

LIHTC Unit Rules

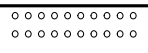
Presented by:

Gwen Volk

CPM[®], NAHP-e[®], RAM[®], FHC[®], CPO[®], SHCM[®], HCCP[®]

Who's in the Room?

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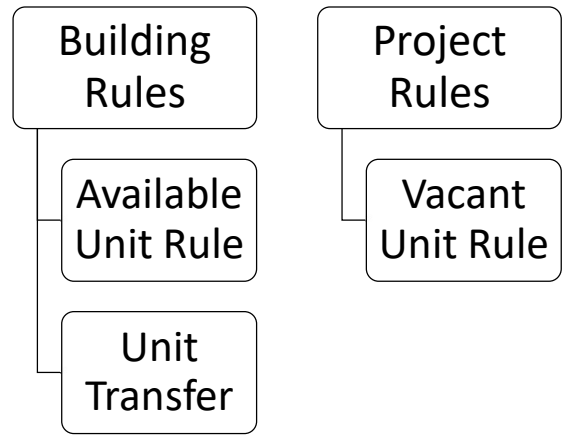


Building versus Project

- Some rules of the program are applied on a project-wide basis
- Other rules of the program are applied on a building by building basis

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Monitored on Mixed Properties (but rules also apply to 100%)



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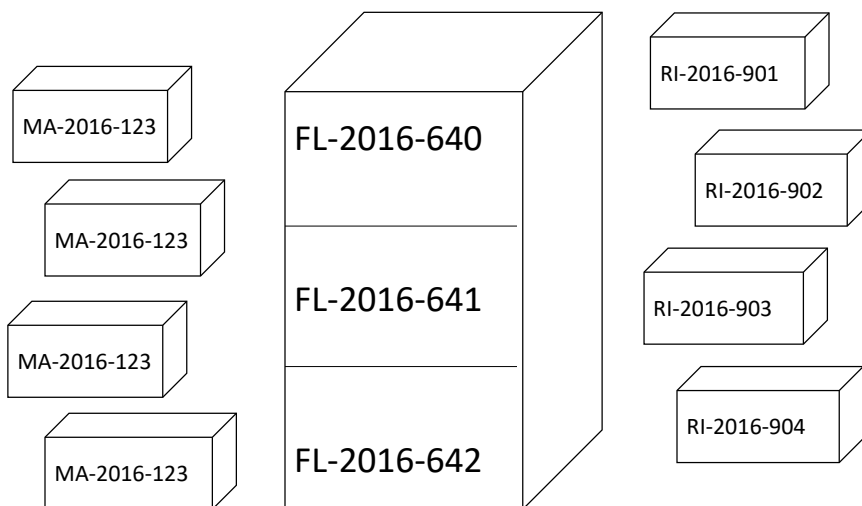
A BIN May Not a “building” Make

A single structure that we typically think of as one building may consist of more than one building for tax credit purposes.

- More than one building can have the same BIN number
- A high-rise may have more than one BIN number (floors 1-4 are a BIN and floors 5-15 are a BIN, perhaps)
- Every BIN may be a project, OR
- Every BIN may be part of a multiple building project*

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BIN Examples



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Building or Project?

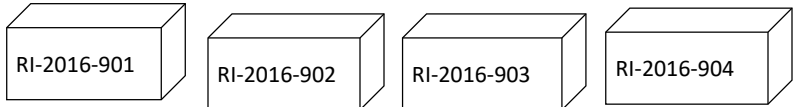
Form 8609: The Answer

8609 Low-Income Housing Credit Allocation and Certification
 Form 8609 (Rev. 05-2016)
 Department of the Treasury Internal Revenue Service
 Go to www.irs.gov/Form8609 for instructions and the latest information. OMB No. 1545-0088

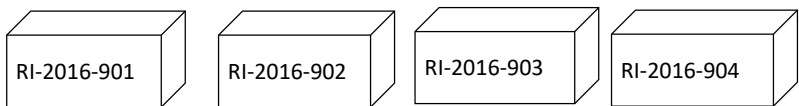
Part I Allocation of Credit
 Check Addition to Qualified Basis Amended Form
 A Address of building (do not use P.O. box) (see instructions) B Name and address of housing credit agency
 C Name, address, and TIN of building owner receiving allocation D Employer identification number of agency
 E Building identification number (BIN)

