

# Affordable Housing Connections, Inc.

## Q & A ON HTC COMPLIANCE

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# FIRST YEAR PROJECTS – PROJECT COMPLIANCE

## Placing a Project In Service

Q. As a property manager, which critical dates must I keep track of in the tax credit program?

A. There are four critical dates:

- **Placed in Service (PIS) Date:** For new construction, this is the date the building receives its certificate of occupancy (CO) from the local building inspector. You cannot start moving tenants into the building before the CO issuance. If the building is not placed in service before the end of the second year it was allocated tax credits, the credits will be lost. *This is a drop dead date.* For rehabilitation projects, see Revenue Ruling 91-38. PIS can be in any month in the 24 month period if rehab is substantially complete on all units in the building and the minimum expenditure (\$3,000 per unit or any higher minimum amount set by the Suballocator) requirement is met (building by building determination). Owners can begin taking credits as of the end of the first full month a building is Placed in Service. **Note:** The owner may **not** count a unit occupied after January 1 toward the first year applicable fraction since the building was not placed in service for a full month. For all other months, even if a resident moved into a unit on the last day of the month, that unit is considered occupied at the end of the month.
- **Credit Period:** The 10 years following the first year of the credit period. The credit period starts the year the project is Placed in Service unless the owner elects to begin the credit period the following year (building by building basis). At the end of the second year, the credit period begins automatically.
- **Compliance Period:** 15 years. The credit period plus 5 years beginning with the first year of the credit period. Failure to maintain compliance during the 5 years following the credit period could result in recapture of a portion of the tax credits granted and used previously. **NOTE:** For acquisition/rehabilitation projects, the credit and compliance periods run concurrently even though they may be Placed in Service in different years.
- **Extended Use Period:** 15 years. The additional 15 year period of affordability which begins after expiration of the compliance period, totaling 30 years for projects that received a credit allocation after 1989. During the extended use period (years 16-30), the Suballocator not the IRS enforces compliance of the terms of the allocation documents, including the project's regulatory agreement. Noncompliance reported during the extended use period is not reported to the IRS.

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## Project Rent and Income Restrictions

Q: What documents show the levels of rent and income restrictions for a new HTC project?

A: The best places to look are the Carryover Agreement, HTC-1, and the extended use agreement (LURA). For purposes of monitoring HTC compliance, the Owner must be adhere to all income, rent, and targeting promises made in the process of the application for credits.

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## COMMON SPACE, FULL TIME STAFF UNIT

Q. Can we set aside an apartment for a maintenance staff person and still take tax credits on it? Can we charge time for this maintenance staff person to projects other than the one where he lives?

A.1 First, determine that your project reasonably can justify a part time or a full time management or maintenance staff person. If a full time staff person can be justified, follow the following procedure:

For buildings that have been Placed in Service after 9/9/92, the full time resident manager's unit MUST be treated as common space (not included in either the numerator or the denominator of the applicable fraction). For buildings that have been Placed in Service before 9/9/92, the full time resident manager's unit may be treated as follows:

- Unit may be considered a qualified low income unit (rent is restricted and resident manager is a certified low income household) or unit is considered common space.
- A unit occupied by a part time manager, caretaker, or maintenance person must either be treated as a qualified low income unit or as a market rate unit. If the unit is treated as a qualified low income unit, then the household must meet all tax credit eligibility criteria.
- Any reduction in rent in exchange for services must be considered as income in qualifying the household as for a tax credit unit.

A.2. The maintenance person may serve multiple building phases or multiple small buildings, if in a geographically proximate area. The specific situation must be described in detail in your notification to the Suballocator (see 1-5 of your Suballocator Compliance Monitoring Manual). However, if the maintenance person is operating a business office from the site, then the unit must be treated as commercial space.

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### **Community Room**

Q. Our new tax credit project for seniors has multiple buildings. One building has a community room and also a beauty parlor. Is it all right for the tenants in buildings 2 and 3 to use the facilities even though they are in building 1?

A. First, community space is treated as common space and is excluded from the tax credit building square footage. As common space, it must be made available to all project residents. Second, determine whether the beauty shop is commercial space (a fee is charged for services or the shop operator pays rent). Tax credit project common space may not be used as commercial space. It is appropriate for the beauty shop to occupy common space and the operator reimburse reasonable costs for lights, heat, water, etc., as long as rent is not charged for use of the space.

