

# LIHC Newsletter

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*The LIHC Newsletter provides a forum for networking and sharing information about IRC 42, the Low-Income Housing Credit, and communicating technical knowledge and skills, guidance, and assistance for developing LIHC issues. We are committed to the development of technical expertise among field personnel. Articles and ideas for future articles are welcome!! The content of this newsletter should not be used or cited as authority for setting or sustaining a technical position.*

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## HUD Handbook 4350.3 Chapter 5: Income-Qualified Households

### Background

Under IRC §42(g)(1), taxpayers elect to provide low-income housing for individuals whose incomes is either 50% or less of Area Median Gross Income (AMGI), or 60% or less of AMGI. The election is made on Form 8609, Low-Income Housing Credit Allocation and Certification, line 10c.

Under §142(d)(2)(B), an individual's income is determined in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937. IRC §42(g)(4) applies §142(d)(2)(B) to IRC §42 projects.

Notice 88-80 explains that individuals' income for purposes of IRC §42(g)(1) are determined using HUD's definitions of income for section 8 purposes and will not be made by reference to items of income used in determining gross income for purposes of computing federal income tax liabilities.

HUD maintains handbooks for administering section 8. Handbook 4350.3, Chapter 5, Section 1 is the source document and authority for how income is treated when determining whether a household is income-qualified for IRC §42 purposes. The [Handbook](#) is available on the HUD website.

The Handbook is one of the authorities cited in Chapter 4 of the Guide for Completing Form 8823 (Form 8823 Guide), which also includes an in-depth discussion of how income from different sources is treated.

### HUD Updated Handbook 4250.3

On August 7, 2013, HUD issued changes to the Handbook, which is designated CHG-4. Revisions within the Handbook are identified by asterisks (\*) at the beginning and ending of the change. Pages with revisions can be identified by the date 8/13 in the bottom right-hand corner. The effective date is also August 7, 2013.

### Questions & Answers

**Q1:** Should owners continue to rely on the IRS' Guide for Completing Form 8823?

**A1:** No. Owners should rely on HUD's handbook as the legal authority when determining a household's income. The Form 8823 Guide is not an authority itself; it is a compilation of authoritative references with explanations for applying the rules.

**Q2:** Must owners obtain documentation of income as described in Chapter 5, Section 3, of the Handbook?

**A2:** While the documentation requirements described in handbook are sufficient for IRC §42 purposes, Handbook 4250.3, Chapter 3, Section 3, Verification, is not the authority for documentation requirements.

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### RC §42 Requirements

In general, under IRC §6001, all taxpayers are held to a documentation standard of “sufficiency.”

Treas. Reg. §1.6001-1 explains:

1. Taxpayer must keep permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.
2. The required books or records must be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Specific to determining whether a household is income qualified, Treas. Reg. §1.42-5(b) requires that taxpayer maintain:

1. The income certification for each low-income tenant completed at the time the household moved into the unit and, if required, annual income recertifications.
2. Documentation to support each low-income tenant’s income certification. For example, a copy of the tenant’s federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant’s income does not exceed the applicable income limit under IRC §42(g).

### Record Retention

Taxpayers must maintain records

such as the income certifications and documentation for a specific tax year for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year.

The records for the first year of the credit period must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

### Third Party Verification

The HUD Handbook includes a helpful discussion of third party verification on pages 5-54 through 5-56.

1. A document generated by a third party source provided by the tenant is still considered “third party” verification because the document originated from a third-party source. For example, a tenant may provide pay stubs or a W-2 prepared by the tenant’s employer. When evaluating the documents, consider:

Is it current? The tenant’s circumstances may have changed since the document was created.

Is it complete? For example, pay stubs can be used to verify income. Actual paychecks (or copies) are not acceptable because deductions are not identified on the paycheck.

Is it the original document? If the document is a copy, it may have been altered by using high-quality copying equipment. Documents with original signatures are the most reliable.

2. Written documentation sent directly by the third-party may be received by mail, fax, or e-mail. If received by fax, the fax should include the company name and fax number of the third party. If received by e-mail, the e-mail address should be for the third party and include the name of the party sending the email.

3. Information verified on the Internet is considered third party verification if the information is from a reliable source. A printout from the Internet is adequate verification.

4. Third party verification may be made over the telephone. To ensure that the person on the telephone is the right party, it is best to call the verification source rather than accepting verification from a third party initiating the telephone call.

### State Agency Requirements

The state housing agencies can require taxpayers to obtain specific documentation of income based on local practices and circumstances. Taxpayers are advised to consult with the state housing agency regarding documentation requirements for income certifications.