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period
 7 Eligible basis of building (see instructions) 7
 8a Original qualified basis of the building at close of first year of credit period 8a
 b Any you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? Yes No
 9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(E)? Yes No
 b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low income units under section 42(i)(3)(F)? Yes No
 10 Check the appropriate box for each election.
 Caution: Once made, the following elections are irrevocable.
 a Elect to begin credit period the first year after the building is placed in service (section 42(i)(1)) Yes No
 b Elect not to treat large partnership as taxpayer (section 42(i)(5)) Yes No
 c Elect minimum set-aside requirement (section 42(g)) (see instructions):
 25-50 40-60 Average income 25-40 (N.Y.C. only)
 d Elect deep rent skewed project (section 142(d)(4)(E)) (see instructions) 15-40
 Under penalties of perjury, I declare that I have examined this form and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

Project Examples

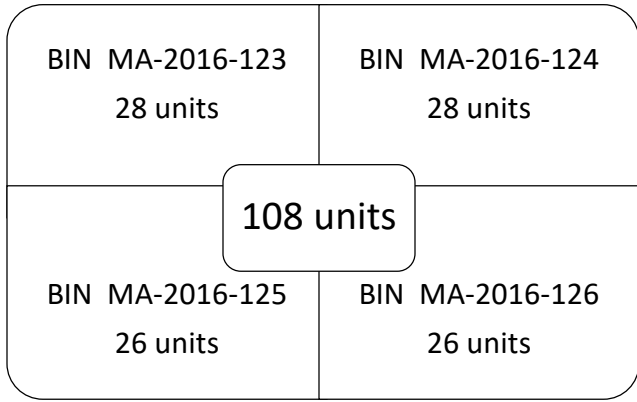


8b –"Yes" One project with four BINS



8b –"No" Each BIN is a project

Minimum Set-Aside: Project Rule



8b – “Yes” One project with four BINs

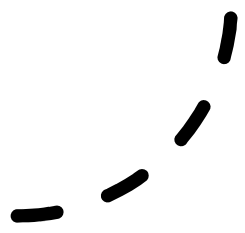
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Calculating the Minimum Set-Aside

20% at 50%
108 X 20% = 21.6 = 22 units

40% at 60%
108 X 40% = 43.2 = 44 units

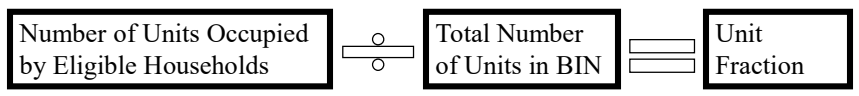
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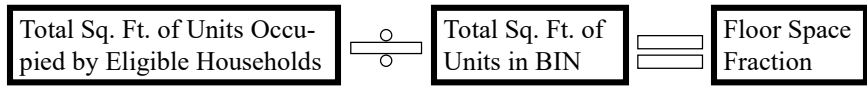
Applicable Fraction: Building Rule

The applicable fraction is the *lesser of* the unit fraction and the floor space fraction

Unit Fraction:

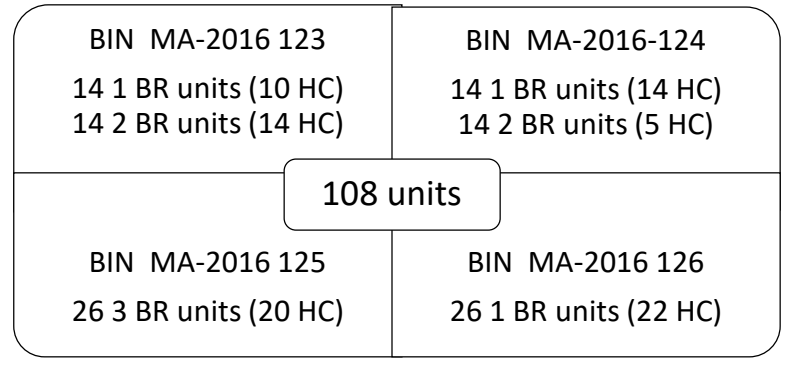


Floor Space Fraction:



