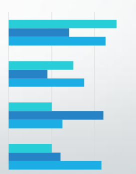
UNIT ELIGIBILITY – 23% of the Test

Layered Programs
Always follow the rule of MOST RESTRICTIVE

- Tax-Exempt Bond Financing
- HOME
- Project-Based Section 8
- Section 202/811



Tax-Exempt Bond Financing

- Tax-exempt bonds are issued to fund loans for acquisition, construction, rehab, and refinancing of properties
  - Usually attached to 4% tax credits
- Most of the rules are similar to the LIHTC Program

HOME

- HUD HOME Investment Partnerships Program provides additional financing to owners.
- Requirements
  - 20% of the units are required to be at 50% AMI (Low HOME)
  - 80% AMI is High HOME
  - Subject to Section 504 of the Rehabilitation Act
  - Properties with 5 or more HOME units must complete the Affirmative Fair Housing Marketing Plan

HOME 2025 FINAL RULE

- Passed on 01/06/2025 – Most Terms Effective 04/20/2025
- Allows properties to charge the full payment standard that PHAs are willing to pay, regardless of whether the resident has a tenant-based or project-based voucher. This is in line with LIHTC.

General Public Use

- All units must be available for general public use. This means that no unit can be held separate for a member of a social organization, etc.
- All units must be made ready and "suitable for occupancy" as soon as possible after they become vacant. There are reporting requirements if a unit is going to be "down" for an extended period of time. Refer to your State Agency for their specific requirements.

Preferences

- You are allowed to have preferences to offer a unit to one person before another. These must be stated in your Tenant Selection Plan and include:
  - A person with special needs (disabled, etc) *Most common*
  - A person who is a member of a specified group under a Federal or State program that supports housing for such a specified group
  - A person who is homeless.
  - Veterans
  - Other Special Needs
- If you have a handicapped accessible unit, you are required to skip to the first person on the wait list who needs the features of that unit.
  - If you don't have anyone on the wait list needing an accessible unit, you can offer it to a non-disabled applicant, with the understanding that if you have someone apply who needs the accessible unit, the household would have to transfer to the first available non-accessible unit of the same size. You should have a lease addendum stating this.

Tenant Selection

- It is recommended that you have your selection criteria clearly detailed in writing.
- Must be easy to understand and may include:
  - Income verification
  - Credit History
  - Rental History
  - Criminal Background
  - Reasons for Denial
- Must include a statement that reasonable accommodations in the application process may be requested by persons with disabilities. Examples are:
  - Extended application time
  - Alternative documents
  - Other disability-related exceptions to policies or procedures

Non-Transient Use Requirements

The LIHTC Program is designed to create permanent, affordable housing. To maintain compliance, unit cannot be operated like motels, hotels, or short-term rentals

- Minimum Lease Terms
  - 6-month minimum initial term, MTM acceptable after
  - Renewal not required
    - Some State Agencies allow rent increases only at renewal. If MTM, do a 1-month renewal with your annual recertification.
  - Written lease required
  - SRO Exception –
    - 1-month minimum
    - Must be permanent housing – not "hotel" use

Prohibited Uses

- Property cannot be used for:
  - Hotel or motel operations
  - Short-term rentals
  - Vacation Rentals
  - Transient Accommodations (ie: homeless shelter or half-way house)
  - Corporate rentals

Vacant Unit Rule

Any vacant unit previously occupied by a qualified unit counts as a qualified tax credit unit throughout the term of the vacancy.

At the end of the initial Tax Credit year, units that are currently vacant but were previously occupied by a qualified household for ***at least one month*** can be counted in the calculation to determine the amount of credit the property receives.

Mixed income properties are required to make every effort to rent the vacant LIHTC unit before the vacant Market unit.

Next Available Unit Rule (NAUR)

Sometimes called the 140% rule

- Does not apply to 100% LIHTC properties
- At recertification, if a household's income goes above 140% of the current AMI, the unit can still remain a LIHTC unit as long as:

NAUR

- The household was initially qualified

AND

- The unit remains rent restricted

AND

- The next available unit of same size or smaller is rented to a qualified household

Non-Compliance of the NAUR as defined by the IRS in the 8823 Guide

If any comparable or smaller unit that is available, or that subsequently becomes available, is rented to a non-qualified household, then ALL OVER-INCOME UNITS WITHIN THE SAME BUILDING FOR WHICH THE AVAILABLE UNIT IS SAME SIZE OR *LARGER* LOSE THEIR STATUS AS LOW-INCOME UNITS.

