



Housing Matters!

Tax Credit Acquisition/ Rehab Fundamentals



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Introduction

Eligible bases for credits

Expenditures to construct new property can form an eligible basis for claiming low income housing tax credits (tax credits). Thus, new construction tax credit properties are the most common type of tax credit housing in many areas. However, costs that support the acquisition and rehabilitation of existing buildings can also support tax credits. Credits based on rehabilitation expenses can be claimed independently, but if credits are claimed based on the costs of acquiring a building, these must be claimed along with separate rehabilitation credits. Tax credit requirements for new construction are complex, and acquisition and rehab credits present several additional unique challenges which this course will address.

Claiming Credits

Placing in service

§ 42 (e)(3)(A) & IRS Notice 88-116

A building is placed in service when a building is ready for its intended purpose. With **new construction**, this is generally the date when the first unit in a building can legally be occupied. In most areas, this is evidenced by a certificate of occupancy or similar. However, with acquisition rehab projects, these rules are less obvious.

8823 Guide 4-24, footnote # 39

For buildings that are **acquired with households living in-place**, the building is ready for its intended purpose upon acquisition. Therefore, the date of acquisition by purchase (as defined by section 179 (d)(2) depreciation rules) becomes the placed in service date for the tax credits.

The **rehabilitation** placed in service date does not directly relate to occupancy. Rather it is an expenditure test to determine what *year* credits can be claimed and when an eligible basis that can support the planned credits is met. Technically speaking, rehab credits can be placed in service at the close of any 2-year period, over which the rehab expenditures are made. At least the greater of 20% of the adjusted basis of the project or \$6,700 per unit must be spent.

Credit deferral

The year that credits are first claimed becomes the first year of the credit period. Tax credits may be claimed starting the year a building is placed in service. Alternatively, the start of the credits may be deferred until the next year. This may allow time for a larger number of units to be tax credit qualified.

To defer or not to defer...

The choice to defer often comes down to whether tax credit qualification goals are met.

***EXAMPLE** Decision...defer!*

Projected tax credits for a building are based on qualifying all 100 of its same-size units as tax credit. It is placed in service on October 31st, 2018. By December

31st of that year, 41 of the 100 units have been qualified. The owner chooses not to claim credits in 2018 with 41% qualification. Instead she defers to 2019 to allow time to achieve higher tax credit occupancy by the end of 2019, which is the deadline to start claiming credits.

EXAMPLE Decision... don't defer!

An 83-unit building has a target tax credit based on 100% qualified occupancy. The building is placed in service on 02/08/2018. By 12/31/2018, all 83 units are qualified. As the goal that would support the desired tax credits has been met by the end of the year that the building was placed in service, the owner had no need to defer credits to 2019.

Acquisition credits are deferred when the rehab is not placed in service the year of acquisition. both acquisition and rehab credits will begin at the start of the year that the rehab is PIS. Any tenant qualified up through January 31st of that year starts credits for their unit for that entire year.

Applicable Fraction

§ 42 (c)(1)(B)-(D)

The portion of a building that supports low-income units is called the applicable fraction. It is based on lower of the number of units or the square footage of those units, as a fraction of all of the units.

Applicable Fraction

Math terms

Numerator

Denominator

Applicable fraction

Total tax credit units in the building

Total residential rental units in the building

First year prorated credits

§ 42 (f)(2)(A) and (B)

After the first year, the applicable fraction reached by the end of the first year should remain constant. First year credits, however, are pro-rated. Starting with the **first full month that the building is in service**, the pro-ration calculation is based on the total of the applicable fractions at the end of each **full** month divided by 12 months.

EXAMPLE Credits start first full month

A building is placed in service on April 14th. Credits may be claimed starting in May using the applicable fraction as of May 31st and every month-end thereafter.

The credits that cannot be claimed in the first year are claimed in the eleventh year.

Workshop: 1st Year Applicable Fraction

A 5-unit building was placed in service on June 30th, 2017. The units were tax credit occupied on the dates listed below. What is the first month credits can be claimed?

Unit #1 (800') was rented on 6/30/2017

Unit #2 (800') was rented on 7/1/2017

Unit #3 (800') was rented on 8/10/2017

Unit #4 (800') was rented on 9/9/2017

Unit #5 (800') was rented on 12/31/2017

Figure the first-year applicable fraction for the building.

Portion of credits claimed in year 1 _____ %

Portion of credits claimed in year 11 _____ %

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	= _____

Credits after the first year

§ 42 (f)(3)

When additional tax credit units are added after the first year of the credit period, there is a 2/3rds adjustment to the credit percentage calculation, and the credits must be claimed over the remainder of the 15 years of the compliance period for the additional units. The credits for these units are thus worth considerably less than full credits.

