenant is/was a victim of an incident or incidents of domestic violence, dating violence, sexual assault or stalking; and b) states that the incident(s) meet the applicable definition of such incident under VAWA and must include the name of the perpetrator of the offense if known and safe to disclose. HUD has provided forms for these requests.
9. VAWA allows an owner to evict a victim if that person has engaged in criminal activity other than the domestic violence, dating violence, sexual assault or stalking that has been perpetrated upon them.

WCDA Housing Compliance Manual | Chapter 5 | Shared LIHTC, HOME, NSP, and NHTF Regulations

Infographic | VAWA Forms



Marketing Accessible and Special Needs Units

At initial lease-up for accessible units and units designated as special need units, the owner/agent must demonstrate significant effort to occupy the units with persons requiring the unit due to their special need.

For ongoing leasing, the following order should be followed marketing these units as they become vacant:

1. First, accessible units should be offered to existing tenants at the property that have requested a transfer to a unit with accessibility features but are currently occupying a unit that does not offer such features.
2. Second, accessible units should be offered to qualified applicants on the waiting list that require accessibility features or that qualify under the special need category for which the unit is set aside. These persons have priority over others on the wait list who may be higher on the wait list but do not need the accessibility features of the unit.
3. Third, the unit should be marketed to attract new qualified applicants that require the accessibility features or that meet a special need category assigned to the unit.
4. Finally, the unit may be offered to a non-disabled/non-special needs family on the wait list. If this offer is made, the family should sign an agreement that they may be requested and required to transfer to another comparable but non-accessible unit if the accessible unit is needed by a person with a disability and will be required to pay any costs incurred in a transfer. (They will not be evicted or otherwise terminated to make room for a household with special needs). This agreement should be incorporated into the lease.

Elderly Housing

A property which includes a specific restriction for the elderly must conform to the federal Fair Housing Act and The Housing for Older Persons Act of 1995. For purposes of this manual regarding LIHTC, Bond, HOME, NSP and NHTF units, the Fair Housing Act permits the following exceptions for housing for the Elderly.

1. Housing intended for and solely occupied by residents who are 62 years of age or older; or
 - Every tenant in every unit must be at least 62 years old to qualify to move in.
2. Housing intended for and operated for persons aged 55 or older where, at all times, at least 80% of the total housing units are occupied by at least one resident who is 55 years of age or older.

- Although the Fair Housing Act stipulates that 80% of the total housing units must be occupied by at least one age 55 or over resident, WCDA requires that for any new move-ins, 100% of the units are leased to families with at least one 55 or over member of the family. The 20% gap permitted by the Fair Housing Act can be used as an allowance for attrition. Thus, if the qualifying 55-year-old ceases to be part of the family, the owner/agent will not have to evict the rest of the family without jeopardizing the elderly status of the property. Owners may also be more restrictive and consistently require all tenants to be at least 55 years of age or older.

LIHTC, Bond, HOME, NSP and NHTF programs do not have the same definition of elderly housing as some other HUD and RD programs which include a person with disabilities regardless of age in their definition of elderly. The definitions that apply to the LIHTC and other programs monitored by WCDA only use age in the definition if not mixed with other HUD or RD funding. However, if a project has other HUD or RD funding, the owner/agent may use the broader HUD or RD definition of elderly that includes persons with disabilities.

An owner/agent cannot rent to a family with someone who is nearly 55 years old, because they will then set a precedent and will have to rent to anyone that is nearly 55 years. Because “nearly 55” is not a protected class under fair housing or elderly housing laws, the project would risk losing its elderly designation. Elderly properties must verify the age of the residents using acceptable forms of proof of age.

Evictions

Pursuant to Revenue Ruling 2004-82, an owner may only evict residents for “good cause” as defined by the state or local jurisdiction. Non-renewal of a lease without good cause is also prohibited. Generally, good cause means the serious or repeated violation of material terms of the lease or a condition that makes the resident's unit uninhabitable. The 2013 Final HOME Rule expressly states that an increase in a tenant's income does NOT constitute good cause for termination of, or refusal to renew, a lease. The IRS has always stated that an increase in a tenant's income is not good cause for termination of, or refusal to renew, a lease.

It is of utmost importance that owners/agents document all violations perpetrated by any tenant or tenant's guest. This includes written documentation, taking pictures, saving phone messages, emails, or texts that are received from the tenant or any other source. It is also crucial that a written and dated notice of any violation is promptly served on the tenant. Follow up with the tenant to ensure that any minor violation is remedied and if necessary, take action to evict for any major violation. It is important to keep track of the number and frequency of violations to establish a pattern of behavior.

The circumstances for eviction should be clearly spelled out in all leases. All termination and non-renewal notices served upon residents must include a list of the specific violations constituting good cause. Notification of a tenant's rights under VAWA must be included with any eviction notice.

Under federal law, residents have the right to receive notice showing good cause so they can prepare a defense for any eviction action brought against them. It is important to note that violations by the resident, household members, and guests of the LIHTC, Bond, HOME, NSP, and NHTF program regulations or their active lease requirements are considered good cause. Fraud and criminal activity are also considered good cause, and these activities should be addressed in the lease.

Swapping Set-asides

In a project that has LIHTC and HOME units, it may be necessary to change a HOME unit into a higher income level LIHTC unit if the HOME unit's family income increases above the 80% HOME income limit. Or, a LIHTC household may have a decrease in income and will now qualify for HOME assistance. If so, the set-asides can be swapped for these two units if they are living in units that have the same number of bedrooms.

