

OREGON HOUSING AND COMMUNITY SERVICES

LIHTC Regulatory Compliance Lease-Up



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Where We Get Direction...

References

OHCS LIHTC Compliance Manual

- 1. Legal Authority**
 - o Section 42, Internal Revenue Code (IRC)
 - o Treasury Regulations
 - o Revenue Rulings
 - o Revenue Procedures
 - o IRS Notices
- 2. Additional Interpretive Resources**
 - o 8823 Guide (revised 2011)
 - o IRS Newsletters (Provides further guidance)
 - o Private Letter Rulings (Cannot be cited as a precedent)
 - o HUD 4350.3


On July 30, 2008, the president signed into law H.R. 3221, **The Housing and Economic Recovery Act (called by HUD "HERA")**. This bill contained substantial revisions to the LIHTC program. Most of these changes apply going forward, so the former rules will apply to currently existing properties. We will indicate these changes, as well as the effective dates, by the icon to the left of this paragraph box.

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Updated New (Federal) Guidance

National Standards for the Physical Inspection of Real Estate (NSPIRE)

- On June 22, 2023 HUD published the NSPIRE Inspection Standards Federal Register Notice, establishing a compliance date of October 1, 2023.
- On September 18, 2023, HUD published a notice in the Federal Register to extend the compliance date to October 1, 2024.
- OHCS adopted NSPIRE Standards effective October 1, 2024.




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Updated New (Federal) Guidance

Housing Opportunity Through Modernization Act (HOTMA) (2016)

- The HOTMA final rule and HUD Notice H 2023-10 / PIH 2023-27 published on September 2023
- Effective January 1, 2024
- HUD's verification which lists verification documentation from most acceptable to least acceptable
- Updated Definitions
- OHCS implemented HOTMA on January 1, 2025



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What are Tax Credits?

October 22, 1986

Dear Taxpayer,

If you invest in affordable housing, we will give you a break on your taxes based on how much you invest.

The IRS

P.S. This is not a tax deduction
P.S. Offset dollar-for-dollar tax liability
P.P.S. This is not an RA program (i.e. subsidized)

1986 Congress enacts Section 42 IRC as part of Tax Credit Reform Act

Moore Development owns Brentwood Estates, an LIHTC project that generates \$90,000 annually in LIHTCs. At the end of the tax year, the partnership can apply the \$90,000 in LIHTC's to the tax liability, which reduces the amount of tax liability due the IRS.

To retain the credits, a development must:

<ol style="list-style-type: none"> 1. Rent to qualified households 2. Keep rents affordable 3. Keep the property decent safe and sanitary 	<p>I = Income R = Rents S = Safe & Sanitary</p>
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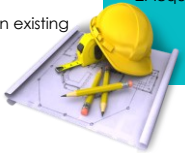

Types of Projects

Affordable housing doesn't always present itself in the same manner.

- Build from scratch
- Rehabilitate a currently owned property
- Acquire and modify an existing building

Can fund:

- New Construction
- Rehabilitation } **OK!**
- Acquisition **No!** } **OK!**

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Land Use Restriction Agreement

In order for LIHTC property owners to receive tax credits, they must agree to follow the restrictions set forth by OHCS and the federal government in the land use restriction agreement (LURA). By executing the LURA, LIHTC property owners accept the rent rate restrictions, a 15 – 30 - year compliance period, limited proceeds upon sale, and government monitoring of the property. The LURA is recorded in the public record and runs with the land (deed restricted). Due to the LURA running with the land, in the event a LIHTC multifamily housing property is sold during the term of the agreement, the LURA's restrictions are binding upon the buyer. The purpose of the LURA is to provide affordable housing to low-income households by limiting the maximum rent that can be charged for a unit and by requiring that some or all of the units be made available only to households with incomes below a percentage of the average medium income (AMI).



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Land Use Restriction Agreement



OHCS refers to the recorded legal documents as **Declaration of Land Use Restrictive Covenant (LURC)**

OHCS requires a second legal document **Regulatory Extended Use Agreement (REUA)**
This is not recorded



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Building Identification Number

“BIN”



- Defines “Building” for your property
- Not always the same as physical structure



Every “BIN” has an IRS Form 8609



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b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

3 BINs, 33 Units Each
Total 99 Units
40/60 MSA

$99 \times .40 = 39.6$
40 Units must be LIHTC

One Project

BLDG A BLDG B BLDG C

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b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

3 BINs, 33 Units Each
Total 99 Units
40/60 MSA

$33 \times .40 = 13.2$
14 LIHTC per BIN
TOTAL OF 42

BLDG A BLDG B BLDG C

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KNOWLEDGE CHECK

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Rent Limits

Rent Limits are calculated by the current MTSP Income Limits

These are LIMITS only. Actual rents charged can be less.

