



# Kentucky Housing Corporation

## Compliance Manual for Low Income Housing Tax Credits

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## Introduction

Kentucky Housing Corporation (KHC) was established in 1972 to assist in the production of housing for low- to moderate-income residents in the state of Kentucky. This manual addresses the requirements for one of those programs, Low Income Housing Tax Credit (LIHTC). The manual is designed to answer questions regarding procedures, rules, and regulations that govern housing properties in Kentucky. This manual should be a useful resource for owners, developers, management agents, and on-site management personnel.

While setting out KHC's requirements under LIHTC, information provided in this manual should not be construed as legal or accounting advice. This manual is only to be used as a supplemental source for compliance with the laws, regulations, and other guidance from the U.S. Housing and Urban Development (HUD) and Internal Revenue Service (IRS).

KHC's obligation to monitor for program compliance with the requirements of the LIHTC program does not make KHC liable for an owner's noncompliance.

## Responsibilities

### The Owner

The owner is responsible for compliance with the IRS code. Any and all financial consequences to the owner as a result of noncompliance, whether identified by KHC or by the IRS, will be the responsibility of the owner. KHC will not make any representation other than to the IRS that a development is in compliance.

The owner is responsible for ensuring that the development is in compliance with Section 42 and all pertinent rules and regulations that apply to rental housing. The owner must make certain that the on-site management team complies with all appropriate rules, regulations, and policies that govern the development. KHC suggests all management and owners attend Low Income Housing Tax Credit training when available.

### Kentucky Housing Corporation (KHC)

KHC is assigned the responsibility of compliance monitoring under Section 42(m)(1)(B)(iii) of the IRS code. The initial Housing Credit (HC) review of the tenant files and physical inspection of the property require that, within two years of the Placed In Service date, KHC conduct on-site inspections of the property and at least 20 percent of the unit files.

Thereafter, at least once every three years, KHC conducts on-site physical inspections and reviews the tenant files. At least 20 percent of the development's low income units will be randomly selected by KHC for review. In the event extensive non-compliance is found, the sample size will be expanded.

Within 30 days of the review date, KHC will notify the owner of a low income housing development if it is discovered during an audit, inspection, review, or in some other manner, that the development is not in compliance with the Code. The owner has an opportunity to correct noncompliance within 30 days from the date of the notice to the owner. If needed, an extension of up to six months (includes the 30-day time frame) may be granted by KHC for good cause as determined by KHC. The request for an extension must be sent in writing to KHC compliance staff for approval.

KHC is required to notify the IRS of an owner's potential noncompliance no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance is corrected. KHC will notify the IRS by filing Form 8823, explaining the nature of the noncompliance and indicating whether the owner has corrected the noncompliance.

The IRS released the Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition in January of 2007. It was updated in September of 2009 and in January of 2011. The 8823 Guide gives guidance on what is considered noncompliance and what steps need to be taken to correct noncompliance.

### Suspension and Debarment Policy

Parties may be subject to having funds/draws withheld for noncompliance with program guidelines or refusal to provide proper documentation. Any parties found to be in consistent noncompliance with program guidelines or that demonstrate flagrant or serious incident(s) of misuse of funds will not be allowed to participate in KHC programs. See KHC's [Suspension and Debarment Policy](#) for additional information.

## Program Information

### Overview of LIHTC Process

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 participation in the construction or acquisition and rehabilitation of rental housing units that will remain income and rent restricted for an extended period of time.

### Calculation of Qualified Basis

$$\text{Eligible Basis} \times \text{Applicable Fraction} = \text{Qualified Basis}$$

**Eligible basis** is the dollar amount spent on the construction or acquisition costs of a building minus items such as land, federal grants, and soft costs. The cost of depreciable property used in common areas or provided as comparable amenities to all residential units is generally included in eligible basis. An example of this would be carpeting in the common area. The cost of tenant facilities may be included in eligible basis if there is not a separate charge for the use of the facility and they are made available on a comparable basis to all tenants in the project. An example of this is a swimming pool or a garage. Other factors in determining eligible basis are the qualified census tract and difficult development areas. Any reduction in eligible basis that results in a decrease in qualified basis is noncompliance that must be reported to the IRS.

**Applicable fraction** is the lesser of the unit fraction or the floor space fraction. The unit fraction is the number of HC units in the building divided by the total number of residential units in the building. The floor space fraction is the total floor space of the HC units in the building divided by the total floor space of the residential rental units in the building. The applicable fraction after the first year should remain constant. Year one is prorated based on the applicable fraction at the end of the month starting after the first full month the building is placed in service.

## Minimum Set Aside Election

When applying for a tax credit allocation, owners must elect a minimum set aside on the form 8609 for each building. Owners elect one of three options:

1. 20/50 – 20% of the units must be occupied by tenants whose income is 50% or less of area median income (AMI).
2. 40/60 – 40% of the units must be occupied by tenants whose income is 60% or less of area median income (AMI).
3. Income Averaging – Allows the LIHTC to serve households earning up to 80% of area median income (AMI) making the LIHTC program more flexible and allows for more mixed-income housing. Income averaging is available to new developments making their election after March 23, 2018. For additional guidance, see NCSHA's [Frequently Asked Questions](#). You may also refer to the Average Income Compliance Policy located on KHC's website at [Compliance – Home](#).

Each building is considered a separate project under IRC Section 42(g)(3)(D). The minimum set-aside applies to each building separately unless the owner elects to treat the building as a multiple-building project. That election is noted on the 8609, Part II, line 8b. Once the election is made, it is irrevocable. Should this election be unanswered on the 8609, the default election is that all buildings are individual single-building projects. Some of the specific areas impacted by this line could be:

- Placed in service date
- Whether buildings are considered individual projects or one multi-building project
- Whether the minimum set-aside is calculated per building or across all buildings included in the multi-building election
- The applicable income/gross rent limits [based on placed in service date(s)]
- Whether income averaging (if elected) is calculated within one building or across all buildings included in the multi-building election
- Whether household moves between buildings are considered transfers or move-outs and move-ins
- Whether over-income households can move between buildings
- Whether manager/maintenance units can be approved since the employee is required to work full-time at the property where the support unit is located, or the IRS may determine the unit is not reasonably required.

In addition to the minimum set-aside, the owner may have further restricted the income percentage on the application or within the Declaration of Land Use Restrictive Covenants. If occupancy in a housing credit project falls below the set-aside percentage, the project will be deemed out of compliance with the Code and may be subject to credit recapture by the IRS, even if the violation is corrected before the end of the calendar year.



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## Rent and Income Limits

The Housing Economic Recovery Act of 2008 (HERA) uses the Multifamily Tax Subsidy Income Limits Summary (MTSP Income Limits). They are published annually by the United States Department of Housing and Urban Development (HUD). The income limits are posted under the HUD data sets. The placed in service date determines the correct income limit table that should be utilized. In the event there are multiple buildings with different placed in service dates, the earliest placed in service date is used. When HUD publishes new income limits, project owners are required to implement the new income limits by the effective date or no later than 45 days, whichever is later.