The goal is to constantly have the agreed-upon number of HOME and LIHTC units at the agreed upon bedroom size, income and rent levels. This requires that owners/agents pay constant attention to HOME tenant income levels and is one of the reasons that annual recertifications for HOME units are required in Wyoming. This also supports WCDA's requirement that all LIHTC projects also have HOME units to include the complete HUD verbiage in the lease or have the Affordable Housing Addendum and the Federal Privacy Act Statement in all tenant files.

NSPIRE

IRC requires housing finance agencies to use the HUD REAC physical inspection protocol or local and state codes for inspection of LIHTC and Bond properties, whichever is stricter. The updated HUD protocol is now called the National Standards for Physical Inspection of Real Estate (NSPIRE). The HOME, NSP and NHTF programs also require that WCDA monitor for compliance with these same standards.



Quick Tip

The NSPIRE standards and other guidance can be found at www.hud.gov Key word search "NSPIRE."

The NSPIRE standards provide a built-in level of severity for each infraction, which are "life-threatening," "severe," "moderate," or "low." WCDA will inspect three inspectable areas: 1) "Outside" the buildings (the site and building exteriors); 2) "Inside" the buildings, but not in units (major systems and common areas); and 3) "Units." All infractions are reported to the IRS on form 8823. NSPIRE focuses on health and safety concerns and all life-threatening incidents are reported to the IRS on form 8823 and must be corrected within 24 hours of the finding. WCDA may inspect a property more often when life-threatening or severe issues are discovered. In addition to periodic WCDA inspections, an owner/agent is required to conduct self-inspections to the NSPIRE code at least annually and keep records of the inspections and repairs made as a result.

WCDA advocates aggressive maintenance procedures and policies. It is much less costly to repair and maintain systems, sites, exteriors, and units on a regular basis than to allow situations to progress to severe or life-threatening violations. Although NSPIRE provides a heavy focus on safety and habitability over issues like curb appeal, WCDA is responsible for monitoring the physical condition of projects and promotes good curb appeal, among other things, as it wants the public to have a desire to live in quality affordable housing projects in Wyoming.

On-Line Reporting Requirements

All owners/agents are required to use WCDA's Procorem Compliance Application on-line system. Procorem is an internet-based reporting system that enables owners/agents to upload the Tenant Income Certifications and re-certifications to WCDA for all properties on or before February 28th each year.

The Procorem Compliance Application on-line system automates and replaces the annual reporting requirements except for:

- Annual Owner's Certification of Continuing Compliance (due by January 31 each year);
- Contact Information Form (due February 28 each year); and
- Audited Financial Statements (due March 31 each year)..

Tenant and Project Data Input

Owners/agents are required to enter unit occupancy and tenant information for each LIHTC, Bond, HOME, NSP and NHTF unit into the Procorem Compliance Application on-line system. Owners/agents are responsible for ensuring the accuracy of information entered into Procorem Compliance Application On-Line. Information is added to the Procorem Compliance Application on-Line system at the time of move-in, any change in household composition, any change in rent amount, and re-certification of household. After December 31 of each year, project owners/management companies are responsible for uploading the previous year's information.

Compliance Training Requirements

All project owners and management companies must attend and receive a certificate of attendance for training conducted by a nationally-recognized firm in the affordable housing industry as approved by WCDA, prior to the project being placed in service or provide a certification showing they have completed the training successfully in the past 5 years (3 years for management companies). Each owner must also successfully complete compliance training at least once every 5 years (3 years for management companies) during the compliance period. Attendance at WCDA's annual Compliance Training seminar satisfies this requirement.

A representative of each management company must attend and receive a certificate of attendance to training conducted by a nationally recognized firm in the affordable housing industry as approved by WCDA, prior to the project being placed in service or provide a certification showing they have completed the training successfully in the past 3 years. Each manager or management company representative must also successfully complete compliance training at least once every 3 years during the compliance period. This training requirement can be met by attending WCDA's annual Compliance Training seminar.

For HOME and/or NHTF only projects, all new management staff are required to attend one-on-one training with WCDA's Compliance Officer. This training takes place at WCDA's office and is project-specific and tailored to the knowledge level of the new management staff. The contact information of the Compliance Officer is found at the end of Chapter 1 of this manual.

If any project has a history of chronic non-compliance, WCDA may require successful completion of a compliance seminar more frequently and which may include passing the required testing for an industry certification.

Change of Property Ownership or Management

An ownership party may not sell or transfer its interest in a property, or change management companies for an LIHTC, Bond, HOME, NSP or NHTF-funded property without prior notice to WCDA and prior written consent by WCDA. Detailed information on management company transfers can be obtained by contacting WCDA, which will request information on the experience of the new company and contact information for other states where that company manages affordable housing projects. WCDA's Compliance Officer contact information is available at the end of Chapter 1 of this manual.

Chapter 6 | HOME, NSP, and NHTF Compliance

Origination and Purpose

The HOME Program | This program was created under Title II (the Home Investment Partnerships Act) of the National Affordable Housing Act of 1990. The general purposes of HOME include:

- Expansion of the supply of decent and affordable housing, particularly rental housing, for low and very-low-income Americans.
- Strengthening the abilities of state and local governments to design and implement strategies for achieving adequate supplies of decent and affordable housing.
- Extending and strengthening partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of affordable housing.

The Neighborhood Stabilization Program (NSP) | NSP was created by the Housing and Economic Recovery Act of 2008 (HERA) and its regulations are at 24 CFR Part 570. All the funding from this program has been allocated, but in Wyoming, there are two multi-family projects and four single-family homes that fall under the rules and regulations for NSP. WCDA enforces compliance requirements for NSP which are similar to the HOME program requirements. One major difference is that the NSP program does not have any student restrictions.