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Calculating Applicable Fraction



1 BR – 650 sq ft 2 BR – 875 sq ft 3 BR – 1050 sq ft

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Calculations

BIN MA-2016-123

<u>Total Units</u> =	<u>28</u>	<u>Total Housing Credit Units</u> =	<u>24</u>
14 1-BR X 650 sq. ft. =	9,100 sq. ft.	10 1-BR X 650 sq. ft. =	6,500 sq. ft.
14 2-BR X 875 sq. ft. =	<u>12,250 sq. ft.</u>	14 2-BR X 875 sq. ft. =	<u>12,250 sq. ft.</u>
Total	21, 350 sq. ft.	Total	18,750 sq. ft.

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Calculating the Applicable Fraction

Example: BIN CA 2016 123

Unit Fraction:

$$\frac{24 \text{ Units Occupied by HC Eligible Households}}{28 \text{ Total Units in BIN}} = 85.71\%$$

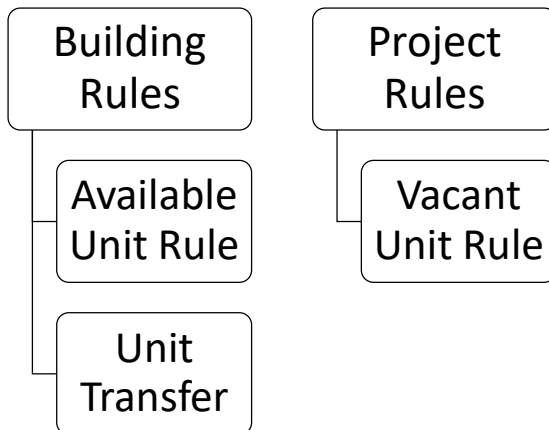
Floor Space Fraction:

$$\frac{18750 \text{ Sq. Ft. Occupied by HC Eligible Households}}{21350 \text{ Sq. Ft. in BIN}} = 87.82\%$$

What is the Applicable Fraction? 85.71%

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Monitored on Mixed Properties (but rules also apply to 100%)




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Available Unit Rule: Building Rule



- Triggered by recertification, if income is over 140% of highest set aside %
- MUST rent next available unit of comparable or smaller size in same building to eligible resident
- Continues as long as over-income resident remains in building
- Must keep over-income resident at restricted rent until applicable fraction is restored

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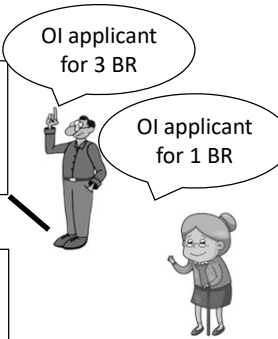
<p>Available Unit Rule: Building Rule</p>	<ul style="list-style-type: none"> • Applies to all buildings – even those that are 100% housing credit. • But -- 100% buildings are only affected when mistakes are made • Mixed income buildings – market unit may have to be rented to eligible resident to maintain fraction • Once fraction is achieved, over-income unit can be raised to market rent • For the Average Income set-aside the Owner may have to change the units included in the qualified group to maintain compliance
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Available Unit Rule Example: BIN CA-2016-101

What would you do?

