

**LIHTC  
Unit Rules**

Presented by:  
**Gwen Volk**

CPM<sup>®</sup>, NAHP-e<sup>®</sup>, RAM<sup>®</sup>, FHC<sup>®</sup>, CPO<sup>®</sup>, SHCM<sup>®</sup>, HCCP<sup>®</sup>

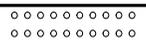
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**Who's in the Room?**

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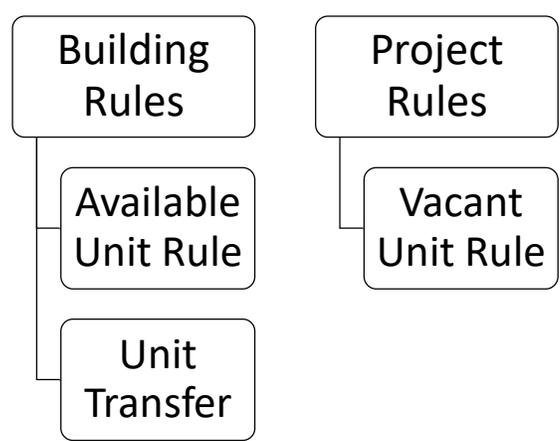
# Building versus Project

- 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

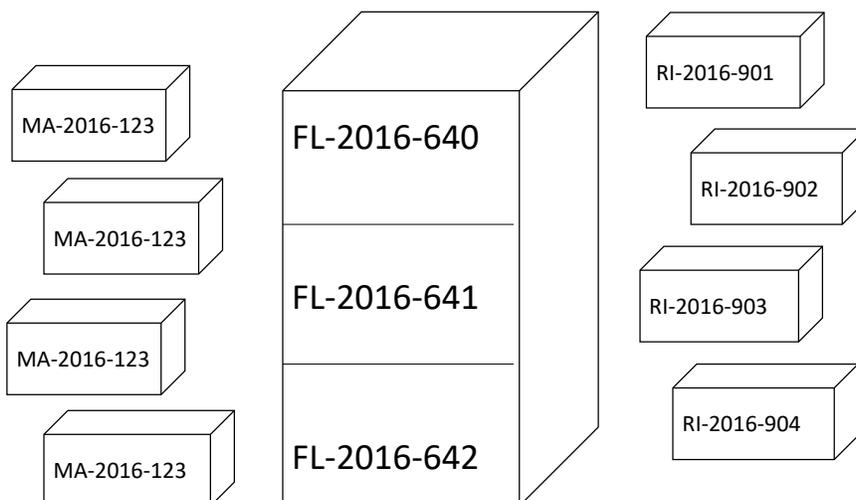
A single structure that we typically think of as one building may consist of more than one building for tax credit purposes.

- 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. May 2016)  
 Department of the Treasury Internal Revenue Service  
 Go to [www.irs.gov/Form8609](http://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)

TIN ▶

1a Date of allocation ▶ b Maximum housing credit dollar amount allowable ▶ 1b  
 2 Maximum applicable credit percentage allowable (see instructions) ▶ 2 1%  
 3a Maximum qualified basis ▶ 3a  
 b Check here  If the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(i)(5)(B), enter the percentage to which the eligible basis was increased (see instructions) ▶ 3b 1 1%  
 4 Percentage of the aggregate basis financed by tax-exempt bonds, (if zero, enter -0-) ▶ 4 1%  
 5 Date building placed in service ▶  
 6 Check the boxes that describe the allocation for the building (check those that apply):  
 a  Newly constructed and federally subsidized b  Newly constructed and not federally subsidized c  Existing building  
 d  Sec. 42(e) rehabilitation expenditures federally subsidized e  Sec. 42(e) rehabilitation expenditures not federally subsidized  
 f  Allocation subject to nonprofit self-help under sec. 42(i)(5)

**Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only**  
 Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.  
 Signature of authorized official Name (please type or print) Date

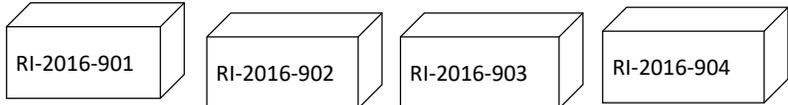
**Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period**  
 7 Eligible basis of building (see instructions) ▶ 7  
 8a Original qualified basis of the building at close of first year of credit period ▶ 8a  
 b Are you treating this building as part of a multiple building project for purposes of section 42 (see 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)(5)(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)(3))  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.  
 Signature Taxpayer identification number Date  
 Name (please type or print) First year of the credit period

