

FAQ's -- Frequently Asked Questions

Sub-Metering vs. Ratio Utility Billing Systems (RUBS)

Are Sub-metering and RUBS permissible under the Low Income Housing Tax Credit Program Guidelines?

Sub-metered rent restricted units are treated as paid directly by the tenant and not by or through the owner of the building. Sub metering measures tenants *actual* consumption, and tenants pay only for the utilities they use. Generally, the sub-metering system is owned by the utility company and billed to the owner.

RUBS are imposed by Tax Credit owners for the re-imbusement of utility expenses incurred on the part of the owner. RUBS are based on an average use rather than billing specifically for a unit (or household's) actual usage. With RUBS, residents are billed monthly for average utility costs by the owner or a third party. Per the IRS, RUBS is not considered a form of sub-metering.

However, if the property is subject to HUD or Rural Housing rules, then the owner follows the HUD/Rural Housing rules for sub-metering or use of RUBS.

The use of sub-metering is permissible under the Tax Credit Guidelines.

The use of RUBS is not permissible for Tax Credit and Bond Properties without HUD and RD and is a reportable Tax Credit non-compliance violation.

Please refer to the CHFA website for a complete description of the Tax Credit Utility Allowance Policy. The information is available at:

http://www.chfainfo.com/documents/utility_allowance.pdf

Comparable Unit – Next Available Unit Rule (NAUR)

How is a Comparable Unit defined as it relates to the Tax Credit Next Available Unit Rule?

The IRS revised 8823 Guide effective October 2009 provided clarification on the definition of a 'comparable unit.'

A Comparable Unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.

An owner may consider a residential unit with the same number of bedrooms (or fewer) and comparable amenities to be a comparable unit.

CHFA's interpretation is that an owner may consider a residential unit with similar square footage (plus or minus 100 SQ FT) and amenities to be a comparable unit. If the available unit meets this definition, it would be considered comparable and should be rented to a qualified low-income household. Any exceptions will need prior approval by CHFA.

Hypothetical Non-Compliance

If during a review, a manager asks you about an existing non-compliance situation applicable to a household/file at the development but the household/file in question was not part of the CHFA officers review process, is CHFA obligated to report the non-compliance?

If the file is not part of the random file review process and/or management does not indicate which unit could be potentially out of compliance, you would not need to report the non-compliance. You would be obligated to assist management with clarifying the issue in regards to the potential non-compliance.

Original Household Members under the age of 18

If a minor originally occupied a unit at the time of the original move-in or initial certification but was under the age of 18 and not a lease signer; would the individual be considered an original household member at a point in the future once the individual in question is of legal age and required to sign all certification documentation?

CHFA would consider the occupant an original household member provided the file contains documentation indicating that the individual originally occupied the unit at the time of move-in or the initial Tax Credit certification (i.e. listed as dependent on lease, included as a household member on TIC and/or application).

Is a 401(k) considered as an asset?

Under what conditions should a 401(k) be included as an asset?

A 401(k) is a retirement account and should be considered an asset or income under the following circumstances:

Employed individuals:

If the individual is able to terminate participation in the 401(k) without quitting his job, the amounts of the 401(k) would be considered an asset even if withdrawal would result in a penalty; however, only the amount that is accessible less penalties would be counted as an asset.

Include only the amount that can be withdrawn without retiring or terminating employment. (IRS 8823 Guide, Chapter 4-16 – Retirement Accounts – HUD Handbook 4350.3 Rev-1, Change 3, Exhibit 5-2 Assets, Paragraph 6).

The only time a 401(k) would not be considered an asset for employed individuals is if 3rd party verification can be provided stating that *under no circumstances would the household have access to the funds* without terminating employment.

For retirement individual:

If the benefit is received as a lump sum, include the lump sum received as an asset.

If the benefit will be received in periodic payments, annualize the period benefit received and count as income for the household. Do not count any remaining amount of the 401(k) account as an asset.