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# 8823 GUIDE – TOPICS OF INTEREST

## General Public Use

- Q: How should owners handle marketing units to particular target resident groups and remain safe from a finding of noncompliance due to denying the general public's access to LIHC housing?
- A: This issue is under discussion and further details will be provided as soon as MHFA and the Suballocators have fully reviewed the subject. Please note that a grandfather clause is not expected for any projects currently employing marketing preferences or other requirements of occupancy. Owners are subject to implementing this as of January 1, 2008 and legal counsel should be sought on any questions about how the IRS might interpret this issue.

For further information, see the 8823 guide: [Chapter 12, Category 11h ó Project not Available to the General Public](#)

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## Rent – what to include in the total rent

- Q: Fees such as pet rent, mandatory insurance, etc. are becoming more common. Can these fees be charged to a tax credit unit?
- A: From the AHC manual: "The fees are allowable, but the gross rent must include these fees and must be below the applicable rent limit. When completing the Tax Credit Summary Report (HTC 13) include the amount in the column with tenant paid rent."
- If a fee is being charged for a service or amenity that is not an option for the resident (i.e. mandatory renter's insurance), the amount must be included in the calculation of tenant paid rent. Optional fees are defined on page 11-1 of the 8823 guide as follows: "A service is optional when the service is not a condition of occupancy and there is a reasonable alternative."
    - Examples of fees that would be charged as a condition of occupancy might include:
      - Transfer fees
      - Month to month lease fees
      - Renter's insurance requirement (unless waived)
    - Examples of fees that would *not* be considered chargeable as a condition of occupancy might include:
      - Pet deposit or pet rent
      - Optional detached garage or parking space\*
      - Optional detached storage area\*

**\*Please Note:** If tenant facilities (e.g. parking, garages, swimming pools, etc.) were included in the project's eligible basis, they must be made available to all tenants on a comparable basis, and a separate fee must **not** be charged for their use.

For further information, see the 8823 guide: [Chapter 11, Category 11g ó Gross Rent\(s\) Exceed Tax Credit Limits](#)

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## **Evictions and Lease Terminations for Good Cause**

Q: Can leases for HTC households be terminated without having to prove good cause?

A: Chapter 26 of the 8823 guide describes the requirement for all HTC projects to include no cause eviction protection for its tenants. "Good cause" is required for an owner to enforce the termination of tenancy, including the nonrenewal of a lease, eviction actions or unlawful detainers: "The owner must not evict **or** terminate the tenancy of an existing tenant of any low income unit for other than for good cause." The HUD Handbook 4350.3 outlines reasons for termination of tenancy as follows:

- Material noncompliance with the lease, including: Substantial lease violations, fraud, repeated minor violations, and nonpayment of rent;
- Drug abuse and other criminal activity;
- Material failure to carry out obligations under a state Landlord and Tenant Act; and
- Other good cause.

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## **Good Cause**

Q: How are owners expected to handle situations where the owner cannot prove good cause?

A: Mutual terminations are an acceptable method of terminating a lease in relation to this requirement of Section 42. If an owner can get a resident to agree to move out, the result is essentially the same as the resident giving their written notice to vacate, rather than having their lease terminated. If a household will not agree to a mutual termination, the owner must document good cause for a termination as outlined in the lease.

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## **Student Status**

Q: Regarding the new definition of full time student: when anticipating five months of full time student status in a calendar year, the revised HTC 35 form and the MHFA HTC Eligibility Application do not inquire about the coming year, how should this be handled?

A: AHC and MHFA discussed this issue, and the 2008 HTC 35 and the MHFA HTC Eligibility Application forms were revised (see attached).

Q: Regarding programs "similar" to JTPA or Workforce Investment Act: which form should be used to verify this information?

A: AHC and MHFA discussed the need for this to be included as a question on the HTC 15, and the form has been revised (see attached).

*For further information, see the 8823 guide: Chapter 17, Category 111 – Low Income Units Occupied by Nonqualified Full Time Students*

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## **PHYSICAL INSPECTIONS**

- Q: How will findings from AHC's physical inspections be reported on an 8823?
- A: Violations will be reported on an 8823 within 45 days of the end of the correction period whether or not the noncompliance has been corrected.

