Affordable Housing Programs Resource Manual

COMBINING MULTIPLE HOUSING PROGRAMS

Researching the Issues

When determining how to comply with multiple housing programs at a community, the first step is to understand comparable rules for each program. Federal and state guidance documents and individual regulatory agreements for a community should be gathered and read carefully. Once this is done, analysis can be conducted to establish which interaction is appropriate to maintain compliance with all programs.

Monitor requirements

When reconciling program requirements, it is very important to understand the difference between federal requirements and those imposed by the regulatory agency, such as the tax credit state Housing Finance Agency (HFA) or the HOME Participating Jurisdiction (PJ). More restrictive income and rent set-asides or specific conservative calculation methodologies are examples. The agency in these cases may have discretion in what they require and may be willing to negotiate their requirement to assist in complying with other program requirements.

MULTI-PROGRAM INTERACTION SUMMARY

Result of Rule Comparison	Action to Take	Examples
A. One program has a requirement that the other does not.	**Apply the requirement.**	**HUD** – Citizenship, criminal background, and numerous specific forms. **RD** – Complex waitlist requirements. **HUD, RD or HOME** – Conduct an affirmative marketing plan.
B. Both programs have similar requirements and:		
a. The rules have built-in reconciliation provisions.	**Apply the reconciled rule.**	**LIHTC with HUD or RD** – Use HUD or RD utility allowances. **LIHTC with HOME** – Do not use income-based rent for over-income households.
b. One requirement is more restrictive.	**Apply the more restrictive rule.**	**LIHTC with HUD, RD or HOME** – Use lowest applicable Income limits. **LIHTC with HUD or RD** – Conduct annual income certifications at 100% LIHTC properties. **LIHTC with HUD or RD** – Apply minimum 1-year lease term. **LIHTC with HUD** – Do not charge application fees.
c. The requirements are different and don't reconcile.	**Apply both rules.**	**LIHTC with HUD, RD or HOME** – Apply both student rules.
d. The requirements conflict.	**Contact key persons to discuss risks and decide on an approach.** ▪ **Owners** ▪ **Investors** ▪ **State HFA & other agencies.**	**LIHTC with RD or HUD** – Displacing over-income households per RD rules or per LIHTC rules for existing households at a HUD acquisition/rehab. **HUD or RD with LIHT**C – Use of conservative calculations to determine eligibility (highest-in-range or year-to-date, for example).

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STUDENT ELIGIBILITY

TAX CREDIT	In general, households made up of full-time students of any age do not qualify. There are five exceptions to this general rule. They are for students who are: 1. Married and entitled to file a joint tax return* 2. Single parents with dependent child(ren) 3. Title IV welfare recipients (TANF or similar program) 4. Former foster care recipients 5. Participants in a Job Training Partnership Act (JTPA) or similar program** * Same-sex couples qualify for "married and entitled to file" if legally married under any state law. **The "Workforce Investment Act" has replaced JTPA.	§42 (i)(3)(D) & 8823 Guide 17-1 & 2 & Exhibit 17-1; 4350.3 Exhibit 5-1 Rev. Rul. 2013-17
HUD	HUD Section 8 Rule: Any individual who attends an institute of higher learning (full OR part-time) must be one of the following: 1. A dependent of the household living with a parent 2. Over age 23 3. A veteran 4. Married 5. A parent with a dependent child in the unit 6. A disabled individual who was receiving assistance prior to 11/30/2005 or 7. Be independent from parents or have parents who are income eligible. Certain vulnerable youths also count as independent under HUD and DOE rules. Non-Section 8 programs: Each student at an institute of higher learning must meet ALL of the following requirements 1. Be of legal contract age under state law 2. Have established a separate household from parents for at least a year OR meet the U.S. Dept. of Education definition of an independent student 3. Not be claimed on a parent's tax return 4. Must disclose if they get financial assistance from parents.	4350.3 3-13
RD	Same as HUD Section 8 Rule	Unnumbered letter dated 1/11/2007
HOME	Same as HUD Section 8 Rule (regardless of commitment date)	HOME Reg §92.2 (2013)
BOND	Same as tax credit. In general, households made up of full-time students of any age do not qualify. Prior to HERA, the only exception that qualified a full-time student household was 'married, entitled to file a joint tax return.' Per HERA, the same five student exceptions that apply for LIHTC apply to bond qualification.	§42 (i)(3)(D) §142 (d)(2)(C)

INCOME ELIGIBILITY DETERMINATIONS

TAX CREDIT	Income eligibility is determined using the Section 8 method for determining gross annual income found in the HUD Handbook 4350.3 Chapter 5. No deductions to annual income apply to the tax credit program.	IRS Notice 88-80, Treas. Reg. 1.42-5(b)(1)(vii), 8823 Guide chapter 4
HUD	Follow the HUD Handbook 4350.3. Allowances and Deductions apply.	4350.3 chapter 5 and Exhibits 5-1 & 5-2
RD	Follow the RD HB-2-3560 chapter 6. These rules are based on HUD regulations.	HB-2-3560 chapter 6
HOME (HTF)	HUD allows PJs to choose from two methods for determining income, these will be stated in the HOME regulatory agreement and may include: 1. 1040 tax return definition 2. Section 8 method from the 4350.3 Chapter 5* 3. The 2013 regulation change eliminated the Census Long Form as an option. *The most widely used and the only option available to tax credit properties. ***HTF allows for the same two options as post-2013 HOME.***	HOME Guide 3.2 D Home Reg § 92.203(b)(2) (2013) HTF 24 CFR 93.151 (b)
BOND	Income eligibility is determined using the Section 8 method for determining annual income found in the HUD Handbook 4350.3 Chapter 5. The LURA will determine what method is used to verify income (see verification).	§ 142 (d)(2)(B)

CHILDREN – ADOPTED OR UNBORN

TAX CREDIT	Children in the process of adoption and unborn children are included when counting household members. (pregnancy verified by self-affidavit by mother)	8823 Guide 4-3 4350.3 Appendix 3, Page 20
HUD	Children in the process of adoption and unborn children are included when counting household members. (pregnancy verified by self-affidavit by mother)	4350.3 Appendix 3, Page 20
RD	Children in the process of adoption and unborn children are included when counting household members.	HB-2-3560 Attachment 6-C, page 1
HOME	Older guidance indicated that children in the process of adoption and unborn children were not included when counting household members. This guidance is no longer available and appears to have been rescinded. It is HIGHLY recommended that the property's PJ be consulted to determine if they still employ this policy. Many PJs use the widely accepted policy for other HUD programs to include these children.	4350.3 Appendix 3, Page 20
BOND	Children in the process of adoption and unborn children are included when counting household members.	

