

AUSTIN **ANNUAL**
2018 **CONFERENCE**
& SHOWPLACE

HFA*s* AT THE
CENTER

VAWA – LIHTC COMPLIANCE CHALLENGES

IRS Silence on VAWA Implementation

Implementation of VAWA

VAWA 2013 did not amend the authorizing statutes for the newly covered housing programs. The Act requires each “Appropriate Agency” to adopt policies and procedures through additional guidance and rule-making to implement the VAWA protections.

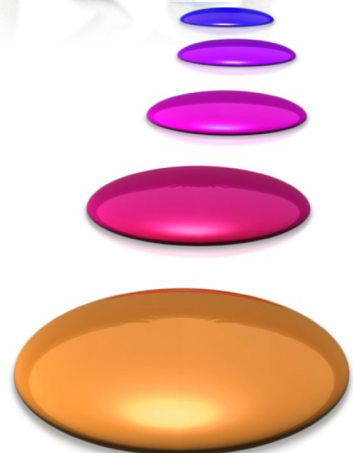
Appropriate Agency

The term “appropriate agency” means, with respect to a covered housing program, the Executive department (as defined in section 101 of title 5) that carries out the covered housing program.

➔ VAWA Section 41411(a)(2)

LIHTC – Appropriate Agency

The Department of Treasury is the Executive department for the Low-Income Housing Program.



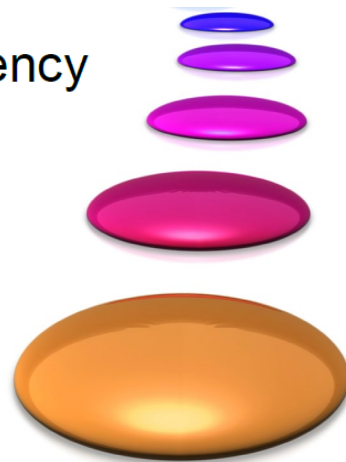
VAWA – LIHTC COMPLIANCE CHALLENGES

IRS Silence on VAWA Implementation

While the Department of Treasury is noted as the “appropriate agency”, the IRS has stated informally that they do not see the need to take any action regarding implementing VAWA. Their reasoning for this is that since VAWA is not a requirement of LIHTC program, noncompliance with VAWA does not trigger credit recapture of previously claimed credits, nor does it prevent the owner from continuing to claim credits.

Per the VAWA statute, further guidance and rulemaking is needed by the appropriate agency as it relates to:

- ➔ **Appropriate Agency Approved VAWA Certification**
- ➔ **Model Transfer Plan**
- ➔ **Reasonable time for requalification or to find new housing as it relates to lease bifurcation.**

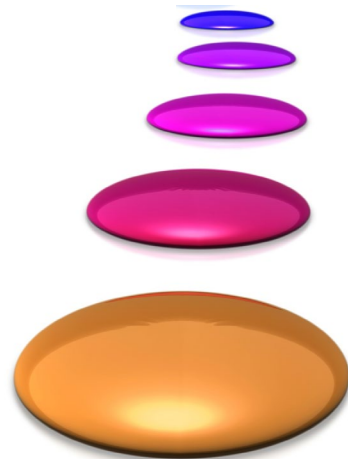


VAWA – LIHTC COMPLIANCE CHALLENGES

Lease Bifurcation Challenges

When a lease is bifurcated, the remaining members of the household must establish program eligibility to remain in the unit. There are some instances where a household would not be able to remain in the unit.

- ➔ No original household member remains, and the remaining member does not meet the income limit requirements.
- ➔ Bifurcation results in a full-time student household and no student exception is met.



VAWA – LIHTC COMPLIANCE CHALLENGES

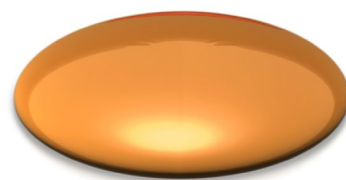
Lease Bifurcation Challenges

Reasonable Time

One contributing factor to this challenge is the lack of guidance from the IRS regarding the definition of “reasonable time” as it relates to the time period allowed for an ineligible household to find new new housing.

HUD, in their final rule, stated that generally 90 days must be provided to remaining tenants to find alternate housing. *(Shorter time restraints apply to some HUD programs, such as Section 202/211, Section 202/8, HOPWA, etc. See HUD’s final rule for complete information, page 80772, section F.)*

This time frame can trigger a larger concern for the LIHTC owners when bifurcations resulting in ineligible households occur around the end of the owner’s tax year.