All buildings within a multiple building project (line 8b on the 8609 is checked “yes”) use the earliest placed in service date. Each building uses a separate placed in service date if the project is not a multiple building project (line 8b on the 8609 is checked “no”).

As a resource, [Novogradac](#) provides income and rent calculators to determine correct income and rent limits.

## Compliance Period

This is a 15 year period that the IRS monitors for compliance. The first year that credits are claimed starts the compliance period. The end of the 15<sup>th</sup> year runs until December 31<sup>st</sup>.

## Extended Use

Beginning with the 1990 allocations, extended low income housing commitments, also known as restrictive covenants and detailed in the Declaration of Land Use Restrictive Covenants, became a requirement of the HC program. The restrictive covenants are recorded at the Register of Deeds in the county the development is physically located. The extended use provision runs at least an additional 15 years after the end of the compliance period. Every Declaration of Land Use Restrictive covenant is project specific and based on the owner’s elections at application.

## Record Retention

Records are to be retained for each building for a minimum of six years after the due date for that year’s federal income tax return. In the event an extension is filed, the starting period for keeping the return is at the time the return is actually filed with the IRS.

The records for the first year of the credit period, however, must be retained for at least 6 years after the due date for filing the tax return for the last year of the compliance period, bringing the total retention for the first year to 21 years. Electronic storage systems may be used instead of paper records.

KHC recommends a duplicate set of the original files be stored at a location other than where the original records are stored. Owners must maintain applicant and tenant information in a way to ensure confidentiality, such as locked doors and file cabinets. Records must be disposed of in a way that personal information is safeguarded, such as shredding or pulverizing.

## Compliance Requirements

It is a requirement to keep separate records for each qualified low income building in the development. These records need to be maintained for each year in the compliance period and extended use period showing the following information:

- Total number of residential rental units in the building, including the number of bedrooms and square footage for each residential rental unit.
- Percentage and number of residential rental units in the building that are low income units.
- Rental fees for each residential rental unit in the building, including any utility allowances and any additional charges to the tenant.
- Number of occupants in each low income unit.
- Low income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.
- Initial low income certification and annual certification for each low income tenant.
- Documentation to support each tenant's income and student status.
- Annual recertifications or annual household updates for each low income household.
- Eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- Character and use of the nonresidential portion of the building included in the building's eligible basis under the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

### Tenant Data Certification System

Organizations working with KHC must manage information about their projects using the [Tenant Data Certification System](#) (TDCS). To begin using TDCS, the owner or management agent will need to register as a new user. After submitting the registration, the user can begin using the system.

Please do not share passwords as this is a secure system. In addition, a terminated employee will continue to have access to the system and data until the user is removed by the project administrator.

### Annual Reporting Information

Certification provisions of the Code require the owner of a low income housing project to certify to KHC that the property meets specific criteria for the preceding 12 month period. This is accomplished through the submission of the Owner's Annual Certification of Compliance.

To decrease costs for partners and KHC, the Annual Performance Report (APR) is required to be electronically submitted. Owner/management agents will be notified by KHC eGram stating the specific due date. In the event the owner is notified and there is no response, and the reports are not received by the due date, an IRS form 8823 will be filed with IRS, as required by the code.

Visit *Annual Performance Reporting Tools* on KHC's [Asset Management Compliance](#) page to find APR Submission Instructions.

### Compliance Monitoring Fees

KHC's monitoring fees are due at the submission of the Annual Performance Report and must be submitted to KHC by April 1. For more information on the Annual Performance Packet, please visit KHC's [Asset Management Compliance](#) page and access the *Annual Performance Reporting Tools*.

## Rent and Utilities

### Rent Requirements

Units in projects receiving HC allocations must be rent-restricted to comply with the low income set-aside requirements. A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. The gross rent must include an allowance for tenant paid utilities. The Declaration of Land Use Restrictive Covenant (LURA) spells out the rent restrictions and is development specific.

Novogradac publishes income and rent limits based on area median income for developments receiving a HC allocation and KHC will provide links to the updated limits as they become available. Rent changes based on updated rent limits are to be made only at move-in or at time of annual recertification.

The amount of rent allowed to be collected by a development receiving an allocation after January 1, 1990 is based on the number of bedrooms in the unit as opposed to the actual family size. Maximum rent for all other unit sizes are based on the qualifying income limits for 1.5 persons for each bedroom in the unit.

For one bedroom units, assumed to be occupied by 1.5 persons, the maximum rent is determined by using the average of the one and two person income limits. The maximum gross rent for a three bedroom unit, assumed to be occupied by 4.5 household members, is determined by using the average of the four and five person income limits.

The maximum gross rent includes the amount of tenant paid utilities inclusive of costs for heat, electric, air conditioning, water, sewer, oil and gas where applicable. Utilities do not include telephone, cable television or internet. Whenever the tenant directly pays utility costs, a utility allowance must be used to determine the maximum unit rent that may be charged. For additional information, please see [Non-Optional Fees](#).

In the event that the rent charged is greater than the maximum HC rent and is determined to be out of compliance, 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 monthly rent charged does not exceed the limit. An owner cannot avoid the disallowance of the tax credit by rebating the excess rent or fees to the affected tenants.

The initial rents established at reservation and recorded in the LURA must be utilized until the earlier of one year measured from the date the unit is occupied or the period of initial occupancy. Please review the development-specific LURA to verify the amount of the rent increase after initial occupancy.

### Utility Allowances

The IRS requires that utility allowances be set according to 26 CFR 1.42-10 (April 24, 1994), effective May 2, 1994, and amended July 29, 2008.

At least once per calendar year, the owner must review the basis on which utility allowances have been established and must update the applicable utility allowance. The review must consider any changes to the building, such as any energy conservation measures, that affect energy consumption and changes in utility rates. The owner has 90 days from the effective date of the new allowance to implement the

utility allowance. The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records.

If a utility (other than telephone, cable television, or internet) is paid directly by the tenant, the gross rent includes a utility allowance. If all utilities are paid by the owner, the utility allowance is zero.

The building owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

For additional guidance, refer to [KHC Utility Allowance Policy](#) for LIHTC, HOME, and NHTF funded projects.

### Non-Optional Fees

Fees as a condition of occupancy – The cost of services that are required as a condition of occupancy must be included in gross rent. (Treasury Regulation 1.42-11(a) (3)). This would include a washer/dryer hook up fee, renter's insurance, or any other fee the owner deems mandatory for occupancy.

Application fees may be charged to cover the actual cost to check a prospective tenant's income, credit history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. Security deposits and pet deposits may be charged.