*For further information, see the 8823 guide: Chapter 6, Category 11c – Violation(s) of the UPCS or Local Inspection Standards*

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### **Units Suitable For Occupancy**

- Q: For leasing up an acquisition/rehab project, how should owners handle claiming credits on units that are considered "unsuitable for occupancy" at the point of the acquisition but prior to the date of beginning rehab?
- A: In order to claim credits on a unit, owners must determine that a unit is suitable for occupancy and also occupied by a qualified household (see pages 4-17 through 4-20 of the IRS guide). If there are any violations of habitability standards as defined by UPCS or by local health, safety and building codes the owner must determine whether a unit meets the definition of being suitable for occupancy. The owner must certify to this issue on question # 8 of the HTC 12.
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### **Units Undergoing Rehab Are Not Suitable for Occupancy**

- Q: During the first year of compliance, how should Owners report the period of time when units are being rehabbed?
- A: Units undergoing rehab are not suitable for occupancy and Owners may not claim credits during the period of rehab. Once rehab is completed on a unit **and** it also is occupied by a qualified household, the unit is HTC eligible. Owners must accurately complete all questions and certify the HTC 12 and provide explanations on page 3 for any period for which credits are not claimed. A unit self-reported by an Owner as unsuitable for occupancy due to rehab during the first compliance year is **not** reportable on an 8823 as noncompliant. The Owner must accurately report and certify to the status of units on the HTC 12 to prevent a finding under 8823 category 11d: *Owner Failed to Provide Annual Certification or Provided Incomplete or Inaccurate Certifications.*

Please also see household transfer requirements on page 18 of this Q & A.

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### **UPCS Violations – Reporting on HTC 12**

- Q: Pertaining to item #8 of the HTC 12: Does there have to be a report of a violation from an agency for there to be a question of potential noncompliance? If there is a report do we then have to determine whether the building has been suitable for occupancy or does a report automatically indicate that the unit is unsuitable for occupancy?

- A: Violations of either UPCS or local codes constitute noncompliance. This is true whether reported by a local inspector or compliance monitoring agency or by an Owner or its management agent during the normal course of project operation.

This is why property Owners and Managers need to understand both UPCS and local codes. The IRS expects Owners to be forthright in reporting the condition of the property on its annual report and to correct any noncompliance immediately after becoming aware of the violation. Owner must disclose any and all instances of UPCS and/or local code or property standard violations, whether corrected or not on the HTC 12. However, violations corrected within a reasonable period of time during normal unit turnover are not expected to be reported by Owner on the HTC 12.

Chapter 3 of the 8823 Guide instructs monitoring agencies that if violations are corrected prior to a notice for review (bright line date) they are not reportable to the IRS on form 8823. There are two possible bright line dates: the bright line date for the HTC 12 is the due date for annual report submission. The bright line date for a project undergoing inspection is the date of the confirmation letter sent to the Owner prior to the physical inspection. If local code or UPCS violations remain uncorrected at the time of either bright line date, the owner would receive a notice of noncompliance and a period of time to correct the violation.

The Owner must report and certify to the status of units on the HTC 12 to prevent a finding under 8823 category 11d: *Owner Failed to Provide Annual Certification or Provided Incomplete or Inaccurate Certifications*. If any violation(s) of UPCS or local code is observed by an Owner, Manager, or inspector, the Owner should answer "No" to item #8 on the HTC 12 and provide an explanation on page 3 of the HTC 12. If applicable, a copy(ies) of violation report(s) as required by 26 CFR 1.42-5 and any documentation of correction also must be submitted.

