

IHCDA - Senior Resource Guide

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Section 42 FAQ for Residents and Applicants

What is Section 42 Housing?

Section 42 is an affordable rental housing program. You may also hear the program referred to as either the “low-income housing tax credit program” or the “rental housing tax credit program.” This is because Section 42 is an affordable housing program established by the federal tax code that allows developers of affordable housing to receive a federal tax credit. In exchange, the developer agrees to keep the housing income restricted, rent restricted, and in safe, decent, and sanitary condition.

What is IHCD’s Role?

The Indiana Housing & Community Development Authority (IHCD) awards Section 42 tax credits for the State of Indiana. In addition, IHCD conducts file audits, physical property inspections, and annual reviews of all active Section 42 properties in the state to ensure program compliance.

How Do I Apply to Live at a Section 42 Property?

Applications must be made at the Section 42 property’s leasing office. IHCD does not receive or review applications for residency. IHCD can, however, help provide a listing of Section 42 properties statewide or in particular counties or cities in Indiana.

What Determines My Eligibility?

Eligibility to live at a Section 42 property is based on two factors: (1) income eligibility and (2) student status eligibility. The income and assets of all household members must be verified by the property management in accordance with program requirements. Once the total household income has been calculated, this is compared to the income limits in affect at the property. All Section 42 units are income restricted for households at or below 30%, 40%, 50%, or 60% of area median income. If the applying household is determined to be income eligible, then it is eligible to move into the property.

The household must also meet the program’s student status eligibility requirements. Generally, any household in which all members are full-time students is not eligible for a Section 42 unit. However, there are some exceptions to this rule. During the application intake, property management will require all applicants to fill out forms to determine student eligibility based on the regulation and possible exceptions.

What Will I Pay in Rent?

This depends on the restrictions on the property at which you are applying and the county in which you are applying to live. Each county has its own set of rent limits and the property can have units designated at either 30%, 40%, 50%, and/or 60% rent limits. Rents are restricted and strictly monitored for program compliance.

IHCDA Tenants' Guide to Section 42

INTRODUCTION

This document is a reference guide for tenants living in rental housing under the Section 42 low-income housing tax credit program. It is designed to provide a basic program overview and to answer frequently asked questions. This manual should be a useful resource for tenants to better understand the program.

Please note, however, that this document is to be used only as a basic introduction. It should not be considered a complete guide to the Section 42 low-income housing tax credit program. In addition, different properties under the program may be subject to different expectations depending on the specific terms and agreements between the property owner and the Indiana Housing and Community Development Authority (IHCDA).

SCOPE

This document covers program eligibility, rent restrictions, tenant protections, and tenant responsibilities under the Section 42 low-income housing tax credit program. This manual is meant to be a resource for tenants or potential tenants of Section 42 housing. This manual does not discuss the full compliance requirements of the program.

Property owners or managers looking for a full description of program compliance requirements should refer to IHCDA's manual entitled *Rental Housing Tax Rental Credit Compliance Manual*. Developers looking for information on how to apply for credits should refer to IHCDA's current Qualified Allocation Plan (QAP).

****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 impliedly, directly or indirectly, suggest, represent, or warrant that you as an 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.

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

Part 1: Program Introduction

The Section 42 low-income housing tax credit program, also called the rental housing tax credit program, is a federal program governed by the Internal Revenue Service (IRS). The purpose of the program is to provide a tax credit to property owners/developers to create affordable rental housing. In exchange for the tax credit, the property owner must agree to restrict occupancy to program eligible households (see Part 2 below), to follow program rent restrictions (see Part 3 below), and to keep the housing safe and sanitary.

Every state has a designated “housing finance authority” that is responsible for overseeing the program in that state. For Indiana, the designated agency is the Indiana Housing and Community Development Authority (IHCDA). IHCDA conducts compliance audits, inspections, and annual reviews on all Section 42 properties in Indiana to ensure that the program rules are being followed.

IHCDA does not own or manage any properties and does not take any applications.

Interested applicants must apply onsite at the property. IHCDA maintains a list of all active Section 42 properties online at <http://www.in.gov/myihcda/2344.htm>. In addition, IHCDA strongly recommends that any households looking for housing options use the online housing search tool Indiana Housing Now at www.indianahousingnow.org.

Part 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 the definition of household.

2.1 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% 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.

2.2 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.

Section 42 program units are designated for households at 30%, 40%, 50%, or 60% 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% could have a household at 30% AMI move into it, but a unit designated at 30% could NOT have a household at 60% 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 4 members and they wanted to move into a unit designated at 50% area median income, the property manager would have to determine household income and make sure that the income is at or below the 4 person 50% income limit in effect. If household income was above this limit, then the household would not be eligible to move-in.

2.3 Student Eligibility

Section 42 was designed to prohibit the use of the 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.

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.

2.4 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 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.

2.5 Tenant Selection

All Section 42 properties must comply with the program regulations regarding income and student status eligibility as described in Parts 2.2 and 2.3 above.