### Sale, Transfer, or Disposition of Project after the Placed In Service Date

When a sale or transfer occurs after the placed in service date, the owner must submit a request to KHC in writing for approval of the transfer. The request must include the new owner or ownership entity including all contact information and any new management that may take the place of the old management. KHC compliance staff must meet with the new owner to ensure the project will maintain the HC eligibility criteria.

The IRS has suggested in Regulation 1.42-5 that, if a building is sold or otherwise transferred by the owner, the new owner should obtain all information regarding the first year of the credit period. Auto filled forms have been provided on TDCS that must be submitted to KHC prior to selling or transferring units. Log in to [TDCS](#), locate the applicable property, then select *Forms* at the top of the page.

## Special LIHTC Rules

### Vacant and Empty Units

When a unit that was occupied by a housing credit-eligible household becomes vacant, this unit will continue to count as a housing credit unit if the next available unit of comparable or smaller size is rented to a housing credit-eligible household.

Units that have never been occupied are considered empty (not vacant) and do not count as housing credit units since they do not exist for housing credit purposes until initial occupancy by a housing credit-eligible household.

An owner must have vacant units marketable within a reasonable period; KHC suggests thirty days.

## Temporary Uninhabitability of a Unit

According to the Revised 8823 Guide, casualty loss is defined as, “the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.” 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, as in the case of damage caused by termites.

The physical damage due to the casualty loss must be reported to KHC as noncompliance with UPCS code or local standards as follows:

1. As soon as the damage occurs, owner/agents must report the damage to KHC in writing within 10 business days from the incident.
2. KHC is required to file an IRS Form 8823 taking the unit or building offline.
3. Owner/agents must notify KHC in writing again when repairs are completed. KHC will then file an IRS Form 8823 putting the unit or building back in compliance.
4. The uninhabitable units must be replaced or made suitable for occupancy by the last day of the year in which the casualty loss occurred to claim credits for those units.

For further guidance concerning casualty loss and LIHTC credits claimed, see IRS Chief Counsel Advice Memo 200134006, August 24, 2011. For additional information, please refer to Chapter 6 of the Revised 8823 Guide. To submit information to KHC regarding an uninhabitable unit, see *Casualty Loss Form* on KHC’s [Asset Management Compliance](#) page under Asset Management Resource Forms and Policies.

## Available Unit Rule

At recertification, if a household’s income increases to over 140% of the current qualifying income limit, the unit becomes “over income.” Credits can continue to be claimed on a unit if the next available unit of equal or smaller size in the same building is rented to a qualified applicant. Units over 140% must remain rent restricted until the next available unit is rented. If the rule is violated, all 140% units fall out of the applicable fraction and minimum set-asides.

Only units that have been previously occupied by an eligible household and are suitable for occupancy may be included for compliance purposes. If a unit has never been occupied by an eligible household, or was a market rate unit, neither are counted as qualifying households. To determine the next available unit, see the *Next Available Unit Worksheet* on KHC’s [Verification Forms](#) page under Sample Forms.

## Unit Transfers

Unit transfers are handled differently depending upon whether the transfer is within the same building or it is to a different building.

### Transfer Within the Same Building

The household moves to a different unit in the same building, the newly occupied unit adopts the status of the vacated unit. The recertification will be due on the anniversary of the original move-in date.

### Transfer to a Different Building

It depends on the household’s area median income and the election made on the 8609, part b. The household cannot transfer if the household income is over 140% of the income limit. Households under

140% of the income limit residing in 100% HC developments can transfer between buildings in the development.

Please note, if on the 8609, part 8b, the election was “no,” you cannot transfer the tenants without first going through the initial income eligibility process and qualifying the household. This is considered a new move-in, not a transfer.

If the building is being treated as a separate project, future recertifications will be the anniversary date of the new move-in.

### Non-Transient Occupancy

The initial HC lease is required to be for a duration of six months or greater. “Transient” is not defined in Section 42 or other IRS regulations, but the legislative history of Section 42 describes a “safe harbor” which states that leases within the initial term of six months which can then revert to a month-to-month tenancy are considered “non-Transient.”

### Manager/Security Unit

The adjusted basis of the unit occupied by a manager can be included in the Eligible Basis of the building under IRC 42(d)(1) as a facility reasonably required for the benefit of the development. However, the unit is excluded from the Applicable Fraction of the building under IRC 42(c)(1)(B).

The manager is not required to be income qualified. If the manager is being charged rent for the unit, the IRS and KHC may determine the unit is not reasonably required by the development because the owner is not requiring the manager to occupy the unit as a condition of employment. The manager position is required to be full-time. The number of hours worked does not define full-time.

Revenue Ruling 92-61 holds that the adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low income building under IRC 42(d)(1), but the unit is excluded from the applicable fraction under IRC 42(c)(1)(B) for purposes of determining the building’s qualified basis.

Typically, a security officer provides on-site presence during the evening and nighttime hours to respond to any emergencies and disturbances, and to respond to residents’ requests for assistance, including complaints, unauthorized visitors, improper parking and unauthorized use of community facilities. Other encouraged activities may include conducting resident background investigations, neighborhood watch programs and educational activities for primary school-age residents.

Conversion of the unit from a manager’s unit to a HC unit must have prior written approval from KHC before the unit is converted, as does converting a HC unit to a manager’s unit. Please see KHC’s [Notification of Removal of Unit\(s\) for Resident Manager, Maintenance, or Security Officer](#).

### Students

A unit is not considered an eligible HC unit if all the occupants of such unit are full time students. IRC 151(c)(4) defines, in part, a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student of an educational organization described in IRC 170(b)(1)(A)(ii). Treasury Regulation 1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending. Part-time student status should be verified with the

educational institution. If one household member is a part-time student and all other household members are full-time students, the household is eligible.

An educational organization, as defined by IRC 170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities and technical, trade and mechanical schools. It does not include on-the-job training courses.

There are exceptions to the full-time student status outlined in IRC 42(i)(3)(D). Full-time student households that are income eligible and satisfy one or more of the following conditions can be considered eligible tenants:

- At least one member of the household receives assistance under Title IV of the Social Security Act (TANF or K-TAP). Verification would be a TANF award letter.
- A student enrolled in a job training program receiving assistance under the Workforce Investment Act or Job Training Partnership Act (JTPA) or is funded by a state or local public agency. Verification would be a copy of the assistance award letter.
- The head of household is a single parent with children and such parents and children are not dependents (as defined in IRC 152) of another individual other than a parent of such children. Verification would be a copy of the tax return or divorce decree.
- Married and filing a joint return or are entitled to file a joint return. Verification would be a copy of their tax return or marriage certificate.
- At least one member of the household was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of the Title IV of the Social Security Act. Effective for verifications after July 30, 2007, a full-time student would qualify if one of the members of the household included a member who formerly received foster care assistance. Verification would be foster care paperwork from social services.