VAWA – LIHTC COMPLIANCE CHALLENGES

Lease Bifurcation Challenges

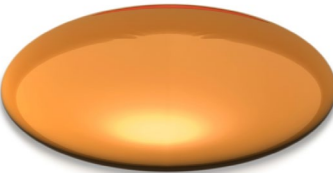
Example – Student Noncompliance as a Result of VAWA Lease Bifurcation

Stacy resides at Laurelwood Hills Apartments, a tax credit project where the owner's taxable year end is 12/31.

Stacy's lease was bifurcated on 12/15/2018. As a result of a bifurcation, Stacy's household is now a full-time student household and no student exception is met. If Stacy's household is still occupying the unit on 12/31/2018, the unit is considered out of compliance as of the last day of the owner's tax year. The unit should not be included as a low-income unit when determining the buildings applicable fraction for 2018, thereby reducing the amount of credit that the owner can claim for 2018.

$$\text{Eligible Basis} \times \text{Applicable Fraction} = \text{Qualified Basis}$$

$$\text{Qualified Basis} \times \text{Applicable Credit \%} = \text{Annual Tax Credit}$$



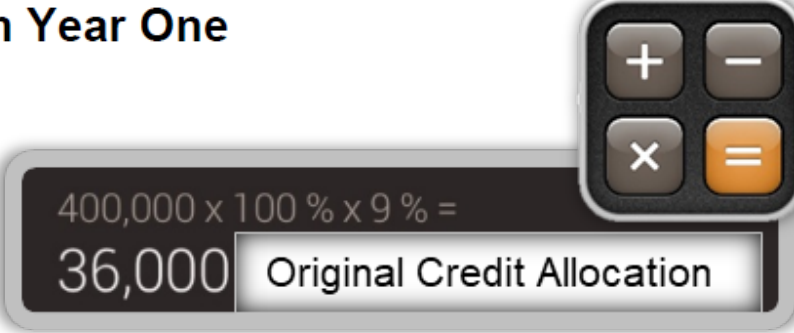
Amanda Lee Gross

Director of Compliance Training, E&A Team – AmandaLee@EandAteam.com

Example – Student Noncompliance as a Result of VAWA Lease Bifurcation in Year One

Lakeview Apartments:

- New Construction – 9% Applicable Credit %.
- Placed in service 10/01/2017.
- Owner deferred credits to 2018.
- Taxable year end is 12/31.
- 10 Units – all same size
- Target Applicable Fraction: 100%
- Eligible Basis: \$400,000
- Annual Credit: \$36,000

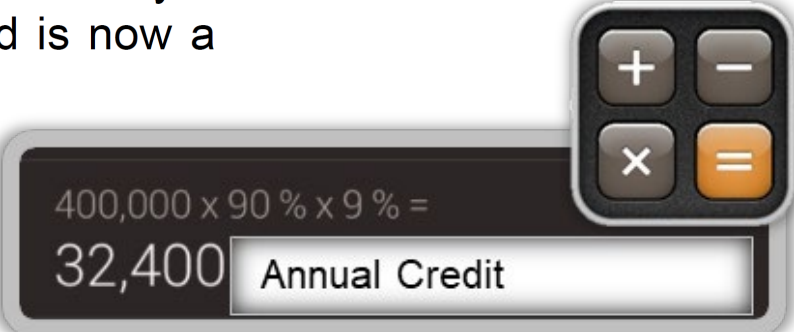

$$400,000 \times 100 \% \times 9 \% =$$

36,000 Original Credit Allocation

Andy moved into unit #105 on 03/05/2018, which was the first year of credit period. Andy's lease was bifurcated on 12/15/2018. As a result of a bifurcation, Andy's household is now a full-time student household and no student exception is met.

In this scenario, if Andy still occupied the unit as of 12/31 the unit is an unqualified unit and should not be included as a low-income unit when determining the building's applicable fraction.

This would reduce the annual credit that the owner can claim to \$32,400.


$$400,000 \times 90 \% \times 9 \% =$$

32,400 Annual Credit

If unit #105 is later occupied by a qualified household, the unit may be treated as a LIHTC unit, however, the owner will not receive the full credit. When a LIHTC unit is added after year one of the credit period, the owner does not receive the accelerated portion of the credit, and instead can only claim 2/3rd of the credit. This is ultimately calculated by multiplying the increase in qualified basis by 1/3rd of the applicable credit percentage (4% or 9%).