Acquisition “tack back” and first year credits

§ 42 (f)(2)(A) and (B)

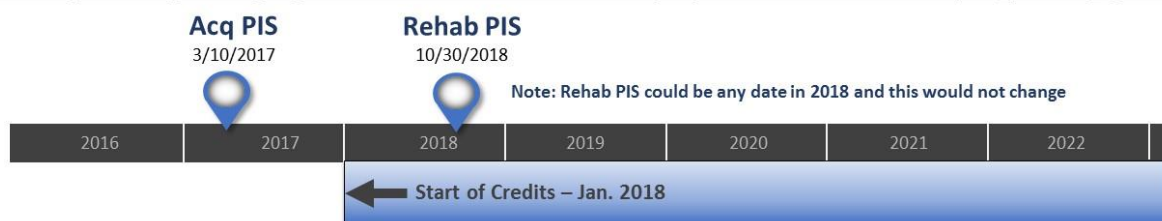
The primary function of the placed in-service date for rehab is to determine **the year** the credits start.

If the rehab is placed in service and completed **the year of acquisition**, the first year of the credit period will be the year of acquisition. A first-year applicable fraction will be prorated and will begin the first full month after the acquisition.

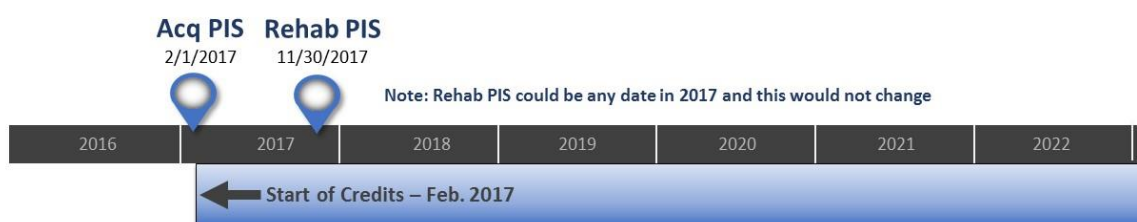
If the rehab is placed in service in a **following year**, acquisition credits will be deferred, and both acquisition and rehab credits will generally begin at the start of the year that the rehab places in service.

Examples: Credit “tack-back”

A building was acquired 3/10/2017 and the rehab was PIS 10/30/2018. Both credits may begin on 1/1/2018.



A building was acquired 2/1/2017 and the rehab was PIS 11/30/2017. Both credits may begin on 2/1/2017.



Comparison of tax credit calculations by different credit types

	Credit type		
Tax Credit calculation:	New construction	Acquisition	Rehabilitation
Eligible basis	Cost to construct building	Cost to acquire building	Cost to rehab building
<u>X Applicable fraction</u>	% of low-income units	% of low-income units	
= Qualified basis			
<u>X Credit percentage</u>	4% (bond) or 9%	4%	4% (bond) or 9%
= Annual tax credits			

Workshop:

Credit Start Dates

- ☐ A building was acquired 1/1/2018 and the rehab was placed in service 12/28/2019. Both credits go back to _____.
- ☐ A building was acquired on 4/1/2016. The rehab was placed in service 10/10/2016. Both credits go back to _____.
- ☐ A building was acquired on 1/1/2018. The rehab was placed in service 12/10/2018. Both credits go back to _____.
- ☐ A building was acquired on 6/12/2017. The rehab was placed in service 6/2/2018. Both credits go back to _____.

Credit, compliance and extended use periods

Once credits are claimed, three periods all begin with that year:



EXAMPLE Determining the end of tax credit periods

First year of the Credit Period 2018

End of the Credit Period 2027 (2018 + 9 years for a total of 10 years)

End of Compliance Period 2032 (2018 + 14 years for a total of 15 years)

End of Extended Use Period (min.) 2047 (2018 + 29 years for a minimum total of 30 years)

Certification process

Effective dates

New construction

New residents have effective dates based on move-in date and all paperwork must precede that date.

Acquisition

As with new construction, new residents that move in after the acquisition of an existing property have effective dates based on move-in date and all paperwork must precede that date. However, there may be existing residents as of the date of acquisition. The effective dates for these tenants can be retroactive to the acquisition date, even if the paperwork takes up to 120 days to complete.

Revenue Ruling 2004-82 (12 questions) Question 8 & 8823 Guide Chapter 4-16 to 20

Acquisition and rehab credits are BOTH satisfied with one set of certification paperwork. This means that once a certification is done for acquisition, another one does not need to be separately done for the rehab.

Income certifications for households who are in-place on the date of acquisition that are completed 120 days before or after the date of acquisition may have an effective date as of the acquisition date. Certifications completed after the 120 days are effective the date the last adult signs the certification.