Revenue Ruling 2013-17 – Recognizes same-sex marriages (married in any state) would meet the married and filing a joint return exception.

If a previously qualified household becomes a full-time student household and does not meet any of the exceptions, the household will not be in compliance and is not a qualified student household. For *Student Self-Certification*, visit KHC’s [Asset Management Compliance](#) page under Sample Forms.

## Available to the General Public

### Fair Housing Act

HC properties are subject to the Fair Housing Act (Title VII of the Civil Rights Act of 1968) which makes it unlawful to discriminate in any aspect relating to rental of dwellings, in the availability of transactions related to residential real estate, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, disability, familial status, or national origin. By adding provisions to 24 CFR 5.105(a)(2) on February 3, 2012, equal access to housing now includes actual or perceived sexual orientation, gender identity, and marital status.

For additional guidance, see HUD’s [Housing Discrimination Under the Fair Housing Act](#).



## Section 504 of the Rehabilitation Act of 1973

Section 504 prohibits discrimination on the basis of disability in federally assisted programs or activities. A housing provider may not deny or refuse to sell or rent to a person with a disability and may not impose application or qualification criteria and rental or sales terms or conditions that are different than those required of or provided to persons without disabilities. For additional guidance, see HUD's [Section 504: Frequently Asked Questions](#).

## Section 8 Tenants

Owners of LIHTC projects may not deny rental of an available unit to an applicant holding a HUD Section 8 Certificate or Voucher solely because the household receives rental assistance from HUD. These households are still required to meet the project's household selection criteria contained in the project's management plan or Tenant Selection Plan. If an applicant holding a Section 8 Certificate or Voucher is denied occupancy, the reason for denial should be documented.

## Elderly

The Fair Housing Act prohibits discrimination against families with children. However, there are two types of "housing for older persons" that allows owners to exclude families with children:

- Housing intended for, and solely occupied by, persons 62 years of age or older; and
- Housing intended and operated for occupancy by at least one person 55 years of age or older per unit; at least 80% of the units are occupied by at least one person 55 years of age or older. The housing facility or community must also publish and adhere to policies and procedures that demonstrate the intent necessary to satisfy the definition of "housing for older persons"; and that the housing provider complies with HUD's regulations governing the 55 or older exemption.

Properties which received financing under other programs than KHC administered programs (HUD or Rural Development, for example) may have exceptions to the Fair Housing Act age limits for "housing for older person". If this funding discontinues, these exceptions discontinue as well.

The above exemptions criterion applies to "housing for the older person" after December 28, 1995 and is not retroactive. The exemption prior to December 28, 1995 requires "significant facilities and services" for the elderly in addition to the current criteria. Properties which are under contract with Rural Development of HUD may have additional exceptions. For the definition of Elderly and Disability Used to Determine Project Eligibility, see [HUD Handbook 4350.3](#) Section 3-17 Figure 3-6.

## Violence Against Women Act (VAWA)

While not a compliance requirement of section 42, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was extended to include the Low Income Housing Tax Credit program in 2013.

While "Women" is included in the name of the Act, the VAWA protections do not apply solely to women. VAWA protects anyone who is living in, or seeking admission to, any of the covered housing programs and is a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking, or an "affiliated individual" of the victim such as a spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in the place of a parent; or an individual, tenant, or lawful occupant living in the victim's household.

Lack of compliance with VAWA does not cause the loss of Tax Credits currently for the IRS. However, KHC monitors for VAWA compliance to avoid violations of victims' rights leading to discrimination under

the Fair Housing Act. For additional guidance and links to HUD Forms, visit HUD's [VAWA Resources](#). KHC also provides information and forms at [Asset Management Compliance](#) under *Violence Against Women Act (VAWA)*.

### Number of Persons Per Unit

There is no HC regulation governing the number of persons allowed to occupy a unit based on size. It is important to be consistent when accepting or rejecting applications. It is recommended the owner determine the minimum and maximum number of people that will be allowed to occupy each size unit and document in writing as part of the Management Plan and Tenant Selection Plan.

### Households and Family Size

As a general rule, a "household" consists of all individuals (or tenants) residing in a unit. To determine the household income limit, all applicable income standards are adjusted for family size.

For HC purposes, the following occupants are not considered part of the household: live-in aides, adult children on active military duty, and guests or visitors.

For HC purposes the following are included in the household: Children temporarily absent due to placement in a foster home, children in joint custody who are present in the household 50% or more of the time, children who are away at school but live with the family during recesses, unborn children of pregnant women, children who are in the process of being adopted, foster children, temporarily absent family member who are still considered family members, family members in the hospital, or a rehabilitation facility for periods of limited or fixed duration.

The family decides if persons permanently confined to a nursing home or hospital are included when determining family size for income limits.

### Change in Household Composition

KHC recommends not adding additional household members for six months after the initial household moves into the unit. Addition of new member(s) to an existing low income household requires the income certification for the new member(s) of the household, including the third-party verification. The new member's income is added to the income disclosed on the existing Tenant Income Certification. The household continues to be income-qualified, and the income of the new member plus the existing household's income is taken into account for purposes of the Available Unit Rule under IRC 42(g)(2)(D).

Decrease in household size does not trigger the immediate completion of a new Tenant Income Certification. The next Tenant Income Certification completed will show the household size decreased and their income/assets will be removed.

A household may continue to add members as long as at least one member of the original low income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income qualified household.

### Qualification of Applicants

Applicants for low income, rent-restricted units should be advised early in their initial visit to the development that there are maximum income limits and student status restrictions that apply to the units. Management should explain to the prospective tenants that the anticipated income of all persons expecting to occupy the unit must be verified prior to occupancy and financial and student status will be reviewed annually.

## Initial Certification

KHC recommends the use of the Tenant Income Certification form. If the property is a Section 8/HC property, a Tenant Income Certification form for the initial certification is required by KHC. The owner must verify all income and assets to determine if the household is income eligible. The income of every prospective household member must be verified.

The Tenant Income Certification effective date should be the date the household moves into the unit.

## Lease

All adults 18 years and over are required to sign the lease. KHC recommends student status, good cause evictions, and required annual reporting be addressed in the HC lease. Owners must ensure the lease does not violate the Fair Housing Act, any federal, state, or local laws and contains the requirement of The Violence Against Women Act. Additionally, all leases must adhere to the Uniform Residential Landlord Tenant Act (URLTA) of 1972. For additional information, visit the [Uniform Law Commission's page, Revised Uniform Residential Landlord and Tenant Act](#).

## Annual Recertification

### 100% Tax Credit Building

Effective January 1, 2009, if all the low income units in the development are 100% low income buildings, the owner is not required to complete an annual tenant income recertification for each household. However, the owner is required to have each household complete a Tenant Income Certification. The form must be completed anytime within 120 days of the anniversary date of move-in. If the self-certification form indicates that all household members are students, an additional student questionnaire should be completed to document the exception used to qualify the household. It is very important to review the form and make sure that it is completely filled out, signed, and dated. The form must also list the rent paid by the tenant and any mandatory fees to ensure the owner is not charging over the limits.