# UNIT COMPLIANCE: DETERMINING ELIGIBILITY OF THE HOUSEHOLD

## Signatures on Tenant Income Certifications (TICs)

- Q: Does the 5 day timeframe for signatures on TICs apply to re-certs as well as move-ins?
- A: The 5 day timeframe for obtaining tenant signatures applies to move-ins, but not to re-certs. TICs at re-cert need to be signed by the tenant before the effective date, but it is not necessary for the date of signing to occur within five days of the effective date. See two clarified slides to insert in your training binder.
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## Proof of Social Security Number

- Q. Must I require applicants for a tax credit unit to provide proof of social security number as part of the tenant application process?
- A. Many HUD programs (such as Sec.8) require that the tenant file contain a copy of the social security card as partial proof of identity. However, if a tax credit project has no HUD program funding, lack of a social security number in a tenant file will not cause a noncompliance finding.
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## Household Composition

- Q. An 18 year old is applying to live in a tax credit unit and wants her two minor siblings to live with her. Their single parent mother lives in another state. What kind of documentation is necessary to determine the eligible household size?
- A. Preferred documentation is a court document that grants guardianship or custody. If unavailable, the mother should document in writing that the children will be living with the tenant (sister) 50% or more of the year. If this documentation is not available, the Suballocator will accept a written affidavit from the tenant that includes the residency statement. If this is a temporary situation (residency of less than 6 months), the Change of Household Composition procedure applies and the resident must qualify at that time as a new move in. If the resident were a full time student and the sole occupant of the tax credit unit at that time, she would be ineligible and must vacate the unit.
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## Unauthorized Guests of Tenants

- Q. I think a potential tenant (sole household member) might have his girlfriend and her child move in after he signs the lease. What can I do?
- A. First, you might ask these questions: Is the tenant asking to rent a unit with multiple bedrooms? Is the tenant's income sufficient to pay the rent and reasonable expenses without Section 8 assistance? Have you explained the consequences of providing false information on

the Tenant Application and the Tenant Income Certification? Does your lease contain adequate provisions to deal with an unrecorded tenant?

- If you do rent a unit to an individual and later discover an unrecorded household member, you must follow the procedure for Change in Household Composition in your Suballocator Compliance manual:
- If the change in household composition is within the first 6 months of the lease, the combined household must be treated as a new applicant and must be eligible under the applicable income limits, using the Initial Certification process.
- All new adult household members 18 and older (unless under 18 years of age and an emancipated minor) must sign the lease at move in.
- If the change in household composition takes place after 6 months, add the new household member to the lease immediately at move-in but incorporate the new household composition and income into the annual recertification process.

NOTE: The proposed IRS 8823 Guide may contain language requiring a new initial certification whenever a household member is added (including birth of a child) on the basis that adding a household member constitutes a new household. Owners may want to review their current leases to include a provision for notification when the household wants to add a new member. Another good practice in trying to get evidence whether a person is living in the unit is to ask the resident to have their guest provide their permanent address. After they have provided that, ask them to bring in a utility bill from that address.

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### Cosigners

Q: Should a cosigner be included as a household member and their income included on the TIC?

A: No. The best practice to avoid confusion is to have the cosigner sign an affidavit stating that they will not reside in the unit. Also inquire whether there will be any regular monetary contribution made to the household by the cosigner; if so, have the cosigner complete a verification form for Regular Monetary Gifts.

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# CALCULATING INCOME

## Child Support

- Q1. A tenant is reporting court ordered child support on her tenant application but says she actually receives much less each month. Which amount do I use in calculating annual income?
- A1. The tenant file should contain both a copy of the court order that identifies the award amount and the third party verification from the county agency administering the court order. If the agency certifies that the actual amount paid over the previous 12 months is less than the court awarded amount, the Sublocator will not find a violation if an annualized estimate of future child support payments is based on historical documentation.
- Q2. A tenant is receiving monthly child support payments that are higher than the court ordered amount due to back payments being caught up. Which amount do I use in calculating annual income?
- A2. HUD Occupancy Manual 4350.3 Chapter 5 does not address this issue. Sublocator suggests the following documentation and calculation methods. If the arrears payments are expected to continue, use the arrears portion in addition to the court ordered monthly amount to annualize the income. If arrears payments are sporadic, use the average based on amounts received in the previous 12 months. If the arrears payments are expected to continue only for a limited length of time, annualized income can be prorated to include the number of months for which arrears payments are expected in addition to court ordered amount (file must be documented with third party verification of expected additional income from arrears payments).
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## Calculating Bonus from Employer

- Q. An employment verification was returned and indicated a possible bonus for the tenant. How do I calculate the amount in anticipated income?
- A. If a bonus amount was paid to the employee in the preceding 12 month period and NO bonus is anticipated for the 12 month period beginning with the Move-in Date, DO NOT include the bonus amount in anticipated income.

