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**Fundamentals of LIHTC Compliance for Enterprise NYC – April 2013**

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FUNDAMENTALS OF LIHTC COMPLIANCE FOR ENTERPRISE NYC

Indicate which topics covered in the seminar will be of most use on your job.
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Please give an overall rating between 1 (unsatisfactory) and 5 (excellent) on the seminar factoring in the course content, manual, and presentation. ______

On what topics in affordable housing will you need training in the next 12 months?
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Are you interested in receiving training through webinars and other electronic media?  Yes_____  No_______

Are you interested in receiving updates on the affordable housing industry and on new training opportunities through the Liz Bramlet Consulting list service?
Yes_______  No_______

If yes, to what email address?  ________________________________ (please print clearly)

Additional Comments:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

May we use your comments in our marketing materials?
Yes_______  No_______

Name (optional)______________________________________________________

Date:_______________________________________________________________
PART ONE: ESTABLISHING COMPLIANCE AT AN LIHTC PROJECT

THE PLACED IN SERVICE DATES

- An owner or property manager must understand the importance of their project’s placed in service date(s). Once a unit is placed in service, it has the potential to produce a low income housing tax credit (LIHTC). Once a unit is in service a full calendar month, it can begin producing an LIHTC when occupied by an LIHTC-qualified resident.

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

- Owners place most LIHTC projects in service by building. It is important that the property manager knows the placed in service date for each building in their LIHTC community.

- For a building that is new construction, its placed in service date is generally based on its certificate of occupancy (C of O). That is the date the local building inspector approves the building as ready for occupancy. The IRS has said that an owner can base their placed in service date on a temporary C of O.

- A building with both acquisition and rehabilitation LIHTC has two placed in service dates: One for its acquisition credits and one for its rehabilitation credits.
  - The PIS date for acquisition credits is the date of acquisition; the date the ownership entity that will benefit from the LIHTC purchased the project.
  - The owner places each building’s rehabilitation credits in service as they complete its rehabilitation activities.
  - All owners must maintain the documentation necessary to justify their PIS date(s).
THE MINIMUM SET ASIDE

- An owner must comply with their minimum set aside to be part of the tax credit program. In New York City, an owner may commit to either the **25% @ 60%** or the **20% @ 50%** minimum set aside. That is, an owner commits to renting a minimum of:
  - 25 percent of the units at a project to residents with income no greater than 60 percent of the area median income (AMI); or
  - 20 percent of the units at a project to residents with income no greater than 50 percent of the AMI.

- The minimum set aside establishes the minimum number of LIHTC units an owner needs for a project to produce the minimum possible tax credit. It also establishes the income limit the owner uses to qualify households for the LIHTC program.

**MINIMUM SET ASIDE CALCULATIONS FOR A 56 UNIT PROJECT**

- 25% @ 60% minimum set aside – 56 total units x 25% = 14 units
- 20% @ 50% minimum set aside – 56 total units x 20% = 12 units

- An owner must meet the minimum set aside at the project level. That is, they must rent the percentage of units required by the first number in the minimum set aside to qualified households for the project to participate in the tax credit program.

- An owner receives an IRS Form 8609 for each building from their credit allocating agency. Before submitting each Form 8609 to the IRS, the owner notes on Line 8b if the building represented by the form is part of a multiple building project. (See a sample Form 8609 on the following page.)
  - If a building is not part of a multi-building project, the owner must meet the minimum set aside using the units in the building.
  - If a building is part of a multi-building project, the owner must meet the minimum set aside using the units in the buildings that make up the project as defined on line 8b of the 8609 forms.
Low-Income Housing Credit Allocation and Certification

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A. Name, address, and TIN of building owner receiving allocation:

B. Name and address of housing credit agency:

C. Name, address, and TIN of building owner receiving allocation:

D. Employer Identification number of agency:

E. Building Identification number (BIM)

TIN: ____________________________

1a Date of allocation: ____________

b Maximum housing credit dollar amount allowable: $_________

2 Maximum applicable credit percentage allowable (see instructions): ___________

3a Maximum qualified basis: $_________

b If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions):

☐ Building located in the Gulf Opportunity (GO) Zone, Former GO Zone, or Wilma GO Zone
☐ Section 42(d)(5)(B) high cost area provisions

4 Percentage of the aggregate basis financed by tax-exempt bonds. If zero, enter 0: ___________

5 Date building placed in service: ____________

6 Check the boxes that describe the allocation for the building (check those that apply):

☐ Newly constructed and not federally subsidized
☐ Newly constructed and not federally subsidized
☐ Sec. 42(c) rehabilitation expenditures federally subsidized
☐ Sec. 42(e) rehabilitation expenditures not federally subsidized
☐ Not federally subsidized because of reason at 40-50% rule under sec. 42(c)(6)
☐ Allocation subject to non-profit set-aside under sec. 42(c)(6)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions): $_________

8a Original qualified basis of the building at close of first year of credit period: $_________

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)?

☐ Yes ☐ No

9a If box 8a is checked, do you elect to reduce eligible basis under section 42(b)(3)?

☐ Yes ☐ No

b For market-rate units above average or quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(b)(9)?

☐ Yes ☐ No

10 Check the appropriate box for each election:

Caution: Once made, the following elections are irrevocable.

a Elect to begin credit period the first year after the building is placed in service (section 42(a)(1))

☐ Yes ☐ No

b Elect not to treat large partnership as taxpayer (section 42(g)(6))

☐ Yes ☐ No

c Elect minimum set-aside requirement (section 42(g)(1) (see instructions):

☐ 20-50 ☐ 40-60

d Elect deep rent cut provision (section 42(c)(4)(B)) (see instructions):

☐ 25-60 (N.Y.C. only)

☐ 15-40

Under penalties of perjury, I declare that the above building continues to qualify as a part of a qualified low-income housing project and meets the requirements of Internal Revenue Code Section 42. I have examined this form and attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature: ____________________________

Taxpayer Identification number: ____________________________

Date: ____________

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
• Notice that within the LIHTC program, "a project" is not defined as a group of buildings sharing the same name, or parking lot, or office phone number. Management must know how the owner intends to define a project on each building's Form 8609.

