Part One

Establishing Compliance at an LIHTC Project
Placed in Service Dates
Placing in Service

- An owner must place an LIHTC project in service for it to have the potential to produce a tax credit.

- When a unit has been in service a full calendar month, it can begin producing an LIHTC when occupied by an LIHTC-qualified resident.

- The general definition of the placed in service date is the date an eligible tax credit family could occupy a unit.
Example

• A unit can begin to produce an LIHTC in:

  – April, if it was PIS on March 31st and occupied by a qualified resident by April 30th

  – April, if it was PIS on April 1st and occupied by a qualified resident by April 30th

  – May, if it was PIS on April 2nd and occupied by a qualified resident by May 31st
Placed in Service Dates cont’d

- For new construction, the PIS date generally coincides with the date on the Certificate of Occupancy (C of O) issued by local inspector.

- An owner may place a building in service based on a temporary C of O.

- Owner must be able to justify each building’s PIS date.
PIS Dates cont’d

• Acquisition/rehab project receives 2 credit allocations: One set of credits to finance its acquisition and one set of credits to finance its rehabilitation

• PIS date is the date of acquisition for the acquisition credits
PIS Dates cont’d

• Owner places each building’s rehab credits in service when completing its rehabilitation activities

• Because an owner’s 10-year credit period must be the same for both sets of credits, their credit period cannot begin until the year they place the rehab credits in service
The Minimum Set Aside
Minimum Set Aside

• An owner commits to renting a minimum percentage of units to LIHTC residents

• It is a project rule

• An owner must meet the requirements of the minimum set aside using only the units included in the same project

• An owner defines a project on Line 8b of each 8609 form

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Minimum Set Aside Options

• **20% at 50%:** 20% of the units in a project reserved for residents with income at or below 50% of the AMI

• **25% at 60%:** 25% of the units in a project reserved for residents with income at or below 60% of the AMI
56 Unit Project Example

- 25% @ 60% - 56 units x 25% = 14 LIHTC units necessary to meet minimum set aside

- 20% @ 50% - 56 units x 20% = 12 LIHTC units necessary to meet minimum set aside
Deep Rent Skewing: An owner commits to one of the two minimum set asides and makes an additional commitment to rent 15% of the project’s LIHTC units to residents with income no greater than 40% of the AMI.
The 8609 Form

• The HFA completes part one of each building’s 8609 form before sending it to the owner

• The owner must complete part two of the form before submitting it to the IRS

• An owner must submit a building’s 8609 form to the IRS for the building’s investors to be able to
“A Project”

• “A project” is not defined as a group of buildings sharing the same name, or parking lot, or office phone number

• For a project’s investors to take a tax credit for any buildings included in a project, it must comply with its minimum set aside by the end of the 1st year of the credit period and continuously comply throughout the compliance period
Minimum Set Aside cont’d

• A property’s allocation agreement may require a certain # of tax credit units per building

• The allocation agreement may require an owner to use an income limit for some of the low income units that is lower than that required by the minimum set aside

• Once an owner commits to a minimum set, it is irrevocable
The Credit and Compliance Periods
Credit Period vs. Compliance Period

- An owner must meet the requirements of the minimum set aside by the end of the first year of the credit period and remain in compliance throughout the compliance period.

- Each building has its own credit period.

- An owner cannot begin a building’s credit period unless it is part of a project that is in compliance with its minimum set aside.
The Credit Period

• A building’s credit period lasts for 10 years

• It typically begins the same year as the building’s PIS date

• An owner may elect to begin the credit period
Example

- Owner places credits in service during 2013
- Owner begins credit period in 2013
- Owner may elect to begin the credit period in 2014
The Compliance Period

• An owner must comply with all federal requirements or the LIHTC program for 15 years

• Year 1 of the credit period is year 1 of the compliance period

• An owner may take their tax credits during the 10 year credit period but it takes 15 years for them to actually earn the tax credits each
The Extended Use Period

• The extended use period continues after the end of the compliance period for at least 15 additional years

• Each owner signs an agreement with their HFA committing to operate their project as an affordable project for a minimum of 30 years
The Applicable Fraction
The Credit Allocation

• Meeting the minimum set aside assures the owner of an LIHTC project will benefit from its minimum possible tax credit, but that is rarely good enough

• A property manager must operate their project so that it produces the tax credit anticipated by the LIHTC investor, its maximum possible tax credit
The Credit Allocation

• In most LIHTC projects, tax credits are allocated by building.

