



## Pertinent Terms With Descriptions Used In The LIHTC Program

The following is a glossary of general terms. This section does not go into great depth and should not be relied upon for interpretation of the IRS Section 42 regulations as mandated for this program. This section will review some of the terms used in this manual. It has been formatted in alphabetical order and may not contain all general terms, regulations and descriptions needed for your compliance purposes.

### **20/50 Test**

Requirements whereby 20 percent or more of the residential rental units are rent restricted and occupied by households with incomes of 50 percent or less of the area median gross income, adjusted for family size. This test is referred to as one of the “minimum set-aside” requirements. Compliance with the minimum set-aside requirements must be maintained at all times during the 15-year compliance period. Failure to meet the elected test would disqualify a project from being eligible for the credit.

### **40/60 Test**

Requirements whereby 40 percent or more of the residential rental units are rent restricted and occupied by households with incomes of 60 percent or less of the area median gross income, adjusted for family size. This test is referred to as one of the “minimum set-aside” requirements. Compliance with the minimum set-aside requirements must be maintained at all times during the 15-year compliance period. Failure to meet the elected test would disqualify a project from being eligible for the credit.

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## **Accelerated Portion Of The Credit**

**I**n exchange for 10 years of tax credits, under the low-income housing credit program, a building owner agrees to comply with IRC Section 42 for at least a 15-year period. This accelerates the tax benefit over a shorter term and lengthens compliance to 15 years.

In each of the 10 years of the credit period, the building owner effectively receives an additional 1/3 of the credit, which is accelerated from the 11<sup>th</sup> through 15<sup>th</sup> years. Thus, the credit for each year consists of both the “earned” portion (2/3) and the accelerated portion (1/3). It is the accelerated or unearned portion that must be recaptured as a result of decrease in qualified basis or disposition events.

## **Allocation**

**A** building must receive low-income credit authority from the credit agency in whose jurisdiction the qualifying low-income building is located.

## **Applicable Fraction**

**U**sed in the determination of qualified basis, the applicable fraction is the smaller of either the unit fraction or floor space fraction and represents the low-income portion of the building.

## **Applicable Percentage**

**T**his is the credit percentage specific to a low-income housing project. Depending on the nature of the project, the applicable percentage may either be 4 percent or 9 percent (restated as approximately 30 percent and 70 percent in present value terms)

## **Area Median Gross Income (AMGI)**

**A** term that represents the “midpoint” (that is, half are above and the other half are below) income levels for a given area. HUD, based on various populations and earning data, publishes these figures annually. The AMGI figure, as adjusted for family size, is used in the determination of whether or not a household qualifies as “low-income” for the purposes of the LIHTC program.

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## **Bedroom Election**

**T**his election allows owners of low-income buildings with allocations before 1990 or on financed buildings placed in service before 1990 to determine the gross rent limitations for rent-restricted units under the number of bedrooms method. In this method, a set occupancy is assigned based on the number of bedrooms contained in the low-income unit. Previously, the actual number of occupants was used to determine the rent restriction.

## **Building Identification Number**

**T**his is the nine digit, alpha numeric designation assigned by the state housing credit agency to a low-income building. Essential to the monitoring process for IRC Section 42, IRS Notice 88-91 provides information regarding building identification number requirements.

## **Compliance Period**

**T**his is the 15-year period over which a project must maintain compliance with IRC Section 42. This period begins with the first taxable year of the credit period. Check your LURA for the length of your property's compliance term.

## **Credit Period**

**T**his is a 10-year period that generally begins in the year a property is placed in service. A taxpayer may instead elect to begin the credit period in the year following the one in which the building was placed in service. The LIHTC is claimed annually for this 10-year period.

## **Eligible Basis**

**E**ligible basis consists of (1) the cost of new construction, (2) the cost of rehabilitation, or (3) the cost of acquisition of an existing building. Eligible basis includes only the adjusted basis of the building (including certain items of personal property and site improvements) and does not include the cost of land. Basis is generally determined at the time the building is placed in service.

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## Floor Space Fraction

The proportion of low-income related floor space to all residential rental floor space (whether occupied or not) in the building.

## General Public Use

The legislative history of IRC Section 42 and Treas. Reg. Section 1.42-9 provides that the residential rental units upon which a low-income housing credit is taken must be available for use by the general public. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination. HUD Handbook 4350.3 Rev.1 is the appropriate reference.

## Gross Rent Limitation

Gross rent may not exceed 30 percent (or deep rent skewed) of the applicable qualifying income as adjusted for household size. Gross rent includes the cost of any utilities, except telephone and cable. If utilities are paid directly by the tenant, the maximum rent must be reduced by the amount of the utility allowance. The gross rent limitation applies only to payments made directly by the tenant. Any rental assistance payments (such as HUD Section 8 payments) are not included in the gross rent limitation.