• The election of a minimum set aside for a tax credit project is irrevocable. For a project's investors to take a tax credit on their income tax return for any of the buildings included in a project, it must meet the requirements for its minimum set aside by the end of the first year of the credit period and comply with the minimum set aside throughout the compliance period.

**THE CREDIT PERIOD**

• The credit period is the period of time a project's investors plan on taking a tax credit on their federal income tax return. A building's credit period typically starts the year it is placed in service, but an owner has the option of beginning the credit period the year following its placed in service date.

• For example, if a building is placed in service during 2013, the owner may begin its credit period during 2013 or 2014.

**THE COMPLIANCE PERIOD**

• The compliance period is the period of time an owner must comply with all program requirements for their investors to benefit from their anticipated tax credit. The first year of a building's compliance period is the first year of its credit period.

• The compliance period lasts for 15 years. It takes an owner 15 years to earn the tax credit the IRS allows them to take over the 10 year credit period. An owner must comply with all requirements established by the IRS and the housing finance agency (HFA) for the 15-year compliance period.

**THE EXTENDED USE PERIOD**

• The extended use period (EUP) continues beyond the compliance period for at least 15 additional years. Although the owner is no longer required by the IRS to do what is necessary to produce a federal tax credit, the owner of an LIHTC project signs a regulatory agreement in which they commit to keep their project in the affordable housing inventory throughout its EUP.
• Every owner and manager must know the requirements for their extended use period based on their regulatory agreement(s), and the compliance monitoring standards established by their HFA for projects past year 15.

**THE APPLICABLE FRACTION**

• 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.

• For most projects, the tax credits are allocated by building. That is, for each building the owner receives a credit allocation which dictates how much of that building can produce a tax credit if occupied by an LIHTC-qualified resident.

• When referring to a:

  • 100% LIHTC project, we are discussing 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 project, we are discussing 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.

• The applicable fraction is that percentage of a building's physical space, measured by units and by square feet, occupied by LIHTC-qualified residents. The applicable fraction is always **the lesser of**:

  • The unit applicable fraction – The percentage of units in a building occupied by LIHTC-qualified residents; or

  • The floor space applicable fraction – The percentage of floor space in a building occupied by LIHTC-qualified residents.

• 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 and take any tax credit on their federal tax return

Owner wants 70 LIHTC units by the end of the first year of the credit period

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

- 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.

- Once a unit has been occupied by an LIHTC resident, it can produce an LIHTC during their tenancy and after they vacate so long as they move to a different project and the owner implements the vacant unit rule. The owner implements the vacant unit rule by preparing the unit for occupancy by a new resident and taking the steps necessary to market it to a new LIHTC resident as quickly as possible.

- A property manager must be careful about approving any transfers during year one of the credit period. They want to avoid the appearance that the owner is trying to move a resident around a project to initiate the credit flow for more than one unit.

- In the transfer rule, the IRS says that the 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 on the same project, both units will produce an LIHTC after they transfer.
• Transfers to a non-LIHTC unit, after the transfer the resident’s new unit will produce a credit but their old unit will have lots its ability to generate an LIHTC. It cannot produce an LIHTC until it is occupied by a new LIHTC-qualified resident.

• Remember that a project is defined on Line 8b of each building’s 8609 form. It is a transfer only if a resident moves within the same building or to another building the owner included in the same project. A resident’s move is covered by the vacant unit rule if they move to a building not included in the same project.

**The First Year of the Credit Period**

• The first year of the credit period is the critical year for every LIHTC building. What an owner does or fails to do during year one establishes the value of the first year’s tax credit and the potential value of the building’s credits for the entire credit and compliance 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

**The First Year Averaging Convention**

• An owner is not allowed to take the entire credit a building produces its first year in the tax credit program on their tax return for year one of the credit period. The investors must split a building’s tax credit for year one between their tax return for year one and the tax return for year 11. How this split occurs depends on how quickly the property manager certifies the residents for the LIHTC program.

• During the first year of the credit period, the owner must calculate a building’s applicable fraction at the end of each calendar month.

• The owner calculates the average applicable fraction for the 12 months in the first year of the credit period. The average applicable fraction determines how much of the first year’s tax credit the investors can take on the tax return for year one of the credit period
• They may take the remaining portion of the first year’s credit on the tax return for year 11 of the compliance period. This is often referred to as “the back end.”

<table>
<thead>
<tr>
<th>IMPACT OF THE FIRST YEAR AVERAGING CONVENTION</th>
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</thead>
<tbody>
<tr>
<td>50 unit, 100% LIHTC building, PiS date of July 15, 2011</td>
</tr>
<tr>
<td>A/F = 0% for Jan – July 2011</td>
</tr>
<tr>
<td>A/F = 20% on August 31, 2011</td>
</tr>
<tr>
<td>A/F = 40% on September 30, 2011</td>
</tr>
<tr>
<td>A/F = 80% on October 31, 2011</td>
</tr>
<tr>
<td>A/F = 100% on November 30, 2011</td>
</tr>
<tr>
<td>A/F = 100% on December 31, 2011</td>
</tr>
<tr>
<td>Average A/F = 28.33% ((20% + 40% + 80% + 100% + 100%)/12 months)</td>
</tr>
<tr>
<td>Estimated annual tax credit = $450,000</td>
</tr>
<tr>
<td>Estimated tax credit taken on the first year’s tax return = $127,485 ($450,000 x 28.33%)</td>
</tr>
<tr>
<td>Estimated tax credit left for the 11th year’s tax return = $322,515 ($450,000 - $127,485)</td>
</tr>
</tbody>
</table>

**THE TWO-THIRDS RULE**

• A unit not rented to an LIHTC-qualified resident during year one of the credit period fails to produce a tax credit for the investor.