INCOME LIMITS

TAX CREDIT	HUD-published Multifamily Tax Subsidy Program (MTSP) income limits are used. 20-80% MTSP limits apply, depending on the minimum set-aside selected for a project. Income limits are property specific and HERA designates a "hold harmless provision" for a specific property, a provision that allows the income limits to never go below the highest limit that has applied to the area since the project placed in service. Households must qualify based on gross annual income.	Treas. Reg. 1.42-5(b)(1)(vii), 8823 Guide 4-2
HUD	Income limits based on area median income (AMI) are used and vary based on which HUD program and the county location or MSA. Limits may go up or down any given year. Households must qualify based on gross annual income. **For Section 8**: the very-low 50% AMI limits generally apply, but 40% of new move-ins must be at the extremely low (30% AMI) limits.	4350.3 3-6
RD	RD program income limits based on area median income (AMI) are used based on which RD program and the county location or MSA. Limits may go up or down any given year. Applicants are given priority based on whether they are very low (50% AMI), low (80%) or moderate (low limit + $5,500) income. Households must qualify based on adjusted income.	HB-2-3560 6.2
HOME (HTF)	HUD HOME income limits based on area median income (AMI) are used. HOME limits are county or MSA specific and may go up or down any given year. The HUD very low (50% AMI) limits apply to Low HOME units. High HOME limits are the HUD low income (80%) limits. ***HTF income limits are HUD's extremely low limits, which are the higher of the 30% limits or the poverty level for an area, capped at the very low (50%) limits.***	HOME Guide 3.2 A HTF 24 CFR 93.302 (a)&(b)
BOND	HUD-published Multifamily Tax Subsidy Program (MTSP) income limits are used. 50 or 60% MTSP limits apply, depending on the minimum set-aside selected for a project. Income limits are property specific and HERA designates a "hold harmless provision" for a specific property, a provision that allows the income limits to never go below the highest limit that has applied to the area since the project placed in service. Households must qualify based on gross annual income.	§ 142 (d)(2)(B)

CERTIFICATION FORM

TAX CREDIT	Tenant Income Certification or "TIC" is commonly used.	
HUD	Form HUD-50059	4350.3 5-31 B
RD	Form RD-3560-8	HB-2-3560 6.11 A
HOME	No specific form required. PJs commonly allow tax credit TICS.	
BOND	Tenant Income Certification (TIC) or Certificate of Tenant Eligibility (CTE) forms are commonly required by bond monitors.	

ZERO INCOME HOUSEHOLDS / UNSECURED INCOME

TAX CREDIT	HUD allows zero income households but makes provision for interim certifications when income changes. The tax credit certification must establish a household's income for the next 12-month period with no interim certifications. This difference in program regulations creates a "grey" area that is open to interpretation between the programs, state agencies and project owners. Some agencies require that future, unsecured income be counted based on the household's income history. While some require that only imminent and verifiable income be counted. The 8823 Guide opts for using a 12-month history for zero or sporadic income households and thus unknown and unverifiable income is not included on the certification. Check with your state HFA.	8823 Guide 4-33
HUD	HUD allows zero income households and unsecured income is not counted. Changes to this status must be reported immediately and an interim certification conducted.	4350.3 5-5 A, Appendix 3, page 22
RD	RD does not consider zero-income households to qualify. Basic expenses that the household must meet are verified and counted as income. A Zero Income Checklist must be completed to determine cash and non-cash contributions to the household that will be used to meet the expenses.	HB-2-3560 6.9 A 4, Attachment 6B
HOME	HOME guidance allows zero-income households but does require that the past 12-month average income (if any) be included on the certification.	HOME GUIDE 6.2 E
BOND	The bond regulations do not speak to this issue. Typically, it is handled per the tax credit program approach.	

EMPLOYMENT INCOME VERIFICATIONS WITH A RANGE OF HOURS, WAGES ETC.

TAX CREDIT	HUD uses "average hours" when determining employment income. (e.g. 35 hours for 30-40 hours listed on a verification) By regulation, we count tax credit income as does the Section 8 program. However, it has generally been accepted as best practice by most state HFAs that the tax credit program should use the more conservative approach of using the HIGHEST in a range (i.e. 40 for the 36-40 hours). Some states apply the HUD method, however. The IRS has not addressed this issue.	
HUD	HUD uses "average hours" when determining employment income (e.g. 35 hours for 30-40 hours listed on a verification)	4350.3 Appendix 6-C
RD	RD does not directly address this issue. Typically, the HUD approach is used. (e.g. 35 hours for 30-40 hours listed on a verification)	
HOME	HOME uses the HUD method to calculated employment income (i.e. "average hours") (e.g. 38 hours for 36-40 hours listed on a verification)	HOME Technical Guide page 6
BOND	Bond technically uses the HUD "average hours" calculation for employment income. Typically, the best practices accepted by many bond issuers implement the more conservative approach of using the HIGHEST amount listed as a range on the employment verification. (e.g. 40 hours used for 36-40 hours listed on a verification)	