If a bonus amount was paid to the employee in the preceding 12 month period and employer indicates that SOME bonus amount but NOT AN ACTUAL dollar amount of bonus is anticipated for the 12 month period beginning with the Move in Date, you need to clarify the employment verification. Fax or call the employer contact and document the employer response.

Questions to Ask Employer:

- Can the amount of the bonus vary each year or is it likely to be the same as last year?
- If different from last year, what might the bonus amount range be (high to low amount)?

If employer indicates "unknown" or "cannot determine" because bonus is based on total work group or department or company performance or "bonus is not guaranteed" you DO NOT have to include the bonus amount in anticipated income.

If a bonus amount range is given, use the arithmetic mean average as anticipated bonus income and add to salary or total anticipated wages.

**EXAMPLE:**

Bonus range (high to low) = 2.5% to 5.0% of regular wage/hour.  
Calculation: Average of 2.5 + 5.0 = 7.5 / 2 = 3.75% (or .0375)  
Annual wage per hour = \$8.50 (X 40 hrs X 52 wks) = \$17,680  
Anticipated annual bonus = \$17,680 X .0375 = \$663  
Total anticipated annual employment income = \$17,680 + \$663 or **\$18,343**

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**Seasonal Employment**

Q. An employment verification says the tax credit applicant is employed now as a factory worker but might be laid off, and then recalled. He is eligible for unemployment during his lay off. How do I calculate his estimated annual income?

A. Determine the likely recall date, if known, and treat the situation like seasonal income (count only the actual time of employment and annualize). Add any unemployment benefits.

**EXAMPLE:**

Date of Initial Income Certification: 6/1/08  
Date hired: 1/1/08  
Date likely laid off: 5/1/08 (Date on verification)  
Date recall likely: 7/1/08 (On employment verification)  
Count only the actual employment period during 12 month period following Move In Date of 6/1/08:

EXAMPLE: \$12.50 X 40 X 48 wks (not 52 wks) = \$24,000

If tenant anticipates receiving unemployment benefits from 6/1/08 until 7/1/08, verify unemployment benefit income.

EXAMPLE: Assume 4 weeks of unemployment benefits totals \$600.

Add unemployment benefit to employment income.

EXAMPLE: \$24,000 + \$600 = \$24,600 total anticipated income

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## **Using Tax Return as form of Verification**

- Q. Why can't I use a proposed tenant's income from their latest tax return instead of verifying their income?
- A. Managers must calculate tenant income for a tax credit household in a way that is consistent with how annual income is calculated under the HUD Section 8 program. Annual Income is not "taxable income" as reported on a tax return. Income for tax credit households is the estimated income the household will receive over the 12 month period beginning with the move in date. The method used to estimate income must be reasonable and consistent among tenants. Managers also must take into consideration "anticipated changes" in income as well as whether the information provided by the household is reasonable.
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## **Self Employment**

- Q: What amounts should an applicant/resident report for self employment?
- A1: The applicant/resident makes this decision based on their knowledge of the business and what they expect for the coming year. GROSS and NET income amounts are requested on the self employment verification forms, and Owners must use the NET amount (Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight line basis). In addition to net income, Owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business. Please see HUD Handbook and Compliance Manual for further detail.
- A2: A tax return is required as supporting documentation for an existing business.
- A3: To properly document the file, ask applicant/resident whether this is a new business or an existing business and provide them with the appropriate verification form to complete. Do not coach applicants or residents to complete the [Self Employment Verification Existing Business](#) or [Self Employment Verification New Business](#) form with an amount to match a supporting tax return or any amount other than the amount they expect in the coming year. If the applicant/resident provides an amount that varies significantly from a supporting tax return, ask them to explain this in writing and include this self certification as a part of the file documentation.
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## **Student Financial Aid**

- Q: Is financial aid included in annual household income?
- A: Yes. Please note the following discrepancy: Page 6-14 of the Sublocator Manual states that Student Financial Aid is included as income, while the HUD Handbook on page 5-82 states this as an exclusion from income. When there is any discrepancy, the HTC Compliance manual takes precedence over the HUD manual and Student Financial Aid should be *included* in the calculation of annual income for the HTC program.
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## Regular Monetary Gifts

Q1: Should I include a single occurrence of a cash gift to a household in the annual income calculation?