• If a unit is rented to an LIHTC-qualified resident after year one of the credit period, it begins to produce a tax credit equal to two-thirds the annual credit it would have produced if rented to a qualified resident during year one.

<table>
<thead>
<tr>
<th>TWO THIRDS RULE EXAMPLE</th>
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</thead>
<tbody>
<tr>
<td>Building allocated 9 tax credit units.</td>
</tr>
<tr>
<td>Each unit will generate a $6,000 credit if rented during year 1</td>
</tr>
<tr>
<td>9 units x $6,000 = $54,000 = projected annual tax credit</td>
</tr>
<tr>
<td>The owner is expecting a total tax credit of $540,000 ($54,000 x 10 yrs)</td>
</tr>
<tr>
<td>The owner rents 6 units during year 1 but doesn’t rent 3 units until year 2</td>
</tr>
<tr>
<td>6 units x $6,000 = $36,000 = tax credit for year 1</td>
</tr>
<tr>
<td>(6 units x $6,000) + (3 units x $4,000) =</td>
</tr>
<tr>
<td>$36,000 + $12,000 = $48,000 = tax credit for year 2</td>
</tr>
<tr>
<td>The building can produce an annual credit of $48,000 for years 2 through 10.</td>
</tr>
<tr>
<td>The building can produce an annual credit of $12,000 for years 11 through 15.</td>
</tr>
<tr>
<td>The owner’s total tax credit will be $528,000 ($36,000 + $432,000 (</td>
</tr>
<tr>
<td>$48,000 x 9 yrs) + $60,000 ($12,000 x 5 yrs))</td>
</tr>
</tbody>
</table>
IMPORTANCE OF THE PARTNERSHIP AGREEMENT

- The partnership agreement governs the relationship between the developer and their investor(s). The investor is often represented by a syndicator whose job it is to find and represent the interest of the investors in their relationship with the developer.

- In the partnership agreement, the investor establishes the conditions under which they will forward equity contributions to the developer for use in constructing or rehabilitating the project. The syndicator often:
  - Conducts a review of all the initial tenant income certifications to confirm they are sufficient to initialize the credit flow for each LIHTC unit; and
  - Requires the developer provide a report that documents the completion of each resident’s initial tenant income certification, and the calculation of the applicable fraction during the months included in year one of the credit period.

IMPORTANCE OF THE HOUSING FINANCE AGENCY

- The Housing Finance Agency (HFA) carries out two main functions within the LIHTC program:
  - Approve an owner and a project to participate in the LIHTC program; and
  - Monitor all projects that are part of the LIHTC program for their compliance with all requirements established by the IRS and the HFA.

- There are three HFAs active in the LIHTC program in New York City:
  - New York City Department of Housing Preservation and Development (HPD);
  - New York City Housing Development Corporation (HDC); and
  - New York State Homes and Community Renewal (HCR).

- Each owner and property manager must know which HFA has responsibility for monitoring their project for compliance within 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.

QUALIFYING A HOUSEHOLD FOR THE LIHTC PROGRAM

- An applicant must meet two eligibility tests to qualify for the LIHTC program.
  
  - Their gross 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

- In the LIHTC program, the income limit is established in the minimum set aside an owner commits to for a project. If the owner committed to the
  
  - 20% @ 50% minimum set aside, the income limit for the LIHTC units is 50 percent of the AMI.
  
  - 25% @ 60% minimum set aside, the income limit for the LIHTC units is 60 percent of the AMI.
  
- When an owner elects to deep rent skew, they commit to a minimum set aside, and promise to rent 15 percent of their LIHTC units to residents with income no greater than 40 percent of the AMI.
Example

100 unit project
Owner elects 25% @ 60% set aside and to deep rent skew
100 units x 25% = 25 units in set aside
25 units x 15% = 4 units must be rented to residents below 40% of the AMI

Impact of HERA 2008

- The Housing and Economic Recovery Act (HERA) of 2008 made changes to how income limits are calculated for LIHTC projects. HERA protected owners of LIHTC projects from rent decreases in 2009, and established a new system for owners to hold their income limits harmless beginning in 2010.

- In 2009, HUD began issuing income limits they calculate specifically for LIHTC projects. HUD refers to an LIHTC project as an MTSP, a multifamily tax subsidy project. HUD issues two sets of MTSP income limits:
  - Income limits for Impacted MTSPs.
  - Income limits for non-Impacted MTSPs.

- An Impacted MTSP is any project with income limits determined in 2007 or 2008 under HUD’s hold-harmless policy. The project’s income limits would have decreased in 2007 or 2008 if HUD had not held them at the previous year’s level. A project must have been in service before 2009 to be an Impacted MTSP.
  - A single building project must have been in service prior to the end of 2008.
  - A multi-building project qualifies as an Impacted MTSP if at least one of its buildings was in service prior to 2009. Remember that a multi-building project is defined on line 8b of each building’s 8609 form.

- Acquisition credits are placed in service on the date of acquisition. A building’s rehab credits are placed in service as the owner completes its rehabilitation activities. An acr/rehab project qualifies as an Impacted MTSP if its acquisition credits were placed in service prior to 2009.