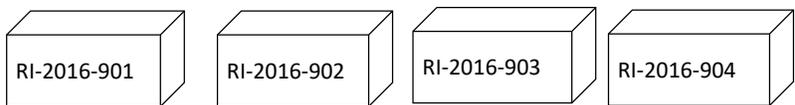
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# Project Examples



8b —“Yes” One project with four BINS



8b —“No” Each BIN is a project

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### Minimum Set-Aside: Project Rule

BIN MA-2016-123 28 units	BIN MA-2016-124 28 units
<b>108 units</b>	
BIN MA-2016-125 26 units	BIN MA-2016-126 26 units

**8b – “Yes” One project with four BINs**

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<h2 style="margin: 0;">Calculating the Minimum Set-Aside</h2>	<p><b>20% at 50%</b></p> <p><b>108 X 20% = 21.6 = 22 units</b></p> <p><b>40% at 60%</b></p> <p><b>108 X 40% = 43.2 = 44 units</b></p>
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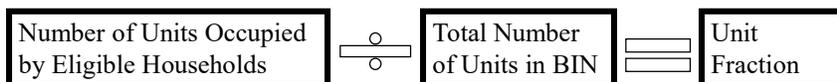
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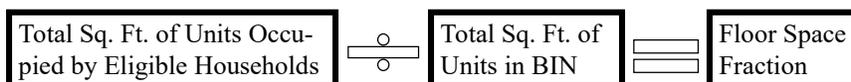
## Applicable Fraction: Building Rule

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

Unit Fraction:



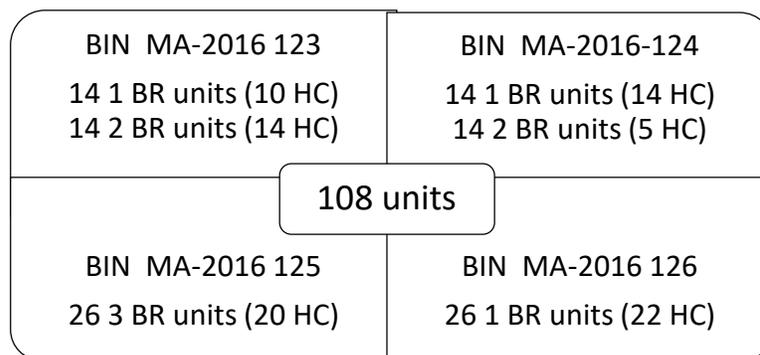
Floor Space Fraction:



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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**

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

Example: BIN CA 2016 123

Unit Fraction:

24 Units Occupied by HC Eligible Households

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28 Total Units in BIN

$\frac{=}{=}$

85.71%

Floor Space Fraction:

18750 Sq. Ft. Occupied by HC Eligible Households

$\frac{\circ}{\circ}$

21350 Sq. Ft. in BIN

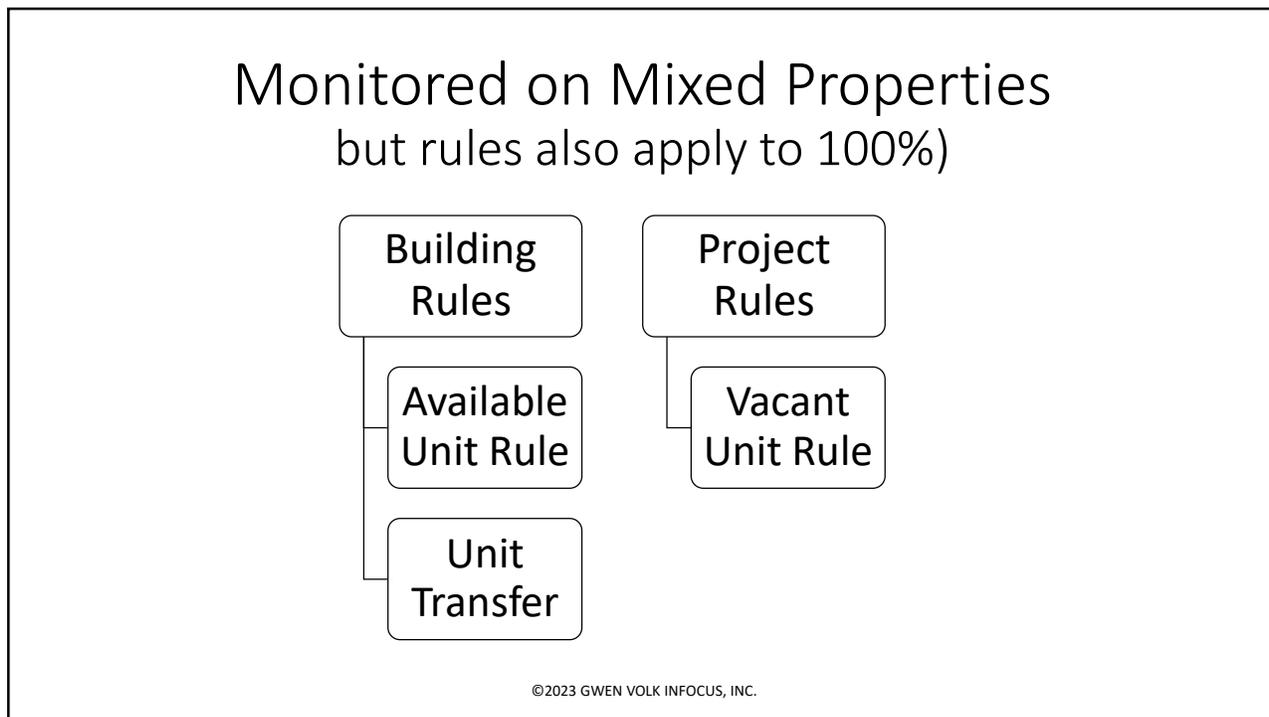
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87.82%

What is the Applicable Fraction? 85.71%

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<p>Available Unit Rule: Building Rule</p>	<ul style="list-style-type: none"><li>• Triggered by recertification, if income is over 140% of highest set aside %</li><li>• MUST rent next available unit of comparable or smaller size in same building to eligible resident</li><li>• Continues as long as over-income resident remains in building</li><li>• Must keep over-income resident at restricted rent until applicable fraction is restored</li></ul>
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<p>Available Unit Rule: Building Rule</p>	<ul style="list-style-type: none"> <li>• Applies to all buildings – even those that are 100% housing credit.</li> <li>• But -- 100% buildings are only affected when mistakes are made</li> <li>• Mixed income buildings – market unit may have to be rented to eligible resident to maintain fraction</li> <li>• Once fraction is achieved, over-income unit can be raised to market rent</li> <li>• For the Average Income set-aside the Owner may have to change the units included in the qualified group to maintain compliance</li> </ul>
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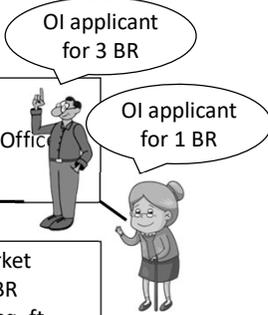
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### Available Unit Rule in an LIHTC With Market Rate Units

*Example is not applicable to the Average Income Set-Aside*

What would you do?

Market 1 BR 600 sq. ft. <b>Vacant</b>	HC 2 BR 800 sq. ft. <b>AR Over 140%</b>	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. <b>Vacant</b>



CA-2016-101

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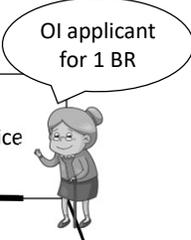
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### Available Unit Rule in an LIHTC With Market Rate Units *Example is not applicable to the Average Income Set-Aside*

What will happen if you rent the Vacant 1 BR unit to this applicant?



Market 1 BR 600 sq. ft. <b>Vacant</b>	HC 2 BR 800 sq. ft. <b>AR Over 140%</b>	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. <b>Vacant</b>



OI applicant  
for 1 BR

BIN CA-2016-101

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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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<p>Vacant Unit Rule: Project Rule</p>	<ul style="list-style-type: none"><li>• Monitored on mixed income properties</li><li>• But -- 100% properties are affected when mistakes are made</li><li>• Owner must make reasonable attempts to rent vacant, low-income units to qualified households before renting vacant market rate units to non-qualifying households.</li><li>• Manager must keep good records of attempts to market the vacant low-income units.</li></ul>
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### Vacant Unit Rule in an LIHTC with Market Rate Units

**BIN CA-2016-102**

HC 1 BR	HC 2 BR	Market 1 BR	Vacant HC 3 BR
HC 1 BR	Vacant Market 1 BR	HC 2 BR	Market 3 BR

**BIN CA-2016-101**

Market 1 BR	Vacant HC 2 BR	Vacant HC 1 BR	Rental Office
Market 1 BR	Market 1 BR	HC 2 BR	Vacant Market 3 BR

What would you do?