The National Housing Trust Fund Program (NHTF) | NHTF was also created by HERA, section 1131, and is governed by the regulations found at 24 CFR Part 93. The compliance requirements for NHTF are similar to HOME program requirements in many ways. Differences include: all NHTF units must be occupied by families with incomes that do not exceed the greater of 30% of the HUD-area median income or the area poverty level; rents cannot exceed the NHTF rent levels; the minimum period of affordability for NHTF is 30 years; and the NHTF program does not have any student restrictions.

Project Completion

For HOME, NSP and NHTF-funded properties, the project completion date is the date that the PJ (WCDA) can close out the funding information in HUD's Integrated Disbursement Information System (IDIS). Close-out in IDIS cannot occur until the owner/agent has provided all required documentation, including copies of the initial HOME, NSP, or NHTF tenant files to implement payment of the final draw. The compliance period for HOME is known as the period of affordability and cannot begin until the project has been completed and closed in IDIS. Thus, it benefits owners/agents to provide WCDA with all required documentation in a timely manner. This also means that in a combination HOME, NSP or NHTF and LIHTC project, the start of the compliance periods for each program begins at different times.

Record Keeping, Retention and Submission Requirements

Reports and records are the key manner that owners/agents can demonstrate that they are following HOME, NSP, and NHTF requirements, including applicable property standards, affordability, and occupancy requirements. WCDA and/or HUD may specify data, reporting frequency, and submission times in its requirements. The owner should ensure that the property owner/agent has systems in place to track rents, incomes, vacancies, marketing, property repairs, and property maintenance.

1. Projects should have a complete tenant file for every household which includes at least an application for tenancy, income and asset calculation forms, source documentation, an interview checklist, a TIC, a 12-month lease (no less than 12 full months) and all other third-party source documentation necessary to prove eligibility. Because all HOME, NSP, and NHTF tenants must be re-certified annually, this documentation must also be included in the file. Tenant files must be retained by the owner for the most recent five years throughout the period of affordability, until five years after the end of the period of affordability.
2. Projects must maintain a general administrative file which shall include documentation necessary for administration of the project, such as marketing activities, rent and occupancy reports, and policies and procedures.
3. Projects must maintain rent rolls which reflect which units are HOME, NSP, or NHTF-assisted units at any given point in time. At a minimum, a rent roll should denote the unit number, name of tenant, move-in date,

amount of rent paid by tenant, amount of rental assistance the family receives, and the income/rent limits set aside for the unit.

4. Projects must maintain maintenance files which document all physical improvements, work orders, and outside inspection reports.
5. Projects must keep a file containing all wait-list applications for tenancy, filed in order of receipt.
6. Projects must maintain a file containing all rejected applications accompanied by written notification to rejected applicants stating the reason for rejection. A copy of the VAWA notification of a victim's rights must be included with all denied application letters.

All files must be made available for inspection by WCDA's monitor at the time of on-site inspections, or as otherwise required.

If there are any litigation, claim, negotiation, audit, monitoring, inspection, or other actions that began before the expiration of the required retention period, the owner must retain all records until these issues have been resolved.

Annual tenant certification reporting is done via Procorem Compliance Application on-line system and submitted to WCDA on or before February 28 of each year. It is important to remember that the reporting done via Procorem Compliance Application on-line system is for units and tenants only from the previous calendar year. For example: the data submitted on or before February 28, 2026, will only have the information for the period running from January 1, 2025, through December 31, 2025. Owners that have not submitted these reports or have submitted reports that are incomplete by February 28 are charged a late fee of \$25 per day.

HUD's HOME Rule requires that owners attest that certain compliance requirements are adhered to at each HOME property. WCDA has created a HOME, NSP, and NHTF Annual Owner's Certification form that must be submitted on or before January 31 of each year. These certifications are completed by the owner, signed by the owner, dated and the Original Certification Form is mailed to the Compliance Officer at WCDA. These forms can be accessed on WCDA's website and the contact information for the Compliance Officer is found at the end of Chapter 1 of this manual.

A copy of the current utility allowance being used and an updated project contact sheet are required to be submitted on or before February 28 of each year.

Projects are also required to submit, on an annual basis, their financial audit for the most previous audit period on or before March 31. HUD now requires any project with 10 or more HOME, NSP, or NHTF-assisted units to provide WCDA with an Audited Financial Statement on an annual basis.

HUD Requirements regarding Utility Allowances

WCDA allows the same UA options for HOME, NSP, and NHTF as are allowed by the LIHTC program. See the section earlier on Utility Allowances for more details on UAs.

Wyoming does not allow sub-metering. See earlier in this manual in the LIHTC section for more information on UAs and submetering.

Chapter 7 | Special HOME, NSP and NHTF Rules

Income Limits

Historically, WCDA's HOME and NSP Agreements have been written with a maximum gross income limit at or below Very Low Income or 50% of Area Median Income (AMI). WCDA NHTF Agreements are written with a maximum gross income limit at or below Extremely Low Income (ELI) or the greater of 30% of Area Median Income (AMI) or the poverty level in the area. Thus, family income must be at or below the applicable income limit. HUD issues these income limits on an annual basis and they differ from the published limits for the LIHTC program. Some projects have stricter income limits or multiple limits that an owner has agreed to, and these limits must also be met. It is up to the owner/agent to know what the income limits are for their HOME, NSP or NHTF units. Home and NSP will use the same income limits. HUD publishes a separate set of income limits for NHTF.