If the individual is retirement and has access to the funds (even with penalty) but has not yet elected to receive period payments, the 401(k) would still be counted as an asset. If the individual is making *occasional* withdrawals from the account, the 401(k) would still be counted as an asset. The occasional withdrawals would not be counted as income. To determine the Assets Cash Value for certification purposes use the average balance for the previous 6-month.

When is an IRA (Individual Retirement Account) an Asset and when is it Income?

At what point would an IRA be considered income. When would it be considered an asset? How do you handle situations when IRA payments are not received on a periodic basis but rather on an elective basis? How would distributions from an IRA be handled?

An IRA is a retirement account and should be considered an asset or income under the following circumstances:

For employed individuals:

Accessible amounts are considered assets even if withdrawal would result in a penalty; however, the amount that is accessible only if the individual is retired would not be included.

Include only the amount that can be withdrawn without retiring or terminating employment.

Distributions from an **IRA**, are not periodic payments and are not counted as income as long as the individual can provide documentation that the distributions(s) are a return of capital; i.e. return of funds the tenant paid into the retirement account. Distributions would be considered Asset Income.

For retired individuals:

The amount received as a lump sum is considered an asset. Any retirement benefits received as periodic payment would be included in annual income.

If funds are withdrawn on an occasional, non-periodic basis, the amount received would not be considered income. The Cash Value of the Asset would then be determined by averaging the balance of the IRA over the previous 6-month period.

Please note that periodic payments from an IRA may have specific age restrictions. Retired individuals may be required to receive annual or periodic payments once they reach a specific age (commonly 70½). At this time, the IRA would no longer be considered an asset and would be counted as income. The exact age for each IRA may need to be verified.

Full-Time Student Rule Exemption – Job Training Partnership Act

What types of training would be included in the Job Training Partnership Act or Work Force Investment Act (WIA) and how would the training provided by Federal, State and local programs qualify as an exemption under the Tax Credit Full Time Student Rule?

A student enrolled in a job training program receiving assistance under the Job Training Partnership Act or other similar Federal, State or local laws would not disqualify a unit from being treated as a low-income Tax Credit Unit – IRC 42(i)3(D). In addition, the income received under programs funded in whole or in part under the these program may be excluded from income. Verification from the program in which the individual is participating is required. This verification information must then be forwarded to your compliance officer for approval.

Full Time Student Rule Exemption – Foster Care

Students previously under the care and placement of the State Agency (Foster Care); how is this defined, who would be included and what verification is needed?

The Housing Reform Act of 2008 (HERA) – Sec 3004(e) provided the inclusion of a 5th exemption under the Tax Credit Full Time Student Rule. The law allows for the inclusion as a student exemption, 'a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act.' This provision has been included as an amendment to the Internal Revenue Code under IRC 42(i)3(D)(i) and would be applicable to any resident in a household if they, at any point in their life, were under the care and placement of a State Foster Care agency.

Per the revised October 2009 IRS 8823 Guide (Chapter 17), the IRS requires proof of participation from the applicable state agency as verification that an individual would qualify under this exemption.

Full Time Student Verification

When is it a requirement to obtain 3rd party verification of compliance with the Full Time Student Rule?

Per Chapter 17 of the revised IRS 8823 Guide, full time student verification is required to prove compliance with the following:

- Verification of the receipt of assistance under Title IV of the Social Security Act (TANF)
- Full time student was at one time under the care and placement of the State Foster Care Agency
- Verification of Student's participation under the Work Force Investment Act (formally the Job Training Partnership Act), or other similar Federal, State or Local Program.
- Verification indicating that one or the other parent (regardless of whether or not the parent is residing in the unit) claims the child and cannot themselves be claimed as a dependent by another person. Acceptable verification would be a tax return or self-affidavit.
- Students are married **and** filing a joint tax return – IRC Sec 42(i)(3)(D)(ii).

Verification obtained must support the exemption or the household would be considered an ineligible student household.