- If the income limit chart lists only a Very Low Income Limit and 60 percent Income Limit, all LIHTC projects in that county use these limits.
• If the chart includes a second set of income limits, every owner must determine if their project was placed in service before 2009.

• The owner of a non-Impacted project uses the Very Low Income and 60 percent limits.

• The owner of an Impacted project uses the HERA-Special 50 percent and HERA-Special 60 percent limits.

• For impacted counties, there may be years when HUD does not publish HERA-Special limits. HUD does not publish HERA-Special limits if they are less than the non-Impacted limits, but the owner of an Impacted project remains eligible to use any HERA-Special limits HUD issues for their area in future years.

Resyndication

• An owner may need to implement a rent decrease when they place the new credit allocation in service when resyndicating an existing LIHTC project. A project will switch from being Impacted to non-Impacted at its new placed in service date. The owner will need to insure they do not charge a rent that exceeds the maximum allowed calculated using the new income limits for the project.

Key Dates to Remember When Applying LIHTC Income Limits

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

• If your project was placed in service after December 31, 2008, it is non-Impacted and you may not use the HERA-Special income limits. You must use the regular income limits issued for New York City for the current year.

• On December 4, 2012, HUD issued the income limits for 2013. Owners and managers may begin using these income limits to determine household eligibility and to calculate maximum LIHTC rents as of December 4, 2012.

• The income limits for New York City for 2013 are on the following two pages.
### 2013 NYC Income Limits Calculated at 60% of the AMI

<table>
<thead>
<tr>
<th>Household Size</th>
<th>Income Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 person</td>
<td>$36,120</td>
</tr>
<tr>
<td>2 people</td>
<td>$41,280</td>
</tr>
<tr>
<td>3 people</td>
<td>$46,440</td>
</tr>
<tr>
<td>4 people</td>
<td>$51,540</td>
</tr>
<tr>
<td>5 people</td>
<td>$55,680</td>
</tr>
<tr>
<td>6 people</td>
<td>$59,820</td>
</tr>
<tr>
<td>7 people</td>
<td>$63,960</td>
</tr>
<tr>
<td>8 people</td>
<td>$68,040</td>
</tr>
</tbody>
</table>

### 2013 Maximum LIHTC Rents for New York City Calculated for Projects at 60% of the AMI*

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>Max Allowable Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio/Efficiency</td>
<td>$903</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>$967</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>$1,161</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>$1,340</td>
</tr>
<tr>
<td>4 Bedroom</td>
<td>$1,495</td>
</tr>
<tr>
<td>5 Bedroom</td>
<td>$1,650</td>
</tr>
</tbody>
</table>

*Remember to subtract the relevant utility allowance from the maximum allowable rent to determine the maximum rent you may charge your residents.

### 2013 NYC Income Limits Calculated at 50% of the AMI

<table>
<thead>
<tr>
<th>Household Size</th>
<th>Income Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 person</td>
<td>$30,100</td>
</tr>
<tr>
<td>2 people</td>
<td>$34,400</td>
</tr>
<tr>
<td>3 people</td>
<td>$38,700</td>
</tr>
<tr>
<td>4 people</td>
<td>$42,950</td>
</tr>
<tr>
<td>5 people</td>
<td>$46,400</td>
</tr>
<tr>
<td>6 people</td>
<td>$49,850</td>
</tr>
<tr>
<td>7 people</td>
<td>$53,300</td>
</tr>
<tr>
<td>8 people</td>
<td>$56,700</td>
</tr>
</tbody>
</table>

### 2013 Maximum LIHTC Rents for New York City Calculated for Projects at 50% of the AMI*

<table>
<thead>
<tr>
<th>Unit Size</th>
<th>Max Allowable Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio/Efficiency</td>
<td>$752</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>$806</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>$967</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>$1,116</td>
</tr>
<tr>
<td>4 Bedroom</td>
<td>$1,246</td>
</tr>
<tr>
<td>5 Bedroom</td>
<td>$1,375</td>
</tr>
</tbody>
</table>

*Remember to subtract the relevant utility allowance from the maximum allowable rent to determine the maximum rent you may charge your residents.

HOUSEHOLD SIZE & INCOME LIMITS

- Exclude the following household members from the family size when selecting a household’s income limit for the LIHTC program:
  - Foster children;
  - Foster adults;
  - Live-in attendants;
  - Children not living in the unit at least 50 percent of the time.

SAMPLE HOUSEHOLD

<table>
<thead>
<tr>
<th>Head</th>
<th>Foster Child – age 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse</td>
<td>Mother of Head</td>
</tr>
<tr>
<td>Child – age 6</td>
<td>Live in Attendant</td>
</tr>
<tr>
<td>Child – age 10</td>
<td></td>
</tr>
</tbody>
</table>

Number in household for income limit = 5
Number in household for unit size = 7

- HUD provides additional guidance on which individuals must be included in the household size when selecting the income limit. From 4350.3 HUD Handbook, Rev. 1, include:
  - 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;
  - Unborn Children of pregnant women;
  - Children in the process of being adopted; and
  - Temporarily absent family members still considered family members, including family members in a medical facility for a limited or fixed duration.
RECENT CHANGES TO RULES FOR CALCULATING ANNUAL INCOME

- HUD made the following changes to the rules for calculating annual income in Change 3 to the 4350.3 HUD Handbook released in the 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;
  - 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.

- In the October 2009 version of the 8823 Audit Guide, the IRS announced their policy regarding scholarships and grants for students living in LIHTC units.
  - Exclude all scholarships and grants for students who are not on Section 8.
  - For an LIHTC resident who receives Section 8 assistance, include that portion of a scholarship or grant in excess of that needed to pay tuition. Exclude their scholarship or grant 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.