Rent Limits

All initial rent limits for HOME, NSP, and NHTF units are set forth in the Land Use Restrictive Agreement. These rent amounts include any applicable utility allowance. According to HUD, owners/agents cannot increase HOME, NSP, or NHTF unit rents without WCDA's written approval. However, owners/agents may decrease HOME, NSP, or NHTF unit rents, at any time. For instance, this may be necessary due to market conditions.

HOME and NSP's definition of gross monthly rent is equal to the total of:

- The tenant paid portion plus
- Any applicable utility allowance (UA) plus
- Any non-optional charges.

NHTF's definition of gross monthly rent is equal to the total of:

- The tenant paid portion plus
- Any applicable UA plus
- Any non-optional charges.

Collecting more than the maximum amount approved by WCDA constitutes non-compliance. The utility allowance must be subtracted from the HOME, NSP, & NHTF rents approved by WCDA. Phone, cable, and internet are not considered utilities. Other details regarding the UAs are found in an earlier section of this manual.

HOME/NHTF Rent Increase Policy

WCDA must approve all HOME & NHTF rent schedules for a property prior to lease-up and must also approve all HOME & NHTF rent increases during the period of affordability. HUD updates the HOME and NHTF rent limits every year, and the HUD-published HOME and NHTF rent limits include utilities. When a tenant pays directly for utilities, the owner/agent must subtract a WCDA-approved utility allowance to determine the maximum rent that can be charged for the unit.

An owner must request a rent increase in writing during the window for submitting rent increases, which is March 1 to May 31 each year.

Please note, WCDA does not allow for a rent increase until 12 full months after HOME project completion. The commencement of periods of affordability for HOME and NHTF and the compliance period for LIHTC differ.

The PIS date for LIHTC units is the date the first unit in a building receives a certificate of occupancy. The compliance period for these projects begins with the year a building is placed in service, or the next, depending upon the owner's election.

HOME and NHTF projects meet completion requirements on the date all documents are received and approved, and the project is closed in the federal IDIS system. An owner/agent may consult with WCDA as to when a project is eligible for the first rent increase review before submitting the request.

WCDA will not consider a rent increase request for any project that has a current funding application with WCDA on that project (such as supplemental, resyndication, acquisition/rehabilitation).

WCDA considers a 1.25 Debt Coverage Ratio (DCR) to be healthy for a property. Any property that exceeds a 1.25 DCR may have its rent increase reduced or denied.

For rent increase requests for multi-family projects, WCDA typically allows an annual increase request between 5% and 7%, but all requests are capped at 10%. An increase between 7% and 10% is only granted where necessary for extenuating circumstances. WCDA maintains discretion to approve or deny all requests for rent increases.

Rent increase requests for senior designated properties (properties for residents aged 55 or 62 and older) are capped at the lower of: 1) the prior year's Social Security Cost of Living Adjustment (COLA); or 2) WCDA's allowed 5% maximum for senior projects. However, in years of 0% COLA adjustments, the owner is permitted to request to increase rents by a maximum of 2% (subject to WCDA approval).

All rent increase requests must be submitted in writing by the owner or owner's representative, should define the need for the increase, include the amount of the requested increase, and must be accompanied by the following documentation:

- WCDA's Project Information Rent Increase Request Spreadsheet.
- Annual Audited Financial Statement submitted by the due date in Procorem and must accompany the rent increase request or a profit and loss statement for small HOME-only projects.
- Current Utility Allowances (uploaded in Procorem).
- Current Rent Roll (uploaded in Procorem). The current rent roll must contain each unit, bedroom type, rent amount, rent type, and the lease move-in/renewal effective dates for each resident.
- Annual tenant data reporting (uploaded in Procorem).
- The most recent desk audit and NSPIRE inspection.

In addition to the above documentation, the property must be in compliance with all WCDA policies and procedures and any applicable mortgage must be current. WCDA will mail a letter to the owner and upload it in Procorem stating its decision within 45 days of the date of request. If WCDA approves a rent increase, the new rents are noted in a letter along with the effective date of increase. New rents MUST NOT be implemented before the effective date, and a minimum of 30-day notice must be provided to the tenants. In the event the owner/agent does not comply with the list above, the rent increase will be denied.

Annual Recertification of HOME, NSP and NHTF Units

HUD requires that all tenants in HOME, NSP and NHTF-assisted units be income re-certified on an annual basis, each calendar year. WCDA requires that a full third-party certification be completed for each family every year for all HOME, NSP and NHTF projects. This is often done by the anniversary date of the tenant's move-in, or HUD and WCDA permit all tenant re-certifications to be completed at the same time each year. This may mean that tenants are re-certified when they recently moved in if the mass annual recert date coincides with that date.