Rental assistance is NOT counted.

Resident rent + UA + non-optional charges = Gross Rent


HCV Voucher Assistance \$ 500

Tenant rent \$ 100

UA \$ 100

Allowable rent \$ 700


LIHTC Gross rent = \$ 2 00




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Calculating Rent Limits:

2 Bedroom
3 person income limit x 30% ÷ 12
\$27,240 X 30% = \$8,172 ÷ 12
\$681



Maximum Monthly Rents 1/12 of 30% of:	Efficiency Income limit for 1-Person	1 Bedroom Income Limit for [(1-Person) + 2-Person]/2	2 Bedroom Income Limit for 3-Person	3 Bedroom Income Limit for [(4-Person) + 5-Person]/2	4 Bedroom Income Limit for 6-Person
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Income and Rent Limits

If ALL buildings are ONE project:

- Limits for the entire project are based on the PIS date of the **first building**

If each building is a SEPARATE project:

- Limits are based on the PIS date of each building
- Different buildings may have different limits


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Utility Allowances

Owners calculate and must update annually.

1. Rural Development
2. HUD and HCV
3. Conventional
 - a) PHA
 - b) Utility Company
 - c) HUD Model (HUSM)
 - d) Engineer Model (ECM)


MUST implement within 90-days



90-day rule:
PHA: From release
Others: Utility Company, HUSM, ECM

Includes comment period with a total of 90 days

Due to OHCS beginning of 90-day period



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Gross Rent

PART VI. RENT	
Tenant Paid Rent:	\$ <input checked="" type="checkbox"/> <input type="checkbox"/>
Utility Allowance:	\$ <input checked="" type="checkbox"/> <input type="checkbox"/>
Rental Assistance:	\$ <input checked="" type="checkbox"/> <input type="checkbox"/>
Other non-optional charges and mandatory fees:	\$ <input checked="" type="checkbox"/> <input type="checkbox"/>
Gross Rent For Unit (See Instructions):	\$ <input type="checkbox"/>

Unit Meets Rent Restriction at: 80% 70% 60% 50% 40%
 30% 20% %

Is the source of the Rental Assistance Federal? Yes No *If No, what is the source of the assistance?* _____
If Yes, identify the type of Federal Rental Assistance:

<input type="checkbox"/> HUD Multi-Family Project-Based Rental Assistance (PBRA)	<input type="checkbox"/> HUD Housing Choice Voucher (HCV-tenant based)
<input type="checkbox"/> HUD Section 8 Moderate Rehabilitation	<input type="checkbox"/> HUD Project-Based Voucher (PBV)
<input type="checkbox"/> Public Housing Operating Subsidy	<input type="checkbox"/> USDA Section 521 Rental Assistance Program
<input type="checkbox"/> HOME Tenant Based Rental Assistance (TBRA)	<input type="checkbox"/> Other Federal Rental Assistance



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Maximum Gross Rents

Rent limits calculated based on income limits


- Limits only. Actual rents may be less

Income limits held harmless = no gross rent decreases

$$\begin{aligned} &\text{Maximum Gross Rent} \\ &\text{(minus) Utility Allowance} \\ &\text{(minus) Non-Optional Charges} \\ &= \text{Max Allowable Tenant Paid Rent} \end{aligned}$$

* Monthly and annual limits

8823 Guide 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. An owner cannot avoid the disallowance of the LHC by rebating excess rent "or fees" to the affected tenants"



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Maximum Allowable Gross Rents

Federal, State or Local Rental Assistance Programs

IRC §42(g)(2)(D)(i)
8823 Guide 11-5

Section 8 Tenants: Gross rent does not include any payments made to the owner to subsidize the tenant's rent (rental assistance payments), only the tenant-paid portion. Additionally, the gross rent may exceed Tax Credit limits as long as the household is receiving at least \$1 in rental assistance. If at any time the tenant is no longer eligible to receive the rental assistance, the owner must lower the tenant's rent to be at or below the maximum applicable program rent allowed.