VERIFICATION OF ASSETS/ IMPUTING INCOME FROM ASSETS

TAX CREDIT	If the household's assets are $5,000 or less, assets may be verified via self-affidavit. Household assets more than $5,000 must be 3rd-party verified. Imputed income from assets using the Hud passbook rate is calculated if assets exceed $5,000.	8823 Guide 4-7, 4350.3 5-18 B, Rev. Proc. 94-65
HUD	Assets are 3rd-party verified at move-in and every third year thereafter. Intervening years may use a self-affidavit from the household if assets do not exceed $5,000. Imputed income from assets using the Hud passbook rate is calculated.	4350.3 5-13, Appendix 3, 24 CFR § 5.659
RD	Assets are 3rd-party verified. Imputed income from assets using the Hud passbook rate is calculated.	HB-2-3560 6.11 A
HOME (HTF)	Assets are 3rd-party verified or "source documents are used for initial program entry and then every 6th year of the affordability period. Income self-certification or verification from an RA voucher provider can be used for years 2-5. Imputed income from assets using the Hud passbook rate is calculated. *HTF allows the same verification methodology and cycle as HOME.*	HOME Guide 3.2 E 2 & 5, F3, Attachment 3-5 HOME Technical Guide 15 HTF 24 CFR 93.151 (d)
BOND	The bond regulations do not specifically address asset verification requirements. The project LURA may have specific requirements or allow self-affidavits to be used when household assets are $5,000 or less. This is not specifically allowed on a federal level like it is for the tax credit program.	

VERIFICATION METHODS (GENERAL)

Program	Description	References
TAX CREDIT	The regulation requires a review of income documentation, such as w-2s or tax returns. Further IRS guidance provides more detailed verification rules. The below verification options are generally applied to tax credit properties, in the order of preference: 1. 3rd-party verification directly from the party. 2. Documentation provided by the household. 3. Household self- certification. Verifications are good for 120 days from receipt.	8823 Guide 4-7, 4350.3 5-17 B 4350.3 5-13,
HUD	There are 4 basic types of verification available for HUD in order of preference: 1. UIV – Upfront Income Verification with the mandatory use of EIV after move-in and optional use of UIV non-EIV verification 2. Third-party verification from the source (written) 3. Third-party verification from the source (oral) 4. Family certification by household written statement Verifications are good for 120 days from receipt and must be no more than 120 days old at the time of receipt. Fixed income sources must be verified every 3 years. COLAs can be applied in other years.	4350.3 5-13 A, 5-16 B, Appendix 3, HUD MF Notice H-2016-09
RD	The below verification options are generally applied to tax credit properties: 1. 3rd-party 2. Documentation provided by the household 3. Household self- certification Verifications are good for 90 days from receipt and can be extended an additional 90 days with verbal clarification.	HB-2-3560 6.8 & 11
HOME (HTF)	At move-in and every 6th year of the HOME affordability period, "source documents" must be used. These are written documents generated by a 3rd party, that verifies the income sources that the applicant reports. At least 2 months of history must be covered by the documentation. For other years, self-certification or verification from other sources, such as local PHAs is acceptable. Verifications are good for 6 months. ***HTF allows the same verification methods and cycles as HOME.***	HOME Guide 3.2 D 3 & E 3 & 5; 24 CFR 92.203 (2013) HTF 24 CFR 93.151 (d) and 93.302 (e)
BOND	The bond regulations do not specifically address verification requirements. The project LURA may have specific requirements and verification lifespans.	

SECTION 8 VOUCHER CERTIFICATION IN LIEU OF INDIVIDUAL INCOME/ASSET VERIFICATION

TAX CREDIT	Check with state HFA. Some states allow a letter from an RA voucher issuer stating that the household's income is below the income limit.	IRS Reg 1.42-(b)(1)(vii)
HUD	Not allowed	
RD	Not allowed	
HOME (HTF)	Not allowed for initial certification. PJ's might allow use in years other than every 6th year of the affordability period when full 3rd-party verification is not necessary. (see "recertifications"). *HTF allows the same verification methods and cycles as HOME.*	HOME Guide 3.2 D 3 & F 3 HTF 24 CFR 93.151 (d) and 93.302 (e)
BOND	Not specifically allowed. The LURA may allow for this type of verification.	

HOUSEHOLD FILE RECORD RETENTION

TAX CREDIT	Files for households that qualified units in the 1st year of the credit period are vitally important for the audit of any year's records. They must be retained for a total minimum of 21 years after the first-year credits are claimed. Files for households qualified in years 2-15 must be kept for a minimum of 6 years beyond the deadline for filing the tax returns for a year.	Treas. Reg. 1.42-5 (b)
HUD	Applications must be kept for 3 years after denial. EIV reports and other forms and verifications that go into tenant files must be retained in the tenant file for the term of tenancy plus three years. EIV Master Binders keep 3 years of information.	HUD 4350.3 4-22; 5-23; 9-14
RD	Tenant certification forms and supporting documentation must be retained in the tenant file for the longer of 3 years or until the next Agency monitoring visit or compliance review.	RD HB-2-3560 6-11 B 5; Attachment 6-J
HOME	Individual tenant income, rent, and inspection information must be kept for the most recent 5 years throughout the period of affordability, until 5 years after the end of the affordability period.	HOME Guide Exhibit 6-1, 6.2 C 7 & 24
BOND	Records should generally be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds.	1.148-5(d)(6)(iii)(E) of the arbitrage regulations

ADDING HOUSEHOLD MEMBERS TO AN EXISTING HOUSEHOLD / INTERIM INCOME INCREASES

TAX CREDIT	No Interim Certifications are required. Individuals added to an existing household during a certification year are income-certified individually and their income is added to the most recent TIC. The total household income is then checked to determine eligibility. This may trigger the AUR rule. The household is considered the same household so long as one original member remains. Some HFAs do not allow additional household members to be added during the Initial Certification year. *See "Increase in Income and Determining Eligibility" for more information.	8823 Guide 4-4
HUD	Adding household members triggers an interim certification. Increases in income do not require a household to move out.	4350.3 7-10
RD	Adding household members triggers a new certification. If this increases the household's income to more than the moderate-income limit, (low (80% AMI) limit + $5,500) the household may be required to move out.	HB-2-3560 6.28 B, 6.30
HOME	No Interim Certifications are required. Increases in income do not require a household to move out. *See "Increase in Income and Determining Eligibility" for more information.	HOME Guide 3.5 & 6
BOND	No Interim Certifications are required. The regulations do not discuss adding household members. The regulatory agreement may discuss this. Increases in income do not require a household to move out. *See "Increase in Income and Determining Eligibility" for more information.	

