

low income housing tax credit



section 42 tenant guide



*financing the places where
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section 42 tenant guide

This document is a reference guide for tenants living in rental housing under Section 42 of the Low Income Housing Tax Credit (LIHTC) program. It is designed to provide a basic program overview and to answer frequently asked questions. However, this document is to be used only as a basic introduction. It should not be considered a complete guide to Section 42 of the LIHTC program. In addition, properties under this program may be subject to different expectations depending on the specific terms and agreements of multiple funding programs with various agencies.

scope

The guide covers program eligibility, rent restrictions, tenant protections, and tenant responsibilities under Section 42. This guide is meant to be a resource for tenants or potential tenants of Section 42 housing and does not discuss the full compliance requirements of the program.

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section 1

Program Introduction

Section 42 of the Low Income Housing Tax Credit (LIHTC) program is a federal program governed by the Internal Revenue Service (IRS). The purpose of the LIHTC program is to provide equity to property owners and developers to create affordable rental housing. In exchange for the funding, the property owner or developer must agree to restrict occupancy to program-eligible households (see Section 2 below), to follow program rent restrictions (see Section 3 below), and to keep the housing safe and sanitary.

Every state has a designated housing finance authority that is responsible for overseeing the LIHTC program in that state. For Colorado, the designated agency is Colorado Housing and Finance Authority (CHFA). CHFA conducts compliance audits, inspections, and onsite reviews on all LIHTC properties in the state.

CHFA does not manage tax credit properties or process rental applications. Interested applicants must apply directly with individual properties. You can find a list of all active Section 42 LIHTC properties at chfainfo.com/arh/lihtc/Pages/awards.aspx#county. Additionally, CHFA recommends visiting ColoradoHousingSearch.com to find affordable housing options.

A. Applying for Section 42 Housing

An individual or household must apply for Section 42 housing at the property at which they wish to reside. The application process will include the completion of an income and asset questionnaire as well as a student status questionnaire. Any income or asset sources identified must be verified through third-party sources by property management to calculate income. After eligibility has been verified, the household must sign a Tenant Income Certification form (TIC) certifying that all information provided was true and that the calculated household income is accurate. All households accepted into Section 42 housing must enter into a lease agreement for at least six months.

section 2

Program Eligibility

A household must meet two tests in order to be eligible for Section 42 housing. First, the household must be income-eligible. Second, the household must meet the program's student status rule. Before discussing these two rules, it is first important to understand how households are defined.

A. Household Size

Income limits are based on the number of individuals that will be living in the unit. For purposes of determining household size, a household includes all individuals that will reside in the unit, whether or not those individuals are related. This includes individuals temporarily absent from the household (such as children away at school), unborn children, children in joint custody agreements that will reside in the unit at least 50 percent or more of the time, and foster children or foster adults. There are two special rules related to households:

- The household members get to choose whether or not to include a member who is permanently confined to hospital or nursing home.
- Military members away on active duty are only counted in household size if they are the head or co-head, or if they leave behind a spouse or dependent child in the unit.
- Live-in aides and guests are not counted in household size.

B. Income Eligibility

Once household size has been determined, this number is used to determine the correct income limit to apply. The US Department of Housing and Urban Development (HUD) annually releases program income limits based on household size. Each county has its own set of income limits. Eligible program units are designated for households at 30, 40, 50, or 60 percent of the area median income (AMI). A unit will be designated for occupancy at one of these levels. A unit can be occupied by a household with an income below the limit. Therefore, a unit designated at 60 percent could have a household at 30 percent AMI move into it, but a unit designated at 30 percent could **not** have a household at 60 percent AMI move into it.

Income eligibility is determined by looking at all earned income (such as employment), unearned income (such as Social Security, child support, other benefits, etc.), and asset income (such as interest from bank accounts).

The total household income from all household members from all sources (except those sources specifically excluded by program regulations) must be at or below the income limit at the time of move-in.

Example: If a household has four members and they wanted to move into a unit designated at 50 percent AMI, the property manager would have to determine household income and make sure that the income is at or below the four-person 50 percent current income limits in effect. If household income was above this limit, then the household would not be eligible to move into that unit.

C. Student Eligibility

Section 42 was designed to prohibit the use of the LIHTC program to create dormitories or other student housing. Therefore, households in which all members are full-time students are generally ineligible to live in Section 42 program units. An individual is considered a full-time student if he or she was a full-time student (based on the definition of "full-time" used by the school they attend) for parts of five or more months out of the calendar year. These months need not be consecutive. A household that consists entirely of full-time students may still be eligible for Section 42 housing if a certain exemption is met. When applying for housing, each household must complete a Student Status Questionnaire. This questionnaire will walk through all possible student exceptions. If all members are full-time students, but an allowable exception can be documented, then the household will be considered eligible.

D. Tenant Selection

All Section 42 properties must comply with the program regulations regarding income and student status eligibility as described in Parts 1 and 2.

In addition, each property may create additional eligibility screening requirements. Common examples include:

- criminal background checks;
- previous landlord history background checks;
- credit history requirements;
- limits on the number of household members permitted to reside in a unit based on number of bedrooms in the unit; and
- a minimum income requirement.

Each property must create a written “tenant selection criteria” document to explain how applications will be processed and evaluated. The same eligibility criteria must be applied to all applicants. The written tenant selection criteria policy will also outline the waiting list procedure used at the property, if applicable.

section 3

Rent Restrictions

All Section 42 program units are rent-restricted. Units may be rent-restricted at 30, 40, 50, or 60 percent of the AMI. A unit will be designated as rent-restricted at one of these levels. The US Department of Housing and Urban Development (HUD) annually releases program rent limits based on the number of bedrooms in the unit. Each county has its own set of rent limits.