The applicable fraction for that building is lowered accordingly, and credits are subject to recapture.

NAUR and Average Income

20% unit = 140% of current 60% Income Limit
30% unit = 140% of current 60% Income Limit
40% unit = 140% of current 60% Income Limit
50% unit = 140% of current 60% Income Limit
60% unit = 140% of current 60% Income Limit

70% unit = 140% of current 70% Income Limit
80% unit = 140% of current 80% Income Limit

NAUR and AI

- As a whole, income and rent restrictions in the "next available" comparable or smaller unit must be based on:
  - The imputed income limit applicable to the unit that is currently occupied by the over-income tenant, if the comparable or smaller unit is a market unit.

Unit Transfers

- When a qualified household transfers to another unit in the same building, the "status" of the current unit transfers with them to the new unit and the vacated unit adopts the status of the newly occupied unit.
  - For example, the resident in LIHTC unit 301 requests a transfer to a first floor unit. The only available unit on the first floor is a market unit, #101. When the transfer is completed, 101 becomes the LIHTC unit and 301 is now a market unit.
  - You are not required to recertify the resident for unit 101.

Unit Transfer – Building to Building

- If a household with income over 140% of AMI in a mixed income property requests a transfer to a unit in another building, this cannot be done because the NAUR is a building rule, so the status cannot "swap" between buildings.
- If the property is 100% tax credit, and the owner answered Yes to question 8b on the IRS Form 8609, then building-to-building transfers are treated like same building transfers and the unit status transfers with the resident.
  - If the owner answered No to 8b, then the only way a resident can move to a unit in another building is as a move-out/move-in, and the household must qualify.

Special Unit Types

- Model Units
  - Must be available for rent at any time (recommend using a market unit if you have one)
  - Include in unit count
  - Maintain as qualified
- Employee Units
  - Can be excluded from unit counts if occupied by a full-time on-site employee
  - Employee must be required to live on-site
  - Must be a reasonable need
- Security Units – Revenue Ruling 2004-82 permits if:
  - High Crime Area with a need for reasonable security
  - Occupied by security

CLEARLY DOCUMENT EVERYTHING INVOLVED WITH THESE SPECIAL UNIT TYPES

Income Limits

The IRS uses the Very Low-Income (50%) limit as the basis for calculating all other limits

HUD publishes the income limits – usually in April – and these limits are used by all programs

Available on the State Agency's website

CONVERSION FACTOR	AMI LEVEL NEEDED
1.6 or 160%	80%
1.4 or 140%	70%
1.2 or 120%	60%
1.0 or 100%	50%
.8 or 80%	40%
.6 or 60%	30%
.4 or 40%	20%

Calculating Income Limits

Use the 50% income limit and multiply by the conversion factor

Calculating Income Limits

- A much EASIER way to calculate is to take the 50% limit, multiply by 2, and then multiply by the needed AMI %.
  - For example, current income limit for a 3-person household in Denver at 50% AMI is $63,050. To get the 60% limit:

    $63,050 x 2 = $126,100

    $126,100 x 60% = $75,660

PRACTICE

50% AMI is $40,000. The 60% level is ___________

50% AMI is $52,000. The 40% level is ___________

50% AMI is $59,000. The 70% level is ___________

Maximum Rents

- Gross rent is Tenant Rent *plus* Utility Allowance. This cannot exceed the maximum allowable rent as published by the State Agency.
  - Gross rent does NOT include rental assistance.
- The Max Rents are always based on 30% of the income level, not 30% of the household's income.

Calculating Max Rent

- For properties with tax credits allocated PRIOR to 12/31/1989 –
  - Max rent is determined by the number of people in the unit
  - Take the AMI for the household size x 30% /12 – ALWAYS ROUND DOWN

Example: income limit for 3 people is $40,000.