### Mixed Use Building

Buildings that have both market rate units and HC units must have a complete recertification packet on file for the HC units to determine if the Available Unit has been applied correctly.

Upon each anniversary date of the tenant's move-in or anytime within 120 days prior to the anniversary, a subsequent Tenant Income Certification must be completed, and all resident income/assets verified.

A unit does not lose its status as a low income unit solely because of an increase in the household's income. Once a unit qualifies as a low income unit, it continues to qualify as such until the tenant's income exceeds 140 percent of the applicable income limit. Even then, the unit remains a low income unit as long as the owner continues to fill vacancies in comparable or smaller units with tenants who qualify as low income tenants and the units continue to be rent restricted.

## Certification at Acquisition and/or Rehab of Existing Buildings

Income Qualifying Households before the beginning of the 10-year credit period:

Under Rev. Proc. 2003-82, a unit occupied before the beginning of the credit period will be considered a low income unit at the beginning of the credit period, even if the household's income exceeds the income limit at the beginning of the first year of the credit period, if two conditions related to the income qualifications are met, and the unit must be rent restricted.

1. For households occupying a unit at the time of acquisition by the owner, the initial Tenant Income Certification is completed within 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the Tenant Income Certification is the date of acquisition since there is no move-in date.
2. If the household occupies a unit at the time of acquisition, but the Tenant Income Certification is completed more than 120 after the date of acquisition, the household is treated as a new move-in. Owners use the income limits in effect at the time of the Tenant Income Certification. The effective date is the date the last adult household member of the household signed the certification. This is an exception to the general rule for the effective dates because there is no move-in date.
3. When the household moves into a unit after the building is acquired, but before the beginning of the first year of the compliance period, the Tenant Income Certification is completed using the income limits in effect at the time of the certification. The effective date is the date the household moves into the unit.

For purposes of Rev. Proc. 2003-82, the income of the individuals occupying a unit before the beginning of the first credit year are first tested for purposes of the Next Available Unit Rule under IRC 42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period.

1. The test must be completed within 120 days before the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the Tenant Income Certification are still current. If additional sources or amounts of income are identified, the Tenant Income Certification will be updated based on the household's documentation.
3. If the household is over-income based on current income limits, the Next Available Unit Rule is applied.

If the effective date of the initial Tenant Income Certifications is 120 days or less before the required "test," it is not necessary to "test" for purposes of the Next Available Unit Rule because the time period for completing the initial Tenant Income Certification and the time period for completing the "test" is the same. The annual Tenant Income Certification will be completed each year on the anniversary of the original Tenant Income Certification's effective date. For additional guidance, refer to Chapter 4, page 25 of the Revised 8823 Guide.

## Determining Household Eligibility

### Application

In the initial visit, the applicant should be advised of the maximum income limits and that income and asset information of all persons expecting to occupy the unit must be verified prior to occupancy and financial and student status will be reviewed annually.

The LIHTC application should obtain the following household information:

- The name, age, and Social Security number of each person who will occupy the unit (legal name should be given just as it will appear on the lease and Tenant Income Certification).

- All sources and amounts of current and anticipated annual income for the next twelve-month certification period.
- Value of all current assets or the imputed income from assets.
- The signature of the head of household and all occupants able to sign a lease and the date when the application was completed.
- A Tenant Release and Consent Form to send with third-party verifications. A sample form is available under the Asset Management [Verification Forms](#) page of KHC's website.

### General Income and Asset Verification Requirements

All income sources, including assets valued at \$5,000 or more, must be verified by a third-party prior to the completion of the Tenant Income Certification and move in of the household. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1 of HUD Handbook 4350.3, Income Inclusions and Exclusions provide a complete listing of income inclusions and exclusions.

Acceptable methods of verifying information include the following:

#### Written

Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third party sources will send written verification to the owner through the mail.

The applicant or tenant should not hand-carry the verification to or from the third-party source. If the verification does not contain an original signature or is delivered by the applicant or tenant, the owner should examine the documents for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.

If the information is not complete, the owner must follow up with the source to obtain complete information.

#### Oral

Oral verification, by telephone, from a reliable third-party source is an acceptable verification method. Owners frequently use this method when the third party does not respond to the written verification request. When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept the verification from a source calling the development management office.

When verifying information by phone, the owner must record and include the following information:

- Third-party's name, position, and contact information.
- Information reported by the third party.
- Name of the person who conducted the telephone interview; and
- Date and time of telephone call.

#### Electronic

The owner may obtain accurate third-party written verification by facsimile, e-mail, or internet, if adequate effort is made to ensure that the sender is a valid third-party source.

1. Fax - Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephonic conversation. The fax should include the company name and fax number of the verification source.
2. E-mail - Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.
3. Internet - Information verified on the internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of the print-out is also acceptable.

When third party documentation is not available, owner must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the tenant file:

- A written note to the file explaining why third-party verification is not possible; or
- A copy of the date-stamped original request that was sent to the third party;
- Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and
- A written note to the file indicating the request has been outstanding without a response from the third-party.

Management should give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party verification to determine actual income. The file must be documented to explain the difference.

If third party verifications of income cannot be provided, household provided documents may be used, such as:

- A minimum of six consecutive paystubs
- W-2 Forms
- A minimum of six consecutive bank statements

Many sample verification forms can be accessed at KHC's Asset Management page under [Sample Forms](#).

### Effective Term of Verification

Verifications are valid 120 days prior to the effective date of the Tenant Income Certification. If the verification is received more than 120 days prior to the effective date of the TIC, new verifications must be obtained.

### Section 8 Tenant Income and Asset Verification

For the LIHTC program, the annual income for a household receiving housing assistance payments under Section 8 Choice Voucher may be verified by obtaining a statement from the Public Housing Authority (PHA). The owner must submit the Section 8 Eligibility Verification to the PHA for completion. If the form shows that the tenant's income does not exceed the applicable income limit, the household is eligible to occupy a rent-restricted unit. However, KHC recommends that for the first year rent-up files, actual Tenant Income Certifications and corresponding third-party documentation is used to document the first year tenant files.

## Calculating Annual Income

Owners and managers should use current circumstances to project annual income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. Annual income is the gross income the household anticipates it will receive from all sources, including earned and unearned income and income from assets.

Examples of earned/unearned income includes, but is not limited to gross wages, salaries, tips, overtime, social security, welfare, unemployment compensation and worker's compensation. Examples of asset income include bank accounts, retirement accounts, real estate and other investments (not including personal items).