Amanda Lee Gross

Director of Compliance Training, E&A Team – AmandaLee@EandAteam.com



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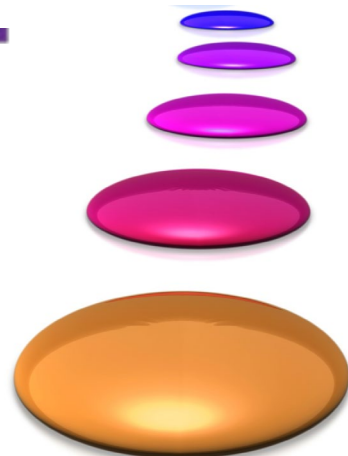
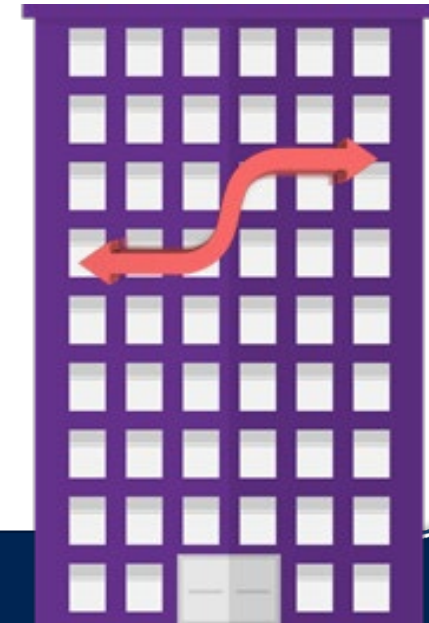
Emergency Transfer Challenges

Unit Transfers



Transfer within Same Building

A household may transfer to a unit within the same building (as defined by the Building Identification Number - BIN) without needing to income qualify. This is the case even if the household is currently over 140% of the current income limit.



VAWA – LIHTC COMPLIANCE CHALLENGES

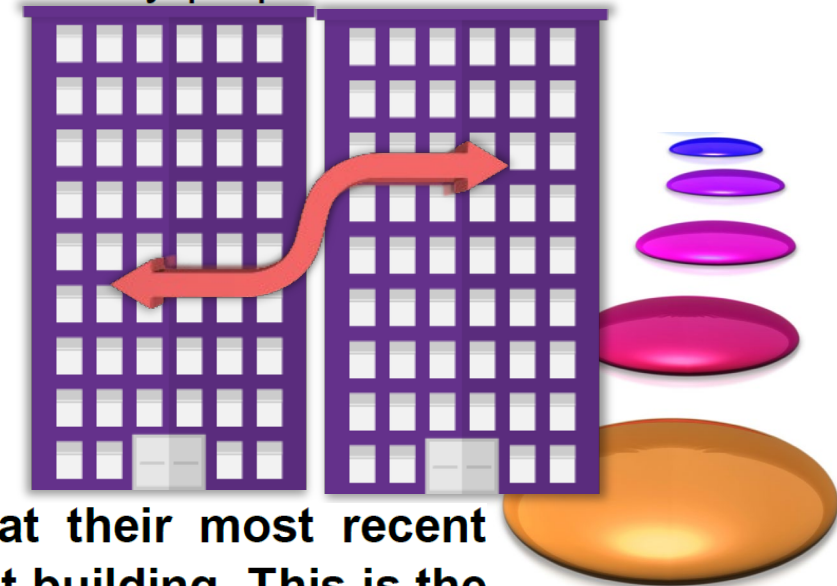
Emergency Transfer Challenges

Unit Transfers

Transfer to a Different Building

Generally, the challenges related to emergency transfers are experienced by properties with more than one building.

A household may transfer to a unit in a different building within a project (as defined by the 8609) without needing to complete a new recertification, if the household's income did not exceed 140% of the applicable federal income limit as of the household's most recent recertification.



If a household was over 140% of the federal applicable limit at their most recent recertification, the household cannot transfer to a unit in a different building. This is the case, even if the building is part of a multiple building project.

Amanda Lee Gross

Director of Compliance Training, E&A Team – AmandaLee@EandAteam.com



VAWA – LIHTC COMPLIANCE CHALLENGES

Emergency Transfer Challenges

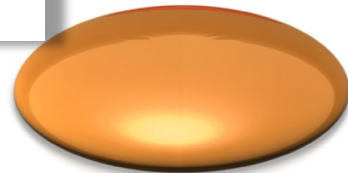
Unit Transfers

Example – Emergency Transfer – Multiple Building Project

Woodland Views is a three building LIHTC Project. The owner elected to treat all three buildings, A, B, and C, as part of multiple building project by answering “yes” to question 8b on the IRS Form 8609.

Meredith resides in unit 202 in building A. Meredith has requested an emergency transfer under VAWA. The first available unit is unit 541, which is located in building B however, Meredith’s income exceeds 140% of the applicable income limit.