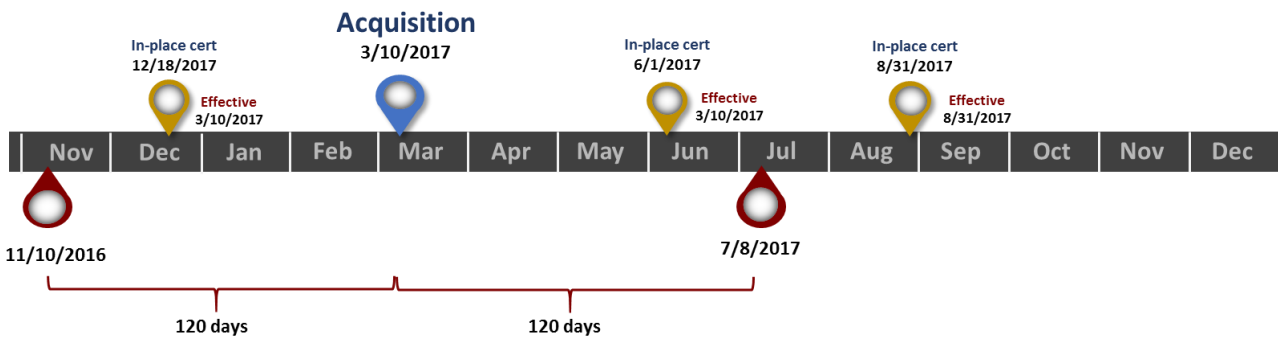
In many cases, credits will be claimed going back to acquisition. This can be done for units with existing residents that are certified within the 120-day deadline. Even if credits are not going to be claimed the year of acquisition, completing the certifications at acquisition accomplishes some very important things. First, it can be determined that household are qualified at acquisition and are then protected against disqualification if their income increases in the future. Additionally, in the unfortunate case where in-place residents do not qualify at acquisition, they can be given more time to develop a relocation plan and exit the property.

The answer to whether an owner/agent should work hard to make the 120-day deadline when credits will not be claimed that year is most flexible if household incomes tend to be low and stable and households are not likely to be disqualified if the qualification process is delayed.

Effective Dates for Tenants In-place at Acquisition date

If certified:	The effective date is:	The Income limits to use are:
120 before or after acquisition	Date of acquisition	Limits on acquisition date
After 120 days	Date TIC is signed	Limits as of signature date

Example: 120-day acquisition grace period



Workshop: Effective Dates

The acquisition of a building takes place on 6/3/2017. The rehab is placed in service on 11/30/2017. Complete the effective dates for these households:

Effective date:

1. A new household that was qualified and the TIC is signed on 6/11/2107. _____
2. An existing household was qualified and the TIC was signed on 4/1/2017. _____
3. An existing household was qualified and the TIC was signed on 11/28/2017. _____
4. An existing household was qualified and the TIC was signed on 7/2/2017. _____

Safe

harbor Income testing

Rev. Proc. 2003-82 & 8823 Guide 4-26

When credits are deferred, units qualified before the start of the credit period with households who are still in place at the start of the credit period will not need to be re-qualified. If they have been in the property more than 120 days before the start of the first year, however, an "income test" may need to be run on the household at the start of the first credit year. The income test is self-certification by the household as to whether their income has changed since they were initially qualified. The household will provide supporting documentation to allow for new calculations if their income has changed. The

household's eligibility to stay is not in question, but the Available Unit Rule (AUR) will be applied to any units that are over the 140% limit at the time of the start of the credit period. Because of how the AUR works, this only applies to projects that are less than 100% tax credit.

For credit periods that start at the beginning of a calendar year, the cutoff date for the 120-day income test is September 3rd of the previous year.

01-01-2018

- 120 days

09-03-2017

Proof

Sep 28 days

Oct 31 days

Nov 30 days

Dec 31 days

120 days

A graphic of a clipboard with a yellow border. At the top, a white piece of paper with a torn edge contains the title 'Workshop: Income Testing' in black text. A black pen lies horizontally across the top right of this paper. Below the title paper, a larger white sheet of paper is attached to the clipboard, containing the main text of the document. The bottom right corner of this white sheet is folded over.

Workshop: Income Testing

A 20-unit building was placed in service on 3/15/2017. By 12/31/2017, 12 of the 20 units are occupied by qualified households. The goal was to occupy 90%. Because the goal tax credit occupancy is not reached, credits will be deferred to 2018. The owner/agent must now determine which households must have an income test completed. Below is a list of some of the qualified units. Put a check besides units that must have an income test completed.

Unit A

A household that was in-place at acquisition that was qualified on 2/1/2017, with an effective date of 3/15/2017.

Unit B

A new move-in that qualified and moved in on 8/20/2017.

Unit D

A household that was in-place at acquisition that was qualified on 4/15/2017, with an effective date of 3/15/2017.