**Q3:** Paragraph 5-6, Q-3, has been added to the Handbook (page 5-20) and specifies that for section 8 tenants only, any deferred disability benefits from the Department of Veterans Affairs (VA) that are received in a lump sum or in prospective monthly amounts are excluded from annual income. Should deferred disability benefits from the VA be excluded for all households for IRC §42 purposes, or just households receiving section 8 assistance?

**A3:** The exception applies only to tenants receiving section 8 assistance. If the exception does not apply, the lump sum deferred payments are counted as an asset. If the lump sum payment was caused by delays in processing periodic payments, then the lump sum payment is included in income.

**NOTE:** The treatment of educational scholarships or grants is also dependent on whether the student is receiving section 8 assistance. See page 5-11 of the HUD Handbook

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and page 4-18 of the Guide for Completing Form 8823.

## Administrative Procedures

### Project/Tracking Codes:

All LIHC cases should include Project Code 0670 and Tracking Code 9812. If the audit is expanded to include additional years or related taxpayers, the additional returns should also carry the LIHC project code and tracking code designations.

### Revenue Protection:

Form 5344, Examination Closing Record, requires entries if you are reducing the amount of credit to be carried forward to a tax year you are not going to audit. Enter the amount of credit carryforward to be disallowed for Item 46. Code "L" should be entered for Item 47. See IRC 4.4.12.4.58 for an example.

### Surveying LIHC Tax Returns:

If you believe it is appropriate to survey an LIHC tax return, please fax Form 1900 to Grace Robertson at (202) 283-2485 for signature approval.

### TEFRA Requirements:

As IRC §42 project owners are almost always partnerships and are likely to be subject to TEFRA procedural requirements, please remember to document actions taken and decisions made by completing:

- Form 13813, TEFRA Procedures
- Form 13814, TEFRA Linkage Package Checklist
- Form 13828, Tax Matters Partner (TMP) Qualifications Checklist
- Form 13827, Tax Matter Partner (TMP) Designation Checklist

## Guide for Completing Form 8823

The "Guide" is available on the IRS website. There's a [searchable html version](#) and a [downloadable pdf file](#). On the IRS website, [www.irs.gov](http://www.irs.gov), enter "ATG" in the search engine. Select the first link on the list of results for "Audit Technique Guides." Then select "L" from the alphabet list and the Guide will be listed as "Low-Income Housing Credit-Guide for Completing Form 8823." Clicking on the title will lead you to the html version and the link to the right of the title will link you to the pdf file.

**Q4:** How should income from IRAs be treated once someone begins receiving periodic payments, even if it is just one payment per year?

**A4:** Before the latest revision, Chapter 5, paragraph 5-6 L-2, read: "Withdrawals from retirement accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments are not counted in annual income." (See 5-7 G-4.) The references paragraph 6-7, G-4, read:

- (b) Balances held in retirement accounts are counted as assets even though withdrawal would result in a penalty.
- (d) Include in annual income any retirement benefits received through periodic payments.

## Subscribing to the LIHC Newsletter

The LIHC Newsletter is distributed free of charge through e-mail. If you would like to subscribe, just contact Grace at [Grace.F.Robertson@irs.gov](mailto:Grace.F.Robertson@irs.gov). Also designate whether you would like to receive the Adobe pdf version or the Word document.

## ♪ Grace Notes ♪

It's that time of year again and surely there will be children who ask us, "Is there really a Santa Claus?" They'll ask with pleading eyes and your heart will break. You can tell from their voices that they really want you to tell them that the magic is real, that Santa lives at the North Pole and travels the earth in a sleigh full of toys driven by flying reindeer...but they're just a little too grown up. So, what do we tell them? Maybe we can fudge a little and for one more year, for ourselves really, the magic will survive. But sooner or later, inevitably, the magic will evaporate --- poof!

We'll tell them that there really *was* a [Santa Claus](#), an extraordinarily compassionate man who, to help relieve the suffering of poor children, anonymously delivered shoes and toys to poor children. The only evidence left behind were the ruts from the sled in the snow

HUD has clarified how these payments should be treated. As before, paragraph 5-6, L-2, reads: Withdrawals from retirement accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments are not counted in annual income (see 5-7 G-4). But paragraph 5-6, L-2(d) now clarifies that IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty, unless benefits are being received through period payments."

Therefore, IRS, Keogh, and similar retirement savings accounts are not considered assets if the person is receiving periodic payments.

and hoof prints of the reindeer pulling it. We'll tell them that it is just as much fun planning and executing "Santa Claus" for the "little" kids as finding gifts under the tree on Christmas morning. And, without lecturing too much, we'll try to explain that it feels wonderful to remember the less fortunate; to give generously and anonymously without expecting anything in return, like Nicholas so long ago. It's even "fun" to be anonymous.

But why should they believe us? I always think of a wonderful M\*A\*S\*H\* Christmas episode titled "Death Takes a Holiday," Its Episode #199.

## Happy Holidays!

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