Resyndication
Frequently Asked Questions

1. **What is the difference between acquisition rehab and resyndication?**
A project is only considered a resyndication if it is actively in the extended use period for Low Income Housing Tax Credits (LIHTC). Acquisition/Rehabilitation is any existing property receiving LIHTC credits regardless of whether it had credits previously or not.

2. **What is "resyndication"?**
When an owner of a tax credit property finishes the 15-year compliance period, during extended use they have the option of rehabbing the property (likely changing ownership) and getting new credits based on how much they spend on the acquisition/rehab. Resyndication is an industry term used to describe a subsequent allocation of Low-Income Housing Tax Credits (LIHTCs) on a qualified project that served as LIHTC housing. When an LIHTC project completes its 15-year compliance period, the ownership entity reserves the option to seek another allocation of LIHTCs if several rules are met, including the following found in 26 U.S.C. §42(d)(2)(B):
   - The building is acquired by purchase
   - The 10-year hold rule: at least 10 years has elapsed between the date the building was last placed-in-service or substantially rehabilitated and the acquisition date
   - The building was not previously placed-in-service by the original ownership entity or a related party

3. **If the existing project currently has an extended-use agreement, will it be terminated after resyndication?**
No. The new extended-use agreement will begin on the first day of the compliance period for the new LIHTC allocation per 26 U.S.C. §42(h)(6)(D) and end at least 15 years after the close of the compliance period for a total of at least 30 years. However, the old extended-use agreement will remain in effect and requirements for both must be met until the end of the old extended use period; thereafter only the new agreement's requirements will be in effect.

4. **Will my building change its Building Identification Number (BIN) when it undergoes resyndication?**
No. Per 26 C.F.R. §1.42-6(d)(2)(x), the BIN assigned for the first allocation must continue to be used for subsequent allocations.

5. **What does it mean for a tenant to be "grandfathered in"?**
With resyndication there is a concept known as "Income Grandfathering." A project might include some units occupied by over income households as of the 2nd credit allocation. As long as the household was previously income qualified when they first occupied a unit (during the initial LIHTC compliance period) they may be used as a qualified household for the new round of credits. According to Chapter 4-27 of the IRS Form 8823 Guide, households determined to be income-qualified during the compliance period are also income-qualified households during the extended-use period. As a result, any household determined to be income-qualified at the time of move-in during the extended-use period is a qualified low-income household for any subsequent LIHTC allocation. *Keep in mind 'grandfathering' applies only to income. Student status must still be tested.*

The IRS Form 8823 Guide goes on to illustrate:

> Scenario:
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> An owner received IRC §42 credits to construct new low-income housing. The owner placed the buildings in service in 1991 and started claiming credits the same year. The 15-year compliance period ended December 31, 2005. In 2007, the owner applied for and received an allocation of credit to rehabilitate the existing low-income buildings. The rehabilitation is completed, and the owner starts claiming the credit in 2009.
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> On February 1, 2004, John and Mary are determined to be income qualified and move into a low-income unit project. John and Mary timely complete their income recertification each year 2005 through 2008. The unit has always qualified as a low-income unit, except when the unit was not suitable for occupancy during the rehabilitation period.

Response:

The unit is a low-income unit on January 1, 2009, when the owner (a calendar year taxpayer) begins claiming the credit. If the unit was determined to be an over-income unit under IRC §42(g)(2)(D) at the time of the household's last income recertification in January of 2008, then the owner is subject to the Available Unit Rule.

6. **What income and rent limits are used for a resyndication?**
Once a project receives a second allocation of tax credits it is critical to examine the income and rent limits being used. Often a site has been operating under the first allocation using HERA income and rent limits from previous years. *Upon receiving a subsequent allocation of credit the project must use income and rent limits that correspond to the new placed in service date.* In some cases the tenant rents will need to be lowered.

Grandfathered households continue to qualify based on the original certification so income limits are not relevant in relation to the new credits. New move-ins however must be certified at the current income and rent limits at the time of move-in.

7. **Do vacant units qualified under the first set of credits continue to qualify as low income units with the second set of credits?**
The answer depends upon whether or not the project is only claiming rehabilitation credits versus a project claiming both acquisition and rehabilitation credits. See the IRS Audit Technique Guide for completing Form 8823 pg 4-27 for details.

- For a second allocation of credits to the same owner (rehabilitation credits), vacant units previously occupied by income-qualified households continue to qualify as an LIHTC unit so long as the units are suitable for occupancy. Owners are subject to the Vacant Unit Rule
- For a second allocation to a new owner, a vacant unit previously occupied by income qualified households are not considered LIHTC units

Keep in mind the IRS identifies a new owner if the owner qualified for the acquisition credit.

8. **What documentation is used to verify the household is qualified under the old allocation of credits?**
The IRS is silent on this matter. OHFA's policy is the owner should use the original file showing the household qualified for the first set of credits (IRS Audit Technique Guide for competing Form 8823 pgs. 4-35 and 4-36). OHFA recommends the original file is color coded to readily identify it during a compliance audit.

If the original file is not available or sufficient to prove eligibility at move-in, a recertification must be completed using limits in effect at the time of the recertification. This establishes a point in which the household qualified even if after move-in.

OHFA cautions, however, that sometimes the original file may not meet current verification standards. Some syndicators will want to do a recertification on in-place households as is done for acq/rehabs. If the household qualifies under current limits for the new credits no further work is necessary. If the household does not qualify, then the paperwork for the recertification may be used along with an OHFA clarification record Clarification Record (PC-E20) to explain why the older paperwork is being used to take advantage of the grandfathering provision.

9. **Do grandfathered households qualify if they are an ineligible student household at the start of the new credit period?**
No. The 8823 Guide does not indicate households are grandfathered regardless of student status. The owner may have existing households who are 'income' grandfathered but who are student-ineligible under federal rules. Student status must be tested to establish if households that are grandfathered in for income reasons are also student eligible.

10. How is the Available Unit Rule (AUR) implemented for rehabilitation/acquisitions?

The answer depends upon whether or not the project is claiming only rehabilitation credits versus a project that is claiming both acquisition and rehabilitation credits. See the IRS Audit Technique Guide for completing Form 8823 pg 4-27 for details.

- For a second allocation of credits to the same owner (rehabilitation credits), the AUR is applied based on the household's last annual income certification.
- For a new owner with a second allocation (rehabilitation and acquisition credits), income is tested at the beginning of the credit period. If a household is over income (over the 140% current income limit) at the start of the credit period, the AUR is invoked. However, the household is not required to complete a new income (re)certification within 120 days of the acquisition; the existing certification can be used.

11. How do I report move-ins/initial certifications for in-place tenants in DevCo for Resyndicated projects?

Move-in events for in-place tenants at resyndicated projects should be entered as recertification events. Once the recertification TIC is printed, make sure you add a clarification record to the file stating that it is the move-in certification for the new allocation of tax credits.

Remember that it is not required to income qualify in-place tenants during a resyndication. Student status recertification is required. Your company's policy will determine if the recertification TIC will show a new income recertification or only a new student certification. Either way a new TIC is required for the new allocation of credits for the in-place tenants.