Unit F

A new move-in that qualified on 9/10/2017.

Unit H

A new move-in that qualified on 8/31/2017

Unit K

A household that was in-place at acquisition that was qualified on 9/4/2017.

Transfers

PLR 200044020, Treas. Reg. 1.42-15 (d) & 8823 Guide 4-24

For transfers within a building the units simply switch status. Similarly, transfers are allowable for households between buildings within a project without recertification if the household was at or below 140% of the income limits at their most recent certification. It is recommended that an owner/agent check with the state allocating agency for their policy.

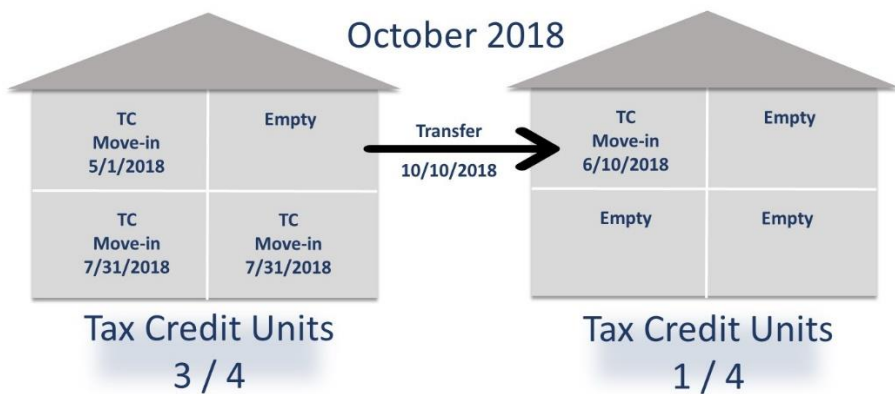
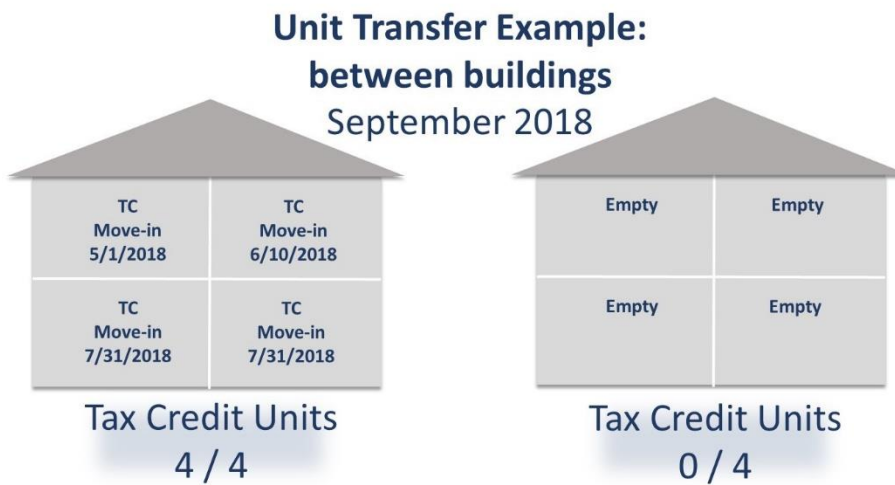
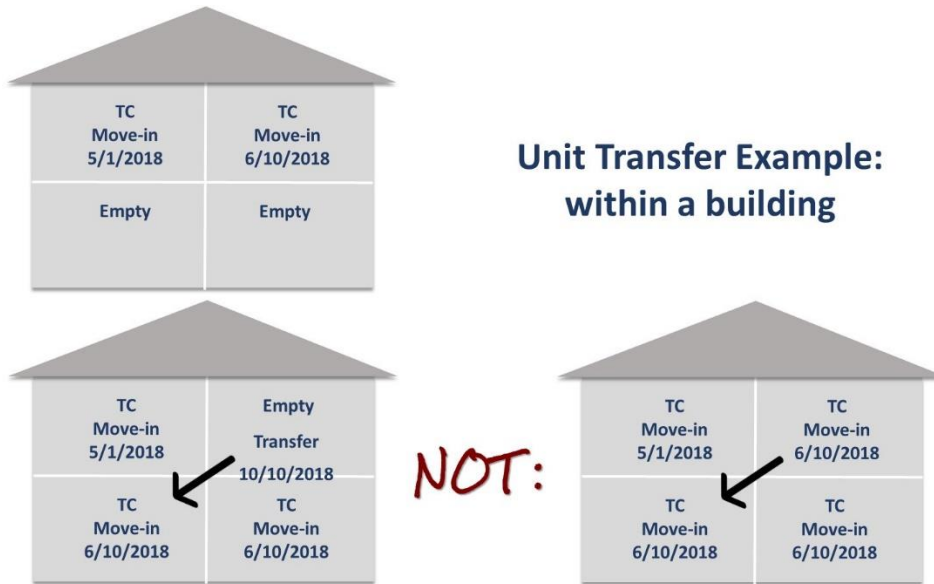