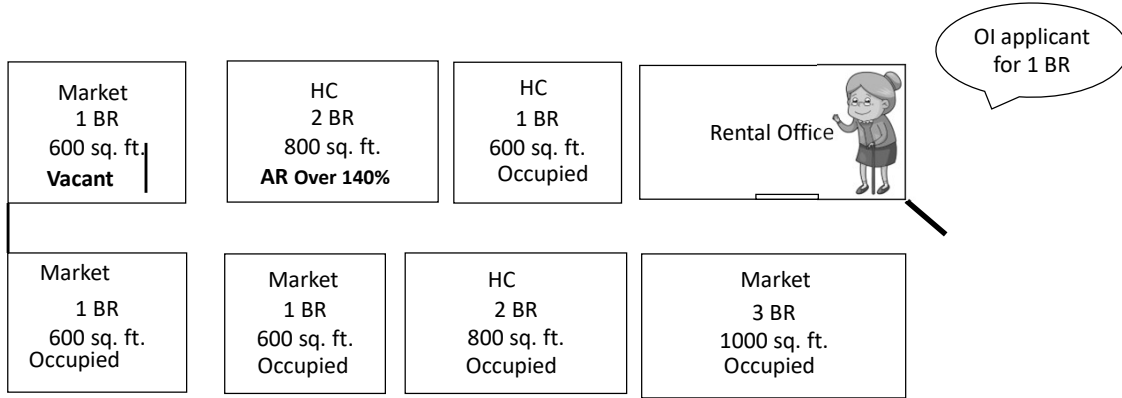
Market 1 BR 600 sq. ft. Vacant	HC 2 BR 800 sq. ft. AR Over 140%	HC 1 BR 600 sq. ft. Occupied	Rental Office
Market 1 BR 600 sq. ft. Occupied	Market 1 BR 600 sq. ft. Occupied	HC 2 BR 800 sq. ft. Occupied	Market 3 BR 1000 sq. ft. Occupied



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Available Unit Rule Example: BIN CA-2016-101

What would happen if you rented the 1 BR unit to this applicant?



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Available Unit Rule With Average Income Set-Aside (AIS)

- Owner may designate units as 10% - 20% - 30% - 40% - 50% - 60% - 70% - 80% of AMI
- The Average of 40% of the designated units must equal 60% at all times to maintain the minimum set-aside.
- For the owner to take credits on all of the units, the applicable fraction must be maintained.
- A unit designated between 10% - 60% is Over Income when its occupants exceed 140% of the 60% income limit. A unit designated as 70% or 80% is Over Income when its occupants exceed 140% of their designated income limit.

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Available Unit Rule With Average Income Set-Aside (AIS) continued

- When that happens, the Available Unit Rule applies.
- For the Average Income Set-aside the Owner can designate a vacant unit that has never been occupied or that is a market rate unit to restore the set-aside
- This differs from the Available Unit Rule for the other set-asides because in those set-asides you change a unit designation only by having it first occupied for 30 consecutive days by a qualified household that is rent restricted at that income level.

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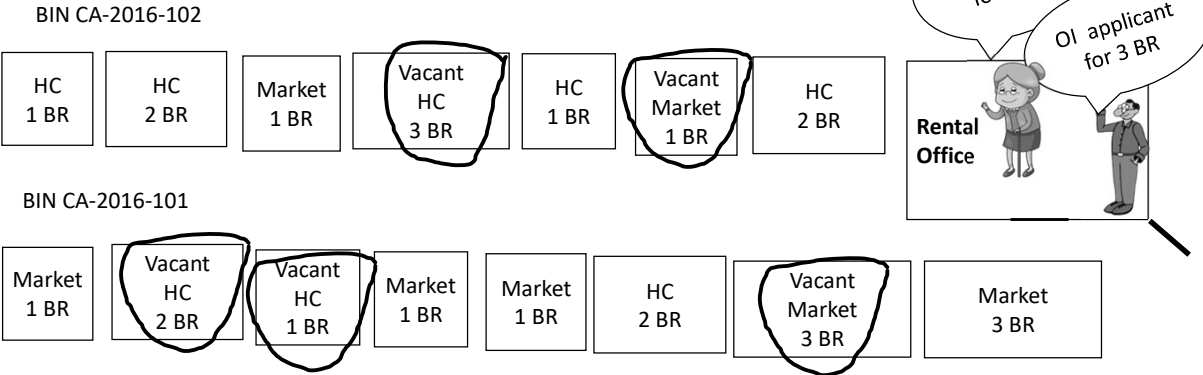
Vacant Unit Rule: Project Rule

- Monitored on mixed income properties
- But -- 100% properties are affected when mistakes are made
- Owner must make reasonable attempts to rent vacant, low-income units to qualified households before renting vacant market rate units to non-qualifying households.
- Manager must keep good records of attempts to market the vacant low-income units.

