Excerpts from *Maximizing Your Acquisition/Rehab LIHTC Project*

www.lizbramletconsulting.com  
www.lbctrainingcenter.com  
www.lizbramlet.wordpress.com

**IRS Guidance on Ac/Rehab Projects**
- Private letter ruling issued in 2000 in response to an owner asking questions about their specific ac/rehab project
- **8823 Audit Guide** issued instructing owners on how and when to issue an 8823 form when an owner is out of compliance

**2000 Ac/Rehab Private Letter Ruling cont’d**
- In the PLR, the IRS explained that an owner cannot begin the credit period for the acquisition credits until they are ready to begin the credit period for the rehab credits
- The owner must spend the costs that form the eligible basis for the rehab credits before they can begin the 10 year credit period for both sets of credits
In January 2007, the IRS issued its original version of the Guide for Completing Form 8823: Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Audit Guide).

The guide provides instructions for housing finance agencies (HFAs) on how and when to issue a Form 8823 for an owner out of compliance with the LIHTC program.

The guide expanded on the information provided for owners of ac/rehab projects in the 2000 PLR.

The guide has helped the industry to understand how to place acquisition and rehab credits in service, and how to operate an ac/rehab project to maximize the value of its two credit allocations.

In October 2009, the IRS issued an updated version of the 8823 Audit Guide.

This version of the guide has provided the industry additional clarification on the impact of an owner’s ability to claim a tax credit when they transfer residents in order to complete a building’s rehabilitation during year one of the credit period.
Placed in Service Dates

- Because an ac/rehab project has two sets of tax credits, the owner must place each set of credits in service separately for each building.
- An owner must know the placed in service (PIS) date for each building’s acquisition credits and for its rehab credits.

PIS Date for Acquisition Credits

- In both the 2000 PLR and the 8823 Audit Guide, the IRS told owners that their acquisition credits go into service on the date of acquisition.
- This was good news because the sooner an allocation of credits goes into service, the sooner the building has the potential to produce tax credits for its owner.

PIS Date for Rehab Credits cont’d

- An owner elects a period of time no longer than 24 months to accumulate the costs that form the eligible basis for a building’s rehabilitation credits.
- An owner should confer with the practices of their HFA to determine the best date on which to place their rehabilitation credits, particularly for bond financed projects.
The Form IRS-8609

- When an owner successfully completes the LIHTC development and allocation process, and provides the cost certification, PIS date, evidence of recording the extended use agreement, and any other required information, the HFA gives them a Form IRS-8609 for each building.

The 8609 Form cont’d

- An owner receives two 8609 forms for each ac/rehab building: One form for the acquisition credits and a second for the rehabilitation credits.
- The owner must complete part 2 of the form and submit it to the IRS before they are able to take their first year’s tax credit.

Line 8b of the 8609 Form

- On Line 8b of a building’s 8609 form, the IRS asks the owner if they intend to treat the building represented by the form as part of a multiple building project.
  - If the owner says no, the building is a single building project.
  - If the owner says yes, the owner must attach a list of the other buildings in the same project.
Acquisition/Rehab Projects
With Existing Residents

Many owners purchase and rehabilitate existing projects through the LIHTC program with residents already in place.

The owner wants to implement a plan for certifying the existing residents for the LIHTC program that will maximize the value of the credit allocation.

How and when an owner should certify the existing residents eligible for the LIHTC program depends on:
- The date of acquisition
- If the owner will be relocating the resident during a building’s rehabilitation activities
- When the owner completes a building’s rehabilitation activities
- When an owner elects to start the credit period
**Acquisition/Rehab with Existing Residents Myth**

- There is a myth that floats around the LIHTC industry that an owner must complete an initial TIC for existing residents for the acquisition credits and a second initial TIC when placing the rehab credits in service.
- This myth is not true and we will learn how/when to complete the one initial TIC required for different ac/rehab projects.

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**Building by Building**

- The developer and property management company must concur on a building-by-building basis.
- It is possible for buildings included in the same project to start their credit periods in different years.

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**Owner Completes Rehab the Year of Acquisition**

- When an owner completes the rehabilitation activities the same year as acquiring the building, the units occupied by qualified residents may begin to produce a tax credit at acquisition.
- The date of acquisition is often referred to as the “look-back date.”
Owner Completes Rehab the Year of Acquisition cont’d

- The IRS allows an owner 120 days after acquiring a building to certify the residents and make the TICs effective at acquisition.