• That is, tax credits are allocated, calculated and taken on their federal tax returns by the investors by building.
The Credit Allocation cont’d

• A manager must know the size of each building’s allocation to plan its lease-up

• It is the owner’s goal that the percentage of each building occupied by LIHTC residents be at least equal to the size of its credit allocation

• Typically the credit allocation allows for more LIHTC units than required by the minimum set aside
100% LIHTC Project

- A project composed entirely of buildings for which the owner received a credit allocation covering all of its units.

- All the units in all the building in this project may produce an LIHTC so long as they are occupied by LIHTC-qualified residents.
Mixed-Income LIHTC Project

- A project that includes at least one building for which the owner received a credit allocation that did not cover all of its units

- From the perspective of the LIHTC program, some of the units included in the project will be occupied by non-low income renters
Applicable Fraction

• The applicable fraction (A/F) is that portion of a building (BIN) occupied by LIHTC residents and qualified to produce a tax credit

• It is an owner’s objective is to maximize a building’s tax credit potential

• An owner cannot maximize a building’s LIHTC potential if all its LIHTC units are not rented by the end of the first year of the credit period
Applicable Fraction Calculation

• Applicable Fraction is always *the lesser of*:

  – **Unit Fraction**: % of units occupied by tax credit eligible residents

  – **Square Footage Fraction**: % of square feet occupied by tax credit eligible residents
Applicable Fraction cont’d

• A building’s credit allocation dictates the owner’s goal for how much of a building should be occupied by LIHTC-qualified residents, or the targeted applicable fraction

• When planning a project’s lease-up, the property manager must know each building’s targeted applicable fraction
Example

Single Building 100 Unit Project

20% @ 50% Set Aside
70% Tax Credit Allocation

Owner needs 20 LIHTC units to meet the minimum set aside

Owner wants 70 LIHTC units by the end of the first year of the credit period
Example cont’d

The owner needs 70% of the units and 70% of the floor space occupied by LIHTC residents by the end of the first year of the credit period.

If the building’s units cover 80,000 square feet, and the owner needs a 70% applicable fraction, 70 units covering 56,000 (80,000 x 70%) square feet must be rented to LIHTC residents by the end of year one of the credit period.
Vacancies and Transfers During Year One of the Credit Period
Vacant Units

• A unit that has not yet been occupied is considered to be an empty unit

• A unit takes on the status of its resident

• A unit that has never been occupied by an LIHTC-qualified resident lacks the status to produce an LIHTC
Vacant Units cont’d

• Once a unit has been occupied by an LIHTC resident, it can produce an LIHTC after they vacate so long as they move to a different project and the owner implements the vacant unit rule

• The owner must prepare the unit for occupancy by a new resident and take the steps necessary to market it to a new LIHTC resident as quickly as possible
Transfers

- two units involved in a transfer swap their status relative to being able to produce an LIHTC. If an LIHTC resident:
  - Transfers to another LIHTC unit in the same project, both units will produce an LIHTC after they transfer
  - Transfers to a non-LIHTC unit, the resident’s new unit will produce a credit but their old unit will have lost its ability to generate an LIHTC
The First Year of the Credit Period
The First Year of the Credit Period

• There are two rules that are fundamental to the LIHTC program that impact an owner’s ability to begin producing LIHTC during the first year of a building’s credit period:
  
  – The first year averaging convention; and

  – The two-thirds rule
First Year Averaging Convention

• The building produces a tax credit for the first year of its credit period based on its applicable fraction as of 12/31 of year one.

• Additionally, during the first year of its credit period, the owner must calculate a building’s applicable fraction at the end of each month.
First Year Averaging Convention cont’d

• The owner must split the tax credit the building produces for year one between their tax return for year one and their tax return for year eleven.