$40,000 x 30% = 12,000/12 = $1,000

Calculating Max Rent

- Tax Credits allocated after 01/01/1990 (Post 1989 Allocation)
- Determine by bedroom size
- IRS established a basis concerning the number of people that would be living in the unit:
  - 1 person in a studio and 1.5 persons in each bedroom thereafter
    - THIS IS NOT AN OCCUPANCY STANDARD

Post 1989 Allocation

UNIT TYPE	FACTOR	# OF PEOPLE
Studio	1	1
1 Bedroom	1.5	1.5
2 Bedroom	1.5	3.0
3 Bedroom	1.5	4.5
4 Bedroom	1.5	6.0
5 Bedroom	1.5	7.5

Post 1989 Allocation

2025 Income Limits – 60% AMI							
1 Person	2 People	3 People	4 People	5 People	6 People	7 People	8 People
$58,860	$67,260	$75,660	$84,060	$90,840	$97,560	$104,280	$111,000

What is the max rent for a 3 bedroom at 60% AMI?

Calculation

- What income limit should you use?
  - 3 bedroom x 1.5 = 4.5 people
  - There is no 4.5 person limit – so you would average the 4 and 5 person income limits

$84,060 + $90,840 = $174,900/2 = $87,450

$87,450 x 30% = $26,235

$26,235/12 = $2,186.25

Maximum Rent for a 3 bedroom at 60% AMI is $2,186.00

PRACTICE

- Using the previous income limits, calculate the max rent for the following:
  - 2 bedroom $________
  - 1 bedroom $________
  - 4 bedroom $________

What Date Must New Limits be Implemented?

- Owners have 45 days to implement new limits after they are published by HUD, or HUD's effective date, whichever is later.

Gross Rent Floor

- The IRS issued Revenue Procedure 94-97 in 1994, which allowed owners to establish a "floor" or the lowest possible rent they would have to charge if the rent and income limits decreased.
- This is an irrevocable election, and is either the placed in service date or the date of allocation of tax credits.
  - For example, the owner chose the date of allocation which was 09/01/2022. The max rent for a 2 bedroom at 60% AMI at that time was $1,200. The rent limit decreased to $1,100 by the time the building placed in service in 2025. Because of the owner chose date of allocation for the gross rent floor, they did not have to lower their rent to the 2025 max rent.

Services, Amenities, and Allowable Fees

Eligible Basis Rule

If a cost was included in the eligible basis, the owner cannot charge tenants separately for that item.

- Common Examples:
  - Parking Spaces
  - Appliances
  - Community Rooms
  - Laundry Facilities (can have coin-operated machines if not included in eligible basis)
  - Playgrounds
  - Community Rooms

Mandatory vs Optional Services

- Mandatory Services/Fees – must be included in Gross Rent
  - Services or fees that all residents must pay regardless of use
- Common Examples:
  - Trash collection
  - Internet
  - Basic Cable
  - Concierge services

Optional Services/Fees

- Not included in gross rent if:
  - Truly optional – charged only if resident chooses the service or item
  - Not included in basis
  - Practical alternative exists
  - Clearly disclosed
- Common Examples:
  - Storage Units
  - Covered parking of garages (if uncovered is available)
  - Premium Cable
  - Housekeeping services

Allowable Fees and Charges

In addition to LIHTC rules, each state's QAP may impose stricter fee restrictions, as may State law. Be aware of these before considering any fees in addition to rent.

Pet Deposits and Rents

- Refundable Pet Deposits
- Non-Refundable Pet Fees (if State law allows)
- Monthly Pet Rent
- Pet Regulation Fees (ie: not cleaning up feces)
- Must be reasonable and applied consistently
- Must allow reasonable accommodation for ESAs and Service Animals
  - Cannot charge deposit or fees

Application Fees

- Cannot exceed actual out-of-pocket cost to property – can include:
  - Screening costs
  - Processing expenses
  - Administrative costs
- Know what your State Agency allows – may only allow cost of the actual screening

Security Deposits

- Must be refundable
- Must comply with State law
- Must include interest earned in any refund
- Need property accounting

Additional Deposits

- May charge for:
  - Last month's rent
  - Key deposits
  - Garage door openers
  - Community Room use (cannot charge "rent" for the community room and must be refundable)