- In the October 2009 version of the 8823 Audit Guide, the IRS implemented a rule for calculating 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 during the 12 months following the effective date of their income certification. The IRS instructs owners not to include the entire income received the previous 12 months if a person has become disabled or their disability has worsened, or if their place of employment or industry no longer exists.
## DETERMINING INCOME ELIGIBILITY EXERCISES

Answer **true** or **false** to the questions below.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A foster child is included for the income limit.</td>
<td></td>
</tr>
<tr>
<td>2. An applicant’s net social security benefit is included in their gross annual income.</td>
<td></td>
</tr>
<tr>
<td>3. The owner of a project that was placed in service in 2004 may use the HERA-Special income limits.</td>
<td></td>
</tr>
<tr>
<td>4. The owner of a project with acquisition credits that were placed in service in 2008 and rehab credits were placed in service in 2009 may use the HERA-Special income limits.</td>
<td></td>
</tr>
<tr>
<td>5. The income earned by a 16-year old foster child is included in the household’s gross annual income.</td>
<td></td>
</tr>
<tr>
<td>6. The SSI disability benefits a resident receives on behalf of a foster child is included in their gross annual income.</td>
<td></td>
</tr>
<tr>
<td>7. The first $480 earned by a 17-year old full-time student is included in their family’s annual income.</td>
<td></td>
</tr>
<tr>
<td>8. The first $480 earned by a 55-year old full-time student, who is the mother of the head-of-household is included in their family’s annual income.</td>
<td></td>
</tr>
<tr>
<td>9. The scholarship received by a student, who lives with their parents, who are on the Section 8 program is included in their gross annual income.</td>
<td></td>
</tr>
<tr>
<td>10. The owner of a project that received their credit allocation in 2008 and placed in service in 2009 may use the HERA-Special income limits.</td>
<td></td>
</tr>
</tbody>
</table>
## Determining Income Eligibility Exercises - Answers

Answer **true** or **false** to the questions below.

<table>
<thead>
<tr>
<th></th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A foster child is included for the income limit.</td>
<td></td>
<td>x</td>
</tr>
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<td></td>
<td>x</td>
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<td>x</td>
<td></td>
</tr>
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<td></td>
</tr>
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<td></td>
</tr>
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<td></td>
<td>x</td>
</tr>
<tr>
<td>8. The first $480 earned by a 55-year old full-time student, who is the mother of the head-of-household is included in their family's annual income.</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>9. The scholarship received by a student, who lives with their parents, who are on the Section 8 program is included in their gross annual income.</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>10. The owner of a project that received its credit allocation in 2008 and placed in service in 2009 may use the HERA-Special income limits.</td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>
**FULL TIME STUDENT RULE**

- Households comprised entirely of full-time students are generally ineligible for LIHTC program.
  - A 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 is verified with the learning institution the student attends.
- The following households may qualify for the LIHTC program even if everyone living in the unit attends school on a full-time basis:
  - All household members are married and file a joint tax return, or are eligible to file a joint tax return with their spouse.
  - The household consists of a 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.
  - At least one household member:
    - Is a welfare recipient;
    - Participates in a federal, state or local job training program; or
    - Was a foster child during their lifetime.
- If everyone in a household is a full time student, the property manager must document in the file that they qualify in one of these five categories for them to be eligible for the LIHTC program.
- An unborn child is included in the household when determining if it qualifies for the LIHTC program.
- Children who attend kindergarten through grade 12 are assumed to be full time students. The manager must document that a school-age child no longer attends school if the household’s eligibility depends on the child having dropped out of school.
FULL TIME STUDENT RULE EXERCISES

Determine if each of the following households is eligible for the LIHTC program under the full-time student rule.

1. Head of household, full-time student
   Son, full-time student
   Daughter, full-time student
   The head of the household claims both the son and daughter as dependents on their federal income tax return.

   Eligible ____________  Ineligible ____________

2. Head of household, full-time student
   Son, full-time student
   Daughter, full-time student
   The head of the household receives public assistance on behalf of the son and daughter.

   Eligible ____________  Ineligible ____________

3. Head of household, full-time student, lives off income from an Uncle
   Son, full-time student
   Daughter, full-time student
   The Uncle claims the daughter as a dependent on his federal income tax return.

   Eligible ____________  Ineligible ____________

4. Head of household, full-time student, participates in job-training program
   Son, full-time student
   Daughter, full-time student

   Eligible ____________  Ineligible ____________

5. Head of household, full-time student, on probation for new job
   Wife, full-time student
   Daughter, full-time student

   Eligible ____________  Ineligible ____________

   ____________  Ineligible ____________
FULL TIME STUDENT RULE EXERCISES - ANSWERS

Determine if each of the following households is eligible for the LIHTC program under the full-time student rule.

1. Head of household, full-time student
   Son, full-time student
   Daughter, full-time student
   The head of the household claims both the son and daughter as dependents on their federal income tax return.
   Eligible _________ X _________  Ineligible ________________

2. Head of household, full-time student
   Son, full-time student
   Daughter, full-time student
   The head of the household receives public assistance on behalf of the son and daughter.
   Eligible _________ X _________  Ineligible ________________

3. Head of household, full-time student, lives off income from an Uncle
   Son, full-time student
   Daughter, full-time student
   The Uncle claims the daughter as a dependent on his federal income tax return.
   Eligible ________________  Ineligible ______________ X _________

4. Head of household, full-time student, participates in job-training program
   Son, full-time student
   Daughter, full-time student
   Eligible _________ X _________  Ineligible ________________

5. Head of household, full-time student, on probation for new job
   Wife, full-time student
   Daughter, full-time student
   Eligible ________________  Ineligible _________ X _________
**MAXIMUM ALLOWABLE RENT**

- Maximum allowable rent in the LIHTC program 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.