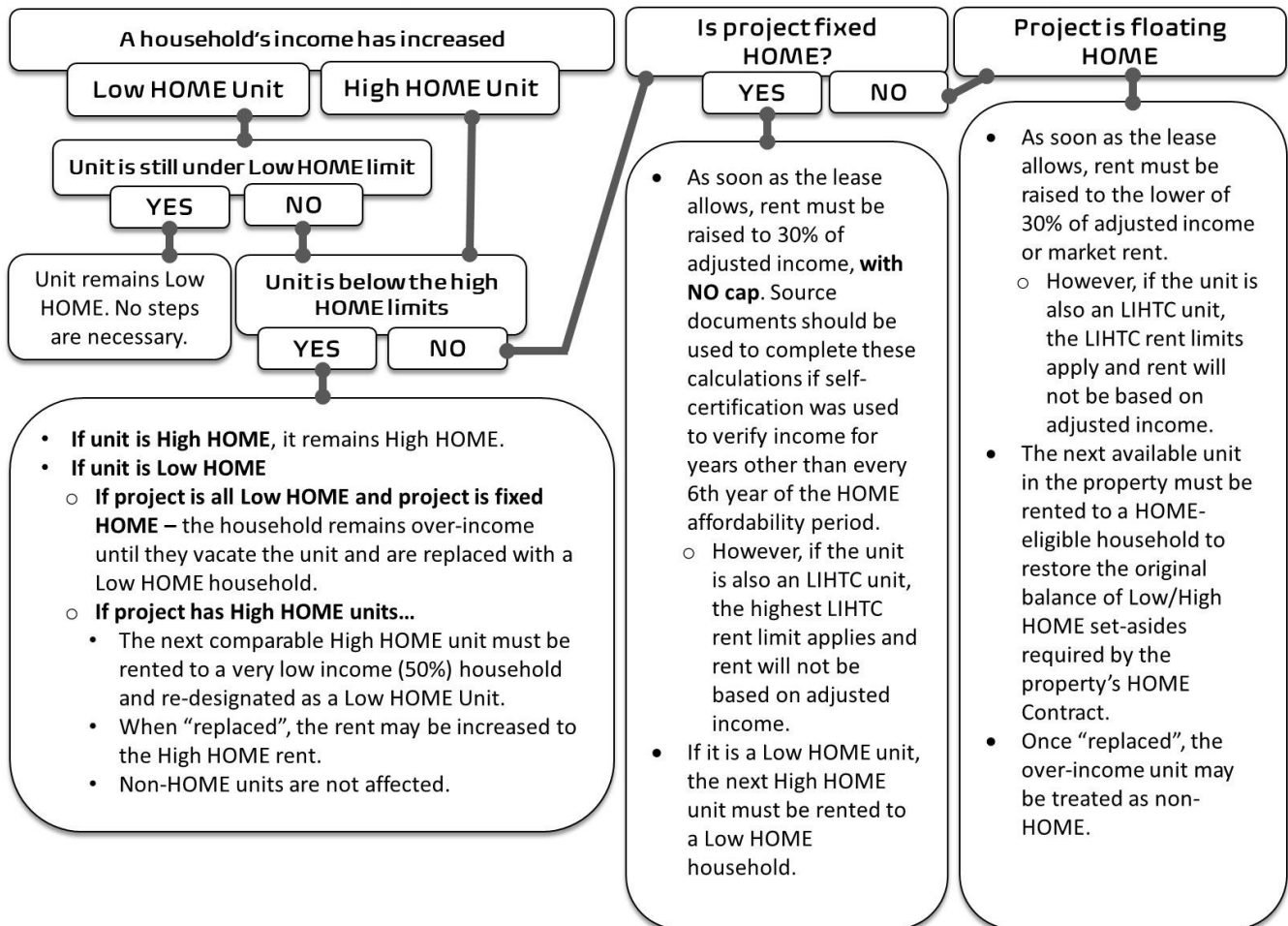
Floating or Fixed HOME/NHTF Units

WCDA considers all HOME and NHTF units to be "floating." In an LIHTC project with HOME or NHTF units, these units are initially designated as HOME or NHTF, but the designation changes, or "floats" among all comparable units within the same HOME or NHTF rental project as units are vacated and/or household's incomes exceed the HOME or NHTF limit.

Per HUD requirements, at the time of re-certification, HOME families found to have an income over 80% of AMI (or that become a family with any ineligible students under the HOME student rule) must have their rent increased to 30% of their adjusted income minus any applicable utility allowance. For ineligible students, this will include their parent(s) income. This rent is capped at the market rate rents for the area. These over-income (or ineligible student) HOME families must have their rent raised as soon as the lease allows. This is true even before they are replaced with the next available non-HOME unit. However, if they are in a unit that is also LIHTC, they will be charged the highest LIHTC max rent at the property. In all cases, they must be replaced by filling a comparable non-HOME unit of the same bedroom size with a HOME-qualified family when one becomes available. This information must be included in all leases. Questions regarding calculating adjusted annual income should be directed to the Compliance Officer at WCDA. The contact information for the Compliance Officer is found at the end of Chapter 1 of this manual.

Per HUD requirements, at time of re-certification, NHTF families found to have exceeded the allowable NHTF income limit as published by HUD will continue to qualify as an NHTF-eligible unit until a comparable vacant unit (the same bedroom size) is rented to an NHTF income-qualified household. Once the unit is replaced, the over-income unit is no longer treated as an NHTF unit and must now be considered a HOME or LIHTC unit, depending upon the project funding.

Flow Chart | Increased of Income for HOME Units



The goal is to constantly have the agreed-upon number of HOME, NHTF and LIHTC units at the agreed-upon income and rent levels. This requires that careful attention be paid to tenant income levels and is one of the reasons that annual re-certifications are required in Wyoming for HOME and NHTF units.

Student Rule for HOME Assisted Units

In 2013, HOME aligned with the Section 8 student rules. In 2017, HUD issued guidance to align their definition of independent students with the Department of Education's and to remove barriers that prevented eligibility for certain vulnerable youths, such as students who are orphans, wards of the court, emancipated minors, or in a legal guardianship relationship with someone other than the student's parents. Under most circumstances, these students are now classified as *independent students*. Owners/agents must verify a student's independence from his or her parents to determine that the student's parents' income is not relevant to determining the student's eligibility for assistance. HUD has also modified the verification requirements when a student claims eligibility based upon their status as an independent student. A household with any ineligible *one* student will not qualify for a HOME unit. If any member of a family in a HOME unit becomes ineligible because of student status after they move in, the family

is treated as an over-income family, and rent is adjusted according to the rules, as if they had exceeded the 80% limits. Because the student does not meet the definition of a student who is independent from parents (or they would have been an eligible student), the income of the parent(s) must also be included in the adjusted income calculation.