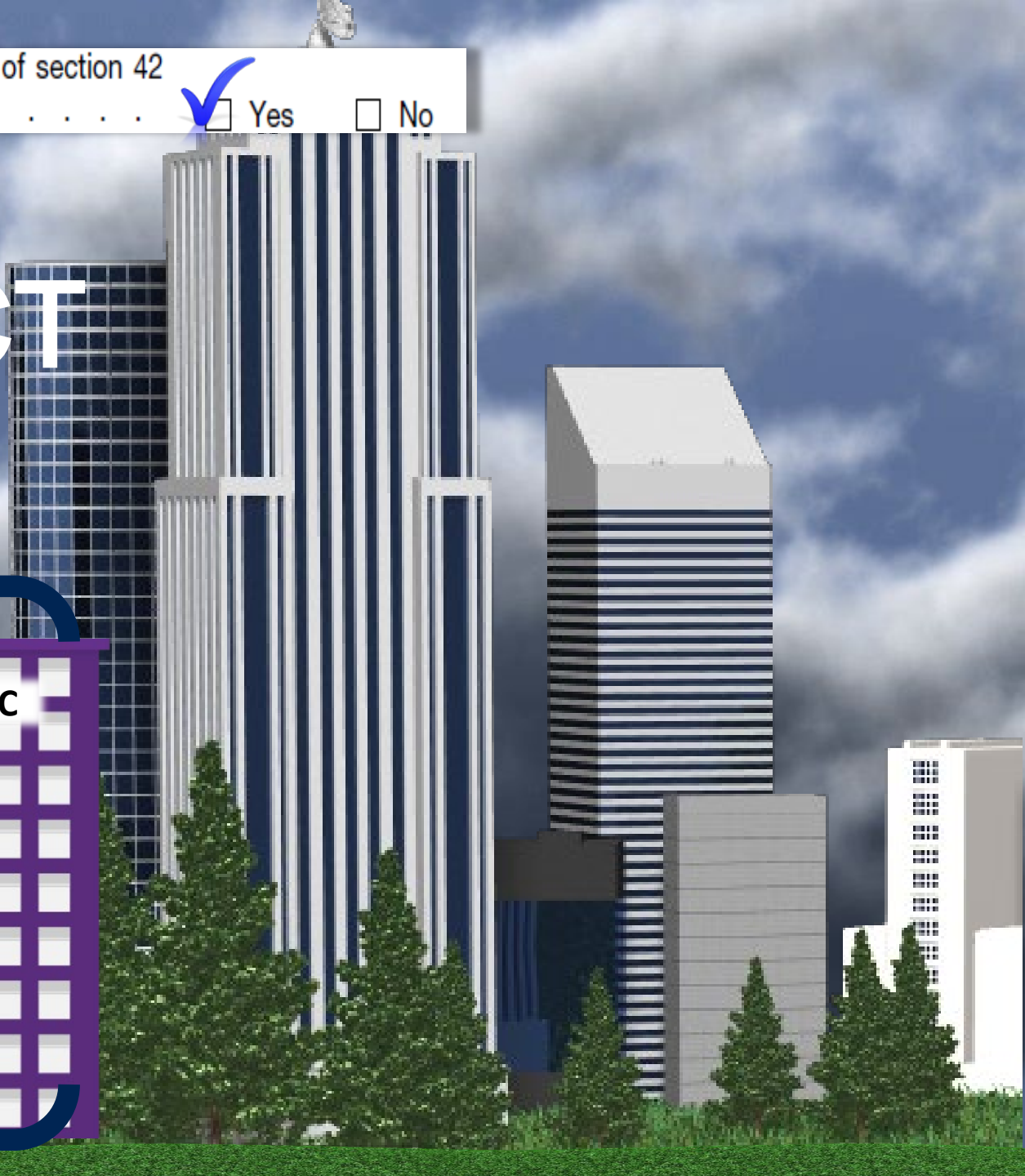
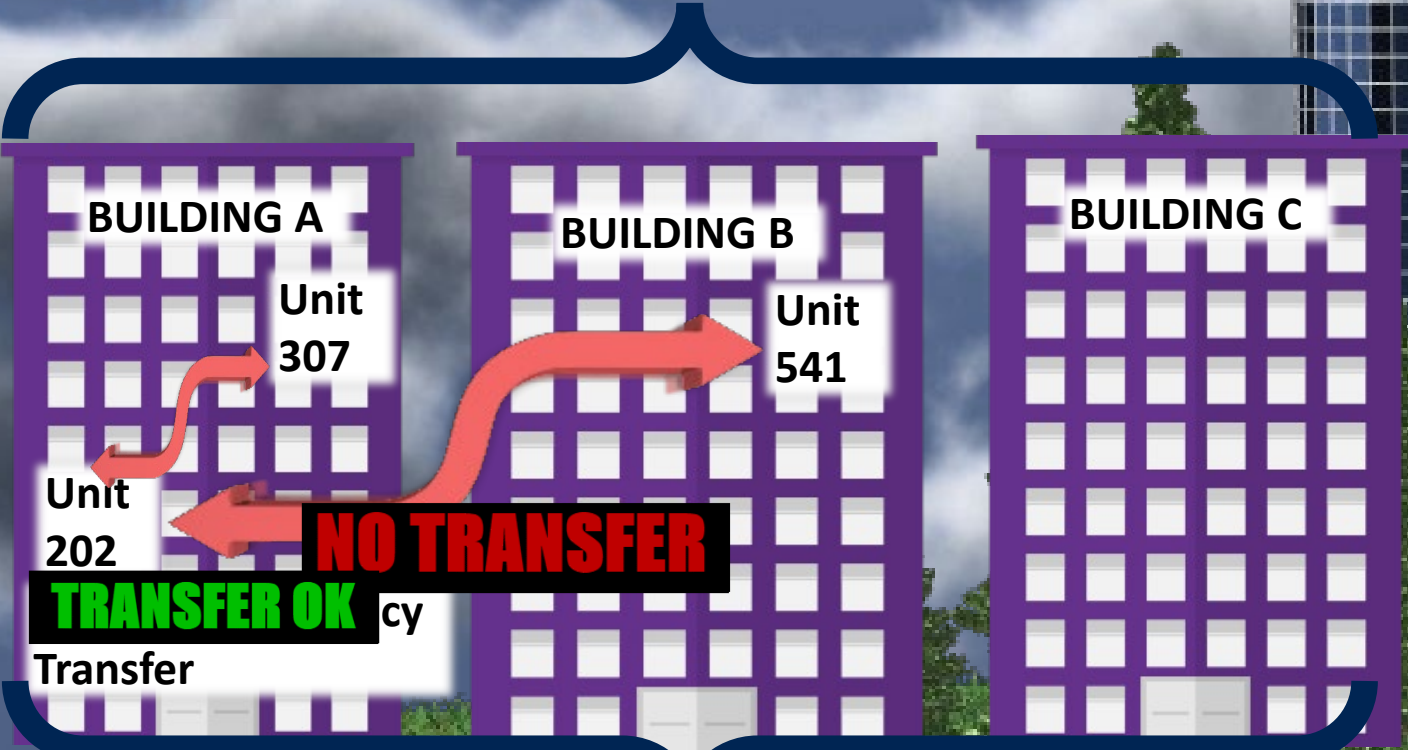
In this scenario, the owner is not required to transfer Meredith to unit 541 since Meredith does not meet the program income requirements for transfer. If another unit becomes available in building A, Meredith may transfer to that unit. She will not be eligible to transfer to a unit in a different building unless there is a decrease in her household’s income.