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.
- 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.

Part 3: Rent Restrictions

All Section 42 program units are rent-restricted. Units may be rent restricted at 30%, 40%, 50%, or 60% of the area median income (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 from the rent limit in the chart released by HUD.

For example, a household lives in a two-bedroom unit designated at 50%. The HUD chart says that the rent limit for a two-bedroom unit at 50% in that county is \$550. The utility allowance for a two-bedroom unit at the property is \$150. The maximum amount of rent that can be charged to the household is \$400 (\$550 rent limit minus \$150 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.

Part 4: Tenant Protections

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

4.1 Rent Protection

All Section 42 units are rent-restricted. See Part 3 above for more information.

4.2 Protection Against 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.

Note: 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.

4.3 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.

4.4 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, national origin, familial status, disability, religion, or sex. In addition, the property must allow reasonable accommodation and reasonable modification requests in accordance with the Fair Housing Act requirement.

4.5 No Eviction Without Good Cause

Section 42 properties may not evict or non-renew leases 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.

Part 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.

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 IHCD staff or contractors. 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.

Part 6: Common Misconceptions

Below is a list of common misconceptions about the program:

- IHCD 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. See Part 3 for more information on rent limits.

- 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 owner/developer 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.

Part 7: Complaints

Tenant complaints should always first be addressed to the onsite property management staff and/or property management company. When a complaint cannot be resolved between the tenant and the management, the tenant may contact IHCD by calling 317-232-7777 or 800-872-0371 and asking to speak with the Constituent Liaison. All program related complaints or complaints about the physical condition of the property that are received by IHCD will be investigated. However, legal issues not related to specific program requirements generally cannot be addressed by IHCD. Discrimination complaints should be directed to the Indiana Civil Rights Commission via 317-232-2600 or 800-628-2909. Information is available at www.in.gov/icrc.

Fair Housing

Recognizing Discrimination

Under the Fair Housing Act, it is Against the Law to:

- Refuse to rent to you or sell you housing
- Tell you housing is unavailable when in fact it is available
- Show you apartments or homes only in certain neighborhoods
- Set different terms, conditions, or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Advertise housing to preferred groups of people only
- Refuse to provide you with information regarding mortgage loans, deny you a mortgage loan, or impose different terms or conditions on a mortgage loan
- Deny you property insurance
- Conduct property appraisals in a discriminatory manner
- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if it might be necessary for you to fully use the housing. (Where reasonable, a landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices, or services if it may be necessary for

you to use the housing on an equal basis with nondisabled persons

- Fail to design and construct housing in an accessible manner
- Harass, coerce, intimidate, or interfere with anyone exercising or assisting someone else with his/her fair housing rights

It is Unlawful to Discriminate in Housing Based on These Factors...

- Race
- Color
- National origin
- Religion
- Sex
- Familial status (families with children under the age of 18, or who are expecting a child)
- Disability

If You Believe Your Rights Have Been Violated...

- HUD or a State or local fair housing agency is ready to help you file a complaint.
- After your information is received, HUD or a State or local fair housing agency will contact you to discuss the concerns you raise.

Indiana State Agency Contact Information:

IHCDA - RED Compliance
575 North Pennsylvania Street, Suite 655
30 S. Meridian Street, Suite 900
Indianapolis, IN 46204

Indiana HUD Field Office:

Minton Capehart Federal Building
575 North Pennsylvania Street, Suite 655
Indianapolis, IN 46204
317-226-6303

Reasonable Accommodations and Modifications

The Fair Housing Act requires owners to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities; or
- A record of having such an impairment; or
- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

The owner may verify the disability only to the extent necessary to document that the applicant/tenant has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination. The owner may not specifically ask about or verify the nature and extent of the disability. The verification form used must be signed by the applicant/tenant to authorize release of such information and should request that the source identify (1) whether the applicant meets the definition of disabled as provided above and (2) whether the requested accommodation or modification relates to the person's specific needs. Receipt of Social Security

disability payments is adequate verification of an individual's disability status, but the correlation between the disability and the requested accommodation or modification may still need verified.

Reasonable Accommodations and Service Animals

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations. When a reasonable accommodation will result in an undue financial burden, the owner must provide all other accommodations up to the point at which further accommodations will result in the undue financial burden.

A common type of reasonable accommodation involves service animals. IHCD uses the term service animals in this manual to broadly describe a category that also includes therapy animals, companion animals, emotional support animals, and assistance animals. These types of animals are not pets and therefore must be permitted even in "no-pet" housing, assuming that the individual has requested an accommodation to the "no-pet" rule and that the need for the service animal can be verified. In addition, the owner cannot charge an upfront security deposit or a fee (one-time or recurring) for the service animal. However, the owner can charge the tenant the cost of repairing any damage caused by the service animal. Another common example of reasonable accommodation is a live-in care attendant / live-in aide.

What is a Reasonable Modification?