Student Eligibility for HUD Section 8 and HOME

To determine eligibility for HUD Section 8 and HOME occupancy, an individual adult (full- or part-time) student at an institute of higher learning must be one of the following:

- A dependent of the household
- 24 years old or older
- Married
- A U.S. military veteran
- Have a dependent child(ren) living with them in the unit
- An orphan or ward of the court
- Disabled and was part of any family receiving Section 8 assistance on 11-30-2005

If the answer is “yes” to *any* of the above, the student may qualify for occupancy. If the answer is “no” to *each* of the above, then the student must be *independent from their parents* to qualify. This must include *all* the following:

The student can demonstrate his or her independence from parents, if they:

- A. Must be of legal contract age under state law; AND
- B. Has established a household separate from parents or guardians for at least one year;

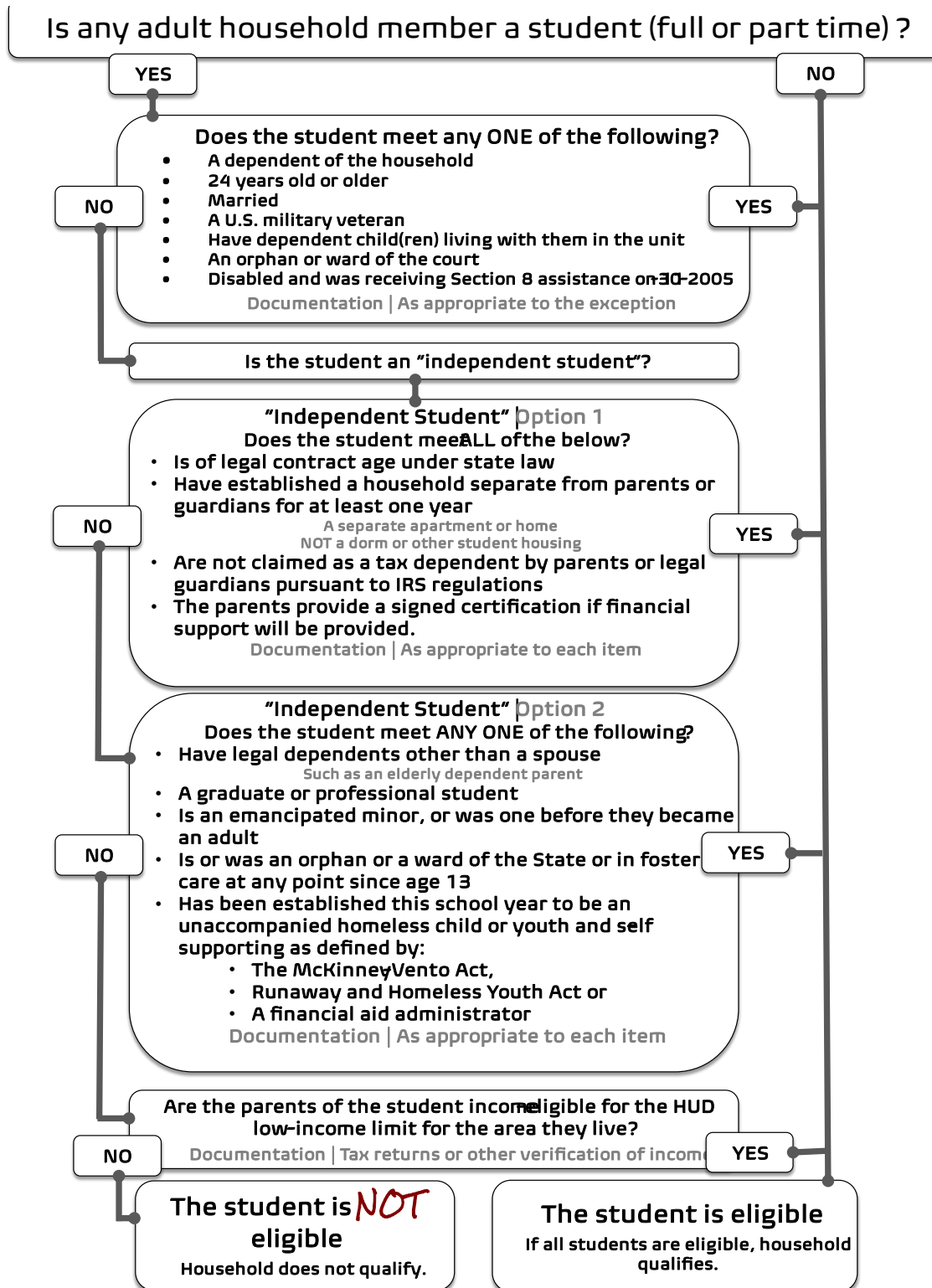
OR

Meet the U.S. Department of Education’s definition of an independent student, including being *any one* of the below:

- a) At least 24 years old by December 31 of that year
- b) A veteran of the U.S. Armed Forces
- c) Have legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
- d) A graduate or professional student
- e) Married
- f) Is an emancipated minor or was one before they became an adult
- g) Is or was an orphan or a ward of the state or in foster care at any point since age 13
- h) Has been established during the school year that HOME eligibility is being determined to be an unaccompanied homeless child or youth and self-supporting as defined by:
 - 1) the McKinney-Vento Act;
 - 2) the Runaway and Homeless Youth Act; or
 - 3) a financial aid administrator.
- C. If the student meets the U.S. Dept. of Education definition of Independence, above, the student qualifies. If not, they must not be claimed as tax dependent by parents or legal guardians according to IRS regulations; AND
- D. The parents must provide a signed certification if any financial support will be provided.