Rural Development: Beginning in 1991, however, gross rent does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the USDA Rural Housing Service under Section 515 of the Housing Act of 1949. As long as the owner pays Rural Development the rent amount over the limit (all of the overage) that unit is in compliance.




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Non-Compliant Rent Issues


Overcharging rent one month makes the unit non-compliant for the rest of the owner's tax year!

- ⊗ Charging fees that are not permissible
- ⊗ Increasing rent to exceed maximum allowable rent limit
- ⊗ Improperly calculating the utility allowance



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Eligible Basis (EB)




"What the building cost"

Acquisition or construction Costs
(minus) Land
(minus) Federal Grants
(minus) Some "soft" costs =
Eligible Basis

Eligible Basis Boost
130% Eligible Basis if in:

- "Difficult Development Area" (DDA)
- "Qualified Census Tracts" (QCT)



H.R. 3221
HERA SAYS:
"States may now apply this increase as needed"

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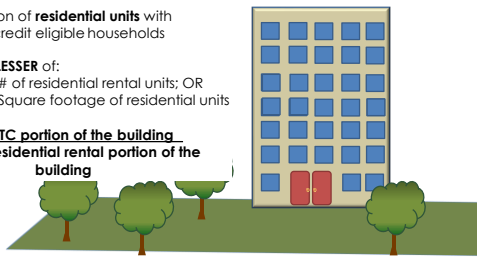
Applicable Fraction (AF)

Portion of **residential units** with tax credit eligible households

The **LESSER** of:

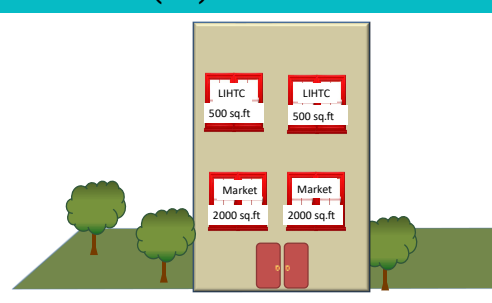
- # of residential rental units; OR
- Square footage of residential units

The total LIHTC portion of the building
 The total residential rental portion of the building



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Applicable Fraction (AF)



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Applicable Fraction (AF)

Common (non-residential) area is excluded from this calculation



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Applicable Fraction (AF)

Model Unit

- Counted as a unit
- Fixed Models never counted as LIHTC

Manager Unit


- Full time employees to the property (as defined by property needs)
- INCLUDED in eligible basis
- EXCLUDED from applicable fraction (unless rented to a LIHTC household)
- Common areal
- Best for 100% LIHTC
- Rent can be charged for an exempt unit




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Applicable Fraction (AF)


The applicable fraction is based on the units in compliance as of the last day of the tax year (except for the 1st and 11th year)





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Knowledge Check




There are 12 total units in the building:
 Seven of the units are one bedroom (900sqft.) and five of the units are two- bedroom units (1400sqft.)
 LIHTC units - One, of the two- bedroom units and all five of the one-bedroom units
 One managers unit (900sqft) and one model unit (900sqft.)

LIHTC - 1,400 sq. ft.	LIHTC - 900 sq. ft.
Market -1,400 sq. ft.	LIHTC - 900 sq. ft.
Market -1,400 sq. ft.	LIHTC - 900 sq. ft.
Market -1,400 sq. ft.	LIHTC - 900 sq. ft.
Market -1,400 sq. ft.	LIHTC - 900 sq. ft.
Model - 900 sq. ft.	Manager - 900 sq. ft.

of LIHTC units: $\frac{6}{11} = .54545$
 Total # of units in building

LIHTC Square Feet = $\frac{5,900}{12,400} .4758$
 Total building Sqft. **12,400**

Applicable Fraction will be: **47.58%**



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Vacant Units

Vacant units last LIHTC-occupied are LIHTC IF:

1. Reasonable attempts are made to market units before any market units are rented
2. Units are rent-ready in a "reasonable time"

Avoid "cannibalism"!

General Public Use Rule

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Monitoring Reviews and Inspections

Review Conducted by OHCS or contractor
First visit end of second year.

Example:

Placed in Service:	06/01/23
First visit by:	12/31/25

Every 3rd year thereafter

The last building of Terrace Glen Apartments was placed in service 05/06/2024. The state's first visit must be no later than what date?




December 31, 2026

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When Combining Funding

Possible interactions, where programs do not adjust by design:

1. No corresponding provision
2. Similar rules
 - a. Different provisions
 - b. Most restrictive
3. Actual conflict

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