Please refer to [HUD Handbook 4350.3](#) for a complete listing and discussion of earned/unearned income and asset income. EIV (Earned Income Verification) cannot be used to verify income for Section 42. Please see HUD 4350.3, Chapter 5 for specific information on verifying income and assets.

Income determination is based on the annual gross income a household anticipates it will receive for the 12-month certification period. Verification of all sources of current and anticipated income for all household members aged 18 and older, person under the age of 18 who are treated as adults because they are the head, co-head, or spouse (emancipated minors) and unearned income of minor children must be obtained in order to establish that the income limit is not exceeded. If a full-time student is 18 and over and employed but is not the head, co-head, or spouse, count only the first \$480 in *earned income*. However, all the full-time student's *unearned income* is counted (any income that is not employment income).

Owners must convert all verified incomes to annual amounts. To annualize full-time employment, multiply:

- Hourly wages by 2080 hours
- Weekly wages by 52
- Bi-weekly amounts by 26
- Semi-monthly amounts by 24; and
- Monthly amounts by 12.

To annualize income from other than full-time employment, multiply:

- Hourly wages by the number of hours the family expects to work annually
- Average weekly amounts by the number of weeks the family expects to work
- Other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the family expects to work.

KHC recommends using the greater of the year-to-date income calculation and hourly calculation if both are provided for HC purposes.

Example: When determining annual gross income, if the employer has indicated the Resident works overtime and gives a range of hours, Owners or their agents must always use the highest number of hours. For instance, if the employer has stated the Resident works 5-10 hours overtime, staff must use 10 hours multiplied by the overtime rate. If there is conflicting information from the employer (pay stubs and VOE), or if using the higher number of hours puts the Resident over the income limit, staff should obtain additional pay stubs with year-to-date figures and/or written clarification from the employer to clarify actual overtime hours worked. If a written clarification cannot be obtained, provide efforts made to obtain the form and an Income Verification/Clarification by Telephone form.

If an applicant is currently unemployed with no verifiable income from any source and claiming zero income, he/she must complete a Certification of Zero Income form.

If periodic payments are received from annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, they should be counted as income. If benefits are received through periodic payments, do not count remaining amounts as an asset.

### Educational Scholarships and Grants

The treatment of educational scholarships or grants is dependent on whether the student is receiving Section 8 assistance.

#### Not Receiving Section 8 Assistance

All forms of student financial assistance, no matter how it is used, are excluded from annual income. Financial assistance includes grants, scholarships, educational entitlements, work study programs, and financial aid packages. It does not matter whether the assistance is paid to the student or directly to the educational institution. The financial assistance that comes from the parent to the child is excluded from annual income.

#### Receiving Section 8 Assistance

All financial assistance received from the following sources in excess of tuition is included in income.

- All financial assistance received from the Higher Education Act Assistance under the Higher Education Act of 1965 including Pell Grants, Federal Supplemental Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and the Federal Work Study program.
- Private sources (nongovernmental) of assistance, including assistance provided by a parent, guardian, or other family member, whether residing within the family in the Section 8 assisted unit or not, or from other persons not residing in the unit.
- Institutions of higher education, when the specific institution and scholarship amount are referenced.

Financial assistance received from one of the sources above, in excess of tuition, is not included in income if either of the two following exceptions is applicable:

- The student is over the age of 23 with dependent children, or
- The student is living with his/her parents who are applying for or receiving Section 8 assistance.

Financial assistance does not include loan proceeds.

### Alimony or Child Support

Alimony or child support that is court-ordered or supported by a written agreement should be included in income unless the recipient certifies the funds were not received and reasonable efforts have been made to collect the amount due, including filing with the courts or agencies responsible for enforcing payments.

Documentation would include a verification form completed by the Department of Social Services or the person paying the support or a separation or settlement agreement or copy of a divorce decree stating the amount and type of support and payment schedule.



If the documentation listed above is not available, a signed sworn self-certification by a tenant is sufficient documentation under Treas. Reg. 1.42-5(b)(1)(vii) to show that a tenant is not receiving child support payments. In addition to stating a tenant is not receiving any child support payments, an annual signed, sworn self-certification should indicate whether the tenant will be seeking or expects to receive child support payments within the next 12 months.

If a tenant possesses a child support agreement, but is not presently receiving any child support payments, the tenant should include an explanation of this and all supporting documentation, i.e., a divorce decree or court documents. Also, the self-certification should indicate that the tenant will notify the owner of any changes in the status of child support. Documentation of the collection efforts may be requested.

### Recurring Gifts

This may include rent, utility, and other payments made on behalf of the household and other cash contributions provided on a regular basis. Documentation would include a document showing the purpose, dates, and value of the contribution or gift.

Groceries provided to the household and/or payments made directly to the child care provider by a person not living in the unit are excluded from annual income.

### Income from a Business

The net income from the operation of a business, profession, or sole proprietorship business is included in income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis. Salaries paid to the applicant or other household members from the business must also be identified and included in income. In addition, cash and assets withdrawn by family members must be included in income except when the withdrawal is a reimbursement of cash or assets invested in the business.

Business expenses do not include principal payments on loans, interest on loans for business expansion or capital improvements, or other expenses for business expansion or outlays for capital improvements.

If the net income from a business is negative, it must be counted as zero income. A negative amount cannot be used to offset other family income.

Appropriate documentation could include the following:

- Copy of individual federal income tax return (1040) including any:
  - Schedule C (Small Business)
  - Schedule E (Rental Property Income)
  - Schedule F (Farm Income)
- Copy of Corporate or Partnership Tax return (if applicable)
- Copy of the profit and loss statement from financial statements
- Applicant's notarized statement or affidavit as to net income from the business during the previous year. A *Self-Employment Verification* is available on KHC's [Asset Management Compliance](#) page under Sample Forms.

### Social Security

A copy of the current award or benefit statement showing the gross monthly benefit is acceptable. However, during the initial rent up, the award or benefit statement must be within 120 days prior to the effective date of the Tenant Income Certification. If not, the tenant needs to request a copy of the most recent benefit statement from their local Social Security office.

If the Social Security Department releases a cost of living adjustment (COLA) at the end of the third quarter of the calendar year, the owner/management should calculate income using the adjustment. For example, the months of November and December would be calculated using the amount the household received during the current year.

The months of January through October would be calculated using the amount the household received during the current year, plus the cost of living adjustment. The totals for the two months and ten months are added together to accurately anticipate the household's income. Recertifications of household Social Security or SSI income should be calculated the same way income is calculated for new move-ins.

### Unemployment Applicants

If the household is unemployed and intends to live off income from assets only, a Certification of Zero Income must be completed. If there are two adult members and one is not working, the non-working household member needs to complete a Certification of Zero Income. The asset income must be verified as described below.

Unemployment Compensation can be verified through the Unemployment Compensation office. The amount must be annualized unless there is a clear documentation showing a beginning and end date.