Full-Time Student Rule – Units entirely comprised of 'unrelated' full time students

If unrelated full time student individuals occupy a household and only one of the unrelated individuals meets one of the student exemptions, would the household qualify?

Units entirely comprised of full-time students shall be treated as a low-income unit provided the household, or an individual in the household meets one of the 5 exemptions outlined in IRC42(i)(3)(D). The exemptions do not specify that the individuals within the household must be related. If one unrelated individual in the household meets an exemption, then the entire household would qualify as a low-income household.

Calculating Anticipated Income

How is anticipated income defined in today's current economic environment?

Chapter 4 of the revised October 2009 IRS 8823 Guide has provided some clarification into determining anticipated income. The Guide states '*Annual Household Gross Income is the gross income (with no adjustments or deductions) the household anticipates it will receive in the 12-month period following the effective date of certification.*' The Guide further acknowledges, '*If information is available on changes expected to occur during the year, that information is used to most accurately determine the anticipated income from all known sources during the year. Unanticipated income received after the household moves in will not affect the original determination that a household is eligible for LIHC housing.*'

If the household's income cannot be determined based on current information because the household reports little to zero income or income fluctuates; income may be determined based on actual income received or earned within the last twelve months. Before making this determination, owners should exhibit due diligence by asking follow-up questions when the income certification process reveals unusual circumstances suggesting additional sources of income.'

The IRS will consider the unit to be out of compliance if the initial tenant income certification is inaccurate or documentation of initial eligibility is insufficient; thereby putting the emphasis on management to put in place consistent and reliable policies and procedures to ensure program compliance.

Income verification of all adult household members age 18 years and older will be required by CHFA regardless of whether the individual is employed or not.

Calculating Increases in Salary (Raises)

If an employer does not provide information regarding a potential increase in salary (raise) how should potential salary increases be addressed?

Salary increases are not a guarantee, nor is the amount of an increase consisted between various types of employment. Management is responsible for obtaining a clarification from an employer if a raise amount is or is not expected. Verbal clarifications would be acceptable. If the employer refused to provide this information, then no increase should be counted.

Calculating Income using YTD figures

Does CHFA required management to calculate income base on a comparison of hourly wage and year to date (YTD) figures?

As a result of the new HERA legislation and of the serious consequences of any income calculation errors at move-in; CHFA is now requiring that management compute and review the YTD annual income calculation. As a result of HERA, re-certifications for 100% Tax Credit and Bond households are no longer required to be completed provided no household was over-income at the time of move-in. (Please note that CHFA still requires the completion of one full annual re-certification for all households of 100% affordable developments).

If it is later determined that a household was found to be over-income at the time of move-in, the project would no longer qualify for the re-certification exemption under HERA and the owner would be required to go back and complete all re-certifications for any year which an over-income tenant was allowed to move in. If the income was over 140% of the limit, the property would be in violation of the Next Available Unit Rule (NAUR) and would be subject to tax credit loss/recapture and any bonds applicable to the development could become taxable.

If the household is over-income based on the YTD calculation but not the wage calculation, management must obtain clarification as to why the household would potentially NOT be over-income using the YTD calculation. Verbal clarification would be acceptable.

Calculating Anticipated Child Support without formal documentation

How is anticipated child support calculated, following a separation, when there is no court order and/or divorce proceedings have yet to begin?

Unless you can obtain written documentation from the party providing the support, no support would be counted. According to Rev. Proc. 2004-82 (and CHFA's Child Support Affidavit form) the resident is required to inform the owner if there is a change in the receipt of a child support benefit. However, since interim re-certifications are not required as a result of a change in income for a household, this would not affect the eligibility of the household.

Unemployment Affidavit for Unemployed Household Members

At what point or age is it appropriate to no longer require management to obtain an unemployment resident affidavit? Should only 62 and older be excluded from completing an unemployment affidavit? Must the individual also reside in an elderly

property to be exempt from completing the form? Or would this exemption apply to any residents 62 and older living in an elder, assisted living or a multi-family property.

