





Check TheoPRO.com for Additional Topics in the Symphony Series

- Compliance Basics for LIHC and Tax-exempt Bond Properties
- Compliance Basics for LIHC and HOME
- Compliance Basics for LIHC and HOME/National Housing Trust Fund (NHTF) Properties
- Compliance Basics for LIHC and Section 8/RAD Properties
- Compliance Basics for LIHC and Rural Development Properties
- LIHC Income Averaging for Property Manager

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LIHC/HOME/NHTF Key Question #1



What Agency governs this LIHC project?

- ✓ State HFA (Housing Finance Agency)
- ✓ The HFA is responsible to award tax credits and to monitor for compliance.
 - ✓ In accordance with <u>Section 42</u> of the Internal Revenue Code.

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Key Question #1



What Agency governs this HOME project?

- ✓ PJ (Participating Jurisdiction)
 - √ "Unit of state or local government that receives an annual block grant of Federal HOME funds from HUD."
 - A project can have more than 1 PJ.
- √ The PJ is responsible for day-to-day operations of the HOME program.

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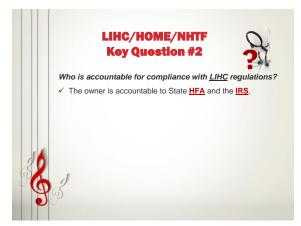
Key Question #1



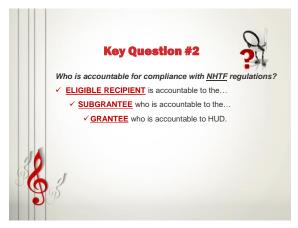
What Agency governs this NHTF project?

- ✓ HUD allocates funds to state agencies or a qualified Statedesignated entity who administers the NHTF program.
 - Known as the **GRANTEE...**
 - Who distributes funds through a <u>SUBGRANTEE...</u> who awards funds to...
 - An ELIGIBLE RECIPIENT

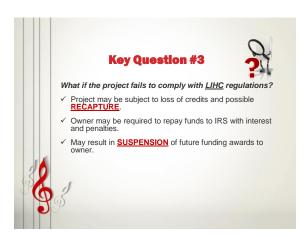




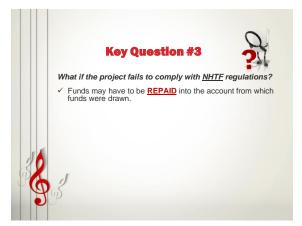




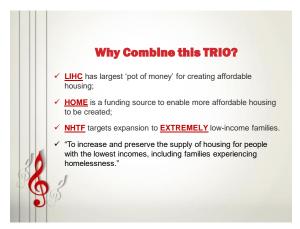


















Defining the 'Project' ✓ The HOME program defines a project as: • 'One or more sites or buildings, under • Common ownership • Common financing, • Assisted with HOME funds as a SINGLE undertaking. It may be an individual rental property, or part of a multiproperty undertaking.' ✓ The NHTF program uses the HOME definition of 'project.'



Key Question #4



How many units at MINIMUM must be included?

- ✓ <u>LIHC</u> requires a MINIMUM percentage of units in each project.
 - · Either:
 - $_{\odot}$ 20% at 50% of AMGI or...
 - o 40% at 60% of AMGI.
 - Average Income Test (AIT) is discussed in a separate web cast.
- $\checkmark\,$ Owners may add more LIHC units; up to $\underline{100\%}$ of the project.
- ✓ More LIHC units = more \$\$\$
- State may require units to be set-aside at less than maximum FEDERAL program limits.
 - · 50%, 40%, 30%, etc.

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Key Question #4



How many units are there at MINIMUM?

- ✓ <u>HOME</u> requires a <u>MINIMUM</u> number of Housing Assisted (HA) units.
 - · Based on:
 - o Amount of HOME Fund Dollars
 - o Total eligible costs invested in project
- ✓ The PJ may designate <u>ADDITIONAL</u> HOME units, up to 100% of the project.
- Check the regulatory agreement.

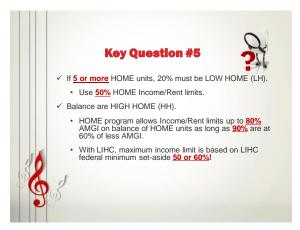
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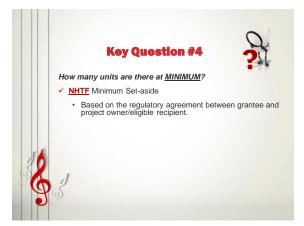
Key Question #5



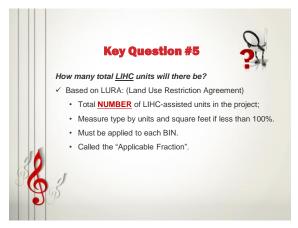
How many total HOME High/Low Home Units are there?