### Assets

Assets, other than necessary personal items, are considered along with verified income in determining the eligibility of a household. There is no limit on the amount of assets held by a household and a household is not required to convert an asset to cash. Assets include bank accounts; saving accounts; trusts; certificates of deposit; money market; stocks and bonds; the surrender value of life insurance policies and cash kept in safety deposit boxes or at home. Assets held in foreign countries are considered assets. Assets over \$5,000 must be third-party verified.

Assets do not include necessary personal items such as clothes, furniture, cars, wedding rings, or vehicles. Assets used in business are not assets included in the computation of the tenant's income. If an asset is held in the tenant's name but the income generated by the asset accrues to someone who is not a member of the household and the other person is responsible for income taxes on the accrued income, then the asset is not included in the tenant's income.

In computing assets, owners must use the cash value of the asset. Cash value is the market value of the asset less reasonable costs that were or would be incurred in selling or converting the asset to cash. KHC considers 6% as a reasonable basis for the costs of conversion.

After calculating the total value of assets, if the asset value is \$5,000 or less, add the actual amount of asset income to the other verified household income. When assets exceed \$5,000, add the greater of the actual asset income, or the imputed income using the passbook interest rate (currently set at 0.06%) to the total verified household income. The household's combined total income cannot exceed the applicable low income limits at move-in.

If the value of the assets does not exceed \$5,000, the *Under \$5,000 Asset Verification* form may be used. This form is only applicable to the HC program. If there is a mixture of other types of funding in the development, such as HOME, Section 8, Tax Exempt Bond, or RD, the *Under \$5,000 Asset Verification* may NOT be used.

Equity in rental property or other capital investments include the current market value less any unpaid balance on any loans secured by the property, and reasonable costs that would be incurred in selling the asset (penalties, broker fees, etc.);

Example: An applicant owns a home with a market value of \$30,000 and a loan against the home of \$18,000. The cash value of the asset would be shown as \$10,200 (\$30,000 less 6% for costs of conversion less \$18,000).

**Checking and Savings Accounts** – Checking accounts use a six-month average balance. Savings accounts use the current balance.

**Payroll Debit Card or Direct Express Debit Card** is considered an asset and verified like a savings account. Payroll Debit Cards and Direct Express Debit Cards use the current balance.

**Stocks/Bonds** – Interest or dividends are counted as income, even if the earnings are reinvested. The value of the stocks and other assets vary from one day to another. Use the quarterly statement or quotes from the broker to determine value.

**Retirement and Pension Funds** – If employed, only include amounts that can be withdrawn without retiring or terminating employment. Count the whole amount less any penalties. After retirement, the amount received as a lump sum is considered an asset. Any retirement benefits received as periodic payments are considered annual income.

**IRA, 401(k), or Keogh Accounts** – If the holder has access or periodic payments are being made, this is counted as income. If the holder has access to the funds and there are no periodic payments, this is counted as an asset.

**Annuities** – If a member of the household is receiving annuity payments and is not able to withdraw the balance as a lump sum of cash, the payments are treated as income. If the balance of the annuity can be withdrawn, the annuity is treated as an asset.

**Insurance Policies** – Cash value of life insurance policies available to the individual before death are considered an asset (e.g., the surrender value of a whole life policy or a universal life policy). Term life insurance has no cash value prior to death.

**Lump Sum Receipts or One-time Receipts** – These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance, and other claims are counted as assets (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

**Personal Property Held as an Investment** includes gems, jewelry, coin collections, or antique cars held as an investment are counted as an asset. An applicant's wedding ring and other personal jewelry are not counted as an asset.

*Assets disposed of within two years before the effective date of certification/recertification:*

If the cash value of the disposed assets exceeds the actual amount the family received by more than \$1,000, include the whole difference between the cash value and the amounts received. Do not include if the difference is less than \$1,000.

Example: A couple gave \$2,000 to each of their three grandchildren and deeded a home to their son. The home had a cash value of \$40,000 and the son paid his parents \$12,000 for the home. \$34,000 ( $\$40,000$  less  $\$12,000$  plus  $\$2,000 \times 3$ ) is counted as an asset until the household can certify on a Tenant Income Certification form that they did not dispose of any assets during the two years preceding the certification date. (The \$12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.)

Do not count assets disposed of for less than fair market value because of foreclosure, bankruptcy, or a divorce or separation agreement.

If assets are owned by more than one person, prorate the assets according to their percentage of ownership. If no percentage is specified, prorate the assets evenly among all owners.

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## Compliance Reviews

### Tenant File Review

Based on the total number of units in the development, on-site and desk reviews will consist of 20% of the multi-family LIHTC units. If Item 8b of the 8609 is marked “no”, the minimum set-aside is calculated per building because each building is considered an individual project. A minimum of 20% of households per building must be reviewed. If there are numerous non-compliance issues, the number of units sampled may increase. KHC may inspect more units than the minimum requirement at its discretion.

The following items may be reviewed during the on-site review. Please note, additional forms may be requested:

- Application
- Tenant Income Certification and supporting documentation
- Tenant Questionnaire
- Student Certification
- Lease
- Consent and Release Forms
- Credit Report and Criminal Background Check (if in the file)
- Affirmative Fair Housing
  - Advertising
  - Equal Opportunity Posters
- Marketing Questionnaire
- Non-Profit Documentation, if applicable
- List of Special Needs Households and Age Requirements Met, if applicable
- Tenant Selection Plan
- VAWA Requirements
- Current Rent Roll
- Work Order History
- Copy of Replacement Reserve Account Balance
- Copy of the last HC Training Certificate for on-site staff
- Waiting List of prospective tenants
- Lead Based Paint Disclosure (if applicable)
- Utility Allowance and supporting documentation for current and previous year
- Income and Rent Limits for current and previous year
- Current Vacant Units
- Project Team Members
- Electronic Signature Authorization Form

Corrections should be made to documents with a line drawn through the incorrect item, write in the correct item, and have both parties initial and date the change. White out is not acceptable.

Any violations corrected prior to the date of the confirmation letter will not be reported to the IRS in the form of an 8823.

### Physical Review of Units

KHC utilizes the Uniform Physical Conditions Standards (UPCS) as the physical inspection criteria for HC developments. All units must be safe, decent, and sanitary. The Lead Based Paint Safe Housing Rule applies to the HC program as criteria of UPCS. Visit KHC’s Design and Construction page for [Lead-Based Paint Compliance](#).