- The owner may also complete a resident’s TIC 120 days prior to the date of acquisition and make the TIC effective on the date of acquisition.

Due to the delays an owner often experiences in closing on buying a project, it can be good practice to begin completing TICs for the existing residents no more than 60 days before an owner expects to purchase the project.

The new owner also wants an agreement with the outgoing owner on how/when they are to rent vacant units to new residents.

Example

- Owner buys a building on 5/1/2012 and completes its rehab during 2012.

- Any TIC an owner completes by 8/31/2012, using the resident’s income and income limit as of 5/1/2012, can be effective on 5/1/2012.

- The resident should sign as of the date they sign the TIC and not back-date their signature to 5/1/2012.
Example cont’d

- If an owner completes an existing resident’s TIC more than 120 days after buying a building, the TIC is effective, and the unit starts producing a tax credit on the day the resident signs the TIC.

- Technically, 120 days after 5/1/2012 is 8/27/2012.

Notes to Example

- Any TICs the owner completed no earlier than January 1, 2012 could also be made effective on May 1, 2012.

- If the owner purchased the building any day in May 2012 after May 1st, the building cannot start producing a tax credit until June.

Rehab Complete the Year of Acquisition cont’d

- When an owner purchases a building and completes the rehabilitation in the same year, the owner may begin the building’s credit period the same year or elect to start taking credits the following year.

  - If the owner begins the credit period the year of acquisition, the tax credit produced for year one will be split between the year 1 and year 11 tax returns based on that year’s average applicable fraction.
Rehab Complete the Year of Acquisition cont’d

- If the owner begins the credit period the year following acquisition, and all the LIHTC units are occupied by qualified residents by January 31st the year following acquisition, the investors can take the entire first year’s tax credit on their tax returns for year one.

Example

- A 60 percent LIHTC building produces an annual rehabilitation credit of $108,000.
- All the LIHTC units are occupied by qualified residents by December 31st of the year of acquisition; Average A/F = 28%.
- The building’s eligible basis for the rehabilitation credits is $2 million and the owner received an allocation of 9 percent LIHTC.

Example cont’d

- If the owner begins the credit period the year of acquisition, the amount of the first year’s tax credit ($108,000) they can take on their tax return for year one is $50,400 ($2,000,000 x 28% x 9%).
- The remaining portion of the tax credit the building produces in year one, $57,600 ($108,000 - $50,400), the owner may take on their tax return for year 11.
Example cont’d

☐ If the owner begins the credit period the year following acquisition, they may take the entire $108,000 credit on their tax returns for year one.

☐ Note: The owner does a comparable calculation for the building’s acquisition credits.

☐ The owner must start the credit period the same year for both sets of credits.

Owner Completes Rehab the Year after Acquisition

☐ When an owner completes a building’s rehab the year following acquisition, the units occupied by qualified residents may begin to produce a tax credit in January of the year the owner completes the rehab activities.

☐ January 1st is often referred to as the “look-back date.”

Owner Completes Rehab the Year after Acquisition

☐ The owner wants the existing residents certified as of January of the year the owner completes the rehab.
Example

- Owner buys a building on 5/1/2012 and completes its rehabilitation activities during 2013.
- An owner can start completing TICs as of 9/1/2010 and make them effective as of 1/1/2011.
- Technically, 120 days prior to 1/1/2011 is 9/3/2012.

Notes to Example

- Because of the rule that says that as long as a unit is in service for an entire calendar month, it can produce a tax credit for that month if occupied by a qualified resident by the end of that month, a unit can start producing a tax credit in January 2013 if the owner certifies the resident for the LIHTC program by 1/31/2013.

Rehab Year After Acquisition

- When an owner completes rehab the year after acquisition, they may elect to begin the credit period the year the rehab credits are PIS, or the following year.
  - If the owner begins the credit period the year rehab activities are complete, the tax credit for year one will be split between the investors' year one and year eleven tax returns based on year one's average A/F.
Notes to Example

- If the owner begins the credit period the year after completing the rehabilitation activities, and all the LIHTC units are occupied by qualified residents by December 31st of the year the owner places the rehabilitation credits in service, the investors may take the entire first year’s tax credit on their tax returns for year one.

Example

- A 60 percent LIHTC building produces an annual rehabilitation tax credit of $108,000.
- All the LIHTC units are occupied by qualified residents by 12/31 the year the owner completes the rehabilitation; Avg A/F = 28%.
- The building’s eligible basis for the rehabilitation credits is $2 million and the owner received an allocation of 9 percent LIHTC.