• The portion of the first year’s tax credit the owner may take on the first year’s return is calculated using the average applicable fraction for the months in year one.
First Year Averaging Convention cont’d

• The portion of the first year’s tax credit the owner is unable to take on the their tax return for year one they take on their tax return for year eleven
Example

50 unit, 100% LIHTC building, PIS date 7/15/11

A/F = 0% for Jan – July 2011
A/F = 20% on August 31, 2011
A/F = 40% on September 30, 2011
A/F = 80% on October 31, 2011
A/F = 100% on November 30, 2011
A/F = 100% on December 31, 2011
Example cont’d

Average A/F 2011 = 28.33%

Estimated annual tax credit = $450,000

Estimated tax credit taken on the first year’s tax return = $127,485 ($450,000 x 28.33%)

Estimated tax credit left for the 11th year’s tax return = $322,515 ($450,000 - $127,485)
The Two-Thirds Rule

• If an owner does not meet the targeted A/F by the end of year 1, they should continue to try to rent the maximum number of tax credit units to LIHTC-qualified residents

• However, units first rented to LIHTC-qualified residents after the first year of the credit period generate 2/3 the annual credit they would have produced if first rented to an LIHTC resident during year one
Two-Thirds Rule Example

Building allocated 9 tax credit units
Each unit will generate a $6,000 credit
9 units x $6,000 = $54,000 = annual credit
Owner expects a total tax credit of $540,000

The owner rents 6 units during year 1 but doesn’t rent 3 units until year 2

6 units x $6,000 = $36,000 = Year 1 LIHTC
Two-Thirds Rule Example cont’d

(6 units x $6,000) + (3 units x $4,000) =
$36,000 + $12,000 = $48,000 = Year 2 Credit

The building can produce an annual credit of
$48,000 for years 2 through 10

The building can produce an annual credit of
$12,000 for years 11 through 15

The owner’s total tax credit will be $528,000

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The partnership agreement, establishes the conditions under which they will forward equity contributions to the developer.

The syndicator often:

- Conducts a review of all the initial tenant income certifications to confirm they are sufficient to iand

- Requires the developer provide a report that documents the completion of each resident’s initial tenant income certification
The HFA carries out two functions:

- Approves a project for participation in the LIHTC program
- Monitors LIHTC projects for compliance

In New York City, there are 3 HFAs active in the LIHTC program:

- HPD, HDC and HCR
Unit Eligibility for the LIHTC Program
Unit Eligibility for the LIHTC Program

- For a unit to be eligible to produce a tax credit for its owner:
  - The household that occupies the unit must have been qualified for the LIHTC program; and
  - The rent the owner charges the residents to occupy the unit must be an amount allowed by the LIHTC program; and
  - The owner meets all verification and leasing requirements for the LIHTC program
Two Applicant Eligibility Factors

- An applicant must meet **two eligibility tests** to qualify for the LIHTC program
  
  - Household’s annual income must not exceed the applicable income limit
  
  - The household must meet the requirements of the LIHTC full-time student rule
LIHTC Income Limits
LIHTC Income Limits

• A household’s gross annual income must be at or below the income limit established for the project

• A project’s income limit is established in its minimum set aside
LIHTC Income Limits cont’d

• If an owner commits to the:
  
  – **20% @ 50%** minimum set aside, the income limit for the low income units at the project is 50% of the AMI
  
  – **25% @ 60%** minimum set aside, the income limit for the low income units at the project is 60% of the AMI
HERA’s Impact on LIHTC Projects

- The Housing and Economic Recovery Act (HERA) of 2008 made statutory changes to how income limits are calculated for LIHTC and bond-financed projects.

- HERA protected owners from rent decreases in 2009 and established a new system for owners to hold their income limits and rents harmless beginning in 2010.

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What Is An MTSP?

- A multifamily tax subsidy project (MTSP) is a project financed through the LIHTC and/or tax-exempt bond programs.