RECERTIFICATION

TAX CREDIT	Projects that are less than 100% tax credit must recertify each household's income and student status annually. 100% tax credit projects must recertify student status annually. Typically, recertifications are due on the original certification anniversary date. A few states require one full income recertification.	§142(d)(3)(A) (see §42(g)(4)), Treas. Reg. 1.42-(b)(1)(vi), 8823 Guide chapter 5
HUD	Recertifications are due on the certification anniversary date. Interim certifications must be conducted when household income increases by $200 a month or decreases by an amount that would change the TTP. It is only required that household composition or income items that have changed since the annual certification must be re-verified. Fixed-source income must be verified at least every 3 years.	4350.3 chapter 7, 7-11 A 4
RD	Recertifications are due on the certification anniversary date. If certain income and household changes occur (including increases of $100 per month or decreases of $50), a new certification is done, and all items are 3rd-party verified. Recertification must then be completed no later than a year from the anniversary of the new certification.	HB-2-3560 6.28
HOME (HTF)	HOME households must be certified at move-in and every 6th year of the affordability period, with some annual recertification requirements in years 2-5. The HOME program does not mandate dates for the annual cycle, allowing all recertifications to be conducted at once for a year. There are no provisions for interim certifications. ***HTF applies the same recertification standards as HOME.***	HOME Guide 3.2 F 6 HTF 24 CFR 93.151 (d) and 93.302 (e)
BOND	Projects that are less than 100% bond must recertify each household's income and student status annually. Like the tax credit program, 100% projects need to recertify student status each year.	§142(d)(3)(A)

DEDUCTIONS AND ALLOWANCES

TAX CREDIT	Deductions and allowances are not used. Rent is not based on income.	
HUD	HUD has 5 types of deductions and allowances used to determine adjusted income and rent. Open to all applicable households are: 1. Dependent deduction ($480 per dependent per year) 2. Childcare expenses and 3. Disability assistance expenses Available to households where the head or co-head is elderly or disabled are: 1. Medical expenses and 2. Elderly household deduction ($400 per household per year)	4350.3 Chapter 5 section 2
RD	RD uses the 5 HUD deductions and allowances	HB-2 3560 5.9 C
HOME	HOME uses HUD's 5 deductions and allowances for those over-income households paying rent based on their income.	HOME Guide Attachment 3-4
BOND	Deductions and allowances are not used. Rent is not based on income.	§142(d)(3)(A)

EFFECTIVE DATES OF CERTIFICATIONS

TAX CREDIT	The effective date for move-in is the actual date of move-in. The effective date for in-place residents at Acq/Rehab properties is the date of acquisition (for households certified within 120 days of the acquisition date). After the 120-day period, the effective date is the date of the last signature on the certification. The effective date of recertification is the anniversary of the effective date of the original tenant income certification (for less than 100% LIHTC projects where recertification is required).	8823 Guide 4-22, 4-25, 5-1
HUD	The move-in date is the date of move-in. The effective date of the initial certification where an in-place resident gets rental assistance is the date that subsidy is assigned to the tenant. Interim Certifications with a rent increase reported in a timely manner is the first of the month after the end of a 30-day notice. The effective date of interim certifications with rent decreases or when increases in income are not reported timely is the 1st of the month after the income is verified. The annual recertification effective date is the first of the month on the anniversary of the original move-in certification. HUD may approve alternative anniversary dates.	4350.3 7-5, 7-13, 7-5 C
RD	The effective date of all RD certifications will always be the 1st of the month. The effective date of a move-in cert is the 1st of the month. If the tenant did not move-in on the 1st, the effective date is 1st of the next month after move-in. The effective date of recertification is the anniversary date of the last certification.	HB-2-3560 6.28
HOME	Effective dates are not discussed. Initial income certification must be completed 6 months prior to move-in. Annual recertification is necessary but does not have to be on the anniversary date of the last certification.	HOME Guide 3.2 E 1, 6
BOND	Effective dates are not discussed. Typically, the Tax credit rules are followed.	

MINIMUM REQUIRED PERIOD IN THE PROGRAM

TAX CREDIT	The tax credit period in the program is generally accelerated to 10 years with a 15-year compliance period. State Housing Finance Agencies (HFAs) also include an extended use period, which can vary, though it is a 30-year minimum total, including the compliance period.	§42(i)(1), (f)(1), (h)(6)(D), 8823 Guide chapter 16
HUD	Program type, financing and other regulations establish the required period in the program.	
RD	Program type, financing and other regulations establish the required period in the program.	
HOME (HTF)	The HOME agreement establishes the parameters of the program. The affordability period in the HOME program can vary depending on the type of HOME project and the average HOME unit investment. It is at least 20 years for most properties. ***HTF has a minimum affordability period of 30 years. Grantees may impose a longer period.***	HOME Guide 7.1 HTF 24 CFR 93.302 (d)(1)
BOND	The bond qualified project period begins once 10% of the units in a property are occupied and ends the latest of: a) 15 years after 50% of the units are occupied, b) the day no tax-exempt bond is outstanding or c) the day Section 8 assistance, if any, terminates.	§142(d)(2)(A)