## Household Income Limitations

One of the requirements of the minimum set-aside test, the income level of a qualifying unit is a set percentage of the Area Median Gross Income figure. In accordance with the minimum set-aside elections, the income level may be no greater than 50 percent or 60 percent of the respective area median gross income.

## Income Certification

All qualifying units must have adequate documentation to support the household income limitation at initial lease-up as well as annually throughout the compliance period. Treas. Reg. Section 1.42-5(b) provides guidance on this compliance-monitoring requirement.

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### Low Income Unit

A low-income unit includes any unit in a qualified low-income building if the individuals occupying such unit meet the income limitations and if the unit meets the gross rent restrictions.

### Land Use Restriction Agreement

Program requirements applicable to post – 1989 years. The extended use period begins with the first day of the fifteen-year compliance period and ends 15 or more years after the close of the initial compliance period—creating a 30 or more year period under which the building owner must be in compliance with IRC Section 42. This document is essential to continued compliance.

### Minimum Set-Aside Test

This is a requirement that must be met at all times during a project's 15- year compliance period. This test restricts rents and dictates which households qualify as low-income and how many units must be occupied by the qualifying households. The two general minimum set-aside tests are the 20/50 and the 40/60 tests. Refer to each for additional specifics.

### Mixed Income Projects

Mixed income projects are buildings with both low-income and market rate tenants.

### Multiple Building Projects

A project may consist of multiple buildings if such buildings are similarly constructed, located on the same tract of land, owned by the same party, and financed under a common plan of financing. These projects may meet the minimum set-aside by having each separate building meet the test within a year of their placed in service date or by an election to aggregate the building.

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## National Pool

Unused state housing credit carryovers for any year are assigned to the Secretary of the Treasury and aggregated into a “national pool,” from which credits are re-allocated among qualifying states during the next calendar year. This is an additional source of credits for the state housing credit agencies.

## Next Available Unit Rule

The rule states that if a tenant’s income in a low-income unit increases above 140 percent of the properties elected minimum set aside election (40/60 or 20/50) made by the owner (over-income unit), available units of comparable or smaller size must be rented to low-income tenants to continue treating the over-income unit as low-income unit. See Treas. Reg. Section 1.42-15.

## Owner Certification

Annually, a building owner must provide certification to the state housing credit agency that the low-income units in the project are occupied by qualifying households. Failure to provide such certification in a timely manner will result in the filing of Form 8823 (noncompliance report) by the state housing credit agency.

## Placed-In-Service

“Placed-in-service” is defined in IRS Notice 88-116, 1988-2 C.B. 449, as being the date on which the first unit in the building is first certified as being suitable for occupancy under state or local law.

## Project vs. Building Rules

The LIHTC program has many rules that are specific to a building or they may apply to the project as a whole. Please be sure to check which applies when dealing with a LIHTC situation.

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### Qualified Basis

This is the figure which, when multiplied by the applicable percentage, equals the low-income housing credit. Qualified basis equals the product of the applicable fraction and the eligible basis. (Applicable Fraction times Eligible Basis = Qualified Basis)

### Qualified Low-Income Building

A building subject to the 15-year compliance period that meets the minimum set-aside and other requirements for all 15 years.

### Qualified Project

A project that meets the minimum set-aside requirements and other requirements related to those units during the entire 15-year compliance period.

### Recapture

Recapture refers to an adjustment in which the accelerated portion of the credits, plus interest, is recovered as a result of reductions in qualified basis (including but not limited to the partial or full disposition of the building or interest therein). If the qualified basis on which credit is taken decreases, recapture applies to that portion of the qualified basis that is no longer eligible for the credit. If a project ceases to meet the minimum set-aside requirements, the project no longer qualifies as a low-income housing project until the minimum set-aside is again met, and recapture is applied to all credits previously taken on the entire project.

### Reservation Of Credits

This is an agreement between a building owner and the state housing credit agency, to set aside a specific amount of credits for a project to be used at a later date. Because this agreement does not constitute an allocation of credits, the state credit ceiling pool is not reduced.

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## **Resident Manager Unit**

**T**he adjusted basis of a unit occupied by a full time resident manager is included in the eligible basis of a qualified low-income building, but the unit is excluded from the applicable fraction for determining the building's qualified basis. See Rev. Rul. 92-61, 1992-2 C.B.7. See Chapter 8 for further information.