Q2: Should emergency assistance for utilities be included in the annual income calculation?

A: Only regular, recurring cash contributions should be included in the annual income for a household. Temporary, nonrecurring, or sporadic income (including gifts) is **not** counted. Energy Assistance for payment of utilities is typically a sporadic source of income. See p. 6-14 of Sublocator Manual and the formula on page 5-82 of the HUD Handbook for utility amounts that might be included as a part of welfare assistance payments (not typical in Minnesota).

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## Using YTD Wages to Calculate Annual Anticipated Income

Q: If an employer reports a year to date (YTD) total of wages paid, how should this be taken into account in the calculation of annual income?

A: Page 6-10 of the 2009 Sublocator Compliance Manual clearly states to use averages in calculating annual income. This language has remained unchanged for years:

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

- Hourly wages by the number of hours the individual is expected to work per week by 52. If verification shows a range of hours, use the average number of hours (i.e., verification shows 30-35 hours per week, use 32.5 hours).
- Average weekly amounts by the number of weeks the individual is expected to work.
- Other periodic amounts (monthly, biweekly, etc.) by the number of periods the individual expects to work.

Section 42 procedures are based on Chapter 5 of the HUD Occupancy Manual (4350.3) which states the definition of annual income to mean all amounts anticipated to be received from a source outside the family during the 12 month period following admission or annual reexamination effective date. A year to date amount is a statement of past income, it is an unreliable basis for calculating anticipated income. There is no language in either of these regulations to suggest a practice of using year to date amounts. Alternative methods are mentioned only for calculating seasonal or sporadic income.

For this reason, in monitoring files for Minnesota Sublocators, AHC has been advising Owners **not** to use the year to date amount as basis for annualizing income unless it the only option (because a third party does not provide enough data to calculate earnings as outlined above). Furthermore, it is the position of the Sublocator that taking the highest possible calculation of income can result in rejecting residents who are technically eligible for this affordable housing, which is counterproductive to the program's intent.

An employer is not required to report the YTD amount on an employment verification form as long as there is adequate information to calculate the income in accordance with the methods outlined in the Sublocator Compliance Manual and the HUD Occupancy Manual 4350.3.

Q: What if an employer only reports a YTD amount, and does not provide hours and rate of pay?

A: If possible, obtain a clarification report from the employer to obtain average hours and rates to arrive at an anticipated annual income. If employer is uncooperative or unable to provide hours and rate of pay, then document the file and use the information available.

*In the absence of more reliable information,* the YTD figure can be used as a basis for annualizing income. For instance:

- An applicant/resident is relatively new to a job or works sporadic hours. Employer cannot report on regularly scheduled hours.
- Earnings are commissions based on sales.

Again, Owners and Managers should NOT make a practice of taking the highest possible annual income calculation as a "conservative" or "safe" measure.

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### **Income from assets – special cases**

Q: How do I calculate a Reverse Mortgage?

A: There is no direct guidance in the HUD handbook for reverse mortgages. We concur with the Minnesota Housing suggestion that managers follow the Section 8 program as a reasonable approach. Because monthly payments someone receives on a reverse mortgage are essentially a loan paid out in monthly installments against equity in real estate, the monthly payments are not considered income. That leaves the real estate as an asset, which is calculated the same way any other real estate is calculated. To figure cash value, you take the market value, minus reasonable costs to sell, including paying off any loans against the property. The tax statement would be OK, although we do prefer verification from a real estate professional since, as I'm sure you know, tax statements are not typically reflective of current market sales conditions.

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### **Assets: Real Estate**

Q. How should I determine the value of a house in foreclosure? How should I document the file?

A1. If foreclosure is final and you have obtained third party verification of the transfer of deed or ownership, the asset is not counted because it is no longer owned by the applicant. Document the file with the verification of foreclosure and do not list the asset on the TIC. Confirm whether the applicant received any proceeds from the foreclosure.