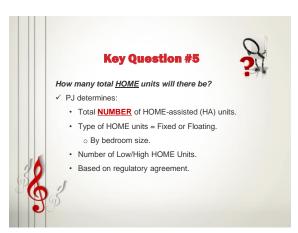
- ✓ If a project has less than $\underline{\text{5 HOME}}$ units, all are High HOME
 - Unless the PJ indicates otherwise in the Regulatory Agreement.

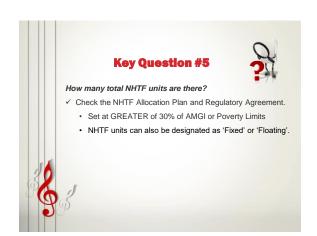








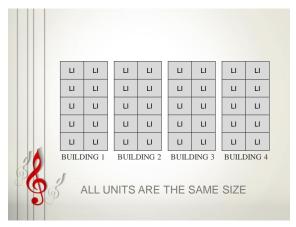


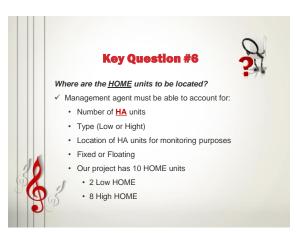


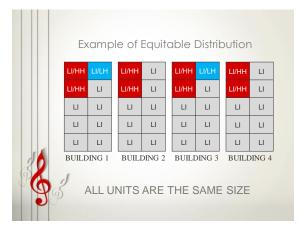




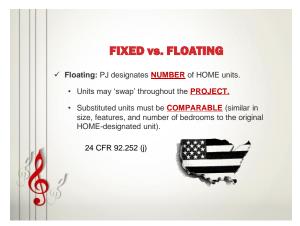




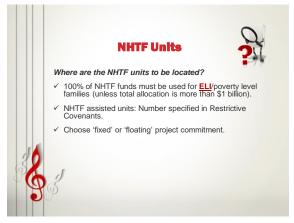














** Once the LIHC/HOME/NHTF units have been designated, owners will want these units to qualify for ALL THREE programs if possible. • Therefore, ALL program regulations must be analyzed and the most restrictive used.





Key Documents Different programs may use different forms. Consolidate if possible. Each program has its own Regulatory Agreement. Analyze each and apply across the PROJECT.

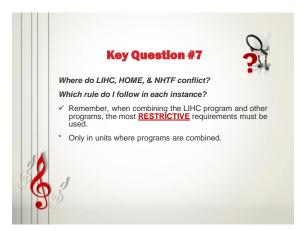
















Income Qualifying Practices LIHC: Requires 3rd party verification of ALL income and permits self-affidavit of assets with a total cash value of \$5,000 or less. HOME: Requires 3rd party verification of ALL income and assets. NHTF: Requires 3rd party verification of ALL income and assets. ALL PROGRAMS: Verifications cannot be older than 120 days prior to move-in (or date family first becomes eligible for subsidy)

from date of receipt.

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V LIHC: Date of Move-in Recertification: Anniversary date thereafter. HOME: Date of Move-in Check with PJ for recertification effective date. Many use first of the move-in month: June 15 MI = June 1 Recertification. NHTF: Date of Move-in Annually thereafter. Check with subgrantee.

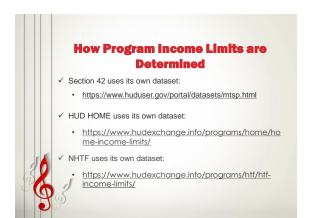


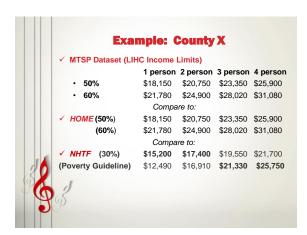
Setting income Limits for LIHC/HOME/NHTF Projects For LIHC/HOME, Income Limits may differ. Generally, the income limits for both programs will be the same. Check each website. Do NOT assume limits are the same. Remember Low HOME units must be set at 50% of AMGI. The HOME Program DOES NOT accept LIHC HERA income limits on HOME units.

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Setting Income Limits for NHTF Projects Use HUD-published ELI (Extremely Low Income) limits 30% of AMGI or income limits below the federal poverty line, whichever is GREATER. Do NOT use with existing LIHC units set aside at 30% unless funds are being used to PRESERVE. The goal is to EXPAND the number of ELI units.