Example cont’d

- If the owner begins the credit period the year rehabilitation is complete, the amount of the first year’s tax credit ($108,000) investors can take on their tax returns for year one is $50,400 ($2,000,000 x 28% x 9%).
- The remaining portion of the tax credit for year one, $57,600 ($108,000 - $50,400), investors may take on their tax returns for year eleven.
Example cont’d

☐ If the owner begins the credit period the year after placing the rehabilitation in service, they may take the entire $108,000 credit on their tax returns for year 1

☐ Note: The owner does a comparable calculation for the building’s acquisition credits. They must start the credit period the same year for both sets of credits

Safe Harbor Rule

☐ In 2003, the IRS issued a revenue procedure giving an owner guidance on how to preserve the validity of an LIHTC resident’s initial TIC if it was completed more than 120 days prior to the start of a building’s credit period

☐ Revenue Procedure 2003-82 tells owners how to protect their tax credits without needing to replace outdated initial TICs

Safe Harbor Rule cont’d

☐ If a TIC was complete more than 120 days before the start of the credit period, the owner should test the resident’s income by asking them to sign a statement certifying if their income has changed since completing their certification for the LIHTC program

☐ The test should be done during the 120 days prior to the start of the credit period
Safe Harbor Rule cont’d

☐ If the resident indicates their income has changed since their initial TIC, the owner should ask for a copy of a document showing the change; E.g., a copy of a pay stub, bank statement, benefit award letter, etc…

☐ If the resident’s income has risen above 140 percent of their income limit, the owner must implement the available unit rule

Safe Harbor Rule cont’d

☐ Implementing Rev Proc 2003-82 is particularly important in mixed-income projects

☐ In a 100 percent LIHTC project, the owner would always rent the next available unit to an LIHTC-qualified resident regardless of what they found when they tested the resident’s income at the start of the credit period

Safe Harbor Rule cont’d

☐ It is important that owners and managers understand that no resident must be forced to vacate their unit if their income has increased since their initial TIC was completed more than 120 days prior to the start of the credit period

☐ Rev Proc 2003-82 allows an owner to preserve their LIHTC without forcing the resident to move
Example

- Owner buys a building on 5/1/2012 and completes its rehabilitation activities and plans to start the credit period in 2013
- The owner should test the income for any resident with an initial TIC completed prior to 9/1/2012
- Technically, 120 days prior to 1/1/2011 is 9/3/2010

Notes to Example

- Because testing a resident’s annual income is not the same as completing an annual recertification, the resident remains on the same annual recertification schedule
- If the owner completed their initial TIC as of July 1, 2012, they should recertify the resident annually as of July 1st

Resident Relocation Issues
Relocating a Resident within the Same Project

☐ An owner may need to relocate an existing resident within the same project for the rehab

☐ When relocating within the same project, the resident may take their TIC to their new unit

☐ The resident stops producing a credit in their old unit and starts producing a credit in their new unit

Relocating a Resident within the Same Project cont’d

☐ Remember that an owner defines what buildings are included in the same project on Line 8b of a building’s 8609 form

☐ When relocating a resident within the first year of the credit period, the owner must track in what months they produced a tax credit in their first unit and in what months they produced a tax credit in their second unit

Relocating a Resident within the Same Project cont’d

☐ The resident’s first unit stops producing a tax credit and cannot be included in the A/F again until occupied by an LIHTC-qualified resident

- The resident may move back to their original unit; or

- Another qualified family may occupy the unit after its rehabilitation and re-start its ability to produce a tax credit
Relocating a Resident within the Same Project cont’d

- If the unit is not occupied by a qualified resident again by the end of year one, it can be included in the applicable fraction for the months the first resident lived in it but not in the year end A/F calculated as of 12/31.

- It may eventually produce a tax credit under the two-thirds rule.

Relocating a Resident within the Same Project Example

- An owner closes on a 3-bldg project 2/1/12 and certifies the existing residents within 120 days.

- The Greens occupy Unit A in Building A until June 30, 2012 when they transfer to Unit B in Building B and live there the rest of the year.

- The Greens produce a tax credit for Unit A in Building A February – June 2012 and for Unit B in Building B July – December 2012.

Relocating a Resident within the Same Project Example cont’d

- Unit A went out of service for its rehab July 1, 2012, was PIS October 30, 2012 and was occupied by a LIHTC family January 2, 2013.