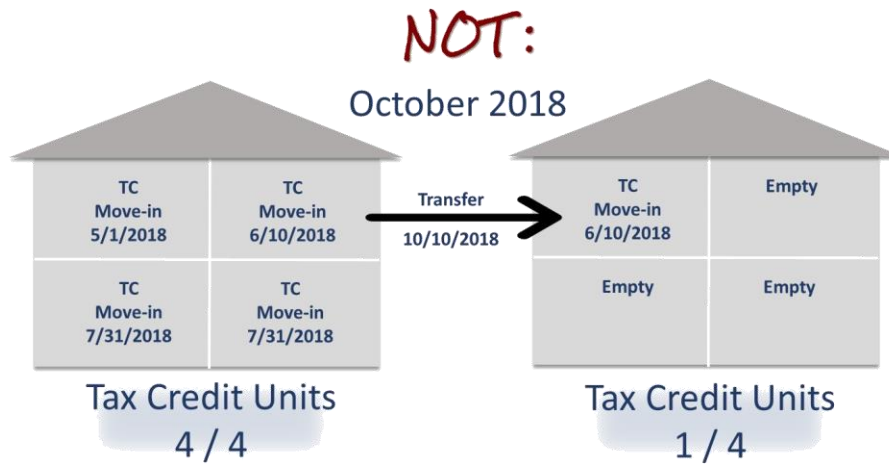
When any transfers occur (within a building or a project), the IRS indicates that a recertification is not necessary, and will be due for the household at the next anniversary of their entry to the project. However, some states more restrictively require recertification at transfer and that becomes the new anniversary date.

Some state agencies still require a formerly common practice of treating transfers between buildings as move-outs and move-ins to the new unit. In these states, a household must qualify to transfer by being at or below the current income limits. If the state requires this, owner/agents planning acquisition/rehab projects need to establish how the certification process is expected to work for an acquisition/rehab project where there will be transfers between buildings while the rehab is in process. Tenants who qualify at acquisition may not qualify when it is time for them to move. States will have to clarify how the owner can avoid evicting these households and still satisfy the state rule.

Most states accept the 8823 Guide instructions and rely on the most recent recertification to establish that the household is below the 140% limit, and do not require the test at all for 100% projects. However, some states that allow transfers between buildings within a project may require a full recertification at the time of transfer before the household may move to prove that they are not over-income (at or below the 140% limit).

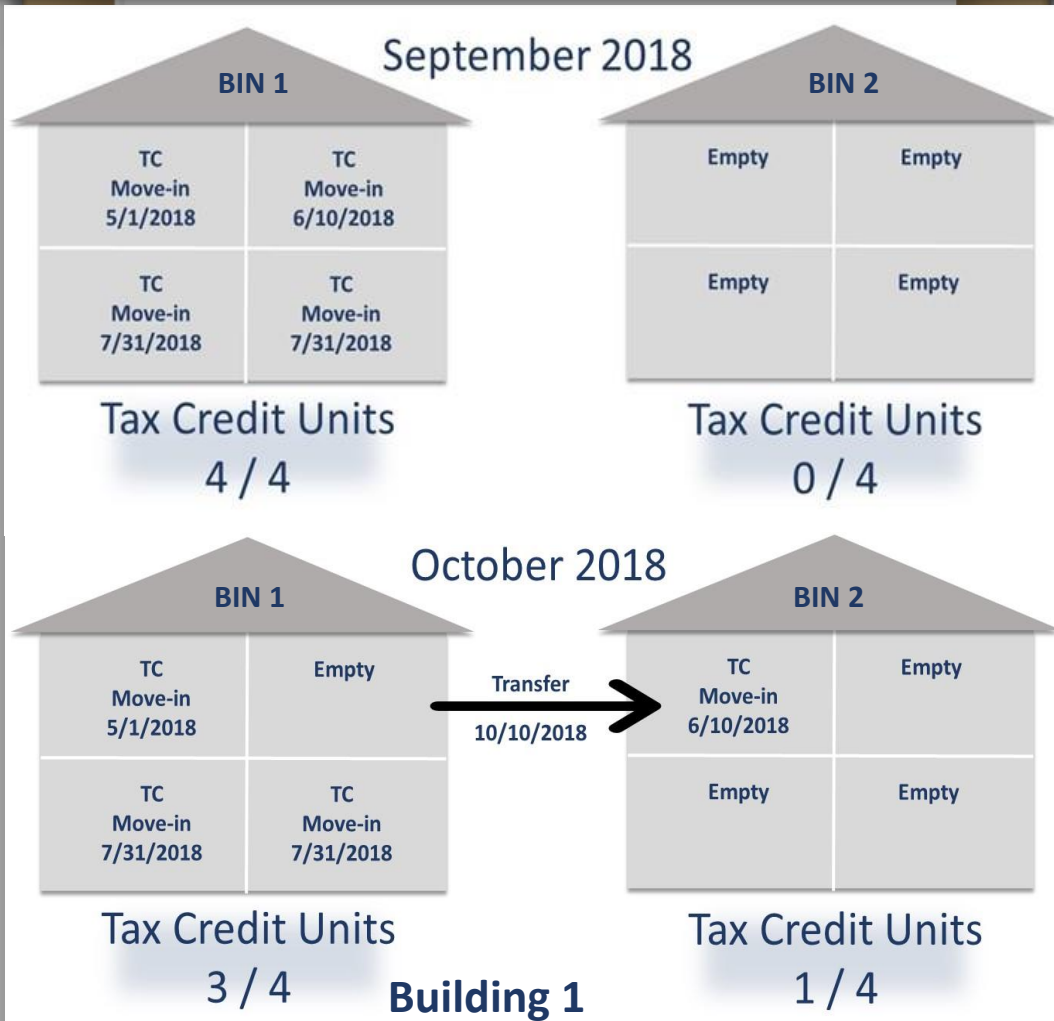
During a lease-up, transfers are permissible. A household, however, can never initially qualify more than one unit at a time. When they transfer, the unit they were in and the unit they go to switch status. If they transfer from a unit that they initially qualified to a never qualified unit, the unit they move to is now qualified, but the unit they leave becomes never qualified starting the date of transfer. The unit must be preoccupied by a new qualifying household to restart credits in the unit. The pro-rated first year applicable fraction is calculated accordingly.