What about Student Financial Assistance? LIHC - Section 42 does NOT require that any form of student financial assistance be included as income. Check with your State Housing Finance Agency. HOME - use Section 8 rules. In excess of TUITION, count as income less student is over age 23 with a dependent child or living with parents who are receiving Section 8 subsidy. NHTF - same as LIHC. When combining all three programs use HOME rules.

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Key Question #7 Zero Income Documentation: ALL THREE PROGRAMS Must thoroughly document how BASIC living expenses are provided. Look for recurring gifts and contributions. If document does not support that basic living expenses are being provided, family is not considered eligible. Minimum income limits must be REASONABLE so as not to unilaterally disqualify Section 8 and other extremely low-income families. Zero income form and Non-employment forms must be complete if a household member claims to be unemployed with no income.



Income Eligibility - LIHC

- ✓ Based on gross income.
- Uses <u>Section 8</u> income eligibility process (4350.3, Revision 1, Change 4, Chapter 5) with permission for use of self-affidavit if total family assets are less than \$5,000; does <u>NOT</u> use rounding down at 49 cents.
- ✓ Also permits use of PHA letter in lieu of full third-party verification for Section 8/PHA voucher tenant eligibility.
 - Check State HFA/Investor requirements MOVE IN.
- Enterprise Income Verification documents are **NOT** permitted to be used for Section 42 purposes.

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Income Eligibility - HOME

- ✓ Based on <u>GROSS</u> income.
- ✓ Section 8 or IRS definition of adjusted income. Use Section 8 when combined with LIHC.
- ✓ Section rules in HUD 4350.3; full verification of all income and assets required.
- ✓ Requires 2 months of source documentation even with 3rd party verification.





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Rent Limits - LIHC

- ✓ Since 1990, rents are based on bedroom size, imputed income limits of 30% at 1.5 persons per bedroom, using appropriate set-aside.
- ✓ If rent is over-charged for any month, the unit is considered out of compliance for balance of the owner's tax year.
- ✓ Note: Average Income Test (AIT) allows income/rent, up to 80% subject to reciprocal decrease.
 - Check TheoPRO's website after October 2019 for more detail.

Rent Limits - HOME

- √ The PJ provides project owners with updated HOME maximum rent LIMITS.
- ✓ The PJ must pre-approve proposed HOME rent INCREASE.
- Any increases in rent are subject to <u>CURRENT</u> lease provisions and, if the lease provides for increases in rent during the lease term, owner must provide at least <u>30</u> days written notice prior to increasing rents.
- ✓ The HOME Program <u>DOES NOT</u> accept LIHC HERA rent limits on HOME units.

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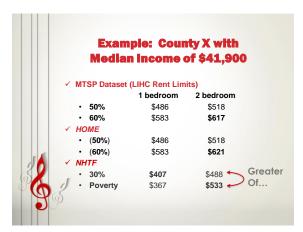
Rent Limits - NHTF

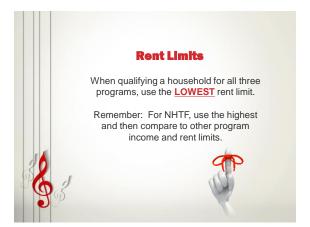
- ✓ ELI (30% of AMGI) or below the poverty line, whichever is GREATER.
- ✓ NHTF rent <u>PLUS</u> utilities shall not exceed <u>30%</u> of the federal poverty line, or 30% of the income of a family whose annual income equals 30% of AMGI determined by HUD.
- ✓ Grantee to establish initial rents and reviews owner-proposed rents <u>ANNUALLY</u>.

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How Program Rent Limits are Determined

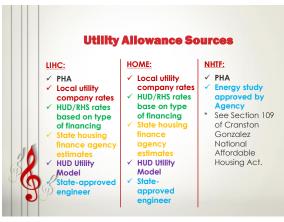
- ✓ LIHC:
 - √ Check state agency for rent limits; also Novogradac's Rent and Income Calculator is very popular. Learn to do this yourself with TheoPRO's On-line training programs.
- ✓ HOME:
 - https://www.hudexchange.info/programs/home/home-rent-limits/
- NHTF:
 - https://www.hudexchange.info/programs/htf/htfrent-limits/













Leases & Lease Terms LIHC: Minimum of SIX MONTHS for the initial lease term. HOME: Requires base terms of at least ONE year unless there is mutual agreement between the tenant and the owner for a shorter term. See list of prohibited lease clauses at 24 CFR 92.253 Note: Mandatory supportive services cannot be required. (Clause #9) MHTF: Requires SIX MONTHS or more See list of prohibited lease clauses at 24 CFR 92.253 Note: Mandatory supportive services cannot be required. (Clause #9)

LIHC/HOME/NHTF STUDENTS

LIHC & Students ✓ If all the occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless the household is comprised ENTIRELY of: 1. 'Single parents and their CHILDREN, and such parents are not dependents and such children are not dependents (as defined in Section 152) of another individual other than the other parent.' • The 8823 Guide instructs that children in primary and high school are considered full-time students.