INCREASES OF INCOME AND DETERMINING ELIGIBILITY

TAX CREDIT	For less than 100% tax credit properties, household income that is over 140% of the current income limit at recertification is "over-income". Over-income households continue to qualify as Tax Credit households if the next available unit of the same or smaller size IN THE BUILDING is rented to a qualified tax credit household. This continues until the applicable fraction is restored not counting the over-income households. Once the applicable fraction is restored, the household may be raised to market rent, but cannot be required to vacate the unit. This is often called either: ▪ the AUR "Available Unit Rule"; ▪ the NAUR "Next Available Unit Rule"; or ▪ the "140% rule"	§42(g)(2)(D)(ii), Treas. Reg. §1.42-15, 8823 Guide chapter 14
HUD	Rent increases up to the maximum rents. Households that are at the maximum rent and not receiving RA are NOT required to move out of the unit.	4350.3 chapter 8
RD	Rents increase up to the maximum rents. Households that exceed the moderate-income limits must vacate the unit. Overage (the amount of the tenant's rent that exceeds Basic Rent up to Note Rent) must be paid to RD.	HB-2-3560 6.30
HOME (HTF)	Income and subsequent rent increases may result in re-classification from LOW to HIGH HOME rents. Rents switch to 30% of adjusted income once the household's income exceeds the 80% limit. LOW HOME households that exceed the HOME 50% limits and HIGH HOME households that exceed the HOME 80% limits are "over-income". Resulting actions are then determined by the program and depend on whether the project is "fixed" or "floating" HOME. Households at the maximum rent are not required to move out of the unit. For projects that have tax credit funding also, rent for over-income households is not based on adjusted income but may be raised to tax credit limits. ***HTF units that exceed the HTF limits are in temporary non-compliance and the next available comparable unit must be rented to an HTF-eligible tenant for floating HTF units. If fixed HTF, the unit(s) will need to be re-occupied with an HTF-eligible household once the over-income household chooses to vacate.***	HOME Guide 3.5 & 6, Attachment 3-4 & Attachment 3-5 §92.25 3 (c) (2013) HTF 24 CFR 93.302 (f)
BOND	For less than 100% bond properties, household income that is over 140% of the current income limit at recertification is "over-income". Over-income households continue to qualify as bond households if the next available unit of the same or smaller size ***IN THE PROJECT*** is rented to a bond household. NOTE: For bond/tax credit projects, this rule becomes a ***BUILDING*** rule to conform to the tax credit regulations.	§142(d)(3)(B) & (C)

TRANSFERRING HOUSEHOLDS

TAX CREDIT	For less than 100% tax credit properties, households with income above the 140% limit at recertification may only transfer to units in the same building. At 100% tax credit properties and for households with income below the 140% limit, transfers can take place between buildings in the project without the household qualifying under current income limits. See IRS form 8609 to determine which buildings are in a project. Transfers between units cause the units to switch status, especially for purposes of initial tax credit rent up.	Treas. Reg. 1.42-15(d), Rev. Rul. 2004-82, Q&A #8, 8825 Guide 4-24
HUD	Transfers are allowed between buildings within a project. Households that overcrowd or under occupy a unit may be required to move to an appropriately sized unit (if that unit is available) or stay and pay contract rent. The effective date of the household's recertification after the transfer is the anniversary date of their original move-in date to the property.	4350.3 chapter 7 section 3
RD	Transfers are allowed between buildings in a project. Households that overcrowd or under occupy a unit may be required to move to an appropriately sized unit (if that unit is available). If an appropriate unit is not available, tenancy may be terminated. Recertification is completed at transfer, and the transfer date becomes the new anniversary date.	HB-2-3560 6.21, 6.30 A
HOME	HUD guidance does not discuss unit transfers for HOME. Generally, households must re-qualify at transfer for the new unit. "Floating" HOME units can switch their designation. "Fixed" HOME units do not switch.	
BOND	Bond rules do not discuss unit transfers.	

SUBSIDY AND RENT LIMITS

TAX CREDIT	Section 8 RA and RA from similar programs is exempt when determining household income. Household rent may exceed the tax credit max rents for households receiving assistance and whose income has increased. Tenant rents may also exceed the tax credit limit for households receiving RD assistance for which RD "overage" is paid.	§42(g)(2)(B)(i) & (iv), 8823 Guide 11-5 & 6
HUD	N/A	
RD	Rental assistance, if available at a property, pays rent up to basic rent. When tenant rent exceeds basic rent, overage is paid to RD equal to the difference between the tenant rent for a unit and the basic rent.	HB-2 7.4 C, 7.11 A-C
HOME (HTF)	Include any subsidy when determining compliance with HOME rent requirements. There is an exception for project-based subsidy in LOW HOME units where tenants pay 30% of their income toward rent. For these units, the full subsidy program rents may be collected. ***For HTF units with PROJECT-based federal or state subsidy, maximum rents are the rents allowable under the subsidy program.***	HOME Guide 3.3 C HTF CFR 24 93.302 (b)(ii)(2)
BOND	The bond program does not impose rent requirements. The bond agreement may have some project-specific requirements.	

UTILITY ALLOWANCES

TAX CREDIT	Projects with RD or HUD funding use the UA for those programs. There are 5 additional choices for other properties: 1. Local PHA published UAs 2. Estimate from a Utility Company 3. Estimate from an HFA 4. HUD Utility Schedule Model (HUSM) 5. Engineer Model The UA for voucher holding households is the PHA published UA that their rent calculation is based on.	Treas. Reg. 1.42-10, 8823 Guide Chapter 18
HUD	UA for a property is calculated based on actual consumption at a property every 3rd year and adjusted by a HUD published rate the other years.	MF Notice H-2015-4
RD	UA for a property is calculated based on RD policy. If there is more than a 15% rate increase, owners should collect a "significant sampling" of tenant data. If any increase 15% or less, "a sampling" is required. Each state Agency sets further policy.	7 CFR 3560.202 HB-2-3560 4.26/ 4-29; 7.3 / 7-3
HOME (HTF)	The PJ establishes a UA. Since the 2013 change in HOME regulations, UAs provided by Public Housing Authorities are no longer acceptable. UAs must now be: 1. Calculated based on actual project consumption; or 2. Use the HUD Utility Schedule Model (HUSM) NOTE: This is only applicable to HOME projects committed funds after 8/23/2013. The method for HUD projects is acceptable. Tax credit options are also acceptable except PHA estimates. ***For the HTF, the grantee must establish UAs each year.***	HOME Guide 3.3 D; 24 CFR 92.252 (d) (2013) CPD HOME FAQ 11-13, Homefires Vol. 13 No. 2 HTF 24 CFR 93.302 (c)
BOND	The bond program does not impose rent limits; thus, a UA is irrelevant. The bond agreement may impose further rent restrictions.	