b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No



ONE PROJECT



VAWA – LIHTC COMPLIANCE CHALLENGES

Emergency Transfer Challenges

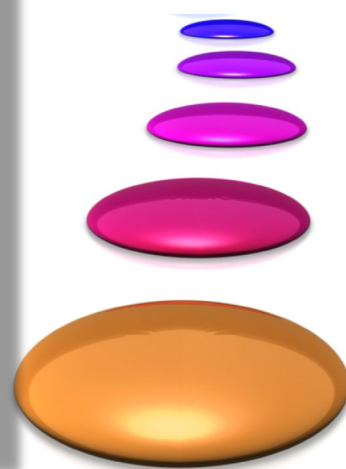
Unit Transfers

Example – Emergency Transfer – Not a Multiple Building Project

Skyline Gardens Apartment is a three building LIHTC project. The owner elected to treat each building, A, B, and C, as its own project by answering “no” to question 8b on the IRS Form 8609.

Christina resides in unit 315 in building B. She has requested and is determined to be eligible for an emergency transfer under VAWA. The first available unit is unit 254 which is located in building C. Since the project is not a multiple building project, in order for Christina to transfer to unit 254, she would need to be income qualified based on the current applicable income limits. It is determined that Christina is over the current income limit applicable for unit 254.

In this scenario, the owner would not need to transfer Christina to unit 254, as she does not meet the program requirements for transfer. If another unit becomes available in building B, Christina may transfer to that unit, but she will not be eligible to transfer to a unit in a different building unless there is a decrease in her household’s income.



b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No

ONE PROJECT ONE PROJECT ONE PROJECT