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LIHC & Students

- If all the occupants of a unit are full-time students, that unit will
 not be considered a qualifying tax credit unit unless the
 household is comprised <u>ENTIRELY</u> of:
 - 2. Students who are married and file a **JOINT** income tax return with spouse.
 - The 8823 Guide instructs that those who are 'entitled to a file' a joint return also fulfill this requirement.
 - Some states may require a wedding certificate as proof of 'entitled.'

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LIHC & Students

- ✓ If all the occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless <u>ANY</u> <u>MEMBER</u> of the household is:
 - 'Receiving assistance under <u>TITLE IV</u> of the Social Security Act which is AFDC/TANF.'
 - 'Enrolled in a job training program receiving assistance under the Job Training Partnership Act or other <u>SIMILAR</u> programs funded by a state or local government agency.'
 - Now part of the <u>Workforce Innovation and Opportunity Act</u>.

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LIHC & Students

- ✓ If all the occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless <u>ANY</u> <u>MEMBER</u> of the household is:
 - 5. 'Previously receiving **FOSTER** care assistance.'
 - Verify former foster care assistance through the foster care agency.
 - Some states limit the number of years prior of the age of the applicant.

Remember: Student status must be verified annually, even if no other form of verification is required.

HOME Funds & Students

- ✓ The HOME program has amended its rules for students with
 publication of the FINAL RULE.
 - For projects receiving commitments after August 23, 2013 the following Section 8 student rules apply:
 - o Eligibility determined at move-in, annual recertification.
 - o Subsidy available if student is either:
 - Full or **part time** at an institution of **higher education** and is:
 - Age 24 by end of calendar year
 - Married
 - Has a dependent child

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HOME Funds & Students

- Is a veteran of the US military.
- Is living with parents eligible to receive Section 8.
- Is individually eligible to receive Section 8.
- Or whose parents are eligible to receive Section 8.
- Does <u>NOT</u> require household to vacate unit if becomes an ineligible LIHC student household.
- o Recognizes LIHC restrictions at MOVE-IN only.

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NHTF & Students

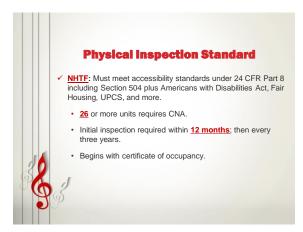
- ✓ Same as LIHC <u>PLUS</u> veterans, honorably discharged.
- ✓ Remember for <u>ALL</u> programs...
 - ✓ Verify student status as required by <u>EACH</u> program separately.
 - √ Student status must be verified ANNUALLY.





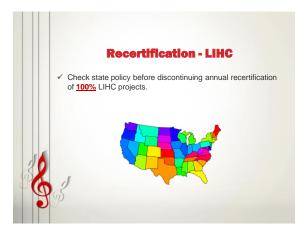


Physical Inspection Standard LIHC: Uniform Physical Condition Standards (UPCS) or local building code (see Clarifications updated May 23, 2016). REAC standards included per Rev. Proc. 2016-15. All units reporting bedbugs must be inspected. Inspections may be blended with other programs. Check with State Housing Finance Agency. HOME: Uniform Physical Condition Standard rules apply.





Recertification – LIHC - 100% Since 7/30/2008, recertification of income NOT required on 100% tax credit projects. STUDENT eligibility must continue to be recertified annually.



Recertification - 100% LIHC WITH HOME/NHTF Recertification of income & assets-HOME/NHTF. If the LIHC project is exempt, then self-certifications are acceptable except for every SIXTH year of the affordability (compliance) period for HOME/NHTF. Subject to PJ/ subgrantee approval.

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Recertification - >100% LIHC WITH HOME/NHTF

- ✓ Recertification of income & assets.
 - Properties that are less than 100% LIHC must continue annual recertifications for <u>ALL</u> programs.
- ✓ At least annually within 120 days prior to end of current effective year (anniversary date on TIC).
 - Example: Move-in September 7th of any year, recertification due on September 7th one year later.
 - See 8823 Guide, Chapter 5, p. 5 'the effective date for recertification continues to be on the anniversary of the actual date of move in.'
 - · Check Regulatory Agreements.



