

## TENANT QUALIFICATIONS

### 1. When can tenants start to be qualified for acquisition/rehab?

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 they are the same names and faces – there is usually a new ownership entity. Remember, acquisition and rehab credits are BOTH satisfied with one set of certification paperwork.

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 tenants 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 tenants that qualify for the LIHTC program can begin to generate credits at acquisition. The IRS says an owner may complete a tenant'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 and getting all required paperwork and signatures.
- It is recommended, 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 processes and timeframes.



#### QUICK TIPS

*Certifications for in-place households on the date of acquisition that are completed 120 days before or after the date of acquisition have an effective date of the acquisition.*

*Certifications completed after 120 days (after acquisition) have an effective date of when the last adult signs the certification.*

### 2. What is the Safe Harbor Income Test and how does it impact in-place acquisition/rehab tenants?

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 when **credits are deferred**, and has the most impact on projects 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 period will not need to be re-qualified. However, if they have been at the project more than 120 days before the start of the first credit year an "income test" will likely be needed at the beginning of that year. The income test is self-certification by the household on 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:

**QUICK TIPS**

*Safe Harbor protects income only. The household must remain student eligible throughout their tenancy to be considered LIHTC qualified.*

*Owners must keep the unit rent restricted to receive the safe harbor protection.*

**3. If I relocate a tenant in order to rehabilitate their unit, do I need to complete a new income certification prior to their relocation?**

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 tenant(s) to their new unit. However, the owner/management agent must complete a transfer TIC. It is imperative management agents know the owners' intention for the IRS Form 8609, line 8b. If the owner elects yes, then a household can be transferred to any building that is included as part of a multiple building project. If the owner elects no, the household can only be transferred to another unit within the same building. If the household must be relocated to a different building, the owner/management agent would treat the household as a move-out and a new move-in. Even if the household is over 140% of the income limit at the last recertification, they are still allowed to transfer to a different unit within the same building.

**QUICK TIPS**

*If a tenant is relocated off-site for six months or more, the owner must requalify the tenant.*

**4. What does Excess Basis do if an in-place tenant is over the LIHTC income limit?**

As the certification process proceeds, it's possible that the owner will discover that some households already in-place do not qualify for LIHTC housing, either because the household income exceeds the LIHTC limits, or because the household doesn't meet the student certification requirements.

If the owner discovers tenants who will not qualify for the LIHTC program, the owner should first coordinate with the investor/syndicator. If this project is NOT a bond deal, it may be possible that there will be excess basis that would cover the loss of credits associated with these households.

The amount of credit earned is a function of the eligible basis (the rehabilitation costs) multiplied by the applicable fraction. In general, OHFA will cap the amount of credits allocated to a project based on the projected costs (and other factors).

- Excess basis occurs when the construction/rehabilitation expenses exceed the anticipated costs and there are more than enough costs to support claiming all of the credits allocated. If the project has excess basis, the project may be able to include a few ineligible tenants and yet produce the full amount of credit allocated to the project

**5. What happens if the project does not have Excess Basis and there is an over-income household or a household who doesn't meet the student certification requirements?**

Tenants who receive Project-Based Section 8 cannot be evicted or have their assistance terminated for anything other than good cause under their HUD lease. Not qualifying for the LIHTC program would NOT constitute a lease violation under the Section 8 program; therefore, these tenants cannot be evicted, nor their lease or assistance terminated simply because they do not qualify for the LIHTC program.

Tenants who do not qualify will not produce a tax credit. Therefore, owners sometimes choose to offer incentives to persuade these tenants to relocate.

## 6. Does the Uniform Relocation Act apply to LIHTC?

The LIHTC program by itself does not trigger the Uniform Relocation Act (URA) because it is not considered federal financial assistance under 24 CFR §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.

## EARNING TAX CREDITS

### 7. Are the Placed-in-Service dates different for a Rehab only project versus an acquisition/rehab project?

#### NEW CONSTRUCTION

*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 be legally occupied. This is supported by a certificate of occupancy.

*§ 42 (e) (3) (A) & IRS Notice 88-116*

#### ACQUISITION

For buildings that are **purchased/acquired with households living in-place**, the building is ready for its intended purpose upon acquisition. The date of acquisition by purchase is the placed-in-service date for the tax credits. This is the date the deed for the building is transferred to the new owner.

*8823 Guide 4-24, footnote # 39*

#### REHAB

The rehabilitation placed-in-service date does not directly relate to occupancy. It is an expenditure test to determine what year credits can be claimed. 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.

### 8. How do I calculate the applicable fraction for the first year of the credit period for the acquisition credits versus the rehab credits?

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. An owner's 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.

## 9. How do Acquisition/Rehab projects earn credits?

There are two streams of credits:

- **Acquisition credits** are available for the purchase of existing housing. These acquisition credits are also known as the 4% or 30% credit.
- **Rehabilitation credits** are available for the rehabilitation of existing housing and are known as the 9% or 70% credit.

For projects that have both acquisition and rehab credits, those credits are always earned simultaneously. Section 42(e) (4)(b) of the Code says the applicable fraction for the rehab shall be the applicable fraction for the existing building. The “existing” building means the building that is being acquired.

Section 42(f)(5)(A) says the credit period for an existing building shall not begin before the FIRST taxable year of the credit period for rehab expenditures. In other words, no credits will be earned—acquisition or rehab—until the year the rehab is placed-in-service.

Once the rehab is placed-in-service the credits can be rolled back to the later of when the tenant was certified. If the tenant was certified prior to the tax year the rehab was placed-in-service, credits can be claimed beginning the first month of the tax year. See the examples below.