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant. However, if the changes needed by the tenant are ones that should have already been included in the unit or common space in order to comply with design and construction accessibility standards, then the owner will be responsible for paying for the modifications.

While the Fair Housing Act allows the owner to pass on costs of reasonable modifications to the tenants, Section 504 of the Rehabilitation Act of 1973 (which applies to housing that receives federal assistance) requires the housing provider to pay for reasonable modifications unless providing them would be an undue financial and administrative burden or result in a fundamental alteration of the program. While the tax credit program is not considered federal assistance for this purpose, tax credit projects receiving other federal assistance through programs including, but not limited to, HOME, HTF, CDBG, CDBG-D, NSP, or Project Based Section 8 Vouchers are covered by Section 504 and thus this rule applies.

Violence Against Women Reauthorization Act of 2013 (VAWA 2013)

The 2013 reauthorization of the Violence Against Women Act (VAWA) expanded the act's coverage to include RHTC projects.

1. Prohibited Denial/Termination

No applicant for or tenant of RHTC housing may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

2. Lease Terms

The owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- ☐ A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
- ☐ Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

3. Termination on The Basis of Criminal Activity & Bifurcation of Lease

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Notwithstanding the foregoing, the owner and/or manager may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. The owner and or manager must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

4. Confidentiality of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The owner shall ensure that any information submitted to the staff, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:

- Requested or consented to by the individual in writing.

- Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- Otherwise required by applicable law.

5. Required Notices

HUD has developed, and may amend from time to time, notices of the rights of individuals under VAWA including the right to confidentiality and the limits thereof. The owner agrees to ensure that these notices are utilized and disseminated at the project as directed by HUD and/or IHCD. See item #7 below for information on required forms.

6. Emergency Transfer

HUD has developed, and may amend from time to time, guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit. The owner agrees to ensure that any guidance developed will be utilized as directed by HUD and/or IHCD. See item #7 below for information on required transfer plan format.

7. Required Forms

IHCD mandates the use of the following VAWA forms for all RHTC developments. HUD 5380: Notice of Occupancy Rights Under VAWA. Must be provided at the following times, along with a copy of the HUD 5382:

- At the time of initial admission; and
- At the time of denial of tenancy; and
- When termination / eviction notices are sent.
- HUD 5381: Model Emergency Transfer Plan. The owner must create a model plan specific to each project. The plan must be made available for review by tenants and by IHCD.
- HUD 5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. This form is to be used by tenants as a self-certification form. A copy must be attached when the HUD 5380 is given to tenants.
- HUD 5383: Emergency Transfer Request. This form is used by tenants to request a transfer under VAWA.
- IHCD VAWA Lease Addendum

Senior Resource Agencies Contact Information in order by County:

Region/County	NAME	PHONE	WEBSITE
Indiana	AARP Foundation Senior Services		https://local.aarp.org
Indiana	AARP Indiana State Office	866-448-3618	https://states.aarp.org/indiana/
Indiana	Area Five Agency of Aging & Community Services	800-654-9421	https://www.areafive.com/
Indiana	BHI Senior Living Inc	317-873-3371	https://www.bhiseniorliving.org/
Indiana	Franciscan Health Senior Promise	317-528-8277	https://www.franciscanhealth.org
Indiana	Home Instead Senior Care	888-331-3242	https://www.homeinstead.com/
Indiana	NAMI Indiana Email: info@namiindiana.org	800-677-6442	https://www.namiindiana.org/
Indiana	Senior Helpers	800-760-6389	https://www.seniorhelpers.com/
Indiana	Visiting Angels	800-365-4189	https://www.visitingangels.com/

Central Indiana	Fair Housing Center of Central Indiana	317-644-0673	https://www.fhcci.org/
NE Indiana	Aging & In-Home Services	260-745-1200 800-552-3662	https://agingihs.org/
NW Indiana	Northwest Indiana Community Action	219-794-1829 800-826-7871	http://www.nwi-ca.com/
NW Indiana	Seniors Helping Seniors	219-210-4747	https://seniorcarenwindiana.com/

Bartholomew County	Thrive-Alliance	812-372-6918	https://thrive-alliance.org/
Gibson, Perry, Posey, Spencer, Vanderburgh & Warrick Counties	SWIRCA	812-464-7800	https://swirca.org/
Hamilton County	Shepherd's Center of Hamilton County	317-674-8777	https://shepherdscenterofhamiltoncounty.org/
Marion County	Indiana Association of Area Agencies on Aging Email: info@iaaaa.org	317-205-9201	http://www.iaaaa.org/
Marion County	Reuben's Senior Center Email: info@jfgi.org	317-726-5450	https://www.jewishindianapolis.org/reuben-center/seniors
Marion and surrounding Central Indiana	CICOA Aging & In-Home Solutions	800-432-2422	https://cicoa.org/
Marion County (Perry Township)	Perry Senior Citizens Services Inc Email: info@perryseiors.org	317-783-9231	https://perryseiors.org/
Monroe & Owen County	Area 10 Agency on Aging	812-876-3383	