

Q1: When can tenants start to be qualified for acquisition/rehab?

Answer: The *date of acquisition* must be known. This is the date the new owner purchased the property. In most cases a new partnership is formed that purchases the building – even though there are the same names and faces – there is usually a new ownership entity.

It is important to know when *rehabilitation activities will be completed* for each building:

- If a building's rehabilitation is completed the *year following acquisition*, units occupied by residents that qualify for the LIHTC program can begin to generate credits in January of the year in which the rehabilitation is completed. Complete the initial income certifications within 120 days of when the credit period is planned to begin.
- If a building's rehabilitation is completed in the *same year* it is acquired, units occupied by residents that qualify for the LIHTC program can begin to generate credits at acquisition. The IRS says an owner may complete a resident's initial income certification within 120 days of acquiring the building and make it effective on the date of acquisition.
 - *For all in place tenants qualified within the 120 day window before or after acquisition*, the acquisition date is used as the effective date on the Tenant Income Certification (TIC). This includes meeting with them to get an application or questionnaire filled out; sending out and receiving all income and asset verifications; filling out the TIC form and getting all required paperwork and signatures.
 - It is recommended that when possible to start qualification prior to the acquisition date; however, consideration must be given to when the credit period will begin. If all qualification documentation is completed after 120 days then the household is effectively considered a new move-in, and the effective date would be based on when the TIC is signed by the last adult household member.

Any new households on or after the acquisition date would follow standard qualification process and timeframes.

Q2: What is the Safe Harbor Income Test and how does it impact in-place acquisition/rehab projects?

Answer: The IRS created the safe harbor to allow owners to use existing tenants as tax credit qualifying households in an event where the household was income eligible when the owner purchased the building but then went over the income limit during the rehab construction period before credits were initiated. Reference [IRS 8823 Audit Guide](#) page 4-25 and see [IRS Revenue Procedure 2003-82](#).

This only applies to when *credits are deferred*, and has the most impact on properties that are mixed income.

If the 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 will not need to be re-qualified. However, if they have been at the property more than 120 days before the start of the first credit year an "income test" will likely be needed at the begin of that year. The income test is self-certification by the household as to

whether their income has changed since they were initially qualified. If their income has changed they will need to provide documentation so that their income can be requalified.

Tenants that are over income at this time are given *Safe Harbor* and the eligibility remains; however, the Next Available Unit Rule will apply to any units that are over the 140% limit at the time of the start of the credit period.

Other factors to consider:

- Safe Harbor protects income only. The household must remain student eligible throughout their tenancy to be considered LIHTC qualified.
- Owner must keep the unit rent restricted to receive the safe harbor protection

Q3: How soon can I begin to generate tax credits at my acquisition/rehab project?

Answer: This depends on when several factors including when the both PIS dates are in the same year, if credits are deferred and when units are qualified.

An owner's 10-year credit period must be the same for both the acquisition and rehab credits. Under [26 U.S.C. §42\(f\)\(5\)](#), the credit period for acquisition LIHTCs cannot begin before the first year of the credit period for rehabilitation LIHTCs. The ownership entity must complete a building's rehabilitation activities to calculate eligible basis for rehabilitation credits and begin its credit period. The ownership entity can decide when to begin generating credits building by building.

- If a building's rehabilitation credits are in service the year in which the building was acquired, the credit period begins the same year.
- If a building's rehabilitation credits are in service the year following acquisition, the credit period begins the year in which the rehabilitated building is placed in service.

For existing buildings that are occupied at acquisition, however, the building is ready for its intended occupancy purpose as of the acquisition. Thus, the placed-in-service date is the date of acquisition.

However, if the rehab is placed in service in a later year, then both credits will start as of the start of the year that the rehab is placed in service. Note that this is not the rehab placed-in-service date, but rather the year. If a building's rehabilitation is completed the year following acquisition, units occupied by residents that qualify for the LIHTC program can begin to generate credits in January of the year in which the rehabilitation is completed.

The definition of placed in service for rehab is based on an expenditure test (how much is spent). That test involves time limits and minimum expenditures to establish the needed eligible basis for the rehab. The date is not necessarily directly related to when the rehab is completed or when all units are suitable for occupancy. Because of this, each acquisition/rehab building has two placed-in-service dates – one for the acquisition and one for the rehab. Each date is listed on its respective IRS 8609 form.

Q4: If I qualify a household for the LIHTC program but the household members need to relocate so I can rehabilitate their unit, do I need to complete a new income certification prior to their relocation?

Answer: No. When a household that has been qualified for the LIHTC program relocates to another unit at the same project because the unit is being rehabilitated, income certification, including its effective date, moves with the resident(s) to their new unit. However, the owner/management

company agent must complete a transfer TIC. Remember that a household relocates around the same project only if it transfers within the same building or to another building the owner plans to include in the same project per Line 8b of the building's 8609 form. If a household relocates to a different project, the owner must complete a new TIC for their new unit in the rehabilitated building to produce LIHTC credits.

Important: If a resident is relocated off-site for 6 months or more, the owner must requalify the resident.

Q5: Are residents of a LIHTC project being rehabilitated covered by the requirements of the Uniform Relocation Act (URA) of 1970?

Answer: The LIHTC program by itself does not trigger the Uniform Relocation Act because it is not considered federal financial assistance under [24 C.F.R §24.2\(a\)\(11\)](#). However, the regulations for many of the other funding sources owners use to finance LIHTC projects—HOME, Section 8 Project-Based Rental Assistance (PBRA) and Project-Based Vouchers (PBV), and Section 811 Project Rental Assistance, for example—do require the ownership entity extend the rights afforded under URA to existing tenants.

Q6: How do I calculate the applicable fraction for the first year of the credit period for the acquisition credits versus the rehab credits?

Answer: You calculate the applicable fraction the same for both sets of credits. Since the IRS issued the private letter ruling in 2000 explaining acquisition/rehab projects, a building begins producing its acquisition and rehab credits in the same month and in the same year. Per [26 U.S.C. §42\(e\)\(4\)\(B\)](#), the applicable fraction is calculated congruently for both acquisition and rehabilitation credits. For the first year of a building's credit period, the applicable fraction is calculated on a monthly basis to determine the average applicable fraction for the year. The CPA needs to know a building's average applicable fraction for year one to determine the LIHTC credits the ownership entity may take on its first year tax return and how many LIHTC credits it must defer until year 11.