- Per HERA, HUD began issuing income limits calculated specifically for MTSPs in 2009.
Two Categories of MTSPs

- HUD issues income limits for **two** types of MTSP:
  - One set of income limits for projects impacted in previous years by HUD’s hold-harmless policy referred to as Impacted MTSPs; and
  - One set of income limits for non-Impacted MTSPs
Impacted MTSPs

• An Impacted MTSP is a project with income limits determined in 2007 or 2008 under HUD’s hold-harmless policy

• A project qualifies as an Impacted MTSP only if it was placed in service before the end of 2008
Impacted MTSPs cont’d

• A single building project qualifies as Impacted only if the building was PIS on or before 12/31/08

• A multi-building project qualifies as Impacted only if at least one building included in the project was PIS on or before 12/31/08
Defining a Multi-Building Project

• Remember that a multi-building project is defined on Line 8b of each building’s 8609 form

• A building is included in the project the owner defined on Line 8b of its 8609 form
Acquisition/Rehab Impacted Projects

- For an acquisition/rehab project, the owner places the acquisition credits in service at acquisition and then places the rehab credits in service for each building when completing its rehabilitation activities.

- A project qualifies as Impacted if its acquisition credits were in service before 2009.
Reading the Income Limit Chart

• If the income limit chart lists only a Very Low Income Limit and 60% Income Limit, all LIHTC and bond-financed projects in the area use these income limits.

• If the chart includes two sets of income limits for a county or metro area, each owner must determine if their project was PIS before 2009.
Non-impacted projects use the very low income limit or the 60% income limit.

Impacted projects may use the HERA-Special 50% and the HERA-Special 60% income limits.
Resyndication

• An owner may need to implement a rent decrease when they place the new credit allocation in service when re-syndicating an existing LIHTC project.

• A project will switch from being Impacted to non-Impacted at its new placed in service date and owner may not charge rents higher than those allowed calculated using the non-Impacted limits
Key Dates to Remember

• To use the HERA-Special income limits, a project had to have been **placed in service by 12/31/08**

• A project **placed in service on or after January 1, 2009** cannot use the HERA-Special income limits and must use the non-Impacted income limits for the current year
Key Dates to Remember cont’d

• On December 4, 2012 HUD issued the income limits for 2013

• An owner may begin determining household eligibility and calculating maximum LIHTC rent using these income limits as of December 4, 2012
Household Size and the Income Limit
Household Size & Income Limits

• Exclude the following household members when selecting an applicant’s income limit:

  – Foster children

  – Foster adults

  – Live-in attendants

  – Children not living in unit at least 50% of the time
**Household Size Example**

Head    Foster Child – age 7
Spouse  Mother of Head
Child – age 6  Live in Attendant
Child – age 10

Number in household for income limit = 5
Number in household for unit size = 7
Household Size cont’d

• From 4350.3 HUD Handbook, Rev. 1

• Include the following in the income limit

  – Children temporarily absent due to placement in a foster home

  – Children subject to joint custody who will be living in the unit at least 50% of the time

  – Children away at school who will live with the family during recesses
Household Size cont’d

– Unborn Children of pregnant women

– Children in the process of being adopted

– Temporarily absent family members still considered family members

– Family members in the hospital or rehab facilities for periods of limited or fixed duration
Household Size cont’d

• The family decides if persons permanently confined to a hospital or nursing home are included when determining family size for income limits

• Permanently confined family members may not be listed as the head of the household, co-head or spouse
Recent Changes to Rules for Calculating Annual Income
New Income Rules

• HUD made the following changes to the rules for calculating annual income in Change 3 to the 4350.3 Handbook in Summer 2009:

  – Include the income earned by foster adults;

  – Include the unearned income received by or on behalf of foster children and foster adults, except for their foster care payments;
New Income Rules cont’d

• Exclude that portion of a resident’s government or private pension payment paid to their former spouse per a divorce decree, annulment, or other legal arrangement; and

• Include that portion of a resident’s former spouse’s government or private pension payment paid to the resident per a divorce decree, annulment, or other legal arrangement
New Income Rules cont’d

• In the October 2009 version of the *8823 Audit Guide*, the IRS announced their policy regarding scholarships and grants received by students living in LIHTC units

  – Exclude all scholarships and grants received by students who are not on Section 8
For an LIHTC resident on Section 8 assistance, include that portion of a scholarship or grant in excess of that needed to pay tuition but exclude it all if:

- They are over 23 years old and have a dependent child;
- They live with their parent or guardian; or
- They are a person with a disability who was receiving Section 8 assistance on November 30, 2005
New Income Rules cont’d