Workshop: 1st Year Transfer Effect

The below units in a multi-building property were placed in service on 4/30/2018. The units are all the same size. Lease-up proceeds as follows, and nothing changes after October until the end of the year.



Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
												=

Building 2

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
												=

Maximizing credits

To maximize the tax credits, it is important to ask several questions as early as possible. Below are some of the key questions with full explanations as to why they are important.

☐ **When is the anticipated placed in service date for each building?**

Being ready to move in qualified households as close to the date the building places in service will occupy the building quickly and begin credits sooner. If credits are going to be deferred and a household's move in is more than 120 days before the start of the first taxable year of the credit period, planning for an "income test" will be important.

☐ **Does the owner intend to defer credits for any building?**

Buildings that are not going to be used to start credits the year they are placed in service can be prioritized lower than units that will be used to claim credits sooner. If credits will be deferred, planning can also occur for the "income test," for less than 100% tax credit properties.

☐ **What is the construction schedule?**

Knowing this may allow for strategic occupancy of entire buildings and allow for meeting the target applicable fraction for each building and claiming of credits the year planned for each building.

The URA and other protections for existing residents

Properties that have a form of federal funding may already be subject to annual recertification requirements.

49 CFR Part 24, HUD Handbook 1378, HUD Notice

The Uniform Relocation Act (URA), passed by Congress in 1970, is a federal law that establishes minimum standards for federally funded programs and projects that displace persons from their homes, businesses, or farms. Similarly Section 104(d) of the Housing and Community Development Act (HCDA) of 1974 provides protections at HOME properties. The URA and Section 104(d)'s protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects.

Generally, residents of federally funded properties cannot be displaced unless they voluntarily choose to move. The URA provides for the following resident dislocation protections, even if they do leave by choice:

- Provide relocation advisory services to displaced tenants and owner occupants
- Provide a minimum 90 days written notice to vacate prior to requiring possession
- Reimburse for moving expenses
- Provide payments for the added cost of renting comparable replacement housing - 42 (URA) to 60 months (104(d))

HUD MF Memo 1-16-15 HUD/LIHTC Occupancy Protections

"An owner may only terminate tenancy in limited circumstances as prescribed by HUD regulations and by the lease, and must follow HUD and state/local procedures. Terminations for reasons other than those permitted by HUD are prohibited. The lease agreement details the grounds for termination of tenancy, which do not include failure to meet tax credit requirements, including tax credit-specific income and student eligibility rules."

“Should an assisted household become over-income and no longer eligible to receive a HUD subsidy, i.e., the owner determines through the annual or an interim recertification that the tenant now has the ability to pay the full contract rent or market rent, the owner will terminate the assistance to the tenant. However, in accordance with the lease agreement, the tenant retains all other rights under the lease, including the right to occupy the unit.”