- Unit A can be included in the monthly A/F for February – June for the first year averaging convention.

- Unit A cannot be included in the first year A/F because it was not occupied again by 12/31/12.
Relocating a Resident within the Same Project Example cont’d

- Unit B was vacant on 2/1/2012, went immediately out of service for its rehab, was PIS on June 30, 2012, and was occupied by the Green family July 1, 2012.

- Unit B can be included in the monthly A/F for July - December for the first year averaging convention and can be included in the first year A/F because it was occupied by 12/31/2012.

Relocating a Resident to a Different Project

- When relocating a resident to a building in a different project, the owner must requalify the resident for the LIHTC program.

- Remember that a building located next door that shares the same parking lot is a different project unless the owner made it part of the same project on Line 8b of both building’s 8609 forms.

Relocating a Resident to a Different Project cont’d

- Because the resident moved to a different project, the vacated unit maintains the status associated with its last resident.

- If the owner qualified the resident for their original unit, it continues to produce a tax credit under the LIHTC vacant unit rule.
Relocating a Resident to a Different Project Example

- An owner buys 2 buildings on 2/1/12, elects to operate them as separate projects, and certifies the residents within 120 days.

- Unit B in Building B is vacant and remains out of service for its rehab until 6/3/2012.

- After requalifying the Greens, the owner moves them from Unit A in Building A to Unit B in Building B on 7/1/2012.

Relocating a Resident to a Different Project Example cont’d

- When the Greens vacate Unit A in Building A, it continues to produce a tax credit under the vacant unit rule, except for the period of time it is out of service for its rehab.

- Unit A in Building A is included in the monthly A/F for the first year averaging convention Feb – June and Nov – December and is included in the first year A/F calculated on 12/31/12.

Relocating a Resident to a Different Project Example cont’d

- Unit B in Building B starts producing a tax credit when occupied by the Green family July 2012.

- Unit B in Building B is included in the monthly A/F for the first year averaging convention July – December and is included in the first year A/F calculated on 12/31/12.
Relocation to a Building with a Different PIS Date

- In most projects, each building has its own PIS date
- Buildings can be PIS in different years and begin their credit periods in different years
- For ac/rehab projects, the owner cannot begin a building’s credit period until the year they place its rehab in service

Relocation to a Building with a Different PIS Date Example

- The Greens live in Unit A in Building A when the owner buys their 3 building project on 5/1/2012
- The Greens live in Unit A in Building A until the owner takes it out of service for its rehab September 30, 2012
- The Greens live in Unit B in Building B for the rest of 2012
Relocation to a Building with a Different PIS Date Example cont’d

- The owner does not place the rehab in service for Unit A in Building A until Feb 2013
- Unit A in Building A will not produce a tax credit for May – September 2012 because the owner did not place its rehab in service until 2013
- The Greens will produce a tax credit for Unit B in Building B Oct – December 2012

Relocation When an Owner Elects to Deep Rent Skew

- Every owner must commit to one of two minimum set asides
  - 20% @ 50% - The owner must rent 20 percent of the units at a project to residents with income no greater than 50 percent of the AMI
  - 40% @ 60% - The owner must rent 40 percent of the units at a project to residents with income no greater than 60 percent of the AMI

Relocation When an Owner Elects to Deep Rent Skew cont’d

- An owner in NYC may commit to renting 25 percent of the units at a project to residents with income not above 60 percent of the AMI
- When an owner commits to deep rent skew, they elect a minimum set aside and make the extra promise to rent 15 percent of the low income units to residents with income no greater than 40 percent of the AMI
Most properties where the owner elects to deep rent skew are mixed-income including both low income and market units.

Unlike other mixed-income projects, when an owner elects to deep rent skew, the low income units are fixed.

The same units produce tax credits for the entire 15-year compliance period.

As a resident relocates around a project where the owner elects to deep rent skew, they can only produce a tax credit for the months they occupy one of the fixed low income units.

If a qualified resident occupies a non-low income unit, they cannot produce a tax credit.

The Green family occupies Unit A when the owner buys their building on 2/1/2012.

The owner certifies the Greens for the LIHTC program and their unit becomes one of the fixed LIHTC units at the project.