The manager is required to notify all households at least 48 hours in advance of the physical inspection. The selection of the units is random and at the discretion of the auditor. The auditor will not enter any unit unless they are accompanied by a staff person from the project. A unit will be noted as non-compliant if it is unavailable due to any of the following conditions:

- Any unit that cannot be accessed due to missing keys for exterior locks, resident exterior lock changes, or chain locks. KHC will not inspect a unit that requires access by forced entry, including, but not limited to, removing locks or hardware.
- Units cannot be accessed due to resident refusal or objection to entry
- Units that cannot be accessed fully due to locked interior doors
- Units that contain unsupervised minor child(ren)
- Units that contain unrestrained animals
- Any unit, occupied or vacant, with health and safety issues that threaten the life, health, or safety of the auditor (natural gas leaks, heavy mold concentrations, compromised structural integrity of floors, walls, etc.)
- Any unit that has confirmed reports of bed bug infestations. KHC will follow HUD guidelines in reference to infested units.
- Units containing any visible drugs or drug paraphernalia
- Units that contain any visible and unsecured weapons
- Units without essential services such as electric, water, sewer, etc.

Any unit described above will be considered out of compliance and a reinspection will need to be conducted. Owner will be required to pay the reinspection fee of \$500 for KHC staff to return to the site to complete the inspection. The reinspection fee is due and payable once the new review date and time have been established by all parties.

UPCS has five areas to be inspected:

1. Site – This includes fencing and gates, grounds, walkways and steps, storm drainage, retaining walls, signs, and refuse disposal.
2. Building Exterior – This includes doors, main entrance, accessibility to main entrance, fire escapes, foundations, lighting, roofs, walls, and windows.
3. Building Systems – This includes domestic water, electrical system, elevators, emergency power, exhaust system, fire protection, HVAC, and sanitary system.
4. Dwelling Units – This includes, but is not limited to, bathrooms, call-for-aid, ceiling, doors, electrical system, floors, water heater, HVAC system, kitchen, laundry area, lighting, outlets/switches, patio/porch/balcony, smoke detector, stairs, walls, and windows.
5. Common Areas – This includes, but is not limited to, basement/garage/carport, utility/mechanical closets, community room, daycare, interior hallways, kitchen, laundry room, lobby, office, patio/porch/balcony, pools, restrooms, storage, trash collection areas, call-for-aid, ceiling, doors, electrical system, outside areas, floors, HVAC system, stairs, walls, windows, lighting, and graffiti.

If any Health and Safety issues are found during the physical review, a *Notice of Critical Violations* will be issued at the end of the review. There is a 24-hour correction period for any Health and Safety issues.

Some of the most common Health and Safety findings include tripping hazards, inoperable emergency lights, inoperable smoke detectors, GFIs that do not reset, inaccessible breaker box, missing spacers from the breaker box, housekeeping negligence to the degree it poses a health and safety issue, blocked window egresses, combustible items stored near the furnace or water heater, water heater pressure relief valve pipe missing, inoperable exterior locks, and expired fire extinguisher tags.

KHC recommends using a preventative maintenance schedule at all developments. For additional UPCS guidance, refer to Chapter 6 of the Revised 8823 Guide.

**KHC is required to notify the IRS of all Corrected and Noncorrected UPCS findings regardless of the severity level.**



## Noncompliance

If KHC does not receive the required certifications by the due date or if KHC discovers upon audit, inspection, review, or in some other manner that the development is not in compliance with the Code, KHC will notify the owner within 30 days.

The owner will have an opportunity to supply missing certifications or to correct noncompliance within a specified correction period, not to exceed 30 days, from the date of the notice to the owner. At the sole discretion of KHC, the correction period for physical findings may be extended for a period of up to six (6) months if there is good cause for granting an extension.

KHC is required to notify the IRS of an owner's failure to file the Annual Owner Certification on a timely basis, or any other noncompliance issues, no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance or failure to certify has been corrected.

The IRS has published a [Guide for Completing Form 8823](#) or what is commonly called the 8823 Guide. This guide provides instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are reported. Owners and managers are encouraged to use the Guide as a reference tool.

If uncorrected noncompliance is reported to the IRS, a corrective 8823 cannot be filed until all instances of noncompliance are corrected for that building.

## Extended Use – Year 15 and Beyond

### Extended Use

Beginning with 1990 allocations, the extended low income housing commitments, also known as restrictive covenants (Declaration of Land Use Restrictive Covenants) became a requirement of the HC program. The restrictive covenants are recorded at the Register of Deeds in the county the development is physically located. KHC established a set of monitoring procedures for qualified HC properties after year fifteen. The procedures are designed to lessen reporting burdens for owners and preserve the long-term affordability of developments.

Owners who elect to stay in the HC program at the end of the 15 year period will follow modified monitoring criteria, which will be in effect for the extended use period. View [Compliance Requirements After Year 15](#) for KHC's extended use policy.

After year 15 and the end of the compliance period, an IRS form 8823 will not be filed with the IRS to notify them of noncompliance. The tax benefit to the owner is exhausted and the IRS can no longer capture or disallow credits. Compliance fees are to be paid to KHC through the extended use period.

Throughout the extended use period, if noncompliance occurs, KHC will work with the owner to bring the property back into compliance and reserves the right to sue for specific performance. If compliance is not attained, that information is shared with KHC's Production staff. If the owner comes in for a competitive allocation of HC, there is a deduction of points from the application which may cause the application to not be successful in the competition.

## Qualified Contract

Each LURA is project specific. The owner may or may not be allowed to come in for the Qualified Contract depending on their elections at the time of application. Depending on the elections, owners who are no longer interested in owning and/or retaining the low income use restrictions on the development can pursue the Qualified Contract option. During or any time after the 14th year of the compliance period, the owner may request that KHC find a buyer for the low income portion of the development. If KHC is unable to find a purchaser to purchase the development pursuant to a Qualified Contract within a one-year period, the development may be converted to market-rate use. For more information, please review KHC's [Qualified Contract Process](#).

## References

- [Blank 8609](#)
- [Guide for Completing Form 8823](#)
- [Housing Discrimination Under the Fair Housing Act](#)
- [HUD Handbook 4350.3](#)
- [Internal Revenue Code Section 42](#)
- [Low-Income Housing Credit Minimum Unit Sample Size Reference Chart \(page 5\)](#)
- [NCSHA's Housing Credit Income Averaging Frequently Asked Questions](#)
- [NCSHA Recommended Practices](#)
- [Novogradac Rent & Income Limit Calculator](#)
- [Revised Uniform Residential Landlord and Tenant Act \(URLTA\)](#)
- [Section 504: Frequently Asked Questions](#)
- [Uniform Law Commission](#)
- [Utility Allowance Policy](#)
- [VAWA Resources](#)

## KHC Links:

- [Asset Management Compliance](#)
- [Compliance Requirements After Year 15](#)
- [KHC Utility Allowance Policy](#)
- [Notification of Removal of Unit\(s\) for Resident Manager, Maintenance, or Security Officer](#)
- [Qualified Contract Process](#)
- [Sample Forms](#)
- [Suspension and Debarment Policy](#)
- [Tenant Data Certification System \(TDCS\)](#)
- [Verification Forms](#)