“In many cases, owners of LIHTC properties have offered incentives to HUD-eligible households who become over-income for LIHTC or do not meet another LIHTC requirement, to move voluntarily. Owners may do so as long as the incentives are not paid from Section 8 or FHA project funds. In such cases, owners should first inform tenants in writing that they have the option of remaining in occupancy as HUD-assisted tenants under the terms of their lease, in order to ensure that the choice of moving with incentives is truly voluntary.”

Resyndication

Grandfathered households

8823 Guide 4-27 & 28

An owner of a property that has been tax credit may apply for acquisition/rehab credits. Getting additional allocations of credits is often referred to as a “resyndication” of credits. Households that were qualified previously under the initial set of credits continue to qualify without re-certification of their income.

EXAMPLE “Grandfathered” Household

A household originally qualified in 2009 for a project that had been constructed with tax credits and had a compliance period that ended in 2005 and that still has many years left on its extended use period. The owners are re-syndicating and getting rehab credits in 2018. The household will qualify based on their initial qualification in 2009. If a recertification is required (because the project is not 100% tax credit), and the household income has gone up since 2009, the Available Unit Rule may be in effect.

Completing a certification at acquisition even for households qualified under the first allocation may be required by the state agency or investors. They may suggest or require only using a past certification if the household is currently over the income limit. Many companies also choose to implement this policy. Some of the reasons that this may be a good idea are that it results in a cleaner file with current stringent verification rules. It also is true that retroactively correcting past imperfect files can be difficult.

Other Concerns

Only income qualification is not required for past-qualified households. Student status must still be tested. Many state allocating agencies eliminate or relax the student rules after the first 15 years when IRS rules are in full effect (the compliance period). ***If an owner thinks there is any chance of resyndication, the IRS***

student rules should continue to be applied to ensure household continued eligibility even if state HFA rules do not require this.

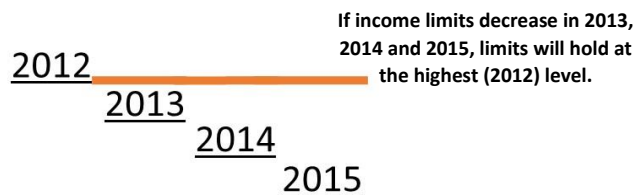
Finally, owner/agents need to be aware that this provision only applies if the original extended use agreement is in place. If it has been removed by the state HFA or by foreclosure, for instance, then existing households will need to re-qualify as at a traditional tax credit acquisition/rehab.

Income and rent limits

As *existing* households will continue to qualify, the income limits are not particularly relevant for them. However, income limits for new move-ins and rent limits for all units will need to reflect the tax credit limit applicable at the time the new credits will start. Because tax credit income limits hold harmless from past years, it is possible that the new limits are lower than those used for the former credits and rent and income limits may well decrease. HERA Special income limits, which are applicable on a project placing in service prior to 2009, also cease to apply upon acquisition.

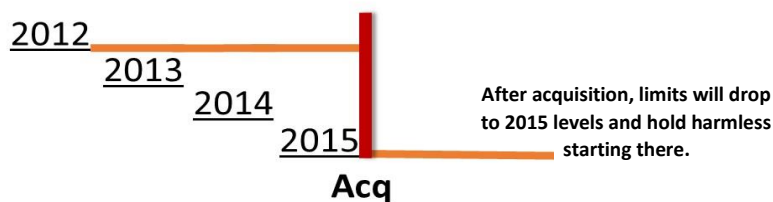
Before

HELD HARMLESS LIMITS



After

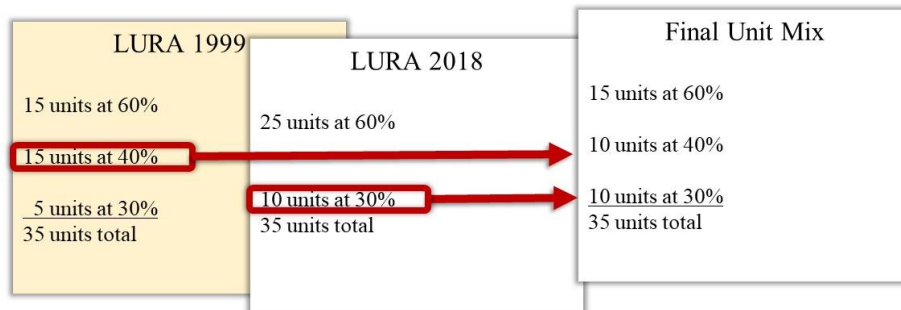
HELD HARMLESS LIMITS END



State set-asides

Because the original extended use agreement remains in place, the state set-asides continue to apply, as well as the terms of the new agreement. Some, but not all, state allocating agencies seek to reconcile the two agreements. It is important, however, not to assume that the older state set-asides no longer apply.

EXAMPLE Reconciling Regulatory Agreements



Practical Tips

FAILING TO PLAN IS PLANNING TO FAIL!