A certification questionnaire must be completed at move-in and at the time of the annual re-certification. This questionnaire must contain information regarding employment.

Unemployment verification would not be required for residents at a Senior/Elderly Development if the resident already receives some form of government assistance (i.e. Social Security, SSI, etc.), is presently employed earning taxable wages or if the resident indicated on the questionnaire that they were unemployed.

For Family developments, unemployment verification is required for all unemployed household members 18 years and older.

Including Children as Household Members in Shared Custody Situations

When should a child be considered a member of the household for purposes of determining occupancy?

Both Chapter 2 of the HUD Handbook 4350.3 and the Revised October 2009 IRS 8823 Guide state that when determining household size children in joint custody arrangements who are present in the household 50% or more of the time should be considered household members.

Completion of the CHFA Demographic Form

*When should the CHFA Demographic form be completed (at move-in or annually)?
Is there a required standardized form that must be used?*

With the enactment of the Housing and Economic Reform Act (HERA) of 2008 the collection of demographic information for Tax Credit and Bond Financed developments is now required. Management is required to request this form from all current residents; however, the disclosure of race and ethnicity by the resident is optional. Because the collection of Demographic Information is required under HERA, the tenants file must contain proof that the tenant was offered the opportunity to disclose the information.

All demographic information is to be obtained **after** a new household has been approved for residency. A person's race or ethnic background should not be construed as a condition for occupancy. As a person's race and ethnicity does not change, the information need only be obtained once.

CHFA provides a Demographic form that may be used for obtaining demographic information. The use of the CHFA specific form is not required provided management has employed an acceptable means for obtaining the information (i.e. included in certification application or questionnaire).

Management will in turn be required to report the demographic information obtained electronically to CHFA via WCMS. This information is automatically carried over within WCMS when annual re-certification data is entered into the system and

therefore need only be obtained by management at the time of move-in. If the head of household changes for a unit upon re-certification, demographic information will need to be obtained for the new head of household and this information will need to be revised within WCMS.

Documenting Changes in Gross Rent as a result of rent and/or utility change

How should changes in the gross rent charged to a household be documented if the change occurs between annual certifications?

If there is a change in the gross rent of a household due to increases or decreases in tenant paid rent resulting from the publishing of new utility allowance estimates and/or new annual rent and income limits, a new Tenant Income Certification (TIC) form is not required. It is acceptable for management to include as an addendum to the existing TIC information regarding the change in the gross rent. The original TIC form must be maintained in the file.

Compliance Lease Addendum (Formally Exhibit M)

When should the lease addendum be completed?

The use of the Lease Addendum is a recommended best practice. It provides management the authority to complete required annual re-certifications for affordable properties. The addendum is used in conjunction with the Lease and should be completed at the time of initial occupancy and whenever a new lease is signed.

For lease renewals, when a one page renewal is used extending the existing lease and addendums a new Compliance Addendum would not be required provided the lease extension provides an explanation of the extended terms and rental rates.

Use of CHFA forms of Verification

Is the use of the CHFA forms required?

The use of any or all CHFA forms is not required provided that the forms used by management are comprehensive and contain all required information. The CHFA forms are provided as a service for those owners and managers that have not developed their own standardized forms.

Non-Compliant Tenant Income Certification (TIC) forms

What constitutes a Non-Compliant Tenant Income Certification form?

Failure to properly complete the TIC form would not be an 8823 reportable issue unless it constituted a pattern of deficiency and management failed to make the necessary revisions within the correction period noted in the management review report.

The TIC form must be completed in its entirety and include the following:

Signature Date on the TIC form

Generally, all adult members of the household should sign the income certification before, or when, the household moves into the rental unit. In the case of annual re-certifications, all adult household members are required to sign and date the form on or before the required effective date of the certification and on or after all verification documentation has been obtained. All verifications are valid if obtained within 120-days of effective date of the current verification.

However, there will be circumstances when obtaining the signatures is impractical (i.e. military deployment, medical concerns, etc.). In these situations, the owner should document the reason for the delay or absence of signature in the tenant's file and secure the signature as soon as possible.