- The tenant rent is the maximum a landlord may charge a resident to occupy an LIHTC unit. The tenant rent equals unit’s gross rent minus the utility allowance.

```
<table>
<thead>
<tr>
<th>Gross Rent</th>
<th>$500</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Allowance</td>
<td>-$50</td>
</tr>
<tr>
<td>Tenant Rent</td>
<td>$450</td>
</tr>
</tbody>
</table>
```

- An owner calculates the maximum allowable rent for each unit size using a project’s income limits.

- An owner imputes a family size of 1.5 persons per bedroom & 1 person for a studio or an efficiency apartment.

- Maximum allowable rent equals 30% of the income limit for the imputed family size.
  - The maximum allowable rent for a studio/efficiency is 30 percent of a project’s one person income limit.
  - The maximum allowable rent for a one-bedroom unit is 30 percent of a project’s income limit for 1.5 persons, calculated by averaging the one and two person income limits.
  - The maximum allowable rent for a two-bedroom unit is 30 percent of a project’s three person income limit. (2 bedrooms x 1.5 persons = 3 persons)
  - The maximum allowable rent for a three-bedroom unit is 30 percent of a project’s income limit for 4.5 persons, calculated by averaging the four and five person income limits. (3 bedrooms x 1.5 persons = 4.5 persons)
- The maximum allowable rent for a four-bedroom unit is 30 percent of a project's six person income limit. (4 bedrooms x 1.5 persons = 6 persons)

- The maximum allowable rent for a five-bedroom unit is 30 percent of a project's income limit for 7.5 persons, calculated by averaging the seven person and eight person income limits. (5 bedrooms x 1.5 persons = 7.5 persons)

**EXAMPLE**

25% @ 60% minimum set aside

1 bedroom unit

Utility allowance = $45

1-person 60% income limit = $16,700

2-person 60% income limit = $18,100

\[ \frac{($16,700 + $18,100)}{2} = $17,400 \]

$17,400 = 60% income limit for 1.5 Persons

$17,400 x 30% = $5,220

$5,220/12 months = $435 (rounded down)

$435 - $45 = $390 = max tenant rent

- Any resident living in an LIHTC unit who pays their rent for themselves cannot pay more than the maximum allowable for the LIHTC program.

- Residents who benefit from the Section 8 program, including Shelter Plus Care, pay rent according to the rules for their subsidy program.
  - The total revenue received for the unit, and the portion of that revenue paid by the resident is based on the rules for the subsidy program.
  - So long as a resident benefits from 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

- All information necessary to document a household’s eligibility must be documented using the rules for the LIHTC program.

- All information must be verified through a third party or the owner must document why a third party verification was not possible. It may not be possible if the relevant third party will not respond to a request for information.
  
  - An owner may obtain information from a third party through US mail, by fax, by email, or through information obtained off from the Internet.
  
  - When obtaining information by email, or from the Internet, the owner must maintain sufficient documentation to demonstrate that it was obtained from a valid, third party source.

- If a third party does not respond to multiple written requests to provide information, the owner may attempt to follow up and obtain the information by phone. Many third-parties will not provide information via the phone for legal reasons.

- 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 to document necessary information, the owner may ask the resident to sign a witness or notarized certification. For example, if an adult has no income, require that they certify to the fact on a zero income statement.

- Verified information is valid for 120 days. Once information is over 120 days old, it is no longer usable as part of a tenant income certification.

- An owner who obtains information through EIV for the Section 8 program may not use it to support an LIHTC tenant income certification. The rules governing the use of EIV data do not allow its use in the LIHTC program.

- When verifying information on an applicant and resident and completing a tenant income certification, use the forms required or recommended by your housing finance agency.
LEASING REQUIREMENTS

- The LIHTC program requires that an owner sign a lease with a resident that lasts at least six months.

- The lease should also detail:
  - The household members approved to occupy the unit;
  - The utilities to be paid by the landlord;
  - The utilities to be paid by the resident; and
  - The requirement that the resident comply with all recertification requirements.

- The resident must also sign the required form certifying to compliance with the LIHTC full time student rule.

ASSEMBLING A COMPLIANCE BINDER

- Before beginning the initial certifications, an owner should establish a compliance binder for the project. In this binder, the owner should assemble the documents that demonstrate compliance within the LIHTC program, including when management completed each resident’s initial tenant income certification. The compliance binder should include:

  - Forms IRS-8609 for each building in the project after the HFA has completed part 1 of the form and the owner has completed part 2;
  - The regulatory agreement detailing the requirement for the project;
  - 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 as the manager completes the initial tenant income certifications;
  - Any other regulatory agreements that apply to the project including those for the Shelter Plus Car, HOME, tax-exempt bond, etc. programs; and
• The current income limits, maximum allowable rents and utility allowances for the project.

**Owner’s Record Keeping Requirements**

• The owner is responsible for maintaining the records that are necessary for both the HFA and the syndicator, and its representatives, to complete their compliance monitoring activities. The records must be available at a project’s management office or another convenient location.

• On an ongoing basis, the owner must maintain the following records:
  
  • Signed tenant income certifications (TICs);
  
  • Third party verifications and other documentation supporting income and other information on the TICs;
  
  • Documentation of the amount of rent charged and utility allowance;
  
  • Documentation of their compliance with the Available Unit Rule, Vacant Unit Rule and Transfer Rule.