• In the October 2009 version of the 8823 Audit Guide, the IRS implemented a rule for calculating annual income HUD implemented in 2010

• When an applicant reports little or no income or income that varies and is difficult to project, the owner may use the income the applicant received the previous year to project what their income will be in the coming year
New Income Rules cont’d

• The IRS instructs owners not to include their entire from the previous 12 months if:

  – A person has become disabled or their disability has worsened further limiting the income they may earn;

  – Their place of employment or industry no longer exists and they are unlikely to fully replace their lost income
Determining Income Eligibility Exercises
Full Time Student Rule
Full Time Student Rule

- Households comprised entirely of full-time students are generally ineligible for LIHTC program

- Full time student attends school with full-time status for **5 months out of a calendar year** and the 5 months need-not be consecutive

- Full time status verified with the learning institution the student attends
Full Time Student Rule cont’d

• An unborn child is included when qualifying a household under the student rule

• School age children are considered full time students without verification

• Document that a school age child is not a full time student if claimed by the family and their eligibility is dependent on the child not attending school on a full time basis
Full Time Student Rule cont’d

• Must use the student verification form required by your state housing finance agency

• If everyone in a household is a full-time student, they are ineligible unless the manager documents in writing, in the file, why they should be considered LIHTC eligible
Eligible Student Households

• The following 100% full-time student households may be eligible

  – All household members are married and file a joint tax return or are eligible to file a joint tax return

  – Single parent with at least one child, none of whom are dependents on another person’s most recent tax return except for the return of a child’s other parent
Student Exemptions cont’d

– At least one household member:

  • Is a welfare recipient
  
  • Participates in a federal, state or local job training program
  
  • Was a foster child during their life time
Student Rule Exercises
Maximum Allowable Rent
Maximum Allowable Rent

- Maximum allowable rent is a gross rent
- Maximum allowable rent includes a utility allowance representing the average monthly cost for utilities paid directly by the residents
- Residents keep the utility allowance and can pay the remaining portion of the gross rent as their tenant rent

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Maximum Allowable Rent cont’d

• Tenant Rent: Maximum rent the owner can charge the resident

• Tenant rent equals Gross Rent minus Utility Allowance:

  Gross Rent = $500
  Utility Allowance = -$50
  Tenant Rent = $450
Maximum Rent Formula

• Calculations based on unit size

• Owner imputes a family size of 1.5 household members per bedroom & 1 person for a studio or an efficiency

• Maximum allowable rent equals 30% of the income limit for the imputed family size
Efficiency Maximum Allowable Rent = 30% of the 1 person income limit

1 bedroom x 1.5 persons = Maximum Allowable Rent is 30% of the 1.5 person income limit

– Average the 1 person & 2 person income limits to create income limit for 1.5 people
– (1 person limit + 2 person limit)/2 = 1.5 limit
Imputed Household Sizes cont’d

• 2 bedroom Maximum Allowable Rent = 2 x 1.5 persons = 3 person income limit x 30%

• 3 bedroom Maximum Allowable Rent = 3 x 1.5 persons = 4.5 person income limit x 30%
  – Average the 4 person and 5 person limits to create the income limit for 4.5 people
  – (4 person limit + 5 person limit)/2 = 4.5 limit
Imputed Household Sizes cont’d

• 4 bedroom Maximum Allowable Rent = 4 x 1.5 persons  
  = 6 person income limit x 30%

• 5 bedroom Maximum Allowable Rent = 5 x 1.5 persons  
  = 7.5 person income limit x 30%  
  – Average the 7 person and 8 person limits to create the income  
    limit for 7.5 people  
  – (7 person limit + 8 person limit)/2 = 7.5 limit
Example

20% at 50% set aside
1 bedroom unit
Utility allowance  =  $45

1-person Income Limit = $16,700

2-person Income Limit = $18,100
$16,700 + $18,100)/2
$34,800/2 = $17,400

$17,400 = Income Limit for 1.5 Persons

$17,400 \times 30\% = $5,220

$5,220/12\text{ months} = $435 \text{ (rounded down)}

$435 - $45 = $390 = \text{ max tenant rent}
Residents on Rental Subsidy

• Residents who benefit from the Section 8 program, and like programs, pay rent according to the rules of their subsidy program

  – The total revenue received for the unit, and the portion of that revenue paid by the resident is based on the subsidy program

  – The owner may receive more than the maximum allowable LIHTC rent for the unit and still receive the tax credit for their unit
Completing the Initial Certification
Completing the Initial Certification
Completing the Initial Certification cont’d

- When a third party will not provide information, document a resident’s income by doing a review of documents; e.g., making copies of six current, consecutive paystubs; making copies of bank statements, etc.