RENT LIMITS

Program	Description	Reference
TAX CREDIT	Rent limits are calculated based on income limits. There is a gross rent "floor," established at the date of allocation or placed in service date so that the rents do not have to fall below the "floor" for a project, even if the HUD published Income Limits go down from year to year. Rent limits are calculated imputing 1.5 persons per bedroom.	§ 42 (g)(2)(C), Rev Prc 94-57, 8823 Guide 11-2 Example 1
HUD	Market (or contract) rents are calculated for a specific property and will be spelled out in regulatory and HAP agreements.	
RD	Basic and market rents are calculated for a specific property and will be spelled out in regulatory and other agreements.	
HOME (HTF)	HUD publishes the HOME high and low rent limits. Rents do not decrease below the originally approved HOME rents. 2013 HOME regulation requires that PJs approve all rents annually at each HOME project that they monitor. *For the HTF the grantee must approve rents each year.*	HOME Guide 3.3 §92.2 52(f)(2) (2013) HTF 24 CFR 93.302 (a) - (c)
BOND	The bond program does not have rent limits. Specific bond agreements may impose limits.	

LEGAL AUTHORITY AND PROGRAM GUIDANCE

Program	Description	Reference
TAX CREDIT	Legal Code: Internal Revenue Code §42, Treasury Regulation 1.42, Revenue Rulings, Revenue Procedures, and IRS Notices. Although not regulatory, "The Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" AKA "The 8823 Guide" and IRS Newsletters provide additional guidance. Private Letter Rulings indicate IRS thinking but cannot be cited as precedent for any, but the individual cases involved.	www.irs.gov
HUD	HUD Handbook 4350.3 "Occupancy Requirements of Subsidized Multifamily Housing Programs." Additional MF Housing Notices provide updates. HUD also has an RHIIP Listserve where guidance and announcements are often first published.	www.hud.gov
RD	HB-2-3560 "Multi-Family Housing Asset Management Handbook," RD also provides updates through Administrative Notice (AN) and Unnumbered Letters (UL).	www.rd.usda.gov
HOME (HTF)	24 CFR Part 92 regulation, "Compliance in HOME Rental Projects: A Guide for Property Owners" AKA the "HOME Guide." A HOME Technical Guide and Online Calculator provide income calculation guidance. *The HTF regulations are at 24 CFR Part 93*	www.hudexchange.info
BOND	Internal Revenue Code §142, Revenue Rulings, Revenue Procedures, and IRS Notices.	www.irs.gov

VACANCIES

TAX CREDIT	Vacant units are considered tax credit units if: A) the unit was previously occupied by a qualified household; B) the unit was ready to lease in a reasonable amount of time, and C) the owner/manager can prove that the unit was marketed before any non-tax credit units of the same or smaller size were leased. (Vacant Unit Rule VUR)	Treas. Reg. 1.42-5(c)(1)(ix), Rev. Rul. 2004-82, Q&A #9, 8823 Guide chapter 15
HUD	Vacant units do not impact program compliance unless vacant units are excessive in quantity or duration. Vacancy claims can be made to HUD to recoup lost rents.	
RD	Vacant units do not impact program compliance unless vacant units are excessive in quantity or duration. Rental Assistance that remains unused after 6 months due to vacancies may be removed from a property by RD.	HB-2-3560 9.15/9-33
HOME	A few, short term vacant units do not impact program compliance. NOTE: HOME units that are not leased within 6 months of project completion could become an issue. Within 18 months HOME funds must be paid back on those units that were not leased to HOME qualified households.	§92.525 (2013)
BOND	Vacant units are considered bond units if the unit was previously occupied by a qualified household. When the next household leases the unit, qualification is determined for that household.	IRS Reg. 103.8 (b)(5)(ii)

MINIMUM SET-ASIDE AND REQUIRED NUMBER OF UNITS IN PROGRAM

TAX CREDIT	Typically, properties have a 20-50 or 40-60 minimum set-aside. The first number designates the minimum percentage of units at the property that must be designated "tax credit" units. The second number represents the MTSP income and rent limit for those units. Tax credits are claimed based on the actual percentage of tax credit units to all the units in a building; this is called the "applicable fraction." Starting for new set-aside elections in 2018, the 40-60 set-aside option includes an "Income Average Test" version where units may be set aside at 20 to 80% MTSP set-asides (in whole 10% increments), as long as these average 60%. <u>NOTE</u>: New York City adds minimum set-aside options of 25-50 and 25-60 (Average). State agencies can determine additional set-asides.	§42(g)(1), 8823 Guide chapter 10, IRS form 8609(s) line 10C shows the designation
HUD	This is based on the HUD program type and the regulatory agreement in place for the property.	
RD	This is based on the RD program type and the regulatory agreement in place for the property.	
HOME	The HOME units in a property are determined by the amount of HOME Funds given to the property in proportion to the cost to build. These are designated "low" and "high" HOME units. Typically, 20% of units must be "low" HOME units with a 50% income and rent limit. The remainder of the HOME units are "high" HOME with an 80% rent and income limit.	HOME Guide 1.8
BOND	Typically, properties have a 20-50 or 40-60 minimum set-aside. The first number designates the minimum percentage of units at the property that must be designated "bond" units. The second number represents the MTSP income and rent limit for those units. The bond units must meet the minimum set-aside at the property, but do not need to exceed the minimum. During lease-up once a property reaches 10% occupancy the minimum set-aside must be maintained among the occupied units. This may cause a hold on leasing to non-bond households until the bond minimum set-aside is reached. <u>NOTE</u>: New York City adds a third minimum set-aside of 25-60. State agencies can determine additional set-asides.	§142(d)(1) Rev. Proc. 04-39