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Vacant Unit Rule Example

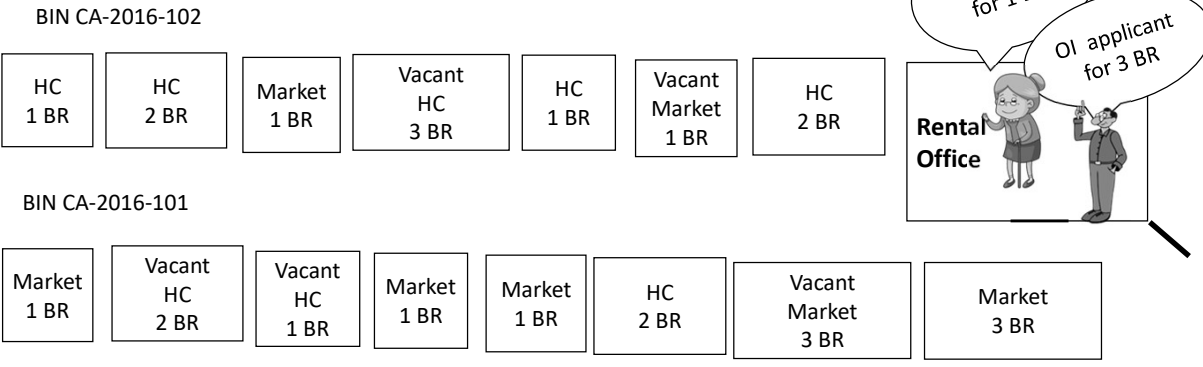
What would you do?



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Vacant Unit Rule Example

Let's see what will happen if we move them in.



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Unit Transfer Rule: Building Rule

Part II First-Year Certification —Completed by Building Owners with respect to the First Year of the Credit Period	
7 Eligible basis of building (see instructions)	7
8a Original qualified basis of the building at close of first year of credit period	8a
b Are you treating this building as part of a multiple building project for purposes of section 42 (see Inst. 42-1)?	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9a If box 6d is checked, are you treating this building as a separate project? (see instructions)	<input type="checkbox"/> Yes <input type="checkbox"/> No
b For market-rate units, are you electing to reduce the number of units available to eligible households?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10 Check the appropriate box for each election.	
Caution: Once made, the following elections are irrevocable.	
a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1))	<input type="checkbox"/> Yes <input type="checkbox"/> No
b Elect not to treat large partnership as taxpayer (section 42(j)(5))	<input type="checkbox"/> Yes
c Elect minimum set-aside requirement (section 42(g)) (see instructions):	
<input type="checkbox"/> 20-50 <input type="checkbox"/> 40-60 <input type="checkbox"/> Average income <input type="checkbox"/> 25-60 (N.Y.C. only)	
d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions)	<input type="checkbox"/> 15-40

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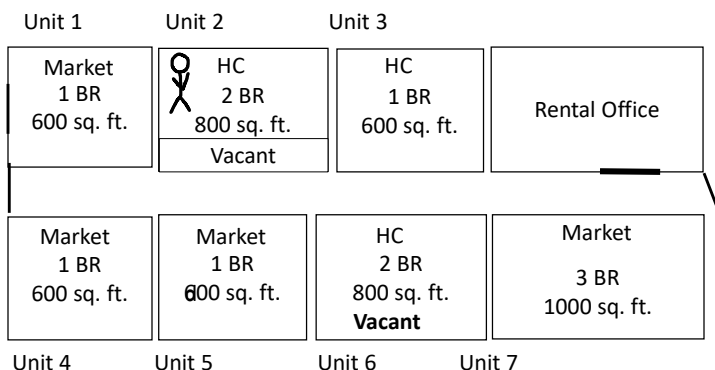
Unit Transfers

- If a LIHC household wants to transfer to a different LIHC unit in the same BIN, the household does not need to be recertified
- A previously qualified household whose income now exceeds the applicable income limit (regardless of how much) may relocate to another low-income unit within the same BIN. The Units trade status.
- If the LIHC household is at or below 140%* of AMGI the household can transfer to a unit in a different BIN within the same project (as identified on the 8609).
- If the LIHC household is above 140%* of AMGI the household can't move to an LIHC unit in another BIN within the same project unless the project is 100% LIHC. If they transfer to another BIN in a non-100% Project it has to be as a market household