- When there is no responsive third-party, or documents a resident can provide, the owner may ask the resident to sign a witness or notarized certification
Completing the Initial Certification cont’d

• Verified information is valid for **120 days**

• An owner who obtains information through EIV for the Section 8 program may not use it to support an LIHTC tenant income certification

• Use the forms required or recommended by your housing finance agency
Leasing Requirements
Leasing Requirements

• No model lease for the LIHTC program

• Initial lease must be at least six months long

• Document household composition and size

• Document responsibility for utility bills

• No subletting
Leasing Requirements cont’d

- Full-Time Student Rule Provisions
- Annual recertification requirements
- Maximum allowable rent provisions
- Rent increase notification requirements
Record Keeping Requirements
Project Compliance Binder

• An owner should establish a compliance binder, electronic or manual, maintaining the documentation that demonstrates their compliance with the LIHTC program

• Copies of each building’s C of O should be in the compliance binder

• Other documents to include in the binder include each building’s 8609 form after the owner completes part 2 of the form, the project’s tax credit application and LURA
Project Compliance Binder

- The regulatory agreement for LIHTC and other programs
- The partnership agreement detailing the relationship with the limited partner(s) and the conditions under which they will make equity contributions to the project
- The reports that track the creation of the project’s applicable fraction
- The current income limits, maximum allowable rents and utility allowances
Record Keeping

• Owners must keep records from **first year of the credit period for 21 years**
  
  – The date every low income unit was first occupied by an LIHTC-qualified resident
  
  – Initial tenant income certification (TIC) for every LIHTC resident
  
  – Documentation supporting every TIC
  
  – The rent charged every LIHTC resident
  
  – The utility allowance used to calculate the rent for every LIHTC resident
Record Keeping cont’d

- Owners must keep records for the remaining years in the compliance period for a minimum of 6 years.

- State HFA may require an owner to keep records for longer than the federal requirements.

- An owner must ask their HFA about their record keeping requirements once a project completes the initial 15-year compliance period.
Part Two

Maintaining Compliance at a Mixed Income LIHTC Project
The Applicable Fraction
Maintaining the Applicable Fraction

• At a mixed income project, it is the goal of the manager to maintain the applicable fraction reached by the end of year 1 of the credit period through the 15 year compliance period.

• An owner can benefit from the largest possible tax credit only if each building in a project reaches its targeted A/F by the end of year 1 and if that A/F is maintained consistently through year 15.
Maintaining the A/F cont’d

• A manager of a mixed-income LIHTC project must make all leasing and occupancy decisions ensuring they do not lower the A/F below the level necessary to support the anticipated tax credit

• Every new resident, transfer, etc… should not be approved until the manager knows what its impact will be on the building’s applicable fraction
Maintaining the A/F cont’d

• To protect a building’s applicable fraction, an owner must know how to:

  – Meet their current requirements for completing annual recertifications;
  
  – Implement the available unit rule;
  
  – Properly lease vacant units under the vacant unit rule; and
  
  – Analyze the impact of a unit transfer under the LIHTC transfer rule.
Penalties for Noncompliance

- During years 2 – 10 of the credit period, if a unit falls out of compliance, it stops producing a tax credit during the period of noncompliance.