INITIAL LEASE AND LEASE TERM

TAX CREDIT	Other than in SRO or transitional housing projects, households must not be "transient." This generally means that the initial lease term must be at least 6-months. Termination or non-renewal must be for good cause under state law.	§ 42(i)(3)(B)(i) & "Blue Book" 8823 Guide chapter 20; § 42 (i)(3)(B)(iv)
HUD	The initial lease term must be 12-months. The HUD lease must be used. Termination or non-renewal must be for good cause.	4350.3 chapter 6, Appendix 4 A-G
RD	The initial lease term must be 12-months or the end of the HAP contract, if sooner. The lease is developed by the owner and must be certified by the owner's attorney and approved by RD. Termination or non-renewal must be for good cause.	HB-2-3560 Attachment 6-E & 6-F
HOME (HTF)	The initial lease term is typically 12-months unless a lesser term is agreed upon, which can't be less than 30-days, except in cases of threat to the tenants, employees or property. The lease is developed by the owner avoiding 9 prohibited clauses. The lease must be approved by the PJ. Termination or non-renewal must be for good cause. ***HTF has the same initial term and prohibited lease terms as apply to HOME. Termination of tenancy must be for cause and in a timeframe dictated by local law.***	HOME Guide 4.3 B, Attachment 4-1 24, CFR 92.253 (b) (2013) HTF 24 CFR 93.303 (a) - (c)
BOND	The bond program leaves the lease and initial lease term up to other program funding unless the bond agreement mandates some lease requirements. The minimum term is generally at least 31 days.	Bond Agreement

APPLICATION, SCREENING AND MONTHLY FEES

TAX CREDIT	Applicants can be charged an averaged fee for the actual costs to run the checks. Non-optional monthly fees must be added when determining gross rent compliance.	8823 Guide 11-2 to 11-3
HUD	Applicants must NOT be charged for the costs of screening. Monthly fees must be approved by HUD.	4350.3 4-7 A-C, E 2
RD	Fees to applicants are discouraged but allowed and limited to the actual cost of the screening. Monthly fees must be approved by RD.	HB-2-3560 6.18 B, 6.19
HOME	Application, screening and other fees must be approved by the Participating Jurisdiction (PJ). Any allowed monthly fees must be deducted from the HOME rent limit to determine the maximum rent charged for a unit. ***Fees that are not customary in rental housing are prohibited. Reasonable application fees may be charged or fees for services or meals, as long as the services are voluntary.***	Home Guide 3.3 D 4 HOME Regs § 92.214(b) (2013) HTF: 24 CFR 93.204(b)
BOND	Application fees and costs to screen applicants are not addressed.	

CRIMINAL BACKGROUND CHECKS

Program	Requirement	Reference
TAX CREDIT	Owners may screen for criminal background.	8823 Guide 11-2 to 11-3
HUD	Owners are required to screen for criminal and drug-related criminal activity. Applicants must be screened for lifetime sex offender registration and those registered are prohibited entry.	4350.3 4-7 A-C, E 2
RD	Owners may screen for criminal background. Owners may deny admission for criminal activity. If rejected for occupancy, the letter must outline the reason.	HB-2-3560 6.18 B, 6.19
HOME	Owners may screen for criminal background. Applicants rejected must receive a written explanation.	HOME Guide Exhibit 4-1
BOND	Criminal background checks are not addressed.	

RELEASE OF INFORMATION FORMS

Program	Requirement	Reference
TAX CREDIT	No specific form is required.	
HUD	HUD uses form 9887 and 9887-A. These are signed at initial and annual recertification.	4350.3 3-11
RD	The owner is required to develop a Release of Information form. No specific form is required.	HB-2-3560 6.11 2
HOME	No specific form is required.	
BOND	No specific form is required.	

CITIZENSHIP REQUIREMENTS

TAX CREDIT	The Internal Revenue Service (IRS) does not establish citizenship requirements. The HFA or the owner may establish some non-citizen restrictions.	8823 Guide 13-2
HUD	Only U.S. citizens or eligible non-citizens may receive assistance. Non-citizens must provide documentation that is verified through the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services' SAVE system. Households that consist of non-eligible and eligible members will have their assistance pro-rated.	4350.3 3-5 F, 3-12, Exhibit 3-5
RD	Only U.S. citizens or eligible non-citizens may receive benefits. RD guidance on how to establish this is still pending.	§3560.152 (a)(1)
HOME	The multi-family HOME program does not have established citizenship requirements.	
BOND	The bond program does not have established citizenship requirements.	

RACE / ETHNICITY REPORTING REQUIREMENTS

TAX CREDIT	Race and ethnicity data collection and reporting procedures are established by the State Housing Finance Agency (HFA). The HFA is required to report this data to HUD.	The Housing and Economic Recovery Act of 2008 (HERA) section 2835
HUD	Applicants have the option to report their race and ethnicity using the form HUD-27061-H, though this is NOT a required form. Management must NOT complete the form on the applicant's behalf. Race and ethnicity data is NOT placed on the waiting list.	4350.3 2-11 A, 4-14 A 4, Exhibit 4- 3, 4-16 D 4
RD	Application forms and waiting lists must include race and ethnicity data. If the applicant will not supply the data, management is required to complete the race and ethnicity information based on observation.	HB-2-3560 6.18 A, Exhibit 6-5
HOME (HTF)	The PJ must establish race and ethnicity data collection and reporting procedures. The PJ must review the data collected each year. *As affirmative marketing rules apply, HTF would require monitoring of race and ethnicity.*	HOME Guide 4.2 B 5 HTF 24 CFR 93.350
BOND	The bond program does not have race and ethnicity data collection or reporting procedures.	

AFFIRMATIVE FAIR HOUSING MARKETING

TAX CREDIT	The Internal Revenue Service (IRS) does not address affirmative marketing.	
HUD	HUD requires an Affirmative Fair Housing Marketing Plan (AFHMP) on HUD form 935.2A. This is updated by the owner/ manager at least every 5 years and must be approved by HUD or the Contract Administrator (CA).	HUD.gov form 935.2A
RD	RD requires an Affirmative Fair Housing Marketing Plan (AFHMP) on HUD form 935.2A. This must be approved by RD and updated every 5 years.	HB-2-3560 6.17, HUD.gov form 935.2A
HOME (HTF)	The PJ must establish affirmative marketing procedures. The PJ is responsible to make sure that the established affirmative marketing plan is followed by the site. ***Grantees must establish and monitor affirmative marketing plans for HTF properties.***	HOME 4. 2 B HTF 24 CFR 93.350
BOND	The Internal Revenue Service (IRS) does not address affirmative marketing.	