The owner takes Unit A out of service for its rehab on 6/30/12 and the Greens transfer to Unit B.
### Relocation When an Owner Elects to Deep Rent Skew Example cont’d

- Unit B is not one of the fixed LIHTC units
- The Greens transfer back to Unit A on 11/1/2012
- The Greens will produce a tax credit for Unit A Feb – June and Nov – December 2012
- The Greens do not produce a tax credit July – Oct 2012 because Unit B is not an LIHTC unit

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### Relocating Residents Off the Project

- An owner may need to temporarily relocate a resident off the project to rehabilitate their unit
- A resident may temporarily leave the project and return without requalifying
- The IRS has not established a limit for how long a resident can be off a project and return to the project based on their initial TIC so an owner should confer with their HFA and CPA

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### Relocating Residents Off the Project cont’d

- Some industry professionals believe the answer to how long a resident can vacate a project and return without re-qualifying is 120 days because that is the length of time information is considered usable to support a tenant income certification
Resident Tracking

Because of the need to know which resident occupied which unit during each month during a project’s rehabilitation, and particularly during the first year of a building’s credit period, an owner must have a mechanism that tracks and certifies resident relocation activities for the investors to make their capital contributions and for the CPA to prepare their first tax return.

Resident Tracking cont’d

For every resident, the owner must track:

- The effective date of their initial TIC
- Their original unit and date of occupancy
- Any unit the resident relocated to and the date of their move
- The months during the first year of the credit period the resident generated a tax credit and in what unit

Resyndicating Existing LIHTC Projects

Owners of older LIHTC projects are seeking new allocations of LIHTC to recapitalize their projects.

A resident that qualified for the LIHTC program under the original 15 year compliance period or extended use period is considered qualified under the new credit allocation.
Resyndicating Existing LIHTC Projects

- In the October 2009 version of the 8823 Audit Guide, the IRS provided guidance for the steps an owner must take to place the new credit allocation in service.

- What an owner must do to produce the credits under the new allocation varies if the project is being resyndicated by the initial owner or by a new owner.

Resyndication by Original Owner

- If the original owner resyndicates with rehab credits, and if a resident’s income was over 140% of their income limit at their most recent recert, the owner is subject to available unit rule for the new credit allocation.

- The owner must rent next available unit to an LIHTC resident to maintain the applicable fraction needed to produce the anticipated tax credit for the new allocation.

Resyndication by Original Owner cont’d

- Vacant units previously occupied by income-qualified households continue to qualify for the LIHTC program under the Vacant Unit Rule, and are subject to the Available Unit Rule if last occupied by an over-income family.
Resyndication by New Owner

- If a new owner resyndicates a property with acquisition and rehab credits, they must follow the requirements of the Safe Harbor Rule.
- The owner must test the income for anyone last recertified more than 120 days before the start of the new credit period.

Resyndication by New Owner cont’d

- Vacant units previously occupied by income-qualified households are not low income units at the start of the new credit period.
- The new owner must calculate the applicable fraction on a month-by-month basis for year one as required under the first year averaging convention.

Resyndicating Impacted LIHTC Projects

- Under the existing allocation, owners in Impacted areas that were PIS prior to 2009 can use the HERA-special income limits allowing for higher rents.
- When an owner resyndicates a project after 2008, it switches from being Impacted to non-Impacted.
Resyndicating Impacted LIHTC Projects cont’d

☐ Because the project is no longer Impacted, the new maximum LIHTC rents will be the non-Impacted rents

☐ Under the current income limit methodology, the income limits and maximum rent will be driven by the year the new tax credits are placed in service

Resyndication cont’d

☐ Once a LIHTC building reaches year 16, it enters its extended use period (EUP) and the HFA’s monitoring procedures may be looser than those required during the 15-year compliance period

☐ For example, some HFAs allow owners to drop the full-time student rule and to drop the need to calculate the square footage A/F

Resyndication cont’d

☐ If an owner plans to resyndicate a project, or to sell to a new owner planning to resyndicate, management should continue following all rules required during the 15-year compliance period including:
  - The full-time student rule
  - The available unit rule
  - The vacant unit rule
  - The transfer rule
Resyndication cont’d

☐ Developer/asset management/property management need to concur on the plans for the project and the need to continue to meet all LIHTC requirements if there is a plan to resyndicate

☐ Additionally, a new LIHTC investor may impose requirements beyond those imposed by the project’s original investor

Questions

Liz Bramlet, President
Liz Bramlet Consulting, LLC
(800) 784 – 1009
liz@lizbramletconsulting.com
www.lizbramletconsulting.com
www.lbctrainingcenter.com
www.lizbramlet.wordpress.com - blog
www.twitter.com/lizbramlet

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