- Additionally, the owner must give back 1/3 the tax credit they have taken on the unit back to year one of the credit period, plus pay penalties and interest on the amount of the returned credit.
Penalties for Noncompliance

– During years eleven through fifteen, the owner must give back less than one-third (exact calculation depends on the year of noncompliance) of the LIHTC they have taken for the unit, plus pay penalties and interest

• A unit does not begin producing a credit again until the owner corrects the noncompliance
Annual Recertifications
Annual Recerts at 100% LIHTC Projects

• the IRS no longer requires owners of 100% LIHTC projects to complete annual recerts

• Every owner should confirm the requirements implemented by their HFA, and their LIHTC syndicator before they stopping

• Must continue to implement the full-time student rule annually using the form required by your HFA
Annual Recerts at Mixed Income Projects

- Owners must recertify LIHTC residents annually

- The rules for calculating and verifying annual income are the same for a recertification as for an initial certification

- The difference between an initial certification and an annual recertification is the income limit used to assess a resident’s ongoing eligibility for the LIHTC program
140 Percent Rule

• At a recertification, the owner must compare a family’s income to 140% of the current income limit for their current household size.

• If family income is above 140% of the current income limit, they are considered over-income for the LIHTC program, **but are not required to vacate their unit**.

• Referred to as the 140% Rule.
140 Percent Rule Example

- Applicant 1-person income limit is $20,000
- $20,000 x 1.4 = $28,000
- The recertification income limit for a 1-person household is $28,000
170% Rule at DRS Properties

• Owner compares resident income to 170% of current income limit to determine ongoing eligibility

• Applies to all tax credit tenants who live at a project where the owner committed to deep rent skew

• Compare the household’s income to 170% of the current income limit for the current household
170% Rule Example

• Applicant 1-person income limit is $20,000

• $20,000 × 1.7 = $34,000

• The recertification income limit for the 1-person household is $34,000
Recertification Schedule

- The effective date of the initial certification is the date the tenant occupies the unit.

- Owner must complete a recertification annually based on the anniversary of the effective date of the initial TIC.

- The manager should accumulate the back up documentation for the recertification during the 120 days preceding its effective date.
The Available Unit Rule
Available Unit Rule

• It is a Building Rule because it is designed to preserve the A/F with an over-income resident.

• If a resident is over income at recert., their unit remains in the A/F and continues to produce a tax credit if the owner:
  – Charges the over income family no more than the maximum tax credit rent; and
  – Rents available units of comparable or smaller size in the same building to an LIHTC eligible tenant.
Available Unit Rule cont’d

• Owner must rent all smaller or comparable sized units to eligible families until applicable fraction is restored without including the unit occupied by the resident found to be over income at their recertification.

• Owner may have to rent multiple smaller units to replace larger unit in Applicable Fraction, including previously market rate units.
Finished with the Available Unit Rule

• After finding a resident’s income is more than 140% of their income limit, the owner finishes implementing the AU rule when:
  – The unit A/F is sufficient to support the anticipated tax credit; and
  – The square footage A/F is sufficient to support the anticipated tax credit

• Without including the unit occupied by the over-income family in the A/F
Available Unit Rule Example

- Building’s A/F = 70%
- A resident in a 3-bedroom unit goes over income at their annual recertification
- The next available unit is a 1-bedroom unit the owner rents to an LIHTC resident
- The A/F is 68% with the resident in the 1-bedroom unit and not the over income family in the applicable fraction
Available Unit Rule Example cont’d

• The owner must continue implementing the AU rule until they rent another unit to an LIHTC resident and both the unit and square footage fractions are at least 70%.

• The owner must continue to charge the over income family no more than the LIHTC maximum rent until they no longer need their unit in the A/F.
LIHTC Units Must Float

• Because of the need to implement the available unit rule, the LIHTC units within a mixed income building must float

• The owner must rent the next unit of comparable or smaller size that comes available in the same building to an LIHTC resident, even if it has previously been occupied by a market renter
Back in Compliance

• A unit returns to compliance if the family’s income is no longer more than 140% of the income limit which may happen if:
  – The family income decreases or
  – The income limit increases
Available Unit Rule at a Deep Rent Skew Project

• If family income rises above 170% of income limit, owner must rent available LIHTC unit to a 40% of AMI family

• This is true even if original family qualified at 50% or 60% of AMI

• Low income and market units are fixed but the owner may need to deep rent skew more of the LIHTC units than planned
Available Unit Rule at a Deep Rent Skew Project cont’d

• The only way an owner of a mixed-income project can fix their low income units is if they elect to deep rent skew