Fact gathering

Communication is crucial to the success of any tax credit project. Construction and the complexity of paperwork and leasing require that development and management talk to each other regularly and communicate as the project progresses. This is even more true with acquisition/rehabs, as **people** also need to be moved about amid other usual construction concerns.

Existing resident engagement

All existing residents will need to be informed of the impending acquisition, educated on new tax credit requirements and encouraged to cooperate. Any URA notification requirements that may apply at federally funded properties must also be respected. Often meetings that gather multiple existing families together can be an efficient way to communicate tax credit requirements and encourage cooperation. Cash or other incentives can be effective in garnering cooperation that will benefit the owner.

Tracking

Many of the “moving parts” of an acquisition/rehab property require thorough and effective tracking.

Certification process

Depending on the size of the property, many existing households may need to have certifications done quickly to meet the 120-day certification timeframe. Each household may have several verification sources to contact and re-contact to verify and clarify information received. Final paperwork will need to be signed and reviewed by any compliance process. All of this requires extensive tracking on a household level to ensure that nothing is missed.

Household movement

Household transfers between units in a project must be tracked to accurately determine the tax credits. Similarly, “down” time while units are being rehabbed will need to be documented and included in the final accounting. If units are of different square footages, it is crucial that unit size also be tracked and carefully included in the calculations.

Conclusion

Housing matters! Tax credits are an important means to the vital end of providing decent housing that are affordable for millions of households. Because of limited resources and resulting preservation efforts, acquisition and rehab of existing building stocks are an efficient use of funding. Although these projects are more complex than others, the effort is certainly a worthy endeavor.



Scott Michael Dunn

Scott Michael is the CEO of Costello Compliance. Before that, he was executive vice president of Zeffert & Associates for 12 years. He brings almost over three decades of direct experience in affordable housing management, auditing and training. He has worked with well over half of the state LIHTC agencies, many HOME participating jurisdictions, and HUD and Rural Development agencies. A recognized expert in the industry, Scott Michael has been published in numerous trade periodicals and is the author of several textbooks

and regulatory manuals on various affordable housing programs. Besides his own subject matter expertise, he also has a proven track record of designing systems that leverage teams to review and ensure compliance, deliver excellent regulatory results and training.

Amanda Lee Gross

Ms. Gross brings to E&A over sixteen years of hard-won, real-world knowledge and experience in all aspects of the affordable housing industry. She has learned the affordable housing industry from the ground up, starting as a site manager, and eventually rising to the position of Trainer and Compliance Officer for a multi-state, 5,000+ unit management company. Ms. Gross has leveraged that experience and become a nationally recognized expert trainer. She conducts hundreds of trainings nationwide, and regularly consults with State Housing Finance Agencies, Public Housing Authorities, management companies, and developers. Ms. Gross is regularly a featured speaker at numerous industry events such as State Housing Finance Agency and Industry Association conferences, as well as periodic national events for the National Association of State Housing Finance Agencies. She also provides custom-tailored trainings to private organizations which understand that highly-trained staff are more effective and better able to protect the assets and reputation of the company. She also works in a consulting capacity, advising clients in the development of their policies and procedures, optimizing project compliance performance, and addressing audit findings.



Beth Mullen



Beth Mullen is the National Director of CohnReznick's Affordable Housing Industry Practice and a member of the Firm's Tax Practice Executive Committee. She has more than 25 years of experience providing consulting, tax, and accounting services to real estate owners and developers and the community redevelopment industry. Beth has been involved with the low-income housing tax credit (LIHTC) program since its inception and has provided consulting services to developers, state credit agencies, and investors. A significant portion of her time is devoted to helping put deals together by structuring public/private partnerships that are financed in part by the LIHTC, federal and state historic tax credit programs, the federal New Markets Tax Credit Program, energy tax credits, and historic rehabilitation tax credits. She manages the CohnReznick tax requirements for private corporate funds and publicly syndicated LIHTC partnerships comprising several billion dollars in invested assets. Her clients value her unique ability to interrelate tax credit regulations and compliance requirements, financial reporting under Securities Acts law and compliance, and cost certification reporting requirements enumerated by HUD and state housing agencies. Beth assists her clients during the development stages of their properties bringing the foresight necessary

in dealing with the competing interests of the developer, lenders, investors and regulatory authorities. Beth is involved on an ongoing basis in upgrading CohnReznick's state of the art financial analysis model that is used to structure transactions. She assists clients with tax planning and research and any necessary correspondence with the Internal Revenue Service and state taxing authorities. She is responsible for the Firm's tax quality control review of all tax returns for owners of affordable housing. Beth is an industry spokesperson and a frequently invited speaker at national and local industry trade conferences. She teaches internal and external courses on low-income, New Markets, and historic tax credits and has published articles in several trade magazines.