Housing Consultants of America

LIHTC vs. HUD Section 8 Compliance: What Property Managers Need to Know

Written by Jenna Ghisolfo, President & Founder | Housing Consultants of America

Affordable housing professionals often use the terms LIHTC and Section 8 in the same conversation, but the programs are not interchangeable. The Low-Income Housing Tax Credit (LIHTC) program and HUD-assisted Section 8 housing have different regulatory structures, eligibility rules, rent methodologies, recertification requirements, verification procedures, reporting systems, and monitoring processes.

The distinction becomes even more important when a property is **layered** - for example, a LIHTC property in which some or all units also receive project-based Section 8 assistance. In that environment, property managers must understand which requirements come from each program and how to document compliance when rules overlap.

> **The key principle: Layered funding generally means layered compliance. Receiving Section 8 assistance does not eliminate LIHTC obligations, and being a tax-credit property does not eliminate applicable HUD requirements. Managers must identify and satisfy the requirements that apply to each program, unit, household, and transaction.**

1. The Programs Have Different Purposes and Oversight

LIHTC is a federal tax-credit program administered through state housing credit agencies under Section 42 of the Internal Revenue Code. State agencies allocate credits and monitor owner compliance with qualified allocation plans, regulatory agreements, elections, and federal requirements. HUD Section 8 programs provide rental assistance and are governed through HUD statutes, regulations, handbooks, notices, contracts, and other program guidance. Depending on the Section 8 platform, HUD, a contract administrator, housing authority, or other administering entity may be involved.

2. Income Eligibility Is Not Always Evaluated the Same Way

Both programs rely heavily on household income, but managers should not assume that every income rule is identical. The applicable definition of income, exclusions, verification procedures, effective dates, and implementation requirements must be evaluated for each program. HOTMA has made this distinction especially important because implementation timing and program-specific guidance can differ.

3. Rent Compliance Works Differently

LIHTC generally establishes maximum gross rents based on the applicable income and rent limits, unit size, set-aside, and utility allowance. HUD-assisted Section 8 properties use HUD program rules to determine tenant rent and assistance. At a layered property, management must make sure the rent structure satisfies both the LIHTC maximum gross-rent requirements and the applicable HUD requirements.

4. Utility Allowances Can Create Layered Compliance Issues

Utility allowances directly affect LIHTC gross-rent compliance when tenants pay utilities. HUD programs also have utility-allowance requirements and procedures. A manager cannot simply assume that one allowance automatically satisfies every funding source. The property must determine which allowance is applicable to the unit under each program and document the source, effective date, and implementation.

5. Annual Recertification Requirements Can Differ

HUD-assisted households generally have ongoing annual recertification requirements, along with applicable interim-processing rules. LIHTC annual recertification requirements can differ depending on the property's circumstances and applicable federal and state rules. At a layered LIHTC/Section 8 property, the HUD annual recertification process may still be required even where a particular LIHTC rule provides different treatment. Staff should maintain a calendar based on every applicable program obligation.

6. Interim Certifications Are a Major Difference

HUD programs have detailed requirements governing interim reexaminations and changes in family income or composition. LIHTC does not operate through the same tenant-rent adjustment model. At a layered property, a change reported by a resident may therefore trigger HUD action while also requiring the manager to evaluate whether the change affects LIHTC documentation, household composition, student status, unit status, or other compliance considerations.

7. Student Rules Are Especially Important Under LIHTC

The LIHTC full-time student rule is a major eligibility requirement that property managers cannot overlook simply because a household also receives Section 8 assistance. A household can satisfy HUD eligibility requirements and still present an LIHTC student-rule issue. Managers at layered properties should separately document LIHTC student status and any applicable exception.

8. Asset Rules and HOTMA Require Careful Program Analysis

Assets are another area in which staff should avoid assuming that one program's treatment controls all others. HOTMA changes definitions and procedures affecting HUD programs, while LIHTC compliance must also reflect applicable Section 42 rules and state agency guidance. Layered properties should update written procedures and file-review tools so staff can see which asset rules apply to each program.

9. Forms and Certifications Are Not Interchangeable

HUD-assisted properties use HUD-required certifications, notices, verification documents, EIV-related records, leases or addenda, and other forms. LIHTC files commonly include state agency forms and the Tenant Income Certification along with program-specific documentation. One program's form does not necessarily replace another program's required documentation. A layered file should contain the records needed to demonstrate compliance with each applicable funding source.