## **Rural Housing Services (Rural Development)**

**T**he Rural Housing Service, formerly known as the Farmers Home Administration, is an agency of the U.S. Department of Agriculture, which provides qualified public nonprofit organizations, and public agencies with grant funds for programs to assist very-low and low-income homeowners repair and rehabilitate their homes in rural areas and to assist rental property owners and co-ops repair and rehabilitate their units if they agree to make such units available to low and very low-income persons. Financial assistance provided by grantees may include loans, grants, interest reduction on commercial loans or other assistance.

## **Scattered Site Project**

**A** project consisting of multiple buildings having similarly constructed housing units that are located on the same tract of land, are owned by the same person for federal income tax purposes, and financed pursuant to a common plan of financing. If all units are 100 percent rent restricted, the buildings need not be on the same tract of land.

## **Section 8 Program**

**R**efers to the rental assistance programs under Section 8 of the United States Housing Act of 1937, which assist low and very-low income families obtain decent housing in private accommodations.

## **Section 515 Program (Rural Development)**

**A**dministered by the Rural Housing Service, the Section 515 Rural Rental Housing Loan Program provides loans to finance rental and cooperatively owned housing of modest design for very-low, low and moderate-income families, the elderly, and the handicapped. Funds can be used to construct new housing or to purchase and /or rehabilitate existing structures for rental purposes.

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### Single Room Occupancy (SRO) Units

**R**esidential rental units must generally contain complete living, sleeping, eating, cooking and sanitation facilities. IRC Section 42 provides an exception to this definition, which allows SRO units to qualify as residential rental even if eating, cooking, and sanitation facilities are in a shared basis.

### State Housing Credit Agency

**A**n agency that is generally a governmental unit within a state which allocates the low-income housing tax credits. The state housing credit agency consists of two divisions, the allocation division that is responsible for scoring applications, making reservations and granting allocations; and the compliance division that reviews the annual income certifications and the compliance audits required under the Treas. Reg. Section 1.42-5. NHHFA is the state housing credit agency for New Hampshire.

### Student Tenants

**U**nits occupied entirely by full time students will not be considered to qualify for the LIHTC Program. Exceptions apply for students who are single parents of children who are also full time students, provided no one is claimed as a dependent of a third party. Married students who file a joint return are also exceptions, as are students enrolled in certain job training programs or those receiving assistance under Title IV of the Social Security Act.

### Subsidy Layering

**T**his relates to coordination of HUD programs with the LIHTC program. Projects, which avail themselves of HUD subsidies, must notify HUD of their intentions to use the IRC Section 42-tax credit. These projects are reviewed to ensure that they are not over-subsidized or appropriated funds that would negate the intent of the programs. HUD published administrative guidelines to facilitate these reviews, which are handled in some areas by the state housing credit agencies.

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## Substantial Rehabilitation

A property that undergoes significant repairs resulting in expenditures of a capital nature, which apply to or substantially benefit one or more of the low-income units, and also meet the greater of either 10 percent of the adjusted basis of the building or an average of \$3,000 of the qualified basis per low-income unit. These expenditures are tested over a 24-month period selected by the building owner.

## Syndicator

This is an agent involved in the sale of a project. Expenses related to the sale, (soft cost), are not depreciable and therefore not included in the project's eligible basis.

## Ten Percent Test

This test refers to a carryover allocation requirement, which states that the owner must incur 10 percent of the reasonably expected project cost by the end of the calendar year in which the allocation was made in order for the allocation to be valid.

## Unit Transfers

This term is used when a resident transfers to a different unit. If a resident transfers in the same building, those units swap status and the resident would not need to have their income recertified, and would not be changed on the status report. File must of documentation of transfer. However, they must be recertified at their anniversary date as THEY HAD before the transfer. If a resident transfers to a different building in the project, the resident must be re-qualified as in initial eligibility.

## Unit Vacancy Rule

Vacant units count towards tax credit units as long as a qualifying resident once occupied them. To satisfy the Unit Vacancy Rule, reasonable attempts must be made to rent that vacant tax credit unit. In the meantime, if another comparable or smaller sized unit becomes available, it must be rented to a program-qualified resident. Please note: this is a project rule by the IRS's current interpretation.

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### Unit Fraction

**T**he proportion of low-income units to all residential units (whether occupied or not) in the building.

### Uniform Physical Conditions Standards (UPCS)

**T**he IRS has adopted this HUD inspection standard as an acceptable inspection gauge for the state housing agencies. NHHFA has chosen to use these standards for our LIHTC inspections.

### Utility Allowance

**A** portion of the gross rent figure that represents utility expenses. In a situation where the tenant pays directly for utilities, the maximum rent charged must include the amount of the utility allowance.