OI applicant for 1 BR



OI applicant for 3 BR

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### Vacant Unit Rule in an LIHTC With Market Rate Units

**BIN CA-2016-102**

HC 1 BR	HC 2 BR	Market 1 BR	Vacant HC 3 BR
HC 1 BR	Vacant Market 1 BR	HC 2 BR	Market 3 BR

**BIN CA-2016-101**

Market 1 BR	Vacant HC 2 BR	Vacant HC 1 BR	Rental Office
Market 1 BR	Market 1 BR	HC 2 BR	Vacant Market 3 BR



What would happen if we moved them in?



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## Unit Transfer Rule: Building Rule

<b>Part II First-Year Certification</b> —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. 9a)	<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. Moving to a different project is a move-in subject to initial qualification requirements.	<input type="checkbox"/> Yes <input type="checkbox"/> No
b For market-rate to reduce election	<input type="checkbox"/> Yes <input type="checkbox"/> No
10 Check the appropriate box for each election.	
<b>Caution:</b> 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 <b>not</b> 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

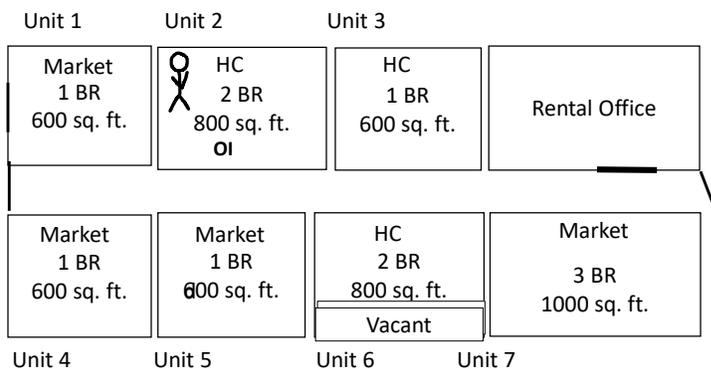
- If a LIHC household wants to transfer to a different LIHC unit in the same BIN, the household does not need to be recertified
- A previously qualified household whose income now exceeds the applicable income limit (regardless of how much) may relocate to another low-income unit within the same BIN. 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

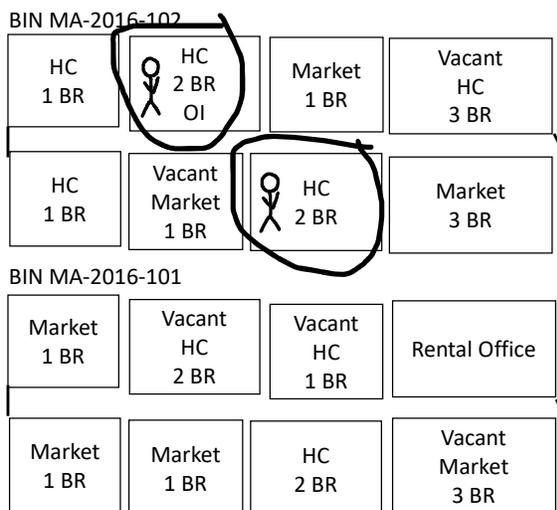
What will happen if Unit 2 transfers to Unit 6?



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### Unit Transfer Between BINs: LIHTC With Market Rate Units



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

Can they transfer?

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### Unit Transfer Between BINs: 100% LIHTC

BIN MA-2016-102			
HC 1 BR	HC 2 BR OI	HC 1 BR	Vacant HC 3 BR
HC 1 BR	Vacant HC 1 BR	HC 2 BR	HC 3 BR

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

Can they transfer?

BIN MA-2016-101			
HC 1 BR	Vacant HC 2 BR	Vacant HC 1 BR	Rental Office
HC 1 BR	HC 1 BR	Vacant HC 2 BR	Vacant HC 3 BR

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<h3 style="text-align: center;">Transfer Within The Initial Credit Period</h3>	<ul style="list-style-type: none"> <li>❑ 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 . . .</li> <li>❑ Transfers within the initial credit period should be avoided if possible.</li> <li>❑ 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</li> </ul>
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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="display: inline-table; border: none;"> <tr> <td style="text-align: center;">49 units</td> <td style="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						
-----	-----						
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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