• The owner must be able to document the month and year each resident was qualified for the LIHTC program, and must keep the above records for each project:
  
  • For the first year of its credit period, for twenty-one (21) years;
  
  • For years two (2) through fifteen (15) of its compliance period, for six (6) years; and
  
  • For each year of its Extended Use Period, as required by the HFA.

• An owner should follow these practices to ensure they have the records available for the HFA, the syndicator, and the IRS for the amount of time required:
  
  • Maintain multiple copies of the necessary records;
  
  • Maintain copies of the necessary records in more than one location in case of fire, flood, etc.;
  
  • Establish an electronic system for maintaining its LIHTC records.
**PART TWO: MAINTAINING COMPLIANCE THROUGH THE COMPLIANCE PERIOD**

**Maintaining Each Building's Applicable Fraction**

- It is always an owner's goal to maximize the value of their LIHTC allocation. To do so, an owner must:
  - Reach building's targeted applicable fraction by the end of the first year of its credit period; and,
  - Maintain that applicable fraction throughout the building's compliance period.
- Throughout a building's 15 year compliance period, an owner will be completing annual recertifications and finding that some resident's experience rises in their income making them over-income for the LIHTC program. An owner will also need to make decisions about how to re-lease units as they are vacated by LIHTC residents and about what unit transfers should be approved for residents already living at their project.
- 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.
- A unit stops producing its LIHTC when it falls out of compliance, plus the owner must return to the IRS the accelerated portion of the credit they have already taking on it back to the first year of the credit period. When a unit falls out of compliance:
  - During years two through ten, the owner must give back one-third of the LIHTC they have taken for the unit, plus pay penalties and interest.
  - 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 Recertification Requirements for 100% LIHTC Projects

- Since the passage of HERA 2008, the IRS no longer requires owners of 100% LIHTC projects to complete annual recertifications. The purpose of doing an annual recertification in the LIHTC program is to alert the owner of the need to implement the available unit rule. At a 100% LIHTC project, the owner automatically rents all available units to LIHTC qualified residents.

- Every owner should confirm the requirements implemented by their HFA, and their LIHTC syndicator before they stop completing annual recertifications.

- Even though an owner is no longer required to complete annual income recertifications, they must continue to implement the full-time student rule. As of the anniversary of a resident’s initial certification, an owner must obtain their signature on the student rule certification form required by their HFA. If a resident is no longer in compliance with the LIHTC student rule, their unit stops producing an LIHTC.

Annual Recertification Requirements for Mixed Income LIHTC Projects

- Tax credit residents in mixed-income projects must be recertified every year.

- The same rules and procedures used at the initial certification to document income are used at the recertification.
  - Information must be collected on annual income, --family size, and family members who are full-time students or resident managers.
  - Information must be verified using the same procedures as required at an initial certification.

140% Rule

- At a recertification, a resident’s income at recertification is compared to 140% of the current income limit for the family size. This is referred to as the 140% Rule.

- If the family’s income at the time of recertification exceeds this limit, the family is no longer eligible for the tax credit program. They are not required to vacate their unit.
**Example**

1 person applicant income limit is $20,000
1 person recertification income limit is $28,000 ($20,000 x 1.4)

**170% Rule**

- For all recertifications at a project where an owner elects to deep rent skew, a resident’s income at recertification is compared to 170% of the current income limit for the family size. This is referred to as the 170% Rule.

- If the family’s income at the time of recertification exceeds this limit, the family is no longer eligible for the tax credit program. They are not required to vacate their unit.

**Example**

1 person applicant income limit is $20,000
1 person recertification income limit is $34,000 ($20,000 x 1.7)

**Available Unit Rule**

- Successful implementation of the available unit rule is key to maintaining each building’s applicable fraction.

- If a resident’s income rises above 140 percent of the current income limit, the owner must rent the next available unit of comparable or smaller size in the same building to an LIHTC-qualified resident.

- All comparable or smaller units must be rented to tax credit-eligible families until the applicable fraction is at least equal to that necessary to support the anticipated tax credit, without including the unit housing the resident now considered to be over-income for the LIHTC program.

- The dimensions of the units involved must be tracked. If the next available unit is smaller than the unit housing the family in violation of the 140% rule, the manager may have to rent more than one smaller or comparably sized unit to tax credit-eligible families for the actual applicable fraction to equal that necessary to produce the expected LIHTC.
Available Unit Rule When an Owner Elects to Deep Rent Skew

- If a resident’s income rises above 170 percent of the current income limit, an owner who elected to deep rent skew must rent the next available LIHTC unit to a resident with income not exceeding 40 percent of the AMI.

- So long as one resident continues to receive an annual income that exceeds 170 percent of their income limit, the owner must rent all available LIHTC units to residents with an annual income not exceeding 40 percent of the AMI.

- At most mixed-income LIHTC projects, the low income units must float for the owner to correctly implement the available unit rule and protect their applicable fraction. It is only when an owner elects to deep rent skew that the low income units at a mixed-income project are fixed.

Penalties for Noncompliance with the Available Unit Rule

- The IRS implements a “one-for-all” policy when penalizing an owner for failing to comply with the available unit rule. When an owner discovers a resident’s income has risen above the income limit used at a recertification, but fails to rent an available unit of comparable or smaller size in the same building to a qualified resident:
  
  - The unit occupied by the over-income family stops producing its LIHTC; and

  - All other units of comparable or larger size in the same building occupied by residents with income above their recertification income limit also stop producing their LIHTC.

- The units occupied by over-income residents do not start producing their LIHTC again until the owner corrects the noncompliance by:
  
  - Moving the unqualified family from the unit that came available after completing the over-income family’s recertification; and

  - Moving an LIHTC-qualified resident into the available unit.