• The deep rent skew option is an official federal election the owner indicates when completing

• Line 10d of the 8609 form
Available Unit Rule at a Deep Rent Skew Project cont’d

• As long as one LIHTC resident’s income is more than 170% of their income limit, the owner must rent all LIHTC units that come available to residents with income not exceeding 40% of the AMI.
Non-correctable Noncompliance

• A violation of the Available Unit Rule is non-correctable noncompliance

• The owner cannot prevent the loss of credits for the period of noncompliance

• The owner can begin to take tax credits again for the units out of compliance only after correcting the noncompliance
Recertifications and Available Unit Rule Exercises
Changes in Household Composition
Changes in Household Composition

• In the October 2009 version of the 8823 Audit Guide, the IRS provided the industry the clearest guidance to date on the impact on a unit’s ability to produce a tax credit it’s resident’s household composition changes

• The IRS provided guidance specific for mixed income projects
Changes in Household Composition at Mixed Income Projects

• May add a new member so long as one original member continues to live in the unit.

• Once all original members vacate the unit, the remaining occupants must be certified as a new income-qualified household unless the newly created household was income qualified, or the remaining residents were independently income qualified when they occupied the unit.
Changes in Household Composition Example

• Michael occupied a 2-bedroom LIHTC unit in a mixed-income project in May 2006 and Jason joined his household in October 2007.

• Michael moved out of the unit in January 2008. Because Jason and Michael’s combined income was less than the 2-person income limit when Jason moved in, it was not necessary to certify him as income-qualified when Michael moved out.
The Vacant Unit Rule
Vacant Unit Rule

• A unit cannot count toward the minimum set aside or applicable fraction until leased at least once to an eligible low income family

• If unit is vacated after being occupied by an eligible low income family, the owner can implement Vacant Unit Rule and the unit continues to generate a tax credit
Vacant Unit Rule

• Vacant unit remains eligible if a:
  
  – Unit is suitable for occupancy; and
  
  – Owner takes reasonable marketing steps to fill the unit with an eligible, low income family
Vacant Unit Rule cont’d

• In Revenue Ruling 2004-82 the IRS stated that owners may rent market units when they have vacant LIHTC units so long as they have made reasonable efforts to lease the vacant low income units.

• In a mixed income project, it is important for an owner to be able to demonstrate that they are not focusing on leasing their market units and ignoring their vacant LIHTC units.
Demonstrating Compliance
Vacant Unit Rule

• Maintain waiting list
• Maintain pool of certified applicants
• Follow policies to rapidly prepare vacant low income units for occupancy
• Maintain vacant unit log
• Maintain contacts with community orgs and housing counseling services
Demonstrating Compliance
Vacant Unit Rule cont’d

• Place advertisements in newspapers
• Maintain copies of all ads placed in papers
• Maintain contacts with local and neighboring PHAs
• Display banner/signage
• Offer incentives to generate leasing
• Develop bonus program as incentives for staff to lease low income units
Penalties for Noncompliance with the Vacant Unit Rule

• An owner is out of compliance when not making reasonable attempts to rent vacant low income units and instead rents units to ineligible tenants

• When an owner violates the Vacant Unit Rule, all vacant units previously occupied by qualified households lose their low-income status and are not included in the minimum set aside or applicable fraction
Penalties for Noncompliance with the Vacant Unit Rule cont’d

• The date of noncompliance is the date the first low-income tenant moved out of the now vacant units.

• If the first low income tenant moved out of one of the vacant units in 2003, an owner’s vacant units stop generating credits retroactive to 2003.
Penalties for Noncompliance with the Vacant Unit Rule cont’d

• Remember that if a project falls out of compliance with its minimum set aside due to violations of the vacant unit rule, all buildings included in the project stop producing a tax credit

• The buildings included in the project do not start producing a tax credit again until the project is back into compliance with its minimum set aside
The Transfer Rule
Transfers in 100% LIHTC Projects

• A resident at a 100 percent LIHTC project may transfer to any other unit in any other building included in the same project.

• Before approving the transfer, the manager must confirm that both buildings were included in the same project when the owner answered the question on Line 8b on both buildings’ 8609 forms.