10. EIV Is a HUD Compliance Requirement

Enterprise Income Verification (EIV) is a central compliance component for applicable HUD programs. LIHTC itself does not make EIV a universal tax-credit requirement. At a layered LIHTC/Section 8 property, however, the HUD-assisted household may be subject to EIV requirements while the same file must simultaneously contain documentation supporting LIHTC compliance. Managers must follow applicable security, access, reporting, discrepancy, and documentation requirements.

11. Monitoring and Audits Come From Different Directions

LIHTC properties are monitored by the state housing credit agency or its designee. HUD-assisted properties may undergo Management and Occupancy Reviews and other HUD or contract-administrator oversight. A layered property can therefore face multiple reviews focused on different requirements. Passing one review does not automatically mean the property is compliant with every other program.

12. Unit Transfers, Vacancies, and Household Changes Can Have Different Consequences

Unit transfers, vacancies, household additions or removals, and changes in occupancy can affect the two programs differently. LIHTC managers must consider unit qualification, applicable fraction, next available unit considerations, student status, and other tax-credit rules. HUD managers may need to consider subsidy, certification, waiting-list, occupancy, and contract requirements. Layered sites need procedures that trigger both analyses rather than only one.

What Happens When the Rules Appear to Conflict?

Property managers sometimes hear that a layered property should simply 'follow the stricter rule.' That phrase can be a useful warning against ignoring a requirement, but it is not a substitute for program analysis. The correct approach is to identify the requirement imposed by each funding source, determine whether both can be satisfied simultaneously, review the property's regulatory documents and agency guidance, and document the conclusion. A rule that is more restrictive in one area may not answer an entirely different requirement imposed by the other program.

When requirements genuinely appear inconsistent, management should elevate the issue before processing the transaction. Compliance leadership may need to review HUD guidance, state housing finance agency requirements, regulatory agreements, HAP contracts, tax-credit elections, or other controlling documents and seek agency or qualified professional guidance when necessary.

The Layered Tenant File Should Demonstrate Both Programs

A strong layered file should allow an independent reviewer to understand the household's eligibility and ongoing compliance under each applicable program. That may require HUD documentation and LIHTC documentation in the same file, along with clear notes explaining any program-specific differences. Managers should avoid assuming that a calculation, verification, form, or certification prepared for one program automatically satisfies the other.

Common Mistakes at LIHTC/Section 8 Properties

Frequent problems include applying HUD income procedures without considering LIHTC requirements; overlooking the LIHTC student rule; using the wrong utility allowance; failing to test LIHTC gross rent because HUD assistance is being paid; assuming a HUD recertification automatically satisfies all state tax-credit documentation; missing state-specific forms; failing to reconcile household composition across certifications; and training staff extensively on one program while giving them little instruction on the other.

How Property Managers Can Build a Better Layered Compliance Process

Start by creating a property-specific compliance matrix listing every funding source, monitoring agency, required certification, applicable income limit, rent restriction, utility-allowance methodology, recertification requirement, student rule, verification process, software workflow, and required form. Use layered checklists for move-ins and recertifications, train staff on the differences between programs, and require quality-control review of complex files. When a regulation changes, update the matrix instead of relying on staff memory.

Why Third-Party Layered File Reviews Can Reduce Risk

Layered properties are especially good candidates for independent file audits because an error can be invisible to a reviewer who is focused on only one program. A third-party compliance specialist can evaluate the file from both perspectives and identify situations in which the HUD side appears correct but the LIHTC side is deficient - or vice versa. Reviewing files before a state monitoring visit, MOR, acquisition, management transition, or major policy change gives ownership an opportunity to identify patterns and correct procedures proactively.

How Housing Consultants of America Can Help

Housing Consultants of America works with affordable housing owners and management companies that operate HUD, LIHTC, HOME, RAD, PBV, and other layered affordable housing programs. HCA can assist with third-party file reviews, move-in and recertification processing, EIV and HUD compliance support, LIHTC compliance, HOTMA implementation, MOR preparation, corrective actions, temporary compliance staffing, training, and ongoing third-party compliance services.

For layered LIHTC/Section 8 properties, the objective is not to force two programs into one set of rules. It is to create a compliance process in which staff understand the requirements of each program, know where they overlap, recognize where they differ, and document the tenant file so both sides of the compliance story are clear.

Compliance disclaimer: This article provides general educational information and is not legal or tax advice. LIHTC and HUD requirements vary based on program type, property documents, placed-in-service date, elections, state agency guidance, HAP contracts, HUD guidance, HOTMA implementation status, and layered funding. Owners and managers should confirm the requirements applicable to each property and certification period.