LIHC Unit Transfer Rules – Same Building ✓ What if the transfer is the same building? • If a Tax Credit household wants to transfer to a Tax Credit unit in the same building: • Such transfers are ACCEPTABLE as long as they are Tax Credit to Tax Credit. • If the transfer is between a Tax Credit unit and a SMALLER Market Rate unit in the building, watch for Applicable Fraction issues!

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LIHC Unit Transfer Rules – Different Building

- ✓ What if the transfer is into a different building in a 100% Project?
 - If a Tax Credit household wants to transfer to a Tax Credit unit in a different <u>BUILDING</u>:
 - 100% projects could allow the transfer subject to the 'project' definition (8609, Part II, line 8b).
 - Check with state housing finance agency.



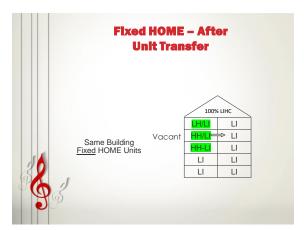


- √ What if the transfer is into a different building <100% LIHC
 </p>
 - If a Tax Credit household wants to transfer to a Tax Credit unit in a different building:
 - o Review the household's most recent certification.
 - The transfer must be <u>DENIED</u> if the household's income exceeds the 140% income threshold.
 - If a <u>Tax Credit</u> household wants to transfer to a <u>Market</u> Rate unit in a different building:
 - o Check impact on the Applicable Fraction



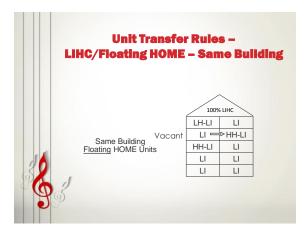






Unit Transfer Rules – LIHC/Fixed HOME – Same Building ✓ In a 100% LIHC project with fixed HOME units, if a household living in a HOME designated unit wants to transfer to a different non-HOME unit in the same building, • The LIHC transfer rule WILL permit the transfer. • The HOME rule will NOT permit the HOME DESIGNATION to transfer. • The family may move. • The HOME designation does not.





Unit Transfer Rules – LIHC/Floating HOME – Same Building In a 100% LIHC project with FLOATING HOME units, if a HOME household wants to transfer to a different COMPARABLE unit in the same building, The unit designation may move. There is NO impact on the LIHC unit count, or the HOME unit requirement, if the units are COMPARABLE.



Unit Transfer Rules – Floating HOME In a 100% tax credit project with FLOATING HOME units, if a HOME household wants to move to a different NON-COMPARABLE unit, Check with the PJ before proceeding even if the family would qualify as the units are not comparable. Request may not be allowed.

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Unit Transfer Rules − NHTF − Same Building ✓ NHTF − Household may transfer with designation; however, next unit must be COMPARABLE, and household must qualify into unit under NHTF move-in restrictions.



Over-income Rules LIHC - 100%

✓ LIHC:

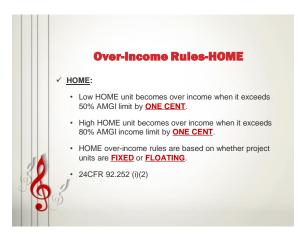
- 100% LIHC projects are <u>EXEMPT</u> from annual recertification.
 - Therefore, there is no tracking of units for an 'over-income' determination.
- 100% LIHC projects must <u>ALWAYS</u> rent the next available unit of smaller or comparable size to a qualified household.
- All units must remain rent-restricted to maximum LIHC rent levels.

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Over-income Rules LIHC <100%

✓ <u>LIHC</u>:

- 'Over-income' occurs when the household's income rises above the applicable <u>CURENT</u> LIHC federal set-aside limit by over <u>140%</u>.
- Requires next available unit(s) in the <u>BUILDING</u> (BIN) to be rented to qualified families until unit and square footage of 'over-income' unit has been <u>REPLACED</u>.
- LIHC 'over income' unit can then become a MARKET RATE unit
 - Rent can be increased only after unit is replaced.



Over-Income Rules NHTF: Called 'temporary non-compliance.' Owner is required to fill any vacant (comparable), next available unit in the project with a QUALIFIED NHTF household as quickly as possible. Over-income at ONE CENT over 140% of 30% AMGI. Rent plus utility allowance CANNOT increase above 30% of AMGI. NOTE: For ALL three programs, the household is NOT required to vacate even if it goes over-income.













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