- Violation of the available unit rule is non-correctible noncompliance. The owner loses the credits that would have been produced during the period of noncompliance, and there is no action that can be taken to prevent that loss of credits.
## Recertifications and Available Unit Rule Exercises

Answer **true** or **false** to the questions below.

<table>
<thead>
<tr>
<th></th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. At a recertification, the owner compares a resident's income to 140% of their current income limit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. An owner of a 100% LIHTC project does not need to implement the student rule after they complete a resident's initial certification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. A building's applicable fraction is 75%. So long as 75% of its units are rented to LIHTC-qualified residents, regardless of its floor space applicable fraction, it will produce its anticipated tax credit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. The syndicator for a 100% LIHTC project may require the manager to continue to complete annual recertifications.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. A housing finance agency may require 100% LIHTC projects in their state to continue to complete annual recertifications.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. An owner has elected to deep rent skew. His 2-person income limit is $34,000. When recertifying a 2-person household, he must compare their annual income to $57,800.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. A building's applicable fraction is 60%. Sixty percent of its units and of its floor space are occupied by LIHTC-qualified residents and nobody's income is more than 140% of their income limit. The owner may rent the available studio apartment to a market renter.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. If a resident no longer qualifies under the student rule, their unit will continue to produce its LIHTC so long as they qualified at their initial certification.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Recertifications and Available Unit Rule Exercises - Answers

Answer **true** or **false** to the questions below.

<table>
<thead>
<tr>
<th></th>
<th>True</th>
<th>False</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. At a recertification, the owner compares a resident’s income to 140% of their current income limit.</td>
<td><em>x</em></td>
<td></td>
</tr>
<tr>
<td>2. An owner of a 100% LIHTC project does not need to implement the student rule after they complete a resident’s initial certification</td>
<td></td>
<td><em>x</em></td>
</tr>
<tr>
<td>3. A building’s applicable fraction is 75%. So long as 75% of its units are rented to LIHTC-qualified residents, regardless of its floor space applicable fraction, it will produce its anticipated tax credit.</td>
<td></td>
<td><em>x</em></td>
</tr>
<tr>
<td>4. The syndicator for a 100% LIHTC project may require the manager to continue to complete annual recertifications.</td>
<td><em>x</em></td>
<td></td>
</tr>
<tr>
<td>5. A housing finance agency may require 100% LIHTC projects in their state to continue to complete annual recertifications.</td>
<td><em>x</em></td>
<td></td>
</tr>
<tr>
<td>6. An owner has elected to deep rent skew. His 2-person income limit is $34,000. When recertifying a 2-person household, he must compare their annual income to $57,800.</td>
<td><em>x</em></td>
<td></td>
</tr>
<tr>
<td>7. A building’s applicable fraction is 60%. Sixty percent of its units and of its floor space are occupied by LIHTC-qualified residents and nobody’s income is more than 140% of their income limit. The owner may rent the available studio apartment to a market renter.</td>
<td><em>x</em></td>
<td></td>
</tr>
<tr>
<td>8. If a resident no longer qualifies under the student rule, their unit will continue to produce its LIHTC so long as they qualified at their initial certification.</td>
<td></td>
<td><em>x</em></td>
</tr>
</tbody>
</table>
Changes in Household Composition

- An LIHTC resident may add a new household member so long as one original member who was listed on their initial TIC 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:
  - For mixed-income projects: The newly created household was income qualified or the remaining residents were independently income qualified when they occupied the unit
  - For 100% LIHTC projects: The remaining residents were independently income-qualified at the time they occupied the unit

EXAMPLE

Michael occupied a 2-bedroom LIHTC unit in a mixed-income project in May 2008 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 an income-qualified resident when Michael moved out

Vacant Unit Rule

- A unit that has never been leased cannot be considered a tax credit-eligible unit. An owner cannot count a unit towards the minimum set-aside or applicable fraction until it has been leased to a resident qualified for the tax credit program.
- After a tax credit resident moves out, the unit can continue to be counted towards the minimum set-aside and the applicable fraction under the following conditions:
  - The unit is suitable for occupancy; and
  - Reasonable efforts to lease the unit to a tax credit-eligible applicant are being made.
- This is referred to as the vacant unit rule.
- An owner can demonstrate compliance with the Vacant Unit Rule by following practices that support the rapid re-leasing of vacant units such as maintaining a waiting list, and tracking the completion of all maintenance work necessary to make a vacant unit ready for occupancy.
**Transfers at a 100 Percent LIHTC Project**

- 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.

**Transfers Within the Same Building at a Mixed-Income Project**

- A tax credit resident can transfer from one unit to another unit in the same building with no need to requalify for the program before the transfer.

- If both units were tax credit eligible before the transfer, they remain so after the transfer. If not, the units involved in the transfer exchange status.

- If the transfer involves units of different size, the owner must check the impact on the building’s applicable fraction before approving the transfer. Remember, the applicable fraction is always the lesser of percentage of units versus the percentage of floor space occupied by LIHTC qualified residents.

**Transfers to a Different Building at a Mixed-Income Project**

- If a household’s income was not more than 140% of their income limit at their most recent recertification, they can transfer to another building included in the same project. If both units were tax credit units before the transfer, they remain so after the transfer. If not, the two units exchange status with one being classified as a tax credit unit and the other as a market unit.

- The resident’s income certification, including the effective date, move with the family.

- Check part 2, line 8b of a building’s Form 8609 to determine the other building(s) that are part of the same project. The owner should maintain each building’s 8609 form in the compliance binder for their project.

- The owner must verify the impact on the applicable fraction for both buildings before approving the transfer.
PART THREE: WRAP UP WITH QUESTIONS