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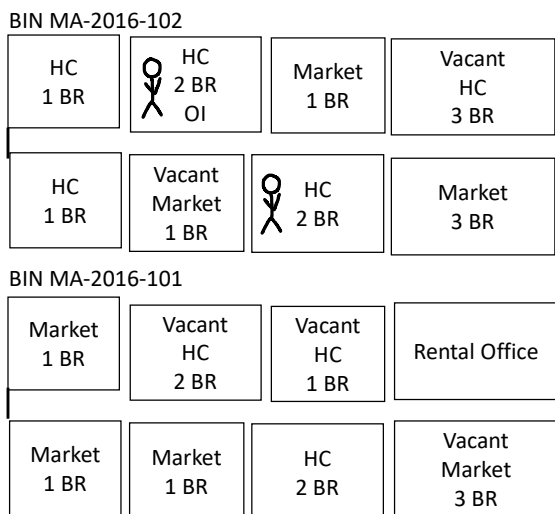
Unit Transfer Within a BIN: Example

What will happen if Unit 2 transfers to Unit 6?



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Unit Transfer Between BINs: LIHTC With Market Rate Units



The residents circled in red want to transfer to the vacant Housing Credit unit in a different BIN?

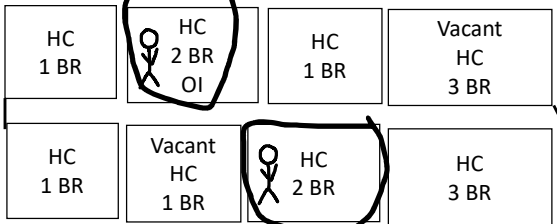
Can they transfer?

What if the OI tenant requests a transfer to a ground floor unit in another BIN as a reasonable accommodation?

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Unit Transfer Between BINs: 100% LIHTC

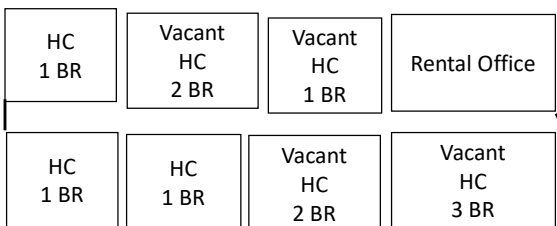
BIN MA-2016-102



The residents circled in red want to transfer to a different BIN?

Can they transfer?

BIN MA-2016-101



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Transfer Within The Initial Credit Period

- The applicable fraction for the first year of the credit period is computed based on a month-by-month accounting of units or floor space occupied by income-qualified households. Therefore . . .
- Transfers within the initial credit period should be avoided if possible.
- Existing qualified households cannot be relocated for the purpose of qualifying more than one LIHC unit to count toward the minimum set-aside or applicable fraction

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Resident Manager Unit

Ruling 92-61 states that as of 9/9/92, resident manager units:

- Are allowed and are included in eligible basis
- Are not counted in applicable fraction - deduct it from both the numerator and the denominator

100 % LIHC Project with 50 Units including 1 Managers Unit							
Eligible Basis	Applicable Fraction = Lesser of						
Cost of all 50 units included	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">49 units</td> <td style="width: 50%; text-align: center;">sq. ft. of 49 units</td> </tr> <tr> <td style="text-align: center;">-----</td> <td style="text-align: center;">-----</td> </tr> <tr> <td style="text-align: center;">49 units</td> <td style="text-align: center;">sq. ft. of 49 units</td> </tr> </table>	49 units	sq. ft. of 49 units	-----	-----	49 units	sq. ft. of 49 units
49 units	sq. ft. of 49 units						
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49 units	sq. ft. of 49 units						

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Resident Manager Unit

Further IRS guidance:

- Manager must be full-time at that property
- Unit is not subject to compliance requirements
- A security officer unit can be considered in the same manner as a resident manager unit.

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Model Unit

- In a property with Market Rate Units, use a Market Rate Unit as the Model Unit.
- In a 100% LIHTC project, the Model Unit must be available for rental to the general public at any time.

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LIHTC: Unit Rules

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LIHTC Unit Rules



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