Late Fees and NSF Charges

- Allowed:
  - Late rent fees
  - Returned check fees
  - Collection costs
  - Legal fees
- Requirements:
  - Must be in lease
  - Must be reasonable
  - Must comply with State law
  - Must be consistent in applying fees

Prohibited Fees

Non-Refundable Move-In Fees

- Cannot Charge:
  - Administrative Fees
  - Processing Fees
  - Preparation Fees
  - Redecoration Fees

Unit Transfer Fees

Understand your State Agency's requirements

- Within Same Building:
  - Generally prohibited
  - Charge may be allowed if for actual, documented costs
- Between Buildings:
  - A little more flexible
  - May consider administrative costs
  - Must be reasonable

I recommend against this unless you have written approval from your State Agency. You can charge the resident for damages to existing unit, and you can require that to be paid before a transfer is approved.

Utility Connection Fees

- Cannot Charge For:
  - Utility account transfers
  - Service connection
  - Administrative processing

Amenity Fees

- Included in Eligible Basis, cannot charge for:
  - Fitness Centers
  - Swimming Pools
  - Business Centers
  - Playgrounds
  - Community Rooms (but can charge a refundable deposit)

Amenity Fees

- Not Included in Basis – can charge if:
  - Clearly optional
  - An alternative exists
  - Properly documented

Parking Considerations

Basic Parking

- If required by local code:
  - Must provide free
  - Include in rent
  - Part of basis

Premium Parking Optional Upgrades

- Can charge for:
  - Covered spaces (if uncovered free)
  - Garages
  - Reserved spaces

Laundry Facilities

Central Laundry Facilities Shared by Residents

- Can charge per use
- Can include equipment cost
- Must be reasonable

In-Unit Washers and Dryers

- If included in all units:
  - Cannot charge extra
  - Included in rent
  - Included in basis
  - Standard amenity
- If optional:
  - Can charge premium
  - Must have units without
  - Clear pricing
  - Document

Community Spaces

Resident Use

- General Access means:
  - Community rooms free
  - Can limit to regular business hours
  - Must have reasonable rules
  - Equal access for all
  - Can charge a refundable deposit

Special Events
Non-Resident Use

- Private Parties – can charge for:
  - Special Setup
  - Cleaning Fees

Utility Allowance

- Owners must provide residents with an "allowance" for any tenant paid utilities
- Does not include phone, cable, or internet
- The utility allowance is included in the gross rent calculation.
- Owners must update UAs at least annually, depending on what UA they are using.

Utility Allowances in Layered Programs

- LIHTC with Rural Housing Service OR an building in which any resident receives RHS rental assistance:

  Use the applicable RHS utility allowance for the entire building

Utility Allowances in Layered Programs

- LIHTC with HUD Project Based Section 8:

  Use the applicable HUD utility allowance for the entire building

Utility Allowances in Layered Programs

- LIHTC with HUD tenant or project-based vouchers:

Use the applicable local PHA utility allowance only for the units occupied by residents with a voucher

Utility Allowance

- LIHTC only units – owner decides how to determine the utility allowance using one of the following methods:
  - Local Utility Company Estimate
  - HUD Utility Schedule Model
  - Energy Consumption Model, or
  - Applicable Local PHA Utility Allowance – may publish more than once in a year
- Regardless of the model used, must be implemented within 90 days of the effective date.

Utility Allowances

- **IT IS IMPORTANT TO STAY ON TOP OF UA CHANGES. Make sure you document your annual review of the UA**
- **IF THE UA *INCREASES*, AND RESIDENTS ARE AT MAX RENT, YOU MUST LOWER THEIR RENT. FAILURE TO DO SO WILL RESULT IN NON-COMPLIANCE FOR THE ENTIRE BUILDING FROM THE EFFECTIVE DATE OF THE UA CHANGE TO THE END OF THE YEAR. THIS IS NOT CURABLE**
- **IF THE UA DECREASES, YOU DON'T HAVE TO MAKE ANY CHANGES TO RENT**

If an applicant has a Housing Choice Voucher, what UA must be used?

A. Utility Company Estimate
B. Energy Consumption Model
C. The PHA's Utility Allowance
D. The State Agency's Utility Allowance

What is an allowable fee to charge a resident?

A. Rent for the community room.
B. Street parking.
C. Application fee.
D. Optional washer and dryer in unit