If tenants are responsible for paying their own utilities, then the property must use a “utility allowance.” This is an estimate of the average monthly utility cost for a unit.

To determine the actual rent that can be charged, the property manager must deduct the utility allowance (based on the utility source used) from the rent limit in the chart released by HUD. For example, a household lives in a two-bedroom unit designated at 50 percent. The HUD chart says that the rent limit for a two-bedroom unit at 50 percent in that county is \$900. The utility allowance for a two-bedroom unit at the property is \$85. The maximum amount of rent that can be charged to the household is \$815 (\$900 rent limit minus \$85 utility allowance).

note

Properties are protected against future decreases in rent limits once they open for occupancy. If the HUD published rent limit for a county decreases from one year to the next, a property may continue using the higher limits from the previous year if it was in service during that prior year. This means that determining a rent limit is not always as simple as pulling up the current HUD rent limit chart.

section 4

Tenant Protections

Tenants are provided a number of protections under the Section 42 program.

Rent Protection

All Section 42 units are rent-restricted. HUD releases rent and income limits annually, which can cause limits to increase or decrease. Owners are not required to lower rents if annual rents are posted lower than the previous year.

Protection Against Non-Renewal for Future Income Increases

Income eligibility is based on the household income at the time of initial move-in. Subsequent income increases do not make the household ineligible to remain in the unit. However, if the building has a mix of market rate and program units, a household that exceeds 140% of the income limit may be converted to market rate status and lose its rent-restricted status.

Student Status

There is no such protection against future changes in student status. If a household fails to be student status qualified after the time of initial move-in, the household no longer be eligible to remain in the unit.

Section 8 Vouchers Accepted

Section 42 properties cannot refuse to accept Section 8 vouchers. However, voucher holders must meet all other eligibility and tenant selection criteria in order to be eligible for occupancy.

Fair Housing

All Section 42 properties are subject to the federal Fair Housing Act. Properties may not discriminate based on the seven protected classes: Race, Color, Religion, Creed, National Origin/Ancestry, Sex, Disability/Handicap, Sexual Orientation (including Transgender Status), Marital Status, and Familial Status (children under the age of 18 in the household). In addition, the property must allow reasonable accommodation and reasonable modification requests in accordance with the Fair Housing Act requirement.

No Eviction Without Good Cause

Section 42 properties may not evict without good cause. Good cause is generally defined as material violations of the lease, such as non-payment of rent, damage to property, failure to follow property rules, interference with other tenants, or fraud. Ultimately good cause is up to the determination of the court if challenged. Increases in income after move-in are not good cause for eviction or non-renewal.

section 5

Tenant Responsibilities

All applicants and tenants are responsible for completely and accurately reporting information related to household size, income and asset sources, and student eligibility. This includes complying with requests for information in a timely manner, both at the time of initial application as well as at annual recertification. Withholding or providing false information is grounds for denial (for applicants) or eviction (for existing tenants). In addition, tenants committing fraud can be reported to the IRS Tenant Fraud Hotline.

Tenant Inspections

Tenants are responsible for complying with all lease terms and property rules and regulations. In addition, tenants need to understand that their units will likely be chosen at some time for inspections by CHFA and/or other agencies. The purpose of such inspections is to ensure that the property is being maintained in a condition that provides safe, decent, and sanitary housing. Tenants must comply when their units are selected for inspection.

section 6

Common Misperceptions

Below is a list of common misconceptions about the program:

- CHFA does not take applications or maintain waiting lists for the Section 42 program. Applications must go directly through the property.
- Rent is not based directly on household income as it is with some HUD programs. Rather, rent is based upon a set-aside designation assigned to the unit. Therefore, two households with significantly different incomes can be asked to pay the same rent if they are residing in units designated at the same rent set-aside.
- Section 42 is not a subsidy program. While Section 42 properties may receive other sources of funding that offer rental assistance, the Section 42 program on its own does not provide any rental assistance.
- The tax credit under Section 42 is for the investor of the property, not for the tenants. The benefit of the program to the tenants is that the rents are restricted and the properties are subject to inspections to ensure they are kept in a safe and decent condition. There is no special tax benefit or credit available for tenants of Section 42 properties.

section 7 Complaints

Tenant complaints should always first be addressed to the onsite property management staff and/or property management corporate office staff. When a complaint cannot be resolved between the tenant and the management, the tenant may contact CHFA by calling 303.297.2432. All program-related complaints or complaints about the physical condition of the property that are received by CHFA will be investigated. However, legal issues not related to specific program requirements generally cannot be addressed by CHFA. In addition, CHFA does not handle any discrimination or fair housing complaints. These complaints will need to be directed to the Office of Public Affairs (HUD) or Fair Housing at portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint.

****disclaimer****

The publication of this document is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or implicitly, directly or indirectly, suggest, represent, or warrant that you as a prospective tenant (applicant) will be admitted into Section 42 housing, nor that you as a current tenant are meeting all of your tenant obligations since lease requirements and tenant rules will vary from property to property.

CHFA's obligation to monitor for compliance with the requirements of the federal program regulations does not make CHFA or its subcontractors liable for a property owner or management agent's noncompliance. CHFA cannot provide legal advice or aid.