A2. If foreclosure is in process, it remains an asset of the applicant and should be reported on the TIC. Obtain third party verifications of the fair market value (i.e. property tax statement or independent appraisal if available) and the outstanding mortgage balance. Because a foreclosure can be reversed or cured, it is important that a home in foreclosure is verified and included as an asset of the applicant until the foreclosure is finalized.

- A pending foreclosure should have documentation available of the value of the home.

- Unfortunately, if the county assessor's verification of fair market value is greater than the expected sales price, there is not an alternative to a third party verification of the value or expected sale price.
  - Under Minnesota law, homeowners must be paid at least 82 percent of the fair market value of their former homes (minus certain permitted costs or expenses) if they are not able to stay in their homes following a foreclosure. For this reason the fair market value must be third party verified and used in the calculation of the value of the asset.
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## MULTIPLE FUNDING SOURCES

- Q. I just took over managing a tax credit project that has several HOME units. It looks like there might be different rent limits for the two projects; can this be correct?
- A. Yes. There are separate rents for each program (and other separate program requirements, as well). The HOME program has both High and Low HOME rents and they must be compared to the appropriate tax credit rent limit for you to know which limit applies.

HOME units also may be fixed (specified by unit) or floating (can be replaced with other units with a comparable number of bedrooms, unit size and amenities) so the relationship with tax credit unit transfers, over income households and rent increases, and the Available Unit Rule can be complex.

Further, if the owner received a 9% tax credit allocation, the Suballocator Compliance Manual requires that 40% of the units (building by building) must be rented at the 50% area income limit, (adjusted by family size). We recommend that you immediately consult with the HOME Program administrator for your participating jurisdiction (PJ) to get specific technical assistance on HOME Program requirements. You can get the person's name and telephone number from the local HUD office (612)370-3000. AHC also provides training and consulting on HOME Program compliance. You can contact us at (651)222-8319.

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# UNIT TRANSFERS

## Important Notes:

- Unit transfers *require* completion of the form "Documentation of Unit Transfer" as updated on January 1, 2008. This can be found on AHC's website.
- Transfer procedures are governed by two factors:
  - a. Whether the units in the project are 100% HTC units or mixed use.
  - b. The Owner's election on form 8609 for all buildings to be considered "the tax credit project" or for each building to be considered as a separate project. See project 8609s, Part II, question 8b to determine the Owner's election.

## Acquisition Rehab Projects

- Q. My project is being rehabbed and households are transferring to new units as the units become ready. Should I income qualify a household before or after they transfer?
- A1. If the project is receiving acquisition credits, the Owner may opt to perform "early" income eligibility determination of a household before temporarily relocations or rehab phase of the project begin. This requires full compliance with all HTC eligibility requirements.
- A2. During the first compliance year, transfers of households after initial determination of eligibility must follow the transfer requirements outlined on pages 5 14 to 5 17 of the 2009 Suballocator HTC Compliance Manual. Whenever a TIC is required, all supporting documentation must be timely (within 120 days of TIC effective date). Please note that a household is able to qualify only one unit for Section 42 status. For this reason, Owners must be cautious about unit transfer procedures during rehab in the first compliance year. If a qualified household transfers units, the Owner may only claim HTC status for the unit that household actually occupies as of December 31<sup>st</sup> of the first compliance year. A unit left vacant by a transferring household is not HTC eligible unless it is occupied by a new qualified household before year end.

For further information, see the 8823 guide: Chapter 4, Category 11a ó Household Income Above Income Limit Upon Initial Occupancy, pages 4 14 through 4 20 for details.

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## Change in Household Composition at Transfer

- Q. A household is splitting up and some of the members are transferring to a new unit. What documentation is required to support the eligibility of the new households?
- A1. HTC eligibility of a household applies only to the unit initially occupied by that household. A household may continue to add and remove members as long as at least one member of the original low income household continues to live in *that* unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income qualified household unless the remaining tenants were documented as income qualified at the time they moved into the unit. Therefore, Owners must document all decreases in household composition to determine eligibility of the remaining members.
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A2. When a partial household moves to a new unit, it is not a "transfer." As stated above, a household is able to qualify only one unit for Section 42 status, and in this case there is no longer an "original unit" for which these household members were determined to be eligible. The Owner must determine eligibility for the new household in a new unit and must meet all current HTC guidelines for a new move in.

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