ONLINE SYSTEM USED BY PROGRAM

TAX CREDIT	The Internal Revenue Service (IRS) does not have an online system. Individual State Housing Finance Agencies (HFAs) may have a unique online system.	
HUD	HUD has Tenant Rental Assistance Certification (TRACS) and Enterprise Income Verification (EIV).	
RD	Management Agent Interactive Network (MINC).	
HOME	The Participating Jurisdiction (PJ) uses the Integrated Disbursement and Information System (IDIS) to report to HUD.	
BOND	The IRS does not have an online system.	

ADMINISTERING AGENCY

TAX CREDIT	The Internal Revenue Service (IRS) and State Housing Finance Agencies (HFAs). NOTE: Each state has an HFA; however, they are not all specifically called Housing Finance Agencies.	IRS.gov and individual state HFA websites
HUD	Housing and Urban Development (HUD) Multi-family Division and Contract Administrators (CAs) which are 'contracted' by HUD.	HUD.gov and individual CA websites
RD	Rural Development (RD) / Rural Housing Services (RHS) under the United States Department of Agriculture (USDA).	RurDev.USDA.gov
HOME (HTF)	Housing and Urban Development (HUD) under the Office of Community Planning and Development (CPD). CPD appoints Participating Jurisdictions (PJs) that commit the HOME funds to owners and monitor compliance. *HUD CPD. CPD appoints state Grantees that commit the HTF funds to owners and monitor compliance.*	HUD.gov and individual PJ and Grantee websites HTF 24 CFR 93.100 and 92.404
BOND	The Internal Revenue Service (IRS) and bond issuers.	IRS.gov

INSPECTIONS – FILE REVIEW AND PHYSICAL

TAX CREDIT	Inspections are done on a minimum 3-year cycle. At least one aspect of ALL buildings is inspected (such as building exterior or HVAC). The number of files and units inspected is listed on a chart published in IRS regs and based on HUD REAC standards. UPCS (Uniform Physical Conditions Standards) or local standards are used for the Physical Review. NOTE: Section 504 is not applicable to tax credit funding where other federal funding is not involved. Fair housing standards apply.	Treas. Reg. §1.42-5(c)(1)(vi) & (2) 8823 Guide 6-1 & Exhibit 6-1
HUD	MORs (Management Occupancy Reviews) are performed on varying schedules. REAC Physical inspections use UPCS and are conducted on a 1 to 3-year schedule based on the previous REAC score: ▪ >89 = 3-year schedule ▪ 80-89 = 2-year schedule ▪ <80 = 1-year schedule Some HUD programs use the HQS (Housing Quality Standards) Protocol. Section 504 and fair housing standards apply for a review of accessibility.	4350.1 chapter 5, see also www.hud.gov for further REAC, UPCS and HQS information
RD	Annual Physical Inspections: 5% of occupied units (minimum of 2) and 5% of vacant units (minimum of 2). Tri-annual Supervisory Visits review units based on size: ▪ 1-5 units = all units inspected ▪ 6-30 units = 6 inspected ▪ 31-74 units = 10 inspected ▪ >74 units = 15 inspected ▪ Vacant units = 5% inspected (minimum of 2 units) RD 3560-11 is the form used for Physical reviews. Section 504 and fair housing standards apply for a review of accessibility.	HB-2-3560 9.9 F, 9.10 F, RD 3560-11
HOME (HTF)	Reviews are based on the total number of units in a property, NOT just the HOME units, with a 3-year inspection cycle. The inspector selects a "Reasonable Sample." The PJ must choose between local and state codes or UPCS or HQS* for the physical reviews. Section 504 and fair housing standards apply for a review of accessibility. *UPCS replaced HQS with the 2013 HOME regulations. Further guidance is forthcoming. ***HTF tri-annual inspections are based on a sample as set forth by HUD notice. For projects with 1-4 HTF-units, all of the HTF units are inspected. HTF properties must meet the HUD UPCS standard and Section 504.***	HOME Guide Exhibit 6-1, 6.2 C 7; HOME Guide Exhibit 5- 1 24 CFR 92.504 (d) (2013) HTF 24 CFR 93.301 (e) and 404 (d)
BOND	No inspection schedule is required by code. NOTE: Section 504 is not applicable to bond funding. Fair housing standards apply.	

REPORTING REQUIREMENTS

TAX CREDIT	IRS form 8609 must be filed with the IRS, the first year of the credit period. Form 8609A is filed the other years of the compliance period. An annual owner certification of program compliance must be submitted to the state HFA.
HUD	Reporting and HAP processing is submitted monthly through TRACS.
RD	Reporting and RA processing is submitted to RD monthly through MINC by the 10th of the month.
HOME	Annual occupancy and other reports are submitted to the PJ.
BOND	Form 8703 must be filed with the IRA annually.

VIOLENCE AGAINST WOMEN ACT (VAWA)

TAX CREDIT	VAWA applies to tax credit properties since 2013. The IRS is unlikely to issue guidance. HUD guidance may be used as a model.	
HUD	Applies since 2005 to Section 8 and since 2013 for most other HUD programs. HUD has issued sample notice of rights (Form HUD-5380), victim cert. (5382), model emergency transfer plan (5381), model emergency transfer request (5383). A lease addendum (91067) is required.	Fed Reg Vol 81 No. 221 Wed Nov 16, 2016
RD	RD applied HUD 2016 guidance.	Admin Notice 4814 dated 1-18-17; Fed Reg Vol 81 No. 221 Wed Nov 16, 2016
HOME (HTF)	HUD 2016 guidance applies to HOME. ***HUD 2016 guidance applies to HTF.***	Fed Reg Vol 81 No. 221 Wed Nov 16, 2016 HTF 24 CFR 93.356
BOND	VAWA does not apply.	

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