If none of the above apply, the student must demonstrate that they are income-qualified AND that the student’s parents or guardian, individually or jointly if the parents reside together, are at or below the low income-limits (80% AMI).

Flow Chart | HOME Student Eligibility



HOME and LIHTC Student Rules

Student restrictions must be included in all leases. Most comprehensive leases include the requirement that the family immediately alert management to any change in student status. WCDA can provide an addendum to a lease that will cover this student status requirement. In addition, family student status must be re-verified annually to confirm the continuing eligibility of the household. Failure to verify student status annually constitutes non-compliance.

A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. A family that was eligible at move-in can later become ineligible based on student status.

As noted above, there are exceptions that allow students under age 24 to qualify for HOME assistance. Documentation verifying the exception being claimed must be included in the tenant file and it must be verified to be true and pertinent on an annual basis.

The LIHTC and HOME student rules are so dissimilar that a shared flowchart cannot be established. A resident seeking to qualify for a HOME unit that is also LIHTC must qualify under both sets of rules.

The NHTF and NSF programs have no student eligibility rules.

Chapter 8 | Noncompliance

Types of Noncompliance

Noncompliance is defined as a period in which a development, specific building, or unit has failed to adhere to required regulations and procedures. These regulations or procedures may be issued by the IRS, LIHTC, Bond, HOME, NSP, or NHTF regulations, or WCDA. Non-compliance can lead to recapture or loss of tax credits for a LIHTC project or the requirement to repay some or all HOME, NSP, or NHTF funding, or subject the owner to fines imposed by WCDA.

All non-compliance in a LIHTC project that is in its initial 15-year compliance period will result in WCDA submitting form 8823 to the IRS listing details of the non-compliance. Only the IRS can determine the next course of action. Uncorrected non-compliance at a LIHTC project also results in penalty fines being charged to the owner.

Non-compliance at a HOME project means that the project fails to comply with its affordability requirements. Penalty fines are levied and continued non-compliance could result in legal action and the requirement of the owner to repay HOME funds.

In general, the following circumstances constitute non-compliance (this is not exhaustive):

- Inadequate family certification documents
- Failure to obtain and retain proper income verification
- Initial lease terms that do not meet the program requirements
- Missing signatures
- Late initial certification or recertification
- Lease issues
- Violations of NSPIRE or local inspection standards
- Failure to timely submit year-end documentation
- Failure to respond to requests for additional information
- Incomplete record keeping
- Failure to properly identify full-time students in an LIHTC unit
- Failure to properly qualify full-or part-time adult students at institutes of higher learning according to the HOME rule
- Failure to maintain and update utility allowance documentation
- Charging rents over the maximum limit
- Failure to maintain the LIHTC minimum set-aside
- Any change in the LIHTC eligible basis or applicable fraction that results in a decrease in the qualified basis
- Housing a non-eligible tenant
- Failure to use WCDA required forms

Currently, projects in Wyoming are charged a non-compliance fee of \$25.00 per day past its correction period or beyond report due dates

Liability

COMPLIANCE WITH THE REQUIREMENTS OF THE HOME PROGRAM, NSP PROGRAM, NHTF PROGRAM, BOND PROGRAM AND/OR THE LIHTC PROGRAM IS THE **RESPONSIBILITY OF THE OWNER** OF THE BUILDING/PROJECT FOR WHICH THE FUNDING AND/OR CREDIT IS ALLOWABLE. WCDA'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS DOES NOT MAKE WCDA LIABLE FOR THE OWNER'S NON-COMPLIANCE.

BECAUSE WCDA MAKES UPDATES TO THE COMPLIANCE MONITORING PROCESS, THIS MANUAL IS SUBJECT TO CHANGES AND UPDATES AT ANY TIME. PROJECTS WILL RECEIVE A NOTICE OF ANY CHANGES OR UPDATES AS SOON AS REASONABLY POSSIBLE.

Chapter 9 | Forms and Reporting Requirements

This section contains a list of required and recommended forms to be used for tenant certification, clarification, and annual report submissions. These forms help projects comply with the requirements of Section 42 for LIHTC projects and HUD's record keeping requirements. Each of these forms can be accessed on WCDA's website.

When filling out any form, it is mandatory that every line and every question be addressed. Make certain that every form is filled out in its entirety. This includes forms that third parties complete. Unanswered questions must be followed up with a phone, email, or fax clarification.

Required Wyoming Forms

The following is a list of forms that WCDA requires:

- LIHTC First Year Qualified Basis Certification
- LIHTC Tenant Income Certification (TIC)
- HOME Tenant Income Certification (TIC) [for HOME-only projects]
- Annual Owner's Certification of Continuing LIHTC Program Compliance
- Annual Owner's Certification of Continuing HOME or NSP Program Compliance
- Contact Information Sheet
- Federal Privacy Act Statement

Forms Available for Owner/Agent Convenience

The following list of forms is available for owner/agent convenience. These specific formats are not required and WCDA will accept comparable forms currently in use by a management company. However, non-compliance will occur if forms that are used do not adequately meet the LIHTC and HUD certification or verification requirements.