Signature Date on TIC – Auto-fills

All TIC forms should be signed and dated by the resident and management. Auto-fill dates are not acceptable. As a result of non-compliance issues noted with properties using auto fill dates, all parties will still be required to sign and date the TIC form manually even if the form has been electronically auto-filled.

Move-in Date as indicated on TIC form

Per IRS guidelines, the effective date of the tenant's income certification is the date the tenant actually moves into the unit. It is the responsibility of management to ensure that this date is clearly stated on the Tenant Income Certification (TIC) form.

Effective Date on the TIC form

The effective date must be indicated on the TIC form. For new move-ins, the effective date and the move-in date will be the same for the first certification. For acquisition /rehab developments, the initial certification may not be equal to the move-in date for the household.

The Listing of all Household Members on the TIC form

All household members (adults and children) must be listed on the TIC form. If a female occupant in the unit is pregnant, the unborn child would be considered a household member and should also be listed on the TIC form as 'unborn child.'

Gross Rent Calculation on the TIC form

The TIC must include the tenant paid rent and utility allowance estimate. If applicable, the TIC should also include the amount of the tenant subsidy and cost of any non-optional charges to the household (i.e. parking, laundry etc.) The actual gross rent for the household is equal to the tenant paid rent, utility estimate and any non-optional charges.

Applicable Leases for Tax Credit Developments

Does CHFA review and/or approve the Lease used for Tax Credit developments?

Leases for Tax Credit developments do not require CHFA approval; however, CHFA will review the Lease at the time of the inspection to determine the following:

- Lease term (minimum 6-month required for non-SRO developments)
- Permissible / Non-Permissible Fees
- Household Members
- Signatures (adult household members and management)

- Tenant Paid Rent
- Tenant Paid Utilities
- Compliance Lease Addendum (annual re-certification requirement language)

Section 8 Contract Leases and Tax Credit Developments

How should properties handle the use of Section 8 Leases for Tax Credit developments which indicate a Section 8 contract rent amount that exceeds the current Tax Credit Gross Rent allowable?

The Section 8 Lease may indicate a rent amount which exceeds the maximum allowable under the current Tax Credit Rent Limits; however, under the Section 8 guidelines the household pays only 30% of their gross income toward rent and would therefore be compliant. The household may pay more than the Gross Rent allowed under the Tax Credit Program requirements provided that at least \$1 of subsidy continues to be applied to the unit.

Should the tenant lose subsidy, management would no longer be allowed to charge the higher contract rent under the terms of the Section 8 Lease. The maximum gross rent charged may not exceed the Tax Credit limits.

For Tax Credit and Section 8 households, language should be included either within the lease or a lease addendum which states that *'should there be a loss in the Section 8 subsidy, the owner will not charge a gross rent amount greater than the maximum allowable under the Tax Credit Program guidelines.'*

Re-imbursement of Rents Charged over the maximum allowable

If non-compliance is determined as a result of charging rents over the maximum allowable, would the project be required to reimburse the tenants for the overage?

The IRS does not require the reimbursement of rents in cases where the owner charged an amount over the maximum allowable. The IRS has stated that the reimbursement would not cure the non-compliance retroactively.

In the interest of CHFA's mission, the owner will be responsible for the reimbursement of gross rents charged over the maximum allowable. This would include both current and past tenants if applicable. Owners will be required to make a 'reasonable effort' to contact past residents. A 'reasonable effort' would be defined as sending notification to the prior resident's last known address.

Use of EIV - Enterprise Income Verification for Tax Credit Developments

Can EIV information be used as verification of income for Tax Credit Certifications?

EIV cannot be used as verification of income for Tax Credit Certifications. Currently, no Memorandum of Understanding (MOU) exists between HUD and the IRS allowing

for the use of the EIV system for the Section 42 Program. In addition, EIV uses current circumstances and does not incorporate any anticipated changes or increases in income over the future 12-month period.