## 10. How soon can I begin to generate tax credits at my acquisition/rehab project?

This depends on several factors including when 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, the building is ready for its intended occupancy purpose as of the acquisition. Thus, the placed-in-service date is the date of acquisition.

- 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
- If a building’s rehabilitation is completed the year following acquisition, units occupied by tenants that qualify for the LIHTC program can begin to generate credits in January of the year in which the rehabilitation is completed.



### QUICK TIPS

*Each acquisition/rehab building will have 2 placed-in-service dates: one for the acquisition and one for the rehab. Each date is listed on its respective IRS 8609 form.*

## Transfers

### 11. What is the importance of knowing the IRS 8609 8b election?

When a household transfers from one unit to another, the unit being transferred into adopts the status of the unit being transferred out of. Basically, the units 'swap' statuses. Importantly, since the unit's status switches upon transfer, only one household may initially qualify one unit for the months they reside in that particular unit. Meaning, the owner is **only able to claim credits for the months a household is residing in a unit**. Some of the requirements regarding transfers depend on if the building is part of a multiple building project (owner elects 'yes' to the 8609 8b election).

- If owner elects 'yes,' owners can transfer tenants between buildings so long as the household is not over the 140% AMI limit at the most recent certification.
  - However, if a household is over the 140% AMI limit even if the project is a multiple building project, the owner cannot transfer between buildings. The owner must do a move-out and a new move-in to the other building.
- If the owner elects 'no' to the 8609 8b election, households cannot transfer between buildings even if the household is under the 140% AMI limit at their most recent recertification without being certified.



#### QUICK TIPS

*If each individual building is a project, each building must meet minimum set-aside at all times.*

*If buildings are grouped together into ONE project, then minimum set-aside would apply to the total units overall.*

### 12. Why is it important to track units during transfers?

Dealing with transfers in an entire project can be very complicated. This is why tracking units are so important when it comes to transfers for acquisition rehabilitation projects. Having a system in place that keeps track of all of the transfers in each building is necessary. You need to make sure:

- To count the correct applicable fraction for each building and make sure you meet the minimum set-aside for the project during the transfer process. This is especially important during year one.
- To track unit status on a month-by-month basis and make sure you know which units are receiving credits in each month.

### 13. How do I properly enter transfer events into DevCo?

Anytime you enter a transfer event into DevCo:

- A transfer-in and transfer-out event is created. These dates are a day apart in the system. Please make sure you are entering the transfer-out date as the day before the household actually relocates to their new unit.
- Ensure you go to the transfer-in event and update any rent, income, or utility allowance information since these do not automatically transfer from the transfer-out event.
- ALL transfer TICs need to be signed by the tenant and management agent on the same day. Blank TICs are never acceptable.
- Move-In and certification dates do not change during a transfer. You must manually add the transfer date to the transfer TIC.

## Income Limits

### 14. What income limits apply to LIHTC acquisition/rehab projects?

If a household is being certified under current income limits, then the current limits will be used. If a household moves-in after acquisition, use the current income limits.

## Rent Limits

### 15. What rent limits are used for acquisition/rehab projects?

For households who are in place at acquisition and who move in afterwards, the rent restrictions will be calculated based on the current rent limits applicable to the project, or the gross rent floor in place with the second allocation, whichever is higher. Gross rents at a tax credit project never have to fall below what they were as of the date of the credit allocation.

## Annual Owner Reporting

### 16. When are owners required to submit an Annual Owner Report (AOR) for a new acq/rehab project?

Once the acquisition is placed-in-service and the project has qualified at least one tenant, an annual owner report is required. This means finalizing the tenant data and submitting the annual certification report. Importantly, do not wait for the entire project to be leased up to start reporting AORs. Owners need to request access to DevCo when the project transfers to the new owner (i.e. the acquisition placed-in-service date).

## VAWA

### 17. Does the Violence Against Women Act (VAWA) apply to LIHTC projects?

Yes. Adherence to the requirements of the [Violence Against Women Act Reauthorization Act of 2022](#) is required for all Ohio Housing Finance Agency (OHFA) funded programs, including LIHTC, HOME, National Housing Trust Fund (NHTF), and Ohio Housing Trust Fund (OHTF).

The Violence Against Women Reauthorization Act of 2022 was signed into law on March 11, 2022. Even though the basic provisions of VAWA did not expire, authorization for funding for VAWA programs had expired in 2018. Here are some of the 2022 Reauthorization requirements:

- Expands the covered housing program to include more housing and homelessness programs.
- Requires each federal agency carrying out covered housing to regulate and assess compliance with VAWA provisions
- **Prohibits retaliation** against persons when they exercise their rights or participate in processes related to VAWA housing protections.
- **Prohibits coercion** of persons when they exercise their rights or participate in processes related to VAWA housing protections.
- **Protects the right to report crime** from one's home
- The 2013 VAWA rule gives 14 business days (HUD excludes federal holidays, Saturdays and Sundays) for a person seeking VAWA protection to provide documentation. As this includes the simple option of self-certification, generally 14 days is sufficient. However, in cases where there is conflicting evidence, some VAWA victims may not be able to acquire third-party documentation within 14 days. Under the 2022 final rule, tenants have 30 days—generally the period of one rent cycle—to submit third-party documentation in cases of conflicting evidence. Housing providers may grant extensions where appropriate. (VAWA 2016 Fed. Reg. 80762)
  - New enforcement provisions make VAWA violations equivalent to Fair Housing violations.

For further information on OHFA VAWA requirements, review [OHFA's VAWA policy](#).