All the following forms may be accessed on WCDA's website

- Affidavit of Estrangement
- Affordable Housing Lease Addendum
- Annuity or Stock Verification
- Application to Rent
- Asset Calculation Worksheet
- Checking, Savings, CD Verification
- Child Support Not Received Affidavit
- Child Support or Alimony Verification
- Disability Certification
- Employment Verification
- Estrangement Certification
- Full-time Student Job Training Exception Verification
- Income Calculation Worksheet
- Life Insurance Verification
- Live-in Aide Agreement
- Live-in Aide Verification
- Pension Verification
- Public Assistance Verification
- Real Estate Evaluation Worksheet
- Real Estate Verification
- Recertification Update
- Regular Contributions Verification
- Release of Confidential Information Authorization
- Request for Reasonable Accommodations & Reasonable Modifications
- Self-Employment Affidavit for an Existing Business

- Self-Employment Certification for a New Business
- Student Questionnaire
- Student Self-certification (LIHTC Only)
- Student Status Certification
- Student Verification
- Telephone Clarification
- Tip Income Certification
- Unborn Child or Adoption Self-Certification
- Asset Self-Certification (for LIHTC Only)
- Unemployed/Non-employed Applicant Affidavit
- Verification Cover Letter
- Zero Income Certification

Record Keeping & Submission Requirements

IRS regulations mandate the LIHTC record-keeping requirements that owners need to follow to maintain compliance. Owners/agents should familiarize themselves with these requirements and understand that a state or IRS audit could occur at any time. Record-keeping responsibilities include three types of project records:

- Tenant files
- Monthly unit data tracking
- Project files, including records regarding the use of facilities included in the project's eligible basis

An owner must maintain records for each qualified low-income family by building and by unit throughout the compliance period.

Owners must also provide WCDA with the following reports, fees, and information regarding the project's status and with the frequency described:

- LIHTC Original Owner's Continuing Compliance Certification: annually
- Utility Allowances currently in use: annually
- Audited Financial Statements: annually
- \$35 per unit Compliance Monitoring Fees: invoiced annually on January 1
- Updated Project Contact Sheet: annually or at the time of any project contact changes
- Any other IRS Forms necessary for Compliance Monitoring: annually
- Copies of any health, safety or building code violations: at on-site monitoring
- Copies of any documentation pertaining to any fair housing complaints: at the time the complaint is made
- Qualified Basis Tracking Sheet: first year only
- Completed Form 8609 within 60 days of completion and filing with the IRS
- Unit history information submitted electronically to Procorem annually

All Procorem Compliance Application on-line submissions, \$35 per-unit compliance monitoring fees, and the original Annual Owner's Continuing Compliance Certification are due on or before February 28 of each year. These certifications must be completed, signed, and dated by the owner with the original Certification mailed to the WCDA Compliance Officer. Annual audited financial statements must be submitted to WCDA on or before March 31 each year.

These forms can be accessed on WCDA's website. The contact information for the Compliance Officer is found at the end of Chapter 1 of this manual.

Projects that have not met the submission requirements are subject to a non-compliance fee of \$25.00 per day that they are delinquent.

File and Reporting Requirements

Tenant Files

At a minimum, the following documentation must be present in a tenant file:

- Application for Housing
- Tenant Consent for Release of Information
- Income & Asset Calculation Worksheets
- 3rd Party Source Verifications
- Tenant Income Certification (TIC)
- Student Status Certification
- Certification of Zero Income (if applicable)
- Asset Self-Certification (if applicable) (not accepted by the HOME, NSP or NHTF programs or when Assets exceed the annual asset threshold)
- Lease (including any addendums)
- Federal Privacy Act Statement – required for all units in all projects
- Affordable Housing Lease Addendum – required for all units in projects with any HOME, NSP, or NHTF funding
- Re-certification documentation (if applicable)
- Proof of age for senior projects

Annual Reporting for LIHTC Projects

The following forms, information, and fees must be submitted to WCDA on or before February 28 each year:

- Owner's Original Certification of Continuing LIHTC Program Compliance – available on WCDA's website
- Current Utility Allowance Schedule
- Demographic/Economic Information by Household (via Procorem Compliance Application on-line system)
- Current Contact Information Sheet (also updated upon any change in staff)
- \$35 per unit annual compliance fee which is invoiced on January 1 of each year

The project's most recent audited financial statement must be submitted to WCDA on or before March 31 each year.

Annual Reporting for HOME, NSP and NHTF Projects

The following forms and information are required to be submitted to WCDA on or before February 28 of each year:

- Owner's Original Certification of Continuing HOME/NSP Program Compliance - available on WCDA's website
- Current Utility Allowance Schedule
- Demographic/Economic Information by Household (via Procorem Compliance Application on-line system)
- Current Contact Information Sheet (also updated upon any change in staff)

For HOME, NSP, and NHTF projects with ten or more federally funded units, the project's most recent audited financial statement must be submitted to WCDA on or before March 31 each year.

Chapter 10 | HUD Notice 2023-10 and HUD Handbook 4350.3 Chapter 5

This information can be accessed in full via a link on WCDA's website.

The following steps should be taken when researching questions relating to income and asset calculations.

1. Check the HOTMA Guidance HUD MFH Notice 2023-10 (updated Feb 2024) first. If that does not address the question, move to Step 2.
2. Consult the Handbook 4350.3. If HOTMA did not replace a provision of the HUD Handbook, the provision still applies, until